

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 10-Q

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the Quarterly Period Ended October 31, 2008

Or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the Transition Period From _____ to _____

Commission file number: 001-33417

OCEAN POWER TECHNOLOGIES, INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware

*(State or Other Jurisdiction of
Incorporation or Organization)*

22-2535818

*(I.R.S. Employer
Identification No.)*

1590 Reed Road, Pennington, NJ 08534

(Address of Principal Executive Offices, Including Zip Code)

(609) 730-0400

(Registrant's Telephone Number, Including Area Code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

As of November 28, 2008, the number of outstanding shares of common stock of the registrant was 10,210,354.

OCEAN POWER TECHNOLOGIES, INC.
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EX-31.1: CERTIFICATION

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EX-10.1: Financial Assistance Award agreement between Ocean Power Technologies, Inc. and US Department of Energy dated September 23, 2008

EX-10.2: Modification of Financial Assistance Award agreement between Ocean Power Technologies, Inc. and US Department of Energy dated October 16, 2008

EX-10.3: Agreement between Ocean Power Technologies, Inc. and the Office of Naval Research of the US Navy dated October 31, 2008

EX-31.1: CERTIFICATION

EX-31.2: CERTIFICATION

EX-32.1: CERTIFICATION

EX-32.2: CERTIFICATION

PowerBuoy® is a registered trademark of Ocean Power Technologies, Inc. and the Ocean Power Technologies logo is a trademark of Ocean Power Technologies, Inc. All other trademarks appearing in this report are the property of their respective holders.

Special Note Regarding Forward-Looking Statements

We have made statements in this Quarterly Report on Form 10-Q that are forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements convey our current expectations or forecasts of future events. Forward-looking statements include statements regarding our future financial position, business strategy, budgets, projected costs, plans and objectives of management for future operations. The words "may," "continue," "estimate," "intend," "plan," "will," "believe," "project," "expect," "anticipate" and similar expressions may identify forward-looking statements, but the absence of these words does not necessarily mean that a statement is not forward-looking.

Any or all of our forward-looking statements in this report may turn out to be inaccurate. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our financial condition, results of operations, business strategy and financial needs. They may be affected by inaccurate assumptions we might make or unknown risks and uncertainties, including the risks, uncertainties and assumptions described in Item 1A, "Risk Factors," of our Annual Report on Form 10-K for the year ended April 30, 2008 and elsewhere in this report. In light of these risks, uncertainties and assumptions, the forward-looking events and circumstances discussed in this report may not occur as contemplated and actual results could differ materially from those anticipated or implied by the forward-looking statements.

You should not unduly rely on these forward-looking statements, which speak only as of the date of this filing. Unless required by law, we undertake no obligation to publicly update or revise any forward-looking statements to reflect new information or future events.

PART I — FINANCIAL INFORMATION

Item 1. FINANCIAL STATEMENTS

Ocean Power Technologies, Inc. and Subsidiaries
Consolidated Balance Sheets

	<u>April 30, 2008</u>	<u>October 31, 2008</u> (Unaudited)
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 88,836,304	11,390,768
Short-term investments	—	45,934,653
Accounts receivable	1,728,637	988,285
Unbilled receivables	577,452	951,321
Other current assets	1,375,249	1,343,664
Total current assets	<u>92,517,642</u>	<u>60,608,691</u>
Property and equipment, net	628,454	808,307
Patents, net	717,288	785,274
Restricted cash	1,123,848	939,960
Long-term investments	12,233,437	32,285,422
Other noncurrent assets	330,296	1,237,328
Total assets	<u>\$ 107,550,965</u>	<u>96,664,982</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 1,457,575	1,231,338
Accrued expenses	4,490,008	3,616,379
Unearned revenues	699,752	375,888
Total current liabilities	<u>6,647,335</u>	<u>5,223,605</u>
Long-term debt	188,784	126,491
Deferred rent	16,237	18,943
Deferred credits	600,000	600,000
Total liabilities	<u>7,452,356</u>	<u>5,969,039</u>
Commitments and contingencies (note 11)		
Stockholders' equity:		
Preferred stock, \$0.001 par value; authorized 5,000,000 shares, none issued or outstanding	—	—
Common stock, \$0.001 par value; authorized 105,000,000 shares, issued and outstanding 10,210,354 shares	10,210	10,210
Additional paid-in capital	153,057,265	153,896,651
Accumulated deficit	(52,927,641)	(62,936,507)
Accumulated other comprehensive loss	(41,225)	(274,411)
Total stockholders' equity	<u>100,098,609</u>	<u>90,695,943</u>
Total liabilities and stockholders' equity	<u>\$ 107,550,965</u>	<u>96,664,982</u>

See accompanying notes to consolidated financial statements (unaudited).

Ocean Power Technologies, Inc. and Subsidiaries
Consolidated Statements of Operations
(Unaudited)

	<u>Three Months Ended October 31,</u>		<u>Six Months Ended October 31,</u>	
	<u>2007</u>	<u>2008</u>	<u>2007</u>	<u>2008</u>
Revenues	\$ 1,686,212	667,124	2,241,916	2,453,752
Cost of revenues	1,923,196	1,369,578	2,728,188	3,317,724
Gross loss	<u>(236,984)</u>	<u>(702,454)</u>	<u>(486,272)</u>	<u>(863,972)</u>
Operating expenses:				
Product development costs	1,942,713	2,330,073	3,758,447	4,033,022
Selling, general and administrative costs	1,371,160	2,393,738	3,367,762	4,945,554
Total operating expenses	<u>3,313,873</u>	<u>4,723,811</u>	<u>7,126,209</u>	<u>8,978,576</u>
Operating loss	(3,550,857)	(5,426,265)	(7,612,481)	(9,842,548)
Interest income	1,343,877	514,446	2,788,163	1,062,038
Foreign exchange gain (loss)	336,164	(1,203,882)	515,658	(1,228,355)
Net loss	<u>\$ (1,870,816)</u>	<u>(6,115,701)</u>	<u>(4,308,660)</u>	<u>(10,008,865)</u>
Basic and diluted net loss per share	<u>\$ (0.18)</u>	<u>(0.60)</u>	<u>(0.42)</u>	<u>(0.98)</u>
Weighted average shares used to compute basic and diluted net loss per share	<u>10,192,854</u>	<u>10,210,354</u>	<u>10,191,104</u>	<u>10,210,354</u>

See accompanying notes to consolidated financial statements (unaudited).

Ocean Power Technologies, Inc. and Subsidiaries
Consolidated Statements of Cash Flows
(Unaudited)

	Six Months Ended October 31,	
	2007	2008
Cash flows from operating activities:		
Net loss	\$ (4,308,660)	(10,008,865)
Adjustments to reconcile net loss to net cash used in operating activities:		
Foreign exchange (gain) loss	(515,658)	1,228,355
Depreciation and amortization	121,135	144,233
Loss on disposal of equipment	—	256,378
Treasury note premium amortization	—	128,093
Compensation expense related to stock option grants and restricted stock	1,154,516	879,371
Deferred rent	2,706	2,706
Changes in operating assets and liabilities:		
Accounts receivable	298,673	538,254
Unbilled receivables	(810,042)	(561,703)
Other current assets	(673,999)	(98,392)
Other noncurrent assets	—	(779,718)
Accounts payable	(285,200)	(56,328)
Accrued expenses	(1,295,886)	(784,535)
Unearned revenues	601,082	(323,864)
Net cash used in operating activities	(5,711,333)	(9,436,015)
Cash flows from investing activities:		
Purchases of short-term investments	(8,968,170)	(52,845,078)
Maturities of short-term investments	17,358,316	6,910,425
Purchases of long-term investments	—	(20,180,078)
Purchases of equipment	(98,271)	(611,324)
Payments of patent costs	(36,376)	(97,188)
Investments in joint ventures and other noncurrent assets	(16,739)	—
Net cash provided by (used in) investing activities	8,238,760	(66,823,243)
Cash flows from financing activities:		
Common stock issuance costs	(870,116)	—
Proceeds from exercise of stock options	53,296	—
Repayment of long-term debt	—	(42,801)
Net cash used in financing activities	(816,820)	(42,801)
Effect of exchange rate changes on cash and cash equivalents	464,992	(1,143,477)
Net increase (decrease) in cash and cash equivalents	2,175,599	(77,445,536)
Cash and cash equivalents, beginning of period	107,505,473	88,836,304
Cash and cash equivalents, end of period	\$ 109,681,072	11,390,768
Supplemental disclosure of noncash investing and financing activities:		
Capitalized purchases of equipment financed through accounts payable and accrued expenses, at period end	\$ 15,181	36,906
Capitalized patent costs financed through accounts payable, at period end	18,172	25,587
Capitalized investment in joint ventures financed through accrued expenses, at period end	—	173,703

See accompanying notes to consolidated financial statements (unaudited).

Ocean Power Technologies, Inc. and Subsidiaries
Notes to Consolidated Financial Statements
(Unaudited)

(1) Background and Basis of Presentation

Ocean Power Technologies, Inc. (the Company) was incorporated on April 19, 1984 in New Jersey, commenced active operations in 1994 and re-incorporated in Delaware in April 2007. The Company develops and is commercializing proprietary systems that generate electricity by harnessing the renewable energy of ocean waves. The Company markets and sells its products in the United States and internationally.

The accompanying unaudited consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all the information and footnotes required by generally accepted accounting principles for complete financial statements. In the opinion of management, all adjustments (consisting of normal recurring adjustments) considered necessary for a fair presentation have been included. The interim operating results are not necessarily indicative of the results for a full year or for any other interim period. Further information on potential factors that could affect the Company's financial results can be found in the Company's Annual Report on Form 10-K for the year ended April 30, 2008 filed with the Securities and Exchange Commission (SEC) and elsewhere in this Form 10-Q.

(2) Summary of Significant Accounting Policies

(a) Consolidation

The accompanying consolidated financial statements include the accounts of the Company and its majority-owned subsidiaries. All significant intercompany balances and transactions have been eliminated in consolidation.

In addition, the Company evaluates its relationships with other entities to identify whether they are variable interest entities as defined by Financial Accounting Standards Board (FASB) Interpretation No. 46R, *Consolidation of Variable Interest Entities* (FIN 46R), and to assess whether it is the primary beneficiary of such entities. If the determination is made that the Company is the primary beneficiary, then that entity is included in the consolidated financial statements in accordance with FIN 46R.

(b) Use of Estimates

The preparation of consolidated financial statements requires management of the Company to make a number of estimates and assumptions relating to the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the period. Significant items subject to such estimates and assumptions include the recoverability of the carrying amount of property and equipment and patents; valuation allowances for receivables and deferred income tax assets; and percentage of completion of customer contracts for purposes of revenue recognition. Actual results could differ from those estimates.

(c) Revenue Recognition

The Company recognizes revenue on government and commercial contracts under the percentage-of-completion method. The percentage of completion is determined by relating the costs incurred to date to the estimated total costs. The cumulative effects resulting from revisions of estimated total contract costs and revenues are recorded in the period in which the facts requiring revision become known. Upon anticipating a loss on a contract, the Company recognizes the full amount of the anticipated loss in the current period. The Company recorded additional provisions related to anticipated losses on contracts of \$221,000 and \$452,000 during the three and six months ended October 31, 2008, respectively. Reserves related to loss contracts in the amounts of approximately \$2,070,000 and \$1,210,000 are included in accrued expenses in the accompanying consolidated balance sheets as of April 30, 2008 and October 31, 2008, respectively.

Unbilled receivables represent expenditures on contracts, plus applicable profit margin, not yet billed. Unbilled receivables are normally billed and collected within one year. Billings made on contracts are recorded as a reduction of unbilled receivables, and to the extent that such billings exceed costs incurred plus applicable profit margin, they are recorded as unearned revenues.

Ocean Power Technologies, Inc. and Subsidiaries
Notes to Consolidated Financial Statements — (Continued)
(Unaudited)

(d) Cash Equivalents

Cash equivalents consist of investments in short-term financial instruments with maturities of three months or less from the date of purchase. Cash and cash equivalents include \$15,617,000 and \$3,066,000 of certificates of deposit with an initial term of less than three months at April 30, 2008 and October 31, 2008, respectively; \$1,251,000 and \$1,115,000 invested in a money market fund as of April 30, 2008 and October 31, 2008, respectively; and \$70,881,000 and \$4,500,000 invested in Treasury bills as of April 30, 2008 and October 31, 2008, respectively.

(e) Restricted Cash and Credit Facility

As of October 31, 2008, the Company had \$939,960 in cash restricted under the terms of a security agreement with Barclays Bank. Under this agreement, the cash is on deposit at Barclays Bank and serves as security for letters of credit which are expected to be issued by Barclays Bank on behalf of Ocean Power Technologies Ltd., the Company's UK subsidiary, under a €800,000 credit facility established by Barclays Bank for such subsidiary. The credit facility is for the issuance of letters of credit and bank guarantees, and carries a fee of 1% per annum of the amount of any such obligations issued by Barclays Bank. The credit facility does not have an expiration date, and is cancelable at the discretion of the bank.

(f) Investment Securities

Short-term investments consist primarily of certificates of deposits and Treasury bills with fixed maturity dates of more than 90 days but less than one year from the date of purchase. Short-term investments included \$6,219,000 of certificates of deposit and \$39,716,000 of Treasury bills at October 31, 2008. Long-term investments consist of Treasury notes with fixed maturity dates of more than one year from the date of purchase. Long-term investments included \$12,233,000 and \$32,285,000 of Treasury notes as of April 30, 2008 and October 31, 2008, respectively.

The Company classifies all of its short-term and long-term investment securities as being held-to-maturity. Held-to-maturity securities are those securities in which the Company has the ability and intent to hold the security until maturity. Held-to-maturity securities are recorded at amortized cost, adjusted for the amortization or accretion of premiums or discounts. A decline in the market value of any held-to-maturity security below cost that is deemed to be other-than-temporary results in an impairment to reduce the carrying amount to fair value. The impairment is charged to earnings and a new cost basis for the security is established. To determine whether an impairment is other-than-temporary, the Company considers whether it has the ability and intent to hold the investment until a market price recovery and considers whether evidence indicating the cost of the investment is recoverable outweighs evidence to the contrary. Premiums and discounts are amortized or accreted over the life of the related security as an adjustment to yield. Such amortization and accretion is included in the "Interest income" line item in the consolidated statements of operations. Interest income is recognized when earned.

(g) Property and Equipment

Property and equipment is stated at cost, less accumulated depreciation and amortization. Depreciation and amortization is calculated using the straight-line method over the estimated useful lives (three to seven years) of the assets. Leasehold improvements are amortized using the straight-line method over the shorter of the estimated useful life of the asset or the remaining lease term. Expenses for maintenance and repairs are charged to operations as incurred. Depreciation expense was \$49,717 and \$63,889 for the three months ended October 31, 2007 and 2008, respectively, and \$108,677 and \$124,491 for the six months ended October 31, 2007 and 2008, respectively.

(h) Foreign Exchange Gains and Losses

The Company has invested in certain certificates of deposit and has maintained cash accounts that are denominated in British pound sterling, Euros and Australian dollars. Such certificates of deposit and cash accounts had a balance of approximately \$9,646,000 and \$4,469,000 as of April 30, 2008 and October 31, 2008, respectively. Such positions may result in realized and unrealized foreign exchange gains or losses from exchange rate fluctuations, which are included in foreign exchange gain (loss) in the accompanying consolidated statements of operations.

Ocean Power Technologies, Inc. and Subsidiaries
Notes to Consolidated Financial Statements — (Continued)
(Unaudited)

(i) Patents

External costs related to the filing of patents, including legal and filing fees, are capitalized. Amortization is calculated using the straight-line method over the life of the patents (17 years). Expenses for the development of technology are charged to operations as incurred. Amortization expense was \$7,509 and \$10,818 for the three months ended October 31, 2007 and 2008, respectively, and \$12,458 and \$19,693 for the six months ended October 31, 2007 and 2008, respectively. Amortization expense for the next five fiscal years related to amounts capitalized for patents as of October 31, 2008 is estimated to be approximately \$50,000 per year.

(j) Long-Lived Assets

In accordance with Statement of Financial Accounting Standards (SFAS) No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets*, long-lived assets, such as property and equipment and purchased intangible assets subject to amortization, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of the asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of the asset to the estimated undiscounted future cash flows expected to be generated by the asset. If the carrying amount of the asset exceeds its estimated future cash flows, then an impairment charge is recognized by the amount by which the carrying amount of the asset exceeds the fair value of the asset. Assets to be disposed of would be separately presented in the consolidated balance sheet and reported at the lower of the carrying amount or fair value less costs to sell, and are no longer depreciated. The assets and liabilities of a disposal group classified as held for sale would be presented separately in the appropriate asset and liability sections of the consolidated balance sheet. The Company reviewed its long-lived assets for indicators of impairment in accordance with SFAS No. 144 and determined that no impairment review of its long-lived assets was necessary for the six months ended October 31, 2008.

(k) Concentration of Credit Risk

Financial instruments that potentially subject the Company to concentration of credit risk consist principally of cash and cash equivalents, bank certificates of deposit and trade receivables. The Company invests its excess cash in highly liquid investments (principally short-term bank deposits, money market funds, commercial paper and Treasury bills) and does not believe that it is exposed to any significant risks related to such investments.

The table below shows the percentage of the Company's revenues derived from customers whose revenues accounted for at least 10% of the Company's consolidated revenues in any of the periods indicated:

Customer	Three Months Ended October 31,		Six Months Ended October 31,	
	2007	2008	2007	2008
US Navy	67%	65%	61%	47%
Iberdrola and Total	27%	14%	27%	40%
Scottish Executive	6%	10%	12%	9%
US Department of Energy	—	11%	—	3%

The loss of, or a significant reduction in revenues from, any of these customers could significantly impact the Company's financial position or results of operations. The Company does not require collateral from its customers.

(l) Net Loss per Common Share

Basic and diluted net loss per share for all periods presented is computed by dividing net loss by the weighted average number of shares of common stock outstanding during the period. Due to the Company's net losses, potentially dilutive securities, consisting of outstanding stock options, were excluded from the diluted loss per share calculation due to their anti-dilutive effect.

In computing diluted net loss per share, options to purchase 1,531,404 shares of common stock for the three and six months ended October 31, 2007 and 1,653,938 shares of common stock for the three and six months ended October 31, 2008 were excluded from the computations.

Ocean Power Technologies, Inc. and Subsidiaries
Notes to Consolidated Financial Statements — (Continued)
(Unaudited)

(m) Stock-Based Compensation

On May 1, 2006, the Company adopted the provisions of SFAS No. 123 (revised 2004), *Share-Based Payment* (SFAS No. 123R), which requires that the costs resulting from all share-based payment transactions be recognized in the consolidated financial statements at their fair values. The Company adopted SFAS No. 123R using the modified prospective application method under which the provisions of SFAS No. 123R apply to new awards and to awards modified, repurchased, or canceled after the adoption date. Additionally, compensation cost for the portion of the awards for which the requisite service had not been rendered that were outstanding as of May 1, 2006 will be recognized in the consolidated statements of operations over the remaining service period after such date based on the award's original estimated fair value. The aggregate share-based compensation expense, related to stock options, recorded in the consolidated statements of operations under SFAS No. 123R was approximately \$402,000 and \$379,000 for the three months ended October 31, 2007 and 2008, respectively and \$1,155,000 and \$839,000 for the six months ended October 31, 2007 and 2008, respectively.

Valuation Assumptions for Options Granted During the Six Months Ended October 31, 2008

The fair value of each stock option granted during the six months ended October 31, 2008 was estimated at the date of grant using the Black-Scholes option pricing model, assuming no dividends and using the weighted average valuation assumptions noted in the following table. The risk-free rate is based on the US Treasury yield curve in effect at the time of grant. The expected life (estimated period of time outstanding) of the stock options granted was estimated using the "simplified" method as permitted by the SEC's Staff Accounting Bulletin No. 107, *Share-Based Payment*. Expected volatility was based on historical volatility for a peer group of companies for a period equal to the stock option's expected life, calculated on a daily basis.

Valuation Assumptions:	2007	2008
Risk-free interest rate	5.0%	3.7%
Expected dividend yield	0.0%	0.0%
Expected life	6.0 years	6.2 years
Expected volatility	77.8%	79.4%

The above assumptions were used to determine the weighted average per share fair value of \$11.41 and \$6.73 for stock options granted during the six months ended October 31, 2007 and 2008, respectively.

During the six months ended October 31, 2008, 4,992 shares of common stock were awarded to non-employee directors pursuant to annual retainer arrangements. The aggregate share-based compensation expense recorded in the consolidated statement of operations for the six months ended October 31, 2008 related to the shares was approximately \$40,000, which represents the fair value on the date of grant. The shares were not issued as of October 31, 2008, and accordingly the liability was included in accrued expenses.

(n) Accounting for Income Taxes

Income taxes are accounted for under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences and operating loss and tax credit carryforwards are expected to be recovered, settled or utilized. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in the statement of operations in the period that includes the enactment date.

(o) Accumulated Other Comprehensive Loss

The functional currency for the Company's foreign operations is the applicable local currency. The translation from the applicable foreign currencies to US dollars is performed for balance sheet accounts using the exchange rates in effect at the balance sheet date and for revenue and expense accounts using an average exchange rate during the period. The unrealized gains or losses resulting from such translation are included in accumulated other comprehensive loss within stockholders' equity.

Ocean Power Technologies, Inc. and Subsidiaries
Notes to Consolidated Financial Statements — (Continued)
(Unaudited)

(p) Recent Accounting Pronouncements

In September 2006, the FASB issued SFAS No. 157, *Fair Value Measurements*, which establishes a framework for reporting fair value and expands disclosures about fair value measurements. SFAS No. 157 as issued is effective for fiscal years beginning after November 15, 2007. On February 12, 2008, FASB Staff Position (FSP) FAS 157-2, *Effective Date of FASB Statement No. 157*, was issued, which delays the effective date to fiscal years beginning after November 15, 2008 for certain nonfinancial assets and liabilities. The Company adopted SFAS No. 157 on May 1, 2008, except for the items covered by FSP FAS 157-2. The adoption of SFAS No. 157 did not have any impact on the Company's consolidated financial statements.

SFAS No. 157 establishes a three-tier fair value hierarchy, which prioritizes the inputs used in measuring fair value as follows:

- Level 1: Observable inputs, such as quoted prices in active markets for identical assets or liabilities;
- Level 2: Inputs, other than the quoted prices in active markets, that are observable either directly or indirectly; and
- Level 3: Unobservable inputs in which there is little or no market data, which require the reporting entity to develop its own assumptions.

In February 2008, the FASB issued FSP FAS 157-1, *Application of FASB Statement No. 157 to FASB Statement No. 13 and Other Accounting Pronouncements That Address Fair Value Measurements for Purposes of Lease Classification or Measurement under Statement 13*. FSP FAS 157-1 amends SFAS No. 157 to exclude certain leasing transactions accounted for under previously existing accounting guidance. This exclusion, however, does not apply to assets acquired and liabilities assumed in a business combination, regardless of whether those assets and liabilities are related to leases. The adoption of FSP FAS 157-1 did not have any impact on the Company's consolidated financial statements.

In October 2008, the FASB issued FSP FAS 157-3, *Determining the Fair Value of a Financial Asset When the Market for That Asset Is Not Active*. FSP FAS 157-3 clarifies the application of SFAS No. 157 when the market for a financial asset is not active. FSP FAS 157-3 was effective upon issuance, including reporting for prior periods for which financial statements have not been issued. The adoption of FSP FAS 157-3 for reporting as of October 31, 2008 did not have any impact on the Company's consolidated financial statements.

In February 2007, the FASB issued SFAS No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities*. SFAS No. 159 allows companies to elect to measure certain assets and liabilities at fair value and is effective for fiscal years beginning after November 15, 2007. The adoption of SFAS No. 159 on May 1, 2008 did not have any impact on the Company's consolidated financial statements.

In December 2007, the FASB issued SFAS No. 141 (revised 2007), *Business Combinations* (SFAS No. 141R), which establishes the principles and requirements for how an acquirer recognizes the assets acquired, the liabilities assumed, and any noncontrolling interest in the acquirer at the acquisition date, measured at their fair values as of that date, with limited exceptions. This statement applies to business combinations for which the acquisition date is after the beginning of the first annual reporting period beginning after December 15, 2008. Earlier adoption is not permitted. The Company will adopt SFAS No. 141R upon its effective date as appropriate for any future business combinations.

In December 2007, the FASB issued SFAS No. 160, *Noncontrolling Interests in Consolidated Financial Statements*. SFAS No. 160 establishes accounting and reporting standards for the noncontrolling interest in a subsidiary and for the deconsolidation of a subsidiary. It clarifies that a noncontrolling interest in a subsidiary is an ownership interest in the consolidated entity that should be recorded as a component of equity in the consolidated financial statements. This statement also requires that consolidated net income shall be adjusted to include the net income attributed to the noncontrolling interest. Disclosure on the face of the statement of operations of the amounts of consolidated net income attributable to the parent and to the noncontrolling interest is required. SFAS No. 160 is effective for fiscal years beginning after December 15, 2008. Earlier adoption is not permitted. The Company is currently evaluating the impact of SFAS No. 160.

Ocean Power Technologies, Inc. and Subsidiaries
Notes to Consolidated Financial Statements — (Continued)
(Unaudited)

In March 2008, the FASB issued SFAS No. 161, *Disclosures about Derivative Instruments and Hedging Activities*, which enhances the disclosure requirements for derivative instruments and hedging activities. Entities are required to provide enhanced disclosures about (a) the location and amounts of derivative instruments in an entity's financial statements, (b) how derivative instruments and related hedged items are accounted for under SFAS No. 133, *Accounting for Derivative Instruments and Hedging Activities*, and its related interpretations, and (c) how derivative instruments and related hedged items affect an entity's financial position, financial performance and cash flows. The guidance in SFAS No. 161 is effective for financial statements issued for fiscal years and interim periods beginning after November 15, 2008, with early application encouraged. This statement encourages, but does not require, comparative disclosures for earlier periods at initial adoption. The Company is currently evaluating the impact of SFAS No. 161.

In April 2008, the FASB issued FSP FAS 142-3, *Determination of the Useful Life of Intangible Assets*. FSP FAS 142-3 amends the factors that should be considered in developing renewal or extension assumptions used to determine the useful life of a recognized intangible asset under SFAS No. 142, *Goodwill and Other Intangible Assets*. FSP FAS 142-3 also adds certain disclosures to those already prescribed in SFAS No. 142. FSP FAS 142-3 is effective as of the beginning of the first fiscal year beginning after December 15, 2008, and early adoption is prohibited. The guidance for determining useful lives must be applied prospectively to intangible assets acquired after the effective date. The disclosure requirements must be applied prospectively to all intangible assets recognized as of the effective date. The Company is currently evaluating the impact of FSP FAS 142-3.

In May 2008, the FASB issued SFAS No. 162, *The Hierarchy of Generally Accepted Accounting Principles*. SFAS No. 162 identifies the sources of accounting principles and the framework for selecting the principles to be used in the preparation of financial statements of nongovernmental entities that are presented in conformity with generally accepted accounting principles in the United States. This statement is effective November 15, 2008. The Company does not expect the adoption of SFAS No. 162 to have any impact on its consolidated financial statements.

In September 2008, the FASB issued FSP FAS 133-1 and FIN 45-4, *Disclosures about Credit Derivatives and Certain Guarantees: An Amendment of FASB Statement No. 133 and FASB Interpretation No. 45; and Clarification of the Effective Date of FASB Statement No. 161*. FSP FAS 133-1 and FIN 45-4 amends SFAS No. 133 to require disclosures by entities that assume credit risk through the sale of credit derivatives including credit derivatives embedded in a hybrid instrument. The intent of these enhanced disclosures is to enable users of financial statements to assess the potential effect on its financial position, financial performance, and cash flows from these credit derivatives. This FSP also amends FASB Interpretation No. 45, *Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others*, to require an additional disclosure about the current status of the payment/performance risk of a guarantee. FSP FAS 133-1 and FIN 45-4 is effective for financial statements issued for fiscal years and interim periods ending after November 15, 2008, with early application encouraged. FSP FAS 133-1 and FIN 45-4 encourages, but does not require, comparative disclosures. The Company expects to adopt FSP FAS 133-1 and FIN 45-4 on January 31, 2009 and does not expect a material impact on its consolidated financial statements.

(3) Accrued Expenses

Included in accrued expenses at April 30, 2008 and October 31, 2008 were contract loss reserves of approximately \$2,070,000 and \$1,210,000, respectively, and accrued employee incentive payments of approximately \$572,000 and \$155,000, respectively. Accrued expenses at April 30, 2008 and October 31, 2008 also included legal and accounting fees of approximately \$556,000 and \$327,000, respectively, and accrued employee vacation of \$143,000 and \$167,000, respectively.

(4) Related-Party Transactions

In August 1999, the Company entered into a consulting agreement with an individual for marketing services, which currently provides for a rate of \$800 per day of services provided. The individual became a member of the board of directors in June 2006. Under this consulting agreement, the Company expensed approximately \$15,000 and \$21,000 during the three months ended October 31, 2007 and 2008, respectively, and \$31,000 during each of the six-month periods ended October 31, 2007 and 2008.

Also see note 7 for an additional related-party transaction.

Ocean Power Technologies, Inc. and Subsidiaries
Notes to Consolidated Financial Statements — (Continued)
(Unaudited)

(5) Debt

During the year ended April 30, 2000, the Company received an award of \$250,000 from the State of New Jersey Commission on Science and Technology for the development of a wave power system that was deployed off the coast of New Jersey. The award contract was assigned to the New Jersey Economic Development Authority in fiscal 2008. Under the terms of this award, the Company must repay the amount funded, without interest, by July 15, 2012. The amounts to be repaid each year are determined as a percentage of revenues (as defined in the loan agreement) the Company receives that year from its customer contracts that meet criteria specified in the loan agreement, with any remaining amount due on July 15, 2012. Based upon the terms of the award, the Company has repaid approximately \$61,000 and was required to repay an additional amount of approximately \$63,000 as of October 31, 2008. The total amount of approximately \$124,000 has reduced the Company's long-term debt balance. The current payment required is included in accrued expenses in the accompanying consolidated balance sheet as of October 31, 2008.

(6) Income Taxes

The Company adopted the provisions of FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes*, on May 1, 2007. During the six months ended October 31, 2008, the Company had no changes in uncertain tax positions. At October 31, 2008, the Company did not have any unrecognized tax benefits as a result of uncertain tax positions. The Company has net operating loss carryforwards that originated in years dating back to the tax year ended April 30, 1994. The tax years April 30, 1994 through April 30, 2008 remain open to examination by the major taxing jurisdictions to which the Company is subject.

(7) Deferred Credits

During the year ended April 30, 2001, in connection with the sale of common stock to an investor, the Company received \$600,000 from the investor in exchange for an option to purchase up to 500,000 metric tons of carbon emissions credits generated by the Company during the years 2008 through 2012, at a 30% discount from the then-prevailing market rate. This amount has been recorded as a deferred credit in the accompanying consolidated balance sheets as of April 30, 2008 and October 31, 2008. If, by December 31, 2012, the Company does not become entitled under applicable laws to the full amount of emission credits covered by the option, the Company is obligated to return the option fee of \$600,000, less the aggregate discount on any emission credits sold to the investor prior to such date. If the Company receives emission credits under applicable laws and fails to sell to the investor the credits up to the full amount of emission credits covered by the option, the investor is entitled to liquidated damages equal to 30% of the aggregate market value of the shortfall in emission credits (subject to a limit on the market price of emission credits). The Company has not received or sold any emission credits as of October 31, 2008.

(8) Common Stock

On April 30, 2007, the Company completed an initial public offering in the United States on The NASDAQ Global Market by issuing 5,000,000 shares of its common stock for a purchase price of \$20.00 per share, resulting in net proceeds to the Company of approximately \$89,900,000.

(9) Preferred Stock

In September 2003, the Company's stockholders authorized 5,000,000 shares of undesignated preferred stock with a par value of \$0.001 per share. At April 30, 2008 and October 31, 2008, no shares of preferred stock had been issued.

(10) Stock Options

Prior to August 2001, the Company maintained qualified and nonqualified stock option plans. The Company had reserved 467,640 shares of common stock for issuance under these plans. There are no options available for future grant under these plans as of October 31, 2008.

In August 2001, the Company approved the 2001 Stock Plan, which provides for the grant of incentive stock options and nonqualified stock options. A total of 1,000,000 shares were authorized for issuance under the 2001 Stock Plan. As of October 31, 2008, the Company had issued or reserved 643,302 shares for issuance under the 2001 Stock Plan. After the effectiveness of the 2006 Stock Incentive Plan, no further options or other awards have been or will be granted under the 2001 Stock Plan.

Ocean Power Technologies, Inc. and Subsidiaries
Notes to Consolidated Financial Statements — (Continued)
(Unaudited)

On April 24, 2007, the Company's 2006 Stock Incentive Plan became effective. A total of 803,215 shares are authorized for issuance under the 2006 Stock Incentive Plan. As of October 31, 2008, the Company had issued options for 542,996 shares of common stock and had reserved an additional 260,219 shares of common stock available for future issuance under the 2006 Stock Incentive Plan. The Company's employees, officers, directors, consultants and advisors are eligible to receive awards under the 2006 Stock Incentive Plan; however, incentive stock options may only be granted to employees. The maximum number of shares of common stock with respect to which awards may be granted to any participant under the 2006 Stock Incentive Plan is 200,000 per calendar year. Members of the board of directors who are not full-time employees receive, as part of their annual compensation, a choice of either (a) an option to purchase 2,000 shares of common stock that is fully vested at the time of grant, or (b) shares of common stock worth \$10,000, which vests 50% at the time of grant and 50% one year later. Vesting provisions of stock options are determined by the board of directors. The contractual term of these stock options is up to ten years. The 2006 Stock Incentive Plan is administered by the Company's board of directors who may delegate authority to one or more committees or subcommittees of the board of directors or to the Company's officers. If the board of directors delegates authority to an officer, the officer has the power to make awards to all of the Company's employees, except to executive officers. The board of directors will fix the terms of the awards to be granted by such officer. No award may be granted under the 2006 Stock Incentive Plan after December 7, 2016, but the vesting and effectiveness of awards granted before that date may extend beyond that date.

Transactions under these option plans during the six months ended October 31, 2008 are as follows:

	<u>Shares Under Option</u>	<u>Weighted Average Exercise Price</u>	<u>Weighted Average Remaining Contractual Term (In Years)</u>
Outstanding April 30, 2008	1,445,302	\$14.61	
Forfeited	(29,625)	13.69	
Expired	(20,710)	16.76	
Exercised	—	—	
Granted	<u>258,971</u>	9.43	
Outstanding October 31, 2008	<u>1,653,938</u>	13.79	5.5
Exercisable October 31, 2008	<u>1,126,771</u>	14.50	4.0

The total intrinsic value of outstanding and exercisable options as of October 31, 2008 was zero. As of October 31, 2008, approximately 464,000 additional options were expected to vest, which had zero intrinsic value and a weighted average remaining contractual term of 8.6 years. As of October 31, 2008, there was approximately \$3,593,000 of total unrecognized compensation cost related to non-vested stock options granted under the plans. This cost is expected to be recognized over a remaining weighted average period of 2.6 years. The Company normally issues new shares of common stock to satisfy option exercises under these plans.

(11) Commitments and Contingencies

Litigation

The Company is involved from time to time in certain legal actions arising in the ordinary course of business. Management believes that the outcome of such actions will not have a material adverse effect on the Company's financial position or results of operations.

Ocean Power Technologies, Inc. and Subsidiaries
Notes to Consolidated Financial Statements — (Continued)
(Unaudited)

(12) Operating Segments and Geographic Information

The Company's business consists of one segment as this represents management's view of the Company's operations. The Company operates on a worldwide basis with one operating company in the US, one operating subsidiary in the UK and one operating subsidiary in Australia, which are categorized below as North America, Europe and Australia, respectively. Revenues are generally attributed to the operating unit that bills the customers.

Geographic information is as follows:

	Three Months Ended October 31, 2007			Total
	North America	Europe	Australia	
Revenues from external customers	\$ 1,129,904	556,308	—	1,686,212
Operating loss	(2,573,605)	(933,469)	(43,783)	(3,550,857)
Long-lived assets	276,017	118,880	1,404	396,301
Total assets	113,073,249	1,732,803	41,347	114,847,399

	Three Months Ended October 31, 2008			Total
	North America	Europe	Australia	
Revenues from external customers	\$ 506,670	160,454	—	667,124
Operating loss	(4,680,636)	(621,037)	(124,592)	(5,426,265)
Long-lived assets	520,328	287,598	381	808,307
Total assets	91,551,813	5,056,006	57,163	96,664,982

	Six Months Ended October 31, 2007			Total
	North America	Europe	Australia	
Revenues from external customers	\$ 1,376,606	865,310	—	2,241,916
Operating loss	(5,740,196)	(1,755,962)	(116,323)	(7,612,481)
Long-lived assets	276,017	118,880	1,404	396,301
Total assets	113,073,249	1,732,803	41,347	114,847,399

	Six Months Ended October 31, 2008			Total
	North America	Europe	Australia	
Revenues from external customers	\$ 1,254,969	1,198,783	—	2,453,752
Operating loss	(8,333,191)	(1,303,695)	(205,662)	(9,842,548)
Long-lived assets	520,328	287,598	381	808,307
Total assets	91,551,813	5,056,006	57,163	96,664,982

Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis should be read in conjunction with the accompanying unaudited consolidated financial statements and related notes included in this Quarterly Report on Form 10-Q. References to a fiscal year in this Form 10-Q refer to the year ended April 30 of that year (e.g., fiscal 2009 refers to the year ending April 30, 2009).

Overview

We develop and are commercializing proprietary systems that generate electricity by harnessing the renewable energy of ocean waves. Our PowerBuoy systems use proprietary technologies to convert the mechanical energy created by the rising and falling of ocean waves into electricity. We currently offer two PowerBuoy products, which consist of our utility PowerBuoy system and our autonomous PowerBuoy system.

We market our utility PowerBuoy system, which is designed to supply electricity to a local or regional power grid, to utilities and other electrical power producers seeking to add electricity generated by wave energy to their existing electricity supply. We market our autonomous PowerBuoy system, which is designed to generate power for use independent of the power grid, to customers that require electricity in remote locations. We believe there are a variety of potential applications for our autonomous PowerBuoy system, including sonar and radar surveillance, tsunami warning, oceanographic data collection, offshore platforms and offshore aquaculture. We also offer our customers operations and maintenance services for our PowerBuoy systems, which are expected to provide a source of recurring revenues.

We were incorporated in New Jersey in April 1984, began commercial operations in 1994, and were re-incorporated in Delaware in 2007. We currently have six wholly-owned subsidiaries, which include Ocean Power Technologies Ltd., Reedsport OPT Wave Park LLC, Oregon Wave Energy Partners I, LLC, Oregon Wave Energy Partners II, LLC, California Wave Energy Partners I, LLC and Fairhaven OPT OceanPower LLC, and we own approximately 88% of the ordinary shares of Ocean Power Technologies (Australasia) Pty. Ltd. Our revenues have been generated from research contracts and development and construction contracts relating to our wave energy technology. The development of our technology has been funded by capital we raised and by development engineering contracts we received starting in fiscal 1995. In fiscal 1996, we received the first of several research contracts with the US Navy to study the feasibility of wave energy. As a result of those research contracts, we entered into our first development and construction contract with the US Navy in fiscal 2002 under a still on-going project for the development and testing of our wave power systems at the US Marine Corps Base in Oahu, Hawaii. We generated our first revenue relating to our autonomous PowerBuoy system from contracts with Lockheed Martin Corporation in fiscal 2003, and we entered into our first development and construction contract with Lockheed Martin in fiscal 2004 for the development and construction of a prototype demonstration autonomous PowerBuoy system. In fiscal 2005, we entered into a development agreement with an affiliate of Iberdrola S.A., a large electric utility company located in Spain and one of the largest renewable energy producers in the world, and other parties to jointly study the possibility of developing a wave power station off the coast of northern Spain. An affiliate of Total S.A., which is one of the world's largest oil and gas companies, also entered into the development agreement in June 2005. In January 2006, we completed the assessment phase of the project, and in July 2006 we entered into an agreement with Iberdrola Energias Marinas de Cantabria, S.A. to complete the first phase of the construction of a 1.39 megawatt (MW) wave power station. In addition, we have entered into a contract with affiliates of Iberdrola and Total to assess the viability of a 2 to 5MW power station off the coast of France. In 2007, we received a \$1.8 million contract from the Scottish Executive for the construction of a 150 kilowatt (kW) PowerBuoy demonstration system at Orkney, Scotland. In June 2007, we received a \$1.7 million contract from the US Navy to provide our PowerBuoy technology to a unique program for data gathering in the ocean. Under this 18-month program, the US Navy conducted an ocean test of our autonomous PowerBuoy as the power source for the Navy's Deep Water Active Detection System. In October 2008, we received a \$3.0 million contract from the US Navy to expand the program and ocean-test an advanced version of our autonomous PowerBuoy for the Deep Water Active Detection System. In August 2007, we announced the award of a \$0.5 million contract from PNGC Power, an Oregon-based electric power cooperative, providing funding toward the fabrication and installation of a 150kW PowerBuoy system off the coast of Oregon. In October 2008, we received a \$2.0 million award from the US Department of Energy in support of the Oregon project. As of October 31, 2008, our backlog was \$8.0 million, an increase of \$4.3 million from July 31, 2008.

For the three months ended October 31, 2008, we generated revenues of \$0.7 million and incurred a net loss of \$6.1 million, compared to revenues of \$1.7 million and a net loss of \$1.9 million for the three months ended October 31, 2007. For the six months ended October 31, 2008, we generated revenues of \$2.5 million and incurred a net loss of \$10.0 million, compared to revenues of \$2.2 million and a net loss of \$4.3 million for the six months ended October 31, 2007. As of October 31, 2008, our accumulated deficit was \$62.9 million. We have not been profitable since inception, and we do not know whether or when we will become profitable because of the significant uncertainties with respect to our ability to successfully commercialize our PowerBuoy systems in the emerging renewable energy market. Since fiscal 2002, the US Navy has accounted for a significant portion of our revenues. We expect that over time, revenues derived from utilities and other non-government commercial customers will increase more rapidly than revenues from government customers and will, within a few years, represent the majority of our revenues.

Financial Operations Overview

The following describes certain line items in our consolidated statement of operations and some of the factors that affect our operating results.

Revenues

We have historically generated revenues primarily from the development and construction of our PowerBuoy systems for demonstration purposes and, to a lesser extent, from customer-sponsored research and development. For the three months ended October 31, 2008 and 2007, we derived approximately 78% and 94%, respectively, of our revenues from government and commercial development and construction contracts and 22% and 6%, respectively, of our revenues from customer-sponsored research and development. For both of the six months ended October 31, 2008 and 2007, we derived approximately 88% of our revenues from government and commercial development and construction contracts and 12% of our revenues from customer-sponsored research and development. Generally, we recognize revenue under the percentage-of-completion method based on the ratio of costs incurred to total estimated costs at completion. In certain circumstances, revenue under contracts that have specified milestones or other performance criteria may be recognized only when our customer acknowledges that such criteria have been satisfied. In addition, recognition of revenue (and the related costs) may be deferred for fixed-price contracts until contract completion if we are unable to reasonably estimate the total costs of the project prior to completion. Because we have a small number of contracts, revisions to the percentage of completion determination or delays in meeting performance criteria or in completing projects may have a significant effect on our revenue for the periods involved.

Under our agreement for the current phase of construction of a wave power station off the coast of Santoña, Spain, our revenues are limited to reimbursement for our construction costs without any mark-up and we are required to bear a portion of any cost overruns and to absorb certain other costs as set forth in the agreement. During the fourth quarter of fiscal 2008, we made the decision to absorb additional costs related to the current phase of the project beyond our obligation for the initial cost overruns and certain other costs as set forth in the agreement. This decision was based primarily on the progress of the project to date, the benefits to be derived from a successful initial project and the prospect of incremental contract value to be received in connection with additional work under this contract.

Our revenues for the three months ended October 31, 2008 decreased compared to the revenues for the three months ended October 31, 2007. The revenue decrease reflected a lower level of activity in connection with our Spain construction contract and our project with the US Navy at the US Marine Corps base in Oahu, Hawaii, as these projects neared completion. The Spain and Hawaii PowerBuoys were deployed in September and October 2008, respectively. For the six-month period ended October 31, 2008, revenue increased slightly compared to the same period in the prior year. The revenue increase reflected increases in revenue related to the autonomous PowerBuoy contract with the US Navy and the Spain construction project, which were partially offset by revenue decreases on the US Navy projects at the US Marine Corps base in Hawaii.

Since fiscal 2002, the US Navy has accounted for a significant portion of our revenues. The US Navy accounted for 65% and 47% of our revenues for the three and six months ended October 31, 2008, respectively, and 67% and 61% of our revenues for the three and six months ended October 31, 2007, respectively. Iberdrola and Total accounted for 14% and 40% of our revenues for the three and six months ended October 31, 2008, respectively, and 27% of our revenues for both the three and six months ended October 31, 2007. We expect that over time, revenues derived from utilities and other non-government commercial customers will increase more rapidly than revenues from government customers and will, within a few years, represent the majority of our revenues.

We currently focus our sales and marketing efforts on coastal North America, the west coast of Europe, the coasts of Australia and the east coast of Japan. During the three months ended October 31, 2008 and 2007, we derived 24% and 33%, respectively, of our revenues from outside the United States. During the six months ended October 31, 2008 and 2007, we derived 49% and 39%, respectively, of our revenues from outside the United States.

Cost of revenues

Our cost of revenues consists primarily of material, labor and manufacturing overhead expenses, such as engineering expense, equipment depreciation and maintenance and facility related expenses, and includes the cost of PowerBuoy parts and services supplied by third-party suppliers. Cost of revenues also includes PowerBuoy system delivery and deployment expenses and an anticipated loss at completion on our contract for a wave power station off the coast of Spain.

We operated at a gross loss of \$0.7 million and \$0.2 million in the three months ended October 31, 2008 and 2007, respectively. We operated at a gross loss of \$0.9 million and \$0.5 million in the six months ended October 31, 2008 and 2007, respectively. Our ability to operate at a gross profit will depend on the nature of future contracts and on our success at increasing sales of our PowerBuoy systems and our ability to manage costs incurred on fixed price commercial contracts.

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Product development costs

Our product development costs consist of salaries and other personnel-related costs and the costs of products, materials and outside services used in our product development and unfunded research activities. Our product development costs primarily relate to our efforts to increase the output of our utility PowerBuoy system, including the 150kW PowerBuoy system and, to our research and development of new products, product applications and complementary technologies. We expense all of our product development costs as incurred, except for external patent costs, which we capitalize and amortize over a 17-year period commencing with the issuance date of each patent.

Our product development costs increased in the three and six months ended October 31, 2008 compared to the three and six months ended October 31, 2007, primarily as a result of our work to continue to increase the output and efficiency of our PowerBuoy systems.

Selling, general and administrative costs

Our selling, general and administrative costs consist primarily of professional fees, salaries and other personnel-related costs for employees and consultants engaged in sales and marketing and support of our PowerBuoy systems, and costs for executive, accounting and administrative personnel, professional fees and other general corporate expenses.

Our selling, general and administrative costs increased in the three and six months ended October 31, 2008 compared to the three and six months ended October 31, 2007. This increase is due to increased costs related to company growth and the expansion of our sales, marketing and business development capabilities. We expect our selling, general and administrative costs will continue to increase as we further grow the company and expand our sales operations and our marketing capabilities.

Interest income

Interest income consists of interest received on cash and cash equivalents, investments in commercial bank-issued certificates of deposit and US Treasury bills and notes. Prior to April 30, 2007, most of our cash, cash equivalents and bank-issued certificates of deposit resulted from the remaining proceeds of our October 2003 common stock offering on the AIM market of the London Stock Exchange. On April 30, 2007, we completed our initial public offering in the United States, which resulted in net proceeds to us of \$89.9 million. Total cash, cash equivalents and short-term and long-term investments were \$89.6 million as of October 31, 2008, compared to \$109.7 million as of October 31, 2007. We anticipate that our interest income reported in fiscal 2009 will continue to be lower than the comparable periods of the prior fiscal year as a result of the decrease in cash, cash equivalents and investments, and lower interest rates.

Foreign exchange gain (loss)

We transact business in various countries and have exposure to fluctuations in foreign currency exchange rates. Foreign exchange gains and losses arise in the translation of foreign-denominated assets and liabilities, which may result in realized and unrealized gains or losses from exchange rate fluctuations. Since we conduct our business in US dollars and our functional currency is primarily the US dollar, our main foreign exchange exposure, if any, results from changes in the exchange rate between the US dollar and the British pound sterling, the Euro and the Australian dollar.

We invest in certificates of deposit and maintain cash accounts that are denominated in British pounds, Euros and Australian dollars. These foreign-denominated certificates of deposit and cash accounts had a balance of \$4.5 million as of October 31, 2008 and \$14.3 million as of October 31, 2007, compared to our total cash, cash equivalents and short-term and long-term investments of \$89.6 million as of October 31, 2008 and \$109.7 million as of October 31, 2007. These foreign currency balances are translated at each month end to the US dollar, and any resulting gain or loss is recognized in our results of operations.

In addition, a portion of our operations is conducted through our subsidiaries in countries other than the United States, specifically Ocean Power Technologies Ltd. in the United Kingdom, the functional currency of which is the British pound sterling, and Ocean Power Technologies (Australasia) Pty Ltd. in Australia, the functional currency of which is the Australian dollar. Both of these subsidiaries have foreign exchange exposure that results from changes in the exchange rate between their functional currency and other foreign currencies in which they conduct business. All of our international revenues for the three and six months ended October 31, 2008 and 2007 were recorded in Euros, British pound sterling or Australian dollars.

We currently do not hedge our exchange rate exposure. However, we assess the anticipated foreign currency working capital requirements and capital asset acquisitions of our foreign operations and attempt to maintain a portion of our cash, cash equivalents and certificates of deposit denominated in foreign currencies sufficient to satisfy these anticipated requirements. We also assess the need and cost to utilize financial instruments to hedge currency exposures on an ongoing basis and may hedge against exchange rate exposure in the future.

Results of Operations**Three Months Ended October 31, 2007 Compared to Three Months Ended October 31, 2008**

The following table contains selected statement of operations information, which serves as the basis of the discussion of our results of operations for the three months ended October 31, 2007 and 2008:

	Three Months Ended October 31, 2007		Three Months Ended October 31, 2008		Change 2008 Period to 2007 Period	
	Amount	As a % of Revenues	Amount	As a % of Revenues	\$ Change	% Change
Revenues	\$ 1,686,212	100%	\$ 667,124	100%	\$(1,019,088)	(60)%
Cost of revenues	1,923,196	114	1,369,578	205	(553,618)	(29)
Gross loss	(236,984)	(14)	(702,454)	(105)	(465,470)	196
Operating expenses:						
Product development costs	1,942,713	115	2,330,073	349	387,360	20
Selling, general and administrative costs	1,371,160	81	2,393,738	359	1,022,578	75
Total operating expenses	3,313,873	197	4,723,811	708	1,409,938	43
Operating loss	(3,550,857)	(211)	(5,426,265)	(813)	(1,875,408)	53
Interest income	1,343,877	80	514,446	77	(829,431)	(62)
Foreign exchange gain (loss)	336,164	20	(1,203,882)	(180)	(1,540,046)	(458)
Net loss	<u>\$(1,870,816)</u>	<u>(111)%</u>	<u>\$(6,115,701)</u>	<u>(917)%</u>	<u>\$(4,244,885)</u>	227

Revenues

Revenues decreased by \$1.0 million in the three months ended October 31, 2008, or 60%, to \$0.7 million as compared to \$1.7 million in the three months ended October 31, 2007. The change in revenues was primarily attributable to the following factors:

- Revenues relating to our utility PowerBuoy system decreased by \$1.1 million due primarily to a decrease in work on our Hawaii project for the US Navy and a wave power station off the coast of Spain, as these projects neared completion. The PowerBuoys related to the projects in Spain and Hawaii were deployed in September and October 2008, respectively.
- Revenues relating to our autonomous PowerBuoy system increased \$0.1 million as a result of work on our \$1.7 million contract with the US Navy to provide our PowerBuoy technology to a program for data gathering in the ocean. The in-ocean test of the PowerBuoy under this contract was completed in October 2008.

Also, higher than expected costs upon completion of the autonomous PowerBuoy system for the US Navy's data gathering program and the Hawaii project had an adverse effect on revenues for the three months ended October 31, 2008 which contributed to the gross loss.

Cost of revenues

Cost of revenues decreased by \$0.6 million, or 29%, to \$1.4 million in the three months ended October 31, 2008, as compared to \$1.9 million in the three months ended October 31, 2007. This decrease in cost of revenues reflected the decreased level of activity on the wave power station off the coast of Spain and the Hawaii project for the US Navy. The decrease in cost of revenues was partially offset by an increase in cost of revenues related to the autonomous PowerBuoy project for the US Navy and an additional \$0.2 million of anticipated loss at completion on the contract for the wave power station off the coast of Spain. The additional anticipated loss was recognized based on a change in estimated costs associated with this contract and our decision in the fourth quarter of fiscal 2008 to absorb additional costs beyond our contractual obligation for initial cost overruns and certain other costs as set forth in the contract.

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Product development costs

Product development costs increased by \$0.4 million, or 20% to \$2.3 million in the three months ended October 31, 2008, as compared to \$1.9 million in the three months ended October 31, 2007. The increase in product development costs was primarily attributable to our work to increase the power output of our utility PowerBuoy system, including the 150kW PowerBuoy system. We anticipate that our product development costs related to the planned increase in the output of our utility PowerBuoy system will increase significantly over the next several years and that the amount of these expenditures will not necessarily be affected by the level of revenue generated over that time period.

Selling, general and administrative costs

Selling, general and administrative costs increased \$1.0 million, or 75%, to \$2.4 million for the three months ended October 31, 2008, as compared to \$1.4 million for the three months ended October 31, 2007. The increase was attributable to an increase of \$0.2 million in professional fees, franchise taxes and costs incurred as a result of our being a public company in the United States, a \$0.2 million increase in sales, marketing and business development activity and \$0.6 million in additional payroll and incentive-based costs related to company growth.

Interest income

Interest income decreased by \$0.8 million, or 62%, to \$0.5 million for the three months ended October 31, 2008, compared to \$1.3 million for the three months ended October 31, 2007, due to a decrease in cash, cash equivalents and investments, and lower interest rates.

Foreign exchange gain (loss)

Foreign exchange loss was \$1.2 million for the three months ended October 31, 2008, compared to a foreign exchange gain of \$0.3 million for the three months ended October 31, 2007. The difference was primarily attributable to the relative change in value of the British pound sterling compared to the US dollar during the two periods.

Six Months Ended October 31, 2007 Compared to Six Months Ended October 31, 2008

The following table contains selected statement of operations information, which serves as the basis of the discussion of our results of operations for the six months ended October 31, 2007 and 2008:

	Six Months Ended October 31, 2007		Six Months Ended October 31, 2008		Change 2008 Period to 2007 Period	
	Amount	As a % of Revenues	Amount	As a % of Revenues	\$ Change	% Change
Revenues	\$ 2,241,916	100%	\$ 2,453,752	100%	\$ 211,836	9%
Cost of revenues	2,728,188	122	3,317,724	135	589,536	22
Gross loss	(486,272)	(22)	(863,972)	(35)	(377,700)	78
Operating expenses:						
Product development costs	3,758,447	168	4,033,022	164	274,575	7
Selling, general and administrative costs	3,367,762	150	4,945,554	202	1,577,792	47
Total operating expenses	7,126,209	318	8,978,576	366	1,852,367	26
Operating loss	(7,612,481)	(340)	(9,842,548)	(401)	(2,230,067)	29
Interest income	2,788,163	124	1,062,038	43	(1,726,125)	(62)
Foreign exchange gain (loss)	515,658	23	(1,228,355)	(50)	(1,744,013)	(338)
Net loss	<u>\$ (4,308,660)</u>	<u>(192)%</u>	<u>\$ (10,008,865)</u>	<u>(408)%</u>	<u>\$ (5,700,205)</u>	<u>132</u>

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Revenues

Revenues increased by \$0.2 million in the six months ended October 31, 2008, or 9%, to \$2.5 million, as compared to \$2.2 million in the six months ended October 31, 2007. The change in revenues was primarily attributable to the following factors:

- Revenues relating to our utility PowerBuoy system decreased by \$0.3 million primarily due to a decrease in work on our Hawaii project for the US Navy, partially offset by an increase in work on the first phase of construction of a 1.39MW wave power station off the coast of Spain.
- Revenues relating to our autonomous PowerBuoy system increased \$0.5 million as a result of work on our \$1.7 million contract with the US Navy to provide our PowerBuoy technology to a program for data gathering in the ocean.

Also, higher than expected costs upon completion of the autonomous PowerBuoy system for the US Navy's data gathering program and the Hawaii project had an adverse effect on revenues for the six months ended October 31, 2008 which contributed to the gross loss.

Cost of revenues

Cost of revenues increased by \$0.6 million, or 22%, to \$3.3 million in the six months ended October 31, 2008, as compared to \$2.7 million in the six months ended October 31, 2007. This increase in cost of revenues reflected the higher level of activity on the first phase of construction of a 1.39MW wave power station off the coast of Spain and on the autonomous PowerBuoy for the US Navy, partially offset by a decrease in activity on the Hawaii project for the US Navy. The increase in costs also reflects the recognition of an additional \$0.4 million of anticipated loss at completion on our contract for a wave power station off the coast of Spain. The additional anticipated loss was recognized based on a change in estimated costs associated with this contract and our decision in the fourth quarter of fiscal 2008 to absorb additional costs beyond our contractual obligation for initial cost overruns and certain other costs as set forth in the contract.

Product development costs

Product development costs increased by \$0.3 million, or 7% to \$4.0 million in the six months ended October 31, 2008, as compared to \$3.8 million in the six months ended October 31, 2007. The increase in product development costs was primarily attributable to our work to increase the power output of our utility PowerBuoy system, including the 150kW PowerBuoy system. We anticipate that our product development costs related to the planned increase in the output of our utility PowerBuoy system will increase significantly over the next several years and that the amount of these expenditures will not necessarily be affected by the level of revenue generated over that time period.

Selling, general and administrative costs

Selling, general and administrative costs increased \$1.6 million, or 47%, to \$4.9 million for the six months ended October 31, 2008, as compared to \$3.4 million for the six months ended October 31, 2007. The increase was attributable to an increase of \$0.3 million in professional fees, franchise taxes and costs incurred as a result of our being a public company in the United States, a \$0.3 million increase in sales marketing and business development activity and \$1.0 million in additional payroll and incentive-based costs related to company growth.

Interest income

Interest income decreased by \$1.7 million, or 62%, to \$1.1 million for the six months ended October 31, 2008, compared to \$2.8 million for the six months ended October 31, 2007, due to a decrease in cash, cash equivalents and investments, and lower interest rates.

Foreign exchange gain (loss)

Foreign exchange loss was \$1.2 million for the six months ended October 31, 2008, compared to a foreign exchange gain of \$0.5 million for the six months ended October 31, 2007. The difference was primarily attributable to the relative change in value of the British pound sterling compared to the US dollar during the two periods.

Liquidity and Capital Resources

Since our inception, the cash flows from customer revenues have not been sufficient to fund our operations and provide the capital resources for the planned growth of our business. For the three years ended April 30, 2008, our revenues were \$9.1 million, our net losses were \$31.4 million and our net cash used in operating activities was \$26.2 million. Over that same period, we raised

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\$90.4 million in financing activities, including \$89.9 million from the closing of our United States initial public offering on April 30, 2007.

At October 31, 2008, our total cash, cash equivalents and short-term and long-term investments were \$89.6 million. Our cash and cash equivalents are highly liquid investments with maturities of three months or less at the date of purchase and consist primarily of term deposits with large commercial banks, Treasury bills and an investment in a money market fund. Our short-term investments consist primarily of certificates of deposits and Treasury bills with fixed maturity dates of more than 90 days but less than one year from the date of purchase, and other investments with current maturities of less than one year. Long-term investments consist of Treasury notes with maturities upon purchase in excess of one year.

The primary drivers of our cash flows have been our ability to generate revenues and decrease losses related to our contracts, as well as our ability to obtain and invest the capital resources needed to fund our development.

Net cash used in operating activities was \$9.4 million for the six months ended October 31, 2008 and \$5.7 million for the six months ended October 31, 2007. The change was primarily the result of an increase in net loss of \$5.7 million, partially offset by a change in foreign exchange gain (loss) of \$1.7 million.

Net cash used in investing activities was \$66.8 million for the six months ended October 31, 2008 compared to net cash provided by investing activities of \$8.2 million for the six months ended October 31, 2007. The change was primarily the result of a net increase in purchases of investments with maturities longer than 90 days during the six months ended October 31, 2008. Also, there was a \$0.5 million increase in purchases of equipment during the six months ended October 31, 2008 as compared to the six months ended October 31, 2007.

Net cash used in financing activities was approximately \$43,000 for the six months ended October 31, 2008, compared to net cash used in financing activities of \$0.8 million for the six months ended October 31, 2007. The cash used during the six months ended October 31, 2007 was primarily to pay accrued expenses related to our initial public offering in the United States.

We expect to devote substantial resources to continue our development efforts for our PowerBuoy systems and to expand our sales, marketing and manufacturing programs associated with the commercialization of the PowerBuoy system. Our future capital requirements will depend on a number of factors, including:

- the cost of development efforts for our PowerBuoy systems;
- the success of our commercial relationships with Iberdrola, Total and the US Navy;
- the cost of manufacturing activities;
- the cost of commercialization activities, including demonstration projects, product marketing and sales;
- our ability to establish and maintain additional commercial relationships;
- the implementation of our expansion plans, including the hiring of new employees;
- potential acquisitions of other products or technologies; and
- the costs involved in preparing, filing, prosecuting, maintaining and enforcing patent claims and other patent-related costs.

We believe that our current cash, cash equivalents and investments will be sufficient to meet our anticipated cash needs for working capital and capital expenditures at least through fiscal 2010. If existing resources are insufficient to satisfy our liquidity requirements or if we acquire or license rights to additional product technologies, we may seek to sell additional equity or debt securities or obtain a credit facility. The sale of additional equity or convertible securities could result in dilution to our stockholders. If additional funds are raised through the issuance of debt securities, these securities would have rights senior to those associated with our common stock and could contain covenants that would restrict our operations. Financing may not be available in amounts or on terms acceptable to us. If we are unable to obtain required financing, we may be required to reduce the scope of our planned product development and marketing efforts, which could harm our financial condition and operating results.

Off-Balance Sheet Arrangements

Since inception, we have not engaged in any off-balance sheet financing activities.

Item 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We generally place our investments in money market funds, Treasury bills and notes, and certificates of deposit with maturities of less than one year. We actively manage our portfolio of cash equivalents and investments, but in order to ensure liquidity, we will only invest in instruments with high credit quality where a secondary market exists. We have not held and do not hold any derivatives related to our interest rate exposure. Due to the average maturity and conservative nature of our investment portfolio, a change in interest rates would not have a material effect on the value of the portfolio. We do not have market risk exposure on our long-term debt because it consists of an interest-free loan from the New Jersey Economic Development Authority.

Management estimates that had the average yield on our cash, cash equivalents and investments decreased by 100 basis points, our interest income for the six months ended October 31, 2008 would have decreased by approximately \$0.5 million. This estimate assumes that the decrease occurred on the first day of the fiscal year and reduced the yield of each investment by 100 basis points. The impact on our future interest income of future changes in investment yields will depend largely on the gross amount of our cash, cash equivalents and investments.

We transact business in various countries and have exposure to fluctuations in foreign currency exchange rates. Foreign exchange gains and losses arise in the translation of foreign-denominated assets and liabilities, which may result in realized and unrealized gains or losses from exchange rate fluctuations. Since we conduct our business in US dollars and our functional currency is primarily the US dollar, our main foreign exchange exposure, if any, results from changes in the exchange rate between the US dollar and the British pound sterling, the Euro and the Australian dollar.

We maintain cash accounts that are denominated in British pound sterling, Euros and Australian dollars. These foreign-denominated cash accounts had a balance of \$4.5 million as of October 31, 2008, compared to our total cash, cash equivalents and investment account balances of \$89.6 million as of October 31, 2008. These foreign currency balances are translated at each month end to the US dollar, and any resulting gain or loss is recognized in our results of operations.

In addition, a portion of our operations is conducted through our subsidiaries in countries other than the United States, specifically Ocean Power Technologies Ltd. in the United Kingdom, the functional currency of which is the British pound sterling, and Ocean Power Technologies (Australasia) Pty Ltd. in Australia, the functional currency of which is the Australian dollar. Both of these subsidiaries have foreign exchange exposure that results from changes in the exchange rate between their functional currency and other foreign currencies in which they conduct business. All of our international revenues for the six months ended October 31, 2008 were recorded in Euros, British pound sterling or Australian dollars. If foreign currency exchange rates had fluctuated by 10% as of October 31, 2008, the impact on our foreign exchange gains and losses would have been approximately \$0.5 million.

We currently do not hedge exchange rate exposure. However, we assess the anticipated foreign currency working capital requirements and capital asset acquisitions of our foreign operations and attempt to maintain a portion of our cash, cash equivalents and certificates of deposit denominated in foreign currencies sufficient to satisfy these anticipated requirements. We also assess the need and cost to utilize financial instruments to hedge currency exposures on an ongoing basis and may hedge against exchange rate exposure in the future.

Item 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Disclosure controls and procedures are our controls and other procedures that are designed to ensure that information required to be disclosed by us in the reports that we file or submit under the Securities Exchange Act of 1934 (the Exchange Act) is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

As of the end of the period covered by this report, we carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures pursuant to Exchange Act Rule 13a-15(b). Based upon that evaluation, as of October 31, 2008, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures are effective in timely alerting them to material information relating to the Company required to be included in our periodic SEC filings.

Changes in Internal Control over Financial Reporting

No change in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) occurred during the fiscal quarter ended October 31, 2008 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II — OTHER INFORMATION

Item 1. LEGAL PROCEEDINGS

We are subject to legal proceedings, claims and litigation arising in the ordinary course of business. While the outcome of these matters is currently not determinable, we do not expect that the ultimate costs to resolve these matters will have a material adverse effect on our financial position, results of operations or cash flows.

Item 1A. RISK FACTORS

The discussion of our business and operations should be read together with the risk factors contained in Item 1A of our Annual Report on Form 10-K for the year ended April 30, 2008. These risk factors describe various risks and uncertainties to which we are or may become subject. These risks and uncertainties have the potential to affect our business, financial condition, results of operations, cash flows, strategies or prospects in a material and adverse manner. There have been no material changes in our risk factors from those disclosed in our Annual Report on Form 10-K filed with the SEC on July 14, 2008.

Item 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

Use of Proceeds

On April 30, 2007, we sold 5,000,000 shares of our common stock in our initial public offering in the United States at a price of \$20.00 per share, pursuant to a registration statement on Form S-1 (File No. 333-138595), which was declared effective by the SEC on April 24, 2007. The managing underwriters in the offering were UBS Securities LLC, Banc of America Securities LLC, and Bear, Stearns & Co., Inc. The underwriting discounts and commissions and offering expenses payable by us aggregated \$10.1 million, resulting in net proceeds to us of \$89.9 million.

From the effective date of the registration statement through October 31, 2008, we used \$0.8 million to construct demonstration wave power stations, \$5.7 million to fund the continued development and commercialization of our PowerBuoy system, \$2.4 million to expand our sales and marketing capabilities and \$0.5 million to fund the expansion of assembly, test and field service facilities. We have invested the balance of the net proceeds from the offering in investment grade interest-bearing instruments, in accordance with our investment policy. We have not used any of the net proceeds from the offering to make payments, directly or indirectly, to any director or officer of ours, or any of their associates, to any person owning ten percent or more of our common stock or to any affiliate of ours. There has been no material change in our planned use of the balance of the net proceeds from the offering as described in our final prospectus filed with the SEC pursuant to Rule 424(b) under the Securities Act of 1933.

Item 3. DEFAULTS UPON SENIOR SECURITIES

None.

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Item 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

The Company's annual meeting of shareholders was held on October 2, 2008. At the annual meeting, the shareholders voted on the following proposals:

Election of Directors

Each nominee for director was elected by a vote of shareholders as follows:

<u>Name</u>	<u>For</u>	<u>Withheld</u>
Seymour S. Preston III	6,772,168	200,533
Paul F. Lozier	6,800,002	172,699
Thomas J. Meaney	6,210,510	762,191
George W. Taylor	6,212,721	759,980
Charles F. Dunleavy	6,212,996	759,705

Ratification of the Selection of KPMG LLP as Independent Registered Public Accounting Firm

	<u>For</u>	<u>Against</u>	<u>Abstain</u>
Ratification of KPMG LLP	6,858,260	36,798	77,643

Item 5. OTHER INFORMATION

None.

Item 6. EXHIBITS

- 10.1 ** Financial Assistance Award agreement between Ocean Power Technologies, Inc. and US Department of Energy dated September 23, 2008
- 10.2 ** Modification of Financial Assistance Award agreement between Ocean Power Technologies, Inc. and US Department of Energy dated October 16, 2008
- 10.3 ** Agreement between Ocean Power Technologies, Inc. and the Office of Naval Research of the US Navy dated October 31, 2008
- 31.1 Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
- 31.2 Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
- 32.1 Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
- 32.2 Certification of Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

** Confidential treatment requested as to certain portions, which portions have been omitted and filed separately with the Securities and Exchange Commission.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

OCEAN POWER TECHNOLOGIES, INC.
(Registrant)

By: /s/ George W. Taylor
George W. Taylor
Chief Executive Officer
(Principal Executive Officer)

Date: December 10, 2008

By: /s/ Charles F. Dunleavy
Charles F. Dunleavy
Chief Financial Officer
(Principal Financial Officer)

Date: December 10, 2008

EXHIBITS INDEX

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** Confidential treatment requested as to certain portions, which portions have been omitted and filed separately with the Securities and Exchange Commission.

Confidential Materials omitted and filed separately with the Securities and Exchange Commission.
Asterisks denote omissions.

DOE F 4600.1#
(7/08)

U.S. DEPARTMENT OF ENERGY
NOTICE OF FINANCIAL ASSISTANCE AWARD

Under the authority of Public Law 109-58, Energy Policy Act (2005)

1. PROJECT TITLE Wave Power Demonstration Project at Reedsport, Oregon				2. INSTRUMENT TYPE <input checked="" type="checkbox"/> GRANT <input type="checkbox"/> COOPERATIVE AGREEMENT								
3. RECIPIENT (Name, address, zip code) Ocean Power Technologies, Inc. 1590 Reed Road Pennington, NJ 08534-5010				4. INSTRUMENT NO. DE-FG36-08GO88017		5. AMENDMENT NO. A000						
8. RECIPIENT PROJECT DIRECTOR (Name, phone and E-mail) Herbert T. Nock Ph: 609-730-0400 E-mail: hnock@oceanpowertech.com				10. TYPE OF AWARD <input checked="" type="checkbox"/> NEW <input type="checkbox"/> CONTINUATION <input type="checkbox"/> RENEWAL <input type="checkbox"/> REVISION <input type="checkbox"/> INCREMENTAL FUNDING								
9. RECIPIENT BUSINESS OFFICER (Name phone and E-mail) Deborah Montagna Ph: 609-730-0400 E-mail: dmontagna@oceanpowertech.com												
11. DOE PROJECT OFFICER (Name, address, phone and E-mail) Curtis K. Framel Phone: 303-275-4872 Golden Field Office 1617 Cole Blvd Golden CO. 80401-3393 E-Mail: Curtis.Framel@go.doe.gov				12. DOE AWARD ADMINISTRATOR (Name, address, phone and E-mail) Sara Wilson Phone: 303-275-4922 Golden Field Office 1617 Cole Blvd Golden CO. 80401-3305 E-Mail: sara.wilson@go.doe.gov								
13. RECIPIENT TYPE <input type="checkbox"/> STATE GOV'T <input type="checkbox"/> INDIAN TRIBUNAL GOV'T <input type="checkbox"/> HOSPITAL <input checked="" type="checkbox"/> FOR PROFIT ORGANIZATION <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> LOCAL GOV'T <input type="checkbox"/> INSTITUTION OF HIGHER EDUCATION <input type="checkbox"/> OTHER NONPROFIT ORGANIZATION <input checked="" type="checkbox"/> C <input type="checkbox"/> P <input type="checkbox"/> SP <input type="checkbox"/> OTHER (Specify): _____												
14. ACCOUNTING AND APPROPRIATIONS DATA:						15. EMPLOYER I.D.						
Fund	Year	Allottee	Reporting Entity	SGL	Object Class	Project	Program	WFO	Local Use	Amount	a. TIN: 22-2535818	
05450	2008	31	200835	61000000	41000	0000000	1005067	0000000	0000000	\$1,968,000.00	b. DUNS: 181079872	
16. BUDGET AND FUNDING INFORMATION												
a. CURRENT BUDGET PERIOD INFORMATION						b. CUMULATIVE DOE OBLIGATIONS						
(1) DOE Funds Obligated This Action			\$ 1,968,000.00			(1) This Budget Period			\$ 1,968,000.00			
(2) DOE Funds Authorized for Carry Over			\$ 0.00			[Total of lines a.(1) and .(3)]						
(3) DOE Funds Previously Obligated in this Budget Period			\$ 0.00			(2) Prior Budget Periods			\$ 0.00			
(4) DOE Share of Total Approved Budget			\$ 1,968,000.00			[Total of lines b.(1) and b.(2)]						
(5) Recipient Share of Total Approved Budget			\$ [**]			(3) Project Period to Date			\$ 1,968,000.00			
(6) Total Approved Budgeted			\$ [**]									
17. TOTAL ESTIMATED COST OF PROJECT, INCLUDING DOE FUNDS TO FFRDC: \$[**]_____ <i>(This is the current estimated cost of the project. It is not a promise to award nor an authorization to expend funds in this amount.)</i>												
18. AWARD/AGREEMENT TERMS AND CONDITIONS This award/agreement consists of this form plus the following: a. Special terms and conditions. b. Applicable program regulations (Specify) <u>n/a</u> (Date) c. DOE Assistance Regulations, 10 CFR Part 600 at http://ecfr.gpoaccess.gov and if the award is for research and to a university or non-profit, the Research Terms and Conditions and the DOE Agency Specific Requirements at http://www.nsf.gov/bfa/dias/policy/rtc/index.jsp . d. Application/proposal as approved by DOE. e. National Policy Assurances to be incorporated as Award Terms in effect on date of award at http://www.management.energy.gov/business_doe/1374.htm .												
19. REMARKS The attached Special Terms and Conditions (Attachment #1); Intellectual Property Provisions (GSB-1003) (Attachment #2); SF-424A, Budget Information – Non Construction Programs (Attachment #3); Federal Assistance Reporting Checklist and Instructions (Attachment #4); and Statement of Project Objectives (Attachment #5) are added and made a part of this award.												
20. EVIDENCE OF RECEIPT ACCEPTANCE						21. AWARDED BY						
/s/ Charles F. Dunleavy SEP 23 2008 (Signature of Authorized Recipient Officer) (Date) Charles F. Dunleavy (Name) C.F.O. (Title)			/s/ Sara Wilson SEP 03 2008 (Signature) (Date) Sara Wilson (Name) Contracting Officer (Title)									

SPECIAL TERMS AND CONDITIONS**JULY 2008****Table of Contents**

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1. RESOLUTION OF CONFLICTING CONDITIONS

Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in this award, as shown in Block 18 of the Notice of Financial Assistance Award (NFAA) must be referred to the DOE Award Administrator identified in Block 12 of the NFAA for guidance.

2. PAYMENT PROCEDURES

REIMBURSEMENT THROUGH THE AUTOMATED STANDARD APPLICATION FOR PAYMENTS (ASAP) SYSTEM

- a. Method of Payment. Payment will be made by reimbursement through the Department of Treasury’s ASAP system.
- b. Requesting Reimbursement. Requests for reimbursements must be made through the ASAP system. Requests for reimbursement should coincide with the Awardee’s normal billing pattern, but not more frequently than every two weeks. Each request must be limited to the amount of disbursements made for the federal share of direct project costs and the proportionate share of allowable indirect costs incurred during that billing period.
- c. Adjusting payment requests for available cash. The Awardee must disburse any funds that are available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on any of those funds before requesting additional cash payments from DOE.
- d. Payments. All payments are made by electronic funds transfer to the bank account identified on the ASAP Bank Information Form that you filed with the U.S. Department of Treasury.

3. COST SHARE

- a. Total Estimated Project Cost is the sum of the DOE share and Awardee share of the estimated project costs. The Awardee’s cost share must derive from non-Federal sources unless otherwise allowed by law. By accepting federal funds under this award, the Awardee agrees to be responsible for its percentage share of total allowable project costs, on a budget period basis, even if the project is terminated early or is not funded to its completion. This cost is shared as follows:

Budget Period No.	Budget Period Start Date	DOE Cost Share \$/ %	Awardee Cost Share \$/ %	Total Estimated Costs
1	08/01/2008	\$1,968,000 / [**]%	\$[**] / [**]%	\$[**]
Total Project		\$1,968,000 / [**]%	\$[**] / [**]%	\$[**]

- b. If the Awardee is unable to provide cost share of the amount identified in paragraph a of this article, the Awardee shall notify the DOE Award Administrator identified in Block 12 of the Notice of Financial Assistance Award, indicating whether you will continue or phase out the project. If the project will continue, the notification must describe how replacement cost share will be secured.
- c. The Awardee must maintain records of all project costs that are claimed as cost share, including in-kind costs, as well as records of costs to be paid by DOE. Such records are subject to audit.
- d. Failure to provide the cost share required by this Article may result in the subsequent recovery by DOE of some or all the funds provided under the award.

4. REBUDGETING AND RECOVERY OF INDIRECT COSTS

- a. If actual allowable indirect charges are less than those budgeted and funded under the award, the Awardee may use the difference to pay additional allowable direct costs during the project period. If at the completion of the award DOE's share of total allowable costs (i.e., direct and indirect), is less than the total costs reimbursed, the Awardee must refund the difference.
- b. Awardees are expected to manage their indirect costs. DOE will not amend an award solely to provide additional funds for changes in indirect cost rates (See "Incremental Funding and Maximum Obligation article). DOE recognizes that the inability to obtain full reimbursement for indirect costs means the Awardee must absorb the underrecovery. Such underrecovery may be allocated as part of the organization's required cost share.
- c. The budget for this award includes indirect charges, but does not include fringe benefits. Therefore, fringe benefit costs shall not be charged to nor shall reimbursement be requested for this project nor shall the fringe benefit costs for this project be allocated to any other federally sponsored project. In addition, fringe benefit costs shall not be counted as cost share unless approved by the Contracting Officer. This restriction does not apply to subawardees' fringe benefits.

5. STATEMENT OF FEDERAL STEWARDSHIP

DOE will exercise normal Federal stewardship in overseeing the project activities performed under this award. Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to correct deficiencies which develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the award objectives have been accomplished.

6. SITE VISITS

DOE's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. The Awardee must provide, and must require its subawardees to provide, reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

7. REPORTING REQUIREMENTS

- a. **Requirements.** The reporting requirements for this award are identified on the Federal Assistance Reporting Checklist, DOE F 4600.2, attached to this award. Failure to comply with these reporting requirements is considered a material noncompliance with the terms of the award. Noncompliance may result in withholding of future payments, suspension or termination of the current award, and withholding of future awards. A willful failure to perform, a history of failure to perform, or unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future awards by Federal agencies,
- b. **Dissemination of scientific/technical reports.** Scientific/technical reports submitted under this award will be disseminated on the Internet via the DOE Information Bridge (www.osti.gov/bridge), unless the report contains patentable material, protected data or SBIR/STTR data. Citations for journal articles produced under the award will appear on the DOE Energy Citations Database (www.osti.gov/energycitations).
- c. **Restrictions.** Reports submitted to the DOE Information Bridge must not contain any Protected Personal Identifiable Information (PII), limited rights data (proprietary data), classified information, information subject to export control classification, or other information not subject to release.

8. PUBLICATIONS

- a. The Awardee is encouraged to publish or otherwise make publicly available the results of the work conducted under the award.
- b. An acknowledgment of DOE support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:

Acknowledgment: "This material is based upon work supported by the Department of Energy [National Nuclear Security Administration] [add name(s) of other agencies, if applicable] under Award Number(s) [enter the award number(s)]."

Disclaimer. "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency

thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof.”

9. FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS

The Awardee must obtain any required permits and comply with applicable federal, state, and municipal laws, codes, and regulations for work performed under this award.

10. INTELLECTUAL PROPERTY PROVISIONS AND CONTACT INFORMATION

- a. The intellectual property provisions applicable to this award are provided as an attachment to this award or are referenced in Block 19 of the Notice of Financial Assistance Award. A list of all intellectual property provisions may be found at http://www.gc.doe.gov/financial_assistance_awards.htm.
- b. Questions regarding intellectual property matters should be referred to the DOE Award Administrator identified in Block 12 of the NFAA and the cognizant DOE Patent Counsel. The Patent Counsel for the Golden Field Office is Julia Moody, who may be reached at 303-275-4867, or Julia.moody@go.doe.gov.

11. LOBBYING RESTRICTIONS

By accepting funds under this award, the Awardee agrees that none of the funds obligated on the award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

12. NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS — SENSE OF CONGRESS

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

13. TRAFFICKING IN PERSONS

- a. Provisions applicable to an Awardee that is a private entity:
 - 1. The Awardee, your employees, subawardees under this award, and subawardees’ employees may not —

- i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - ii. Procure a commercial sex act during the period of time that the award is in effect; or
 - iii. Use forced labor in the performance of the award or subawards under the award.
2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subawardee that is a private entity—
 - i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
 - ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—
 - (a) Associated with performance under this award; or
 - (b) Imputed to you or the subawardee using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement),” as implemented by 2 CFR part 901.
- b. Provision applicable to an Awardee other than a private entity: We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subawardee that is a private entity—
 1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
 2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—
 - i. Associated with performance under this award; or
 - ii. Imputed to the subawardee using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement),” as implemented by 2 CFR part 901.
- c. Provisions applicable to all Awardees:
 1. The Awardee must inform DOE immediately of any information received from any source alleging a violation of a prohibition in paragraph a.1 of this award term.

2. DOE's right to terminate unilaterally that is described in paragraph a.2 or b. of this section:
 - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - ii. Is in addition to all other remedies for noncompliance that are available to DOE under this award.
 3. The Awardee must include the requirements of paragraph a.1 of this award term in any subaward made by the Awardee to a private entity.
- d. Definitions. For purposes of this award term:
1. "Employee" means either:
 - i. An individual employed by the Awardee or a subawardee who is engaged in the performance of the project or program under this award; or
 - ii. Another person engaged in the performance of the project or program under this award and not compensated by the Awardee including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward a cost share requirements.
 2. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
 3. "Private entity":
 - i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
 - ii. Includes:
 - (a) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
 - (b) A for-profit organization.
 4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).
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14. INSOLVENCY, BANKRUPTCY OR RECEIVERSHIP

- a. The Awardee shall immediately notify the DOE Administrator identified in Block 12 of the Notice of Financial Assistance Award of the occurrence of any of the following events: (i) the Awardee or its parent's filing of a voluntary case seeking liquidation or reorganization under the Bankruptcy Act; (ii) the Awardee's consent to the institution of an involuntary case under the Bankruptcy Act against the Awardee or its parent; (iii) the filing of any similar proceeding for or against the Awardee or its parent, or its consent to the dissolution, winding-up or readjustment of its debts, appointment of a receiver, conservator, trustee, or other officer with similar powers over the Awardee, under any other applicable state or federal law; or (iv) the Awardee's insolvency due to its inability to pay debts generally as they become due.
- b. Such notification shall be in writing and shall: (i) specifically set out the details of the occurrence of an event referenced in paragraph (a); (ii) provide the facts surrounding that event; and (iii) provide the impact such event will have on the project being funded by this award.
- c. Upon the occurrence of any of the four events described in the paragraph a. of this provision, DOE reserves the right to conduct a review to determine Awardee compliance with the required elements of the award (including such items as cost share, progress towards technical project objectives, and submission of required reports). If a DOE review determines that there are significant deficiencies or concerns with Awardee performance under the award, DOE reserves the right to impose additional requirements, as needed, including (i) a change of payment method; or (ii) institution of payment controls.
- d. Failure of the Recipient to comply with this provision may be considered a material noncompliance of this financial assistance award by the Contracting Officer.

15. DECONTAMINATION AND/OR DECOMMISSIONING (D&D) COSTS

Notwithstanding, any other provisions of this award, DOE will not be responsible for or have any obligation to the Awardee for (i) Decontamination and/or Decommissioning (D&D) of any of the Awardee's facilities, or (ii) any costs which may be incurred by the Awardee in connection with the D&D of any of its facilities due to the performance of the work under this award, whether said work was performed prior to or subsequent to the effective date of the award.

Intellectual Property Provisions (GSB-1003)
Grant
Research, Development, or Demonstration
Domestic Small Businesses

- | | | |
|-----|---------------------------|---|
| 01. | 10 CFR 600.325 Appendix A | Rights in Data — General (OCT 2003) |
| 02. | 10 CFR 600.325 Appendix A | Patent Rights (Small Business Firms and Nonprofit Organizations) (OCT 2003) |
| 03. | FAR 52.227-23 | Rights to Proposal Data (Technical) (JUN 1987) |

NOTE: In reading these provisions, any reference to “contractor” shall mean “recipient,” and any reference to “contract” or “subcontract” shall mean “award” or “subaward.”

01. 10 CFR Part 600.325 Appendix A, Rights in Data — General (OCT 2003)

(a) Definitions

Computer Data Bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

Computer software, as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created or compiled. The term does not include computer data bases.

Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to administration, such as financial, administrative, cost or pricing, or management information.

Form, fit, and function data, as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

Limited rights, as used in this clause, means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of subparagraph (g)(2) if included in this clause.

Limited rights data, as used in this clause, means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software; including minor modifications of such computer software.

Restricted rights, as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of subparagraph (g)(3) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

Technical data, as used in this clause, means data (other than computer software) which are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

Unlimited rights, as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Allocations of Rights

(1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in—

(i) Data first produced in the performance of this agreement;

(ii) Form, fit, and function data delivered under this agreement;

(iii) Data delivered under this agreement (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this agreement; and

(iv) All other data delivered under this agreement unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Recipient shall have the right to-

(i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Recipient in the performance of this agreement, unless provided otherwise in paragraph (d) of this clause;

(ii) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause;

(iii) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take over appropriate action, in accordance with paragraphs (e) and (f) of this clause; and

(iv) Establish claim to copyright subsisting in data first produced in the performance of this agreement to the extent provided in subparagraph (c)(1) of this clause.

(c) Copyright

(1) Data first produced in the performance of this agreement. Unless provided otherwise in paragraph (d) of this clause, the Recipient may establish, without prior approval of the Contracting Officer, claim to copyright subsisting in data first produced in the performance of this agreement. When claim to copyright is made, the Recipient shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 and acknowledgement of Government sponsorship (including agreement number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For such copyrighted data, including computer software, the Recipient grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

(2) Data not first produced in the performance of this agreement. The Recipient shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this agreement any data not first produced in the performance of this agreement and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the Recipient identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause; provided, however, that if such data are computer software the Government shall acquire a copyright license as set forth in subparagraph (g)(3) of this

clause if included in this agreement or as otherwise may be provided in a collateral agreement incorporated in or made part of this agreement.

(3) Removal of copyright notices. The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) Release, Publication and Use of Data

(1) The Recipient shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Recipient in the performance of this agreement, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this clause or expressly set forth in this agreement.

(2) The Recipient agrees that to the extent it receives or is given access to data necessary for the performance of this award, which contain restrictive markings, the Recipient shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the contracting officer.

(e) Unauthorized Marking of Data

(1) Notwithstanding any other provisions of this agreement concerning inspection or acceptance, if any data delivered under this agreement are marked with the notices specified in subparagraph (g)(2) or (g)(3) of this clause and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by this agreement, the Contracting Officer may at any time either return the data to the Recipient or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer shall make written inquiry to the Recipient affording the Recipient 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Recipient fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Recipient provides written justification to substantiate the propriety of the markings within the period set in subparagraph (e)(1)(i) of this clause, the Contracting Officer shall consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Recipient shall be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer shall furnish the Recipient a written determination, which determination shall become the final agency decision regarding the appropriateness of the markings unless the Recipient files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government shall continue to abide by the markings under this subparagraph (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government shall thereafter have the right to cancel or

ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in subparagraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(f) Omitted or Incorrect Markings

(1) Data delivered to the Government without either the limited rights or restricted rights notice as authorized by paragraph (g) of this clause, or the copyright notice required by paragraph (c) of this clause, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Recipient may request, within 6 months (or a longer time approved by the Contracting Officer for good cause shown) after delivery or such data, permission to have notices placed on qualifying data at the Recipient's expense, and the Contracting Officer may agree to do so if the Recipient:

- (i) Identifies the data to which the omitted notice is to be applied;
- (ii) Demonstrates that the omission of the notice was inadvertent;
- (iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Contracting Officer may also:

(i) Permit correction at the Recipient's expense of incorrect notices if the Recipient identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or

(ii) Correct any incorrect notices.

(g) Protection of Limited Rights Data and Restricted Computer Software

When data other than that listed in subparagraphs (b)(1)(i), (ii), and (iii) of this clause are specified to be delivered under this agreement and qualify as either limited rights data or restricted computer software, if the Recipient desires to continue protection of such data, the Recipient shall withhold such data and not furnish them to the Government under this agreement. As a condition to this withholding, the Recipient shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer data base for delivery to the Government are to be treated as limited rights data and not restricted computer software.

(h) Subaward/Contract

The Recipient has the responsibility to obtain from its subrecipients/contractors all data and rights therein necessary to fulfill the Recipient's obligations to the Government under this agreement. If a subrecipient/contractor refuses to accept terms affording the Government such rights, the Recipient shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with the subaward/contract award without further authorization.

(i) Additional Data Requirements

In addition to the data specified elsewhere in this agreement to be delivered, the Contracting Officer may, at anytime during agreement performance or within a period of 3 years after acceptance of all items to be delivered under this agreement, order any data first produced or specifically used in the performance of this agreement. This clause is applicable to all data ordered under this subparagraph. Nothing contained in this subparagraph shall require the Recipient to deliver any data the withholding of which is authorized by this clause, or data which are specifically identified in this agreement as not subject to this clause. When data are to be delivered under this subparagraph, the Recipient will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

(j) The recipient agrees, except as may be otherwise specified in this award for specific data items listed as not subject to this paragraph, that the Contracting Officer or an authorized representative may, up to three years after acceptance of all items to be delivered under this award, inspect at the Recipient's facility any data withheld pursuant to paragraph (g) of this clause, for purposes of verifying the Recipient's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the Recipient whose data are to be inspected demonstrates to the Contracting Officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the Contracting Officer shall designate an alternate inspector. (End of clause)

02. 10 CFR Part 600.325 Appendix A, Patent Rights (Small Business Firms and Nonprofit Organizations (OCT 2003))

(a) Definitions

Invention means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.

Nonprofit organization means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

Practical application means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms.

Small business firm means a small business concern as defined at section 2 of Public Law 85-536 (16 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3 through 121.8 and 13 CFR 121.3 through 121.12, respectively, will be used.

Subject invention means any invention of the Recipient conceived or first actually reduced to practice in the performance of work under this award, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d) must also occur during the period of award performance.

(b) Allocation of Principal Rights

The Recipient may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this Patent Rights clause and 35 U.S.C. 203. With respect to any subject invention in which the Recipient retains title, the Federal Government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the U.S. the subject invention throughout the world.

(c) Invention Disclosure, Election of Title and Filing of Patent Applications by Recipient

(1) The Recipient will disclose each subject invention to DOE within two months after the inventor discloses it in writing to Recipient personnel responsible for the administration of patent matters. The disclosure to DOE shall be in the form of a written report and shall identify the award under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to DOE, the Recipient will promptly notify DOE of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Recipient.

(2) The Recipient will elect in writing whether or not to retain title to any such invention by notifying DOE within two years of disclosure to DOE. However, in any case where publication, on sale, or public use has initiated the oneyear statutory period wherein valid patent protection can still be obtained in the U.S., the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Recipient will file its initial patent application on an invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the U.S. after a publication, on sale, or public use. The Recipient will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application, or six months from the date when permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications when such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure to DOE, election, and filing under subparagraphs (c)(1), (2), and (3) of this clause may, at the discretion of DOE, be granted.

(d) Conditions When the Government May Obtain Title

The Recipient will convey to DOE, upon written request, title to any subject invention:

(1) If the Recipient fails to disclose or elect the subject invention within the times specified in paragraph (c) of this patent rights clause, or elects not to retain title; provided that DOE may only request title within 60 days after learning of the failure of the Recipient to disclose or elect within the specified times;

(2) In those countries in which the Recipient fails to file patent applications within the times specified in paragraph (c) of this Patent Rights clause; provided, however, that if the Recipient has filed a patent application in a country after the times specified in paragraph (c) of this Patent Rights clause, but prior to its receipt of the written request of DOE, the Recipient shall continue to retain title in that country; or

(3) In any country in which the Recipient decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in a reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum Rights to Recipient and Protection of the Recipient Right To File

(1) The Recipient will retain a non-exclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Recipient fails to disclose the subject invention within the times specified in paragraph (c) of this Patent Rights clause. The Recipient's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Recipient is a party and includes the right to grant sublicenses of the same scope of the extent the Recipient was legally obligated to do so at the time the award was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of that part of the Recipient's business to which the invention pertains.

(2) The Recipient's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and the agency's licensing regulation, if any. This license will not be revoked in that field of use or the geographical areas in which the Recipient has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at discretion of the funding Federal agency to the extent the Recipient, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the funding Federal agency will furnish the Recipient a written notice of its intention to revoke or modify the license, and the Recipient will be allowed thirty days (or such other time as may be authorized by DOE for good cause shown by the Recipient) after the notice to show cause why the license should not be revoked or modified. The Recipient has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and the agency's licensing regulations, if any, concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(f) Recipient Action To Protect Government's Interest

(1) The Recipient agrees to execute or to have executed and promptly deliver to DOE all instruments necessary to:

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions for which the Recipient retains title; and

(ii) Convey title to DOE when requested under paragraph (d) of this Patent Rights clause, and to enable the government to obtain patent protection throughout the world in that subject invention.

(2) The Recipient agrees to require, by written agreement, its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Recipient each subject invention made under this award in order that the Recipient can comply with the disclosure provisions of paragraph (c) of this Patent Rights clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. The disclosure format should require, as a minimum, the information requested by paragraph (c)(1) of this Patent Rights clause. The Recipient shall instruct such employees through the employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Recipient will notify DOE of any decision not to continue prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Recipient agrees to include, within the specification of any U.S. patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under (identify the award) awarded by (identify DOE). The Government has certain rights in this invention."

(g) Subaward/Contract

(1) The Recipient will include this Patent Rights clause, suitably modified to identify the parties, in all subawards/contracts, regardless of tier, for experimental, developmental or research work to be performed by a small business firm or nonprofit organization. The subrecipient/contractor will retain all rights provided for the Recipient in this Patent Rights clause, and the Recipient will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractors' subject inventions.

(2) The Recipient will include in all other subawards/contracts, regardless of tier, for experimental, developmental or research work, the patent rights clause required by 10 CFR 600.325(c).

(3) In the case of subawards/contracts at any tier, DOE, the Recipient, and the subrecipient/contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subrecipient/contractor and DOE with respect to those matters covered by the clause.

(h) Reporting on Utilization of Subject Inventions

The Recipient agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Recipient or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross

royalties received by the Recipient and such other data and information as DOE may reasonably specify. The Recipient also agrees to provide additional reports in connection with any march-in proceeding undertaken by DOE in accordance with paragraph (j) of this Patent Rights clause. As required by 35 U.S.C. 202(c)(5), DOE agrees it will not disclose such information to persons outside the Government without the permission of the Recipient.

(i) Preference for United States Industry.

Notwithstanding any other provision of this Patent Rights clause, the Recipient agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the U.S. unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the U.S. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Recipient or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the U.S. or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in-Rights

The Recipient agrees that with respect to any subject invention in which it has acquired title, DOE has the right in accordance with procedures at 37 CFR 401.6 and any supplemental regulations of the Agency to require the Recipient, an assignee or exclusive licensee of a subject invention to grant a non-exclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances and if the Recipient, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that:

- (1) Such action is necessary because the Recipient or assignee has not taken or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;
- (2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Recipient, assignee, or their licensees;
- (3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Recipient, assignee, or licensee; or
- (4) Such action is necessary because the agreement required by paragraph (i) of this Patent Rights clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the U.S. is in breach of such agreement

(k) Special Provisions for Awards With Nonprofit Organizations

If the Recipient is a nonprofit organization, it agrees that:

- (1) Rights to a subject invention in the U.S. may not be assigned without the approval of DOE, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Recipient;

(2) The Recipient will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when DOE deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Recipient with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific or engineering research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms and that it will give preference to a small business firm if the Recipient determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided that the Recipient is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Recipient. However, the Recipient agrees that the Secretary of Commerce may review the Recipient's licensing program and decisions regarding small business applicants, and the Recipient will negotiate changes to its licensing policies, procedures or practices with the Secretary when the Secretary's review discloses that the Recipient could take reasonable steps to implement more effectively the requirements of this paragraph (k)(4).

(l) Communications.

All communications required by this Patent Rights clause should be sent to the DOE Patent Counsel address listed in the Award Document.

(m) Electronic Filing

Unless otherwise Specified in the award, the information identified in paragraphs (f)(2) and (f)(3) may be electronically filed.

[End of clause]

03. FAR 52.227-23 Rights to Proposal Data (Technical) (JUN 1987)

Except for data contained on pages (none), it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the "Rights in Data—General" clause contained in this contract) in and to the technical data contained in the proposal dated 03/20/2008, upon which this contract is based.

Budget Information — Non Construction Programs

OMB Approval No. 0348-0044

Section A — Budget Summary

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		Total (g)
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	
1. A000	81.087	\$0.00	\$0.00	\$1,968,000.00	[**]	[**]
2.						\$0.00
3.						\$0.00
4.						\$0.00
5. Totals		\$0.00	\$0.00	\$1,968,000.00	[**]	[**]

Section B — Budget Categories

	Grant Program, Function or Activity				Total (5)
	(1) A000	(2)	(3)	(4)	
6. Object Class Categories					
a. Personal	[**]				[**]
b. Fringe Benefits	[**]				[**]
c. Travel	[**]				[**]
d. Equipment	[**]				[**]
e. Supplies	[**]				[**]
f. Contractual	[**]				[**]
g. Construction	[**]				[**]
h. Other	[**]				[**]
i. Total Direct Charges (sum of 6a-6h)	[**]				[**]
j. Indirect Charges	[**]				[**]
k. Totals (sum of 6i and 6j)	[**]				[**]
7. Program Income	\$0.00				\$0.00

SF-424A (Rev. 4-92)
 Prescribed by OMB Circular A-102

Previous Edition Usable

Authorized for Local Reproduction

DOE F 4600.2
(05/06)
All Other Editions Are Obsolete

**U.S. Department of Energy
FEDERAL ASSISTANCE REPORTING CHECKLIST
AND INSTRUCTIONS**

1. Identification Number DE-FG36-08GO88017.A000		2. Program/Project Title: Wave Power Demonstration Project at Reedsport, OR																		
3. Recipient Ocean Power Technologies, Inc.																				
4. Reporting Requirements:		Frequency	No. of Copies																	
A. MANAGEMENT REPORTING <input checked="" type="checkbox"/> Progress Report <input checked="" type="checkbox"/> Special Status Report (see special instructions)		Q A	Upload one copy of each report to the address identified in the next column																	
B. SCIENTIFIC/TECHNICAL REPORTING (Reports/Products must be submitted with appropriate DOE F 241. The forms are available at www.osti.gov/elink) <table border="0"> <tr> <td>Report/Product</td> <td>Form</td> <td></td> <td></td> </tr> <tr> <td><input checked="" type="checkbox"/> Final Scientific Report</td> <td>DOE F 241.3</td> <td>F</td> <td rowspan="4"> http://www.osti.gov/elink-2413 https://www.eere-pmc.energy.gov/SubmitReports.aspx http://www.osti.gov/estsc/241-4pre.jsp </td> </tr> <tr> <td><input checked="" type="checkbox"/> Conference papers/proceedings*</td> <td>DOE F 241.3</td> <td>A</td> </tr> <tr> <td><input type="checkbox"/> Software/Manual</td> <td>DOE F 241.3</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Other (see special instructions)</td> <td>DOE F 241.3</td> <td></td> </tr> </table> <i>* Scientific and technical conferences only</i>		Report/Product	Form			<input checked="" type="checkbox"/> Final Scientific Report	DOE F 241.3	F	http://www.osti.gov/elink-2413 https://www.eere-pmc.energy.gov/SubmitReports.aspx http://www.osti.gov/estsc/241-4pre.jsp	<input checked="" type="checkbox"/> Conference papers/proceedings*	DOE F 241.3	A	<input type="checkbox"/> Software/Manual	DOE F 241.3		<input type="checkbox"/> Other (see special instructions)	DOE F 241.3			
Report/Product	Form																			
<input checked="" type="checkbox"/> Final Scientific Report	DOE F 241.3	F	http://www.osti.gov/elink-2413 https://www.eere-pmc.energy.gov/SubmitReports.aspx http://www.osti.gov/estsc/241-4pre.jsp																	
<input checked="" type="checkbox"/> Conference papers/proceedings*	DOE F 241.3	A																		
<input type="checkbox"/> Software/Manual	DOE F 241.3																			
<input type="checkbox"/> Other (see special instructions)	DOE F 241.3																			
C. FINANCIAL REPORTING <input type="checkbox"/> SF-269, Financial Status Report <input checked="" type="checkbox"/> SF-269A, Financial Status Report (short form) <input type="checkbox"/> SF-272, Federal Cash Transaction Report		F Q	https://www.eere-pmc.energy.gov/SubmitReports.aspx																	
D. CLOSEOUT REPORTING <input checked="" type="checkbox"/> Patent Certification <input checked="" type="checkbox"/> Property Certification <input type="checkbox"/> Other (see Special Instructions)		F F	https://www.eere-pmc.energy.gov/SubmitReports.aspx																	
E. OTHER REPORTING <input checked="" type="checkbox"/> Annual Indirect Cost Proposal <input type="checkbox"/> Annual Inventory of Federally Owned Property, If Any <input type="checkbox"/> Other (see special instructions)		Y																		
FREQUENCY CODES AND DUE DATES: A – Within 5 calendar days after events or as specified. F – Final; 90 calendar days after expiration or termination of the award. Y – Yearly; 90 days after the end of the reporting period. S – Semiannually; within 30 days after end of the reporting period. Q – Quarterly; within 30 days after end of the reporting period.																				
5. Special Instructions: The forms identified in the checklist are available at http://management.energy.gov/business_doe/business_forms.htm .																				

(PMC-05/06/06)

Federal Assistance Reporting Instructions (05/06)

A. MANAGEMENT REPORTING

Progress Report

The Progress Report must provide a concise narrative assessment of the status of work and include the following information and any other information identified under Special Instructions on the Federal Assistance Reporting Checklist:

1. The DOE award number and name of the recipient.
2. The project title and name of the project director/principal investigator.
3. Date of report and period covered by the report.
4. A comparison of the actual accomplishments with the goals and objectives established for the period and reasons why the established goals were not met.
5. A discussion of what was accomplished under these goals during this reporting period, including major activities, significant results, major findings or conclusions, key outcomes or other achievements. This section should not contain any proprietary data or other information not subject to public release. If such information is important to reporting progress, do not include the information, but include a note in the report advising the reader to contact the Principal Investigator or the Project Director for further information.
6. Cost Status. Show approved budget by budget period and actual costs incurred. If cost sharing is required break out by DOE share, recipient share, and total costs.
7. Schedule Status. List milestones, anticipated completion dates and actual completion dates. If you submitted a project management plan with your application, you must use this plan to report schedule and budget variance. You may use your own project management system to provide this information.
8. Any changes in approach or aims and reasons for change. Remember significant changes to the objectives and scope require prior approval by the contracting officer.
9. Actual or anticipated problems or delays and actions taken or planned to resolve them.
10. Any absence or changes of key personnel or changes in consortium/teaming arrangement.
11. A description of any product produced or technology transfer activities accomplished during this reporting period, such as:
 - A. Publications (list journal name, volume, issue); conference papers; or other public releases of results. Attach or send copies of public releases to the DOE Project Officer identified in Block 11 of the Notice of Financial Assistance Award.

- B. Web site or other Internet sites that reflect the results of this project.
- C. Networks or collaborations fostered.
- D. Technologies/Techniques.
- E. Inventions/Patent Applications.
- F. Other products, such as data or databases, physical collections, audio or video, software or netware, models, educational aid or curricula, instruments or equipment.

Special Status Report

The recipient must report the following events as soon as possible after they occur. Submit reports by e-mail to the DOE Project Officer identified in Block 11 of the Notice of Financial Assistance Award (NFAA):

- 1. Developments that have a significant favorable impact on the project.
- 2. Problems, delays, or adverse conditions which materially impair the recipient's ability to meet the objectives of the award or which may require DOE to respond to questions relating to such events from the public. For example, the recipient must report any of the following incidents and include the anticipated impact and remedial action to be taken to correct or resolve the problem/condition:
 - a. Any single fatality or injuries requiring hospitalization of five or more individuals.
 - b. Any significant environmental permit violation.
 - c. Any verbal or written Notice of Violation of any Environmental, Safety, and Health statutes or regulations.
 - d. Any incident which causes a significant process or hazard control system failure.
 - e. Any event which is anticipated to cause a significant schedule slippage or cost increase.
 - f. Any damage to Government-owned equipment valued in excess of \$50,000.
 - g. Any other incident that has the potential for high visibility in the media.

B. SCIENTIFIC/TECHNICAL REPORTS

Final Scientific/Technical Report

Content. The final scientific/technical report must include the following information and any other information identified under Special Instructions on the Federal Assistance Reporting Checklist:

1. Identify the DOE award number; name of recipient; project title; name of project director/principal investigator; and consortium/teaming members.
2. Display prominently on the cover of the report any authorized distribution limitation notices, such as patentable material or protected data. Reports delivered without such notices may be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use or reproduction of such reports.
3. Provide an executive summary, which includes a discussion of 1) how the research adds to the understanding of the area investigated; 2) the technical effectiveness and economic feasibility of the methods or techniques investigated or demonstrated; or 3) how the project is otherwise of benefit to the public. The discussion should be a minimum of one paragraph and written in terms understandable by an educated layman.
4. Provide a comparison of the actual accomplishments with the goals and objectives of the project.
5. Summarize project activities for the entire period of funding, including original hypotheses, approaches used, problems encountered and departure from planned methodology, and an assessment of their impact on the project results. Include, if applicable, facts, figures, analyses, and assumptions used during the life of the project to support the conclusions.
6. Identify products developed under the award and technology transfer activities, such as:
 - a. Publications (list journal name, volume, issue), conference papers, or other public releases of results. If not provided previously, attach or send copies of any public releases to the DOE Project Officer identified in Block 11 of the Notice of Financial Assistance Award;
 - b. Web site or other Internet sites that reflect the results of this project;
 - c. Networks or collaborations fostered;
 - d. Technologies/Techniques;
 - e. Inventions/Patent Applications, licensing agreements; and
 - f. Other products, such as data or databases, physical collections, audio or video, software or netware, models, educational aid or curricula, instruments or equipment.
7. For projects involving computer modeling, provide the following information with the final report:
 - a. Model description, key assumptions, version, source and intended use;
 - b. Performance criteria for the model related to the intended use;

- c. Test results to demonstrate the model performance criteria were met (e.g., code verification/validation, sensitivity analyses, history matching with lab or field data, as appropriate);
- d. Theory behind the model, expressed in non-mathematical terms;
- e. Mathematics to be used, including formulas and calculation methods;
- f. Whether or not the theory and mathematical algorithms were peer reviewed, and, if so, include a summary of theoretical strengths and weaknesses;
- g. Hardware requirements; and
- h. Documentation (e.g., users guide, model code).

Electronic Submission. The final scientific/technical report must be submitted electronically via the DOE Energy Link System (E-Link) at <http://www.osti.gov/mlink-2413>.

Electronic Format. Reports must be submitted in the ADOBE PORTABLE DOCUMENT FORMAT (PDF) and be one integrated PDF file that contains all text, tables, diagrams, photographs, schematic, graphs, and charts. Materials, such as prints, videos, and books, that are essential to the report but cannot be submitted electronically, should be sent to the DOE Award Administrator at the address listed in Block 12 of the Notice of Financial Assistance Award.

Submittal Form. The report must be accompanied by a completed electronic version of DOE Form 241.3, "U.S. Department of Energy (DOE), Announcement of Scientific and Technical Information (STI)." You can complete, upload, and submit the DOE F.241.3 online via E-Link. You are encouraged not to submit patentable material or protected data in these reports, but if there is such material or data in the report, you must: (1) clearly identify patentable or protected data on each page of the report; (2) identify such material on the cover of the report; and (3) mark the appropriate block in Section K of the DOE F 241.3. Reports must not contain any limited rights data (proprietary data), classified information, information subject to export control classification, or other information not subject to release. Protected data is specific technical data, first produced in the performance of the award that is protected from public release for a period of time by the terms of the award agreement.

Conference Papers/Proceedings

Content. The recipient must submit a copy of any conference papers/proceedings, with the following information: (1) Name of conference; (2) Location of conference; (3) Date of conference; and (4) Conference sponsor.

Electronic Submission. Scientific/technical conference paper/proceedings must be submitted electronically via the DOE Energy Link System (E-Link) at <http://www.osti.gov/mlink-2413>. Non-scientific/technical conference papers/proceedings must be sent to the URL listed on the Reporting Checklist.

Electronic Format. Conference papers/proceedings must be submitted in the ADOBE PORTABLE DOCUMENT FORMAT (PDF) and be one integrated PDF file that contains all text, tables, diagrams, photographs, schematic, graphs, and charts. If the proceedings cannot be submitted electronically, they should be sent to the DOE Award Administrator at the address listed in Block 12 of the Notice of Financial Assistance Award.

Submittal Form. Scientific/technical conference papers/proceedings must be accompanied by a completed DOE Form 241.3. The form and instructions are available on E-Link at <http://www.osti.gov/mlink-2413>. This form is not required for non-scientific or non-technical conference papers or proceedings.

Software/Manual

Content. Unless otherwise specified in the award, the following must be delivered: source code, the executable object code and the minimum support documentation needed by a competent user to understand and use the software and to be able to modify the software in subsequent development efforts.

Electronic Submission. Submissions may be submitted electronically via the DOE Energy Link System (E-Link) at <http://www.osti.gov/estsc/241-4pre.jsp>

Energy Science and Technology Software Center
P.O. Box 1020
Oak Ridge, TN 37831

Submittal Form. Each software deliverable and its manual must be accompanied by a completed DOE Form 241.4 “Announcement of U.S. Department of Energy Computer Software.” The form and instructions are available on E-Link at <http://www.osti.gov/estsc//241-4pre.jsp>.

Protected Personally Identifiable Information (PII). Management Reports or Scientific/Technical Reports must not contain any *Protected* PII. PII is any information about an individual which can be used to distinguish or trace an individual’s identity. Some information that is considered to be PII is available in public sources such as telephone books, public websites, university listings, etc. This type of information is considered to be Public PII and included, for example, first and last name, address, work telephone number, e-mail address, home telephone number, and general educational credentials. In contrast, *Protected* PII is defined as an individual’s first name or first initial and last name in combination with any one or more of types of information, including, but not limited to, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics, date and place of birth, mother’s maiden name, criminal, medical and financial records, educational transcripts, etc.

C. FINANCIAL REPORTING

Recipients must complete the financial reports identified on the Reporting Checklist in accordance with the report instructions. These standard forms are available at

<http://www.whitehouse.gov/omb/grants/index.html>. Fillable forms are available at http://management.energy.gov/business_doe/business_forms.htm.

D. CLOSEOUT REPORTS

Final Invention and Patent Report

The recipient must provide a DOE Form 2050.11 , "PATENT CERTIFICATION." This form is available at <http://www.directives.doe.gov/pdfs/forms/2050-11.pdf> and http://management.energy.gov/business_doe/business_forms.htm.

Property Certification

The recipient must provide the Property Certification, including the required inventories of non-exempt property, located at http://management.energy.gov/business_doe/business_forms.htm.

E. OTHER REPORTING

Annual Indirect Cost Proposal and Reconciliation

Requirement. In accordance with the applicable cost principles, the recipient must submit an annual indirect cost proposal, reconciled to its financial statements, within six months after the close of the fiscal year, unless the award is based on a predetermined or fixed indirect rate (s), or a fixed amount for indirect facilities and administration (F&A) costs.

Cognizant Agency. The recipient must submit its annual indirect cost proposal directly to the cognizant agency for negotiating and approving indirect costs. If the DOE awarding office is the cognizant agency, submit the annual indirect cost proposal to the DOE Award Administrator identified in Block 12 of the Notice of Financial Assistance Award.

Annual Inventory of Federally Owned Property

Requirement. If at any time during the award the recipient is provided with Government-furnished property or acquires property with project funds and the award specifies that the property vests in the Federal Government (i.e. federally owned property), the recipient must submit an annual inventory of this property to the DOE Award Administrator identified in Block 12 of the Notice of Financial Assistance Award no later than October 30th of each calendar year, to cover an annual reporting period ending on the preceding September 30th.

Content of Inventory. The inventory must include a description of property, tag number, acquisition date, location of property, and acquisition cost, if purchased with project funds. The report must list all federally owned property, including property located at subcontractor's facilities or other locations.

STATEMENT OF PROJECT OBJECTIVES
Ocean Power Technologies, Inc.
Wave Power Demonstration Project at Reedsport, Oregon

A. PROJECT OBJECTIVES

Ocean wave power can be a significant source of large-scale, renewable energy for the US electrical grid. The goal of the Wave Power Demonstration Project at Reedsport, Oregon is to demonstrate wave power as an attractive electricity production option for the twenty-first century by meeting the following objectives:

- Construct the first utility scale wave power project in the US at Reedsport OR based on OPT's PowerBuoy® technology
- Demonstrate the benefits of wave power as an innovative technology that adds diversity to the nation's energy supply
- Demonstrate wave power as a cost-competitive technology
- Demonstrate the environmental advantages of wave power over other forms of energy: no exhaust gases, no noise, minimal visibility from shore, and safe for sea life

B. PROJECT SCOPE

OPT's Wave Power Demonstration Project at Reedsport, Oregon meets the objectives of the Wind & Hydropower Technologies Program, one of the ten EERE Programs, which works to increase the use of domestic wind and water resources for electric power generation in order to stabilize energy costs, enhance energy security, and improve our environment.

As the first utility scale wave power project in the US, a wave power demonstration project in Reedsport, OR (not included in the scope of this project), will consist of 1 PowerBuoy 2.5 miles off the coast. Wave power will be converted to electricity through a buoy in the water, using the rise and fall of waves to move the buoy up and down (mechanical stroking) which drives an electric generator. OPT's wave power generation system includes sophisticated techniques to automatically tune the system for efficient conversion of random wave energy into low cost green electricity, for disconnecting the system in large waves, and for automatically restoring operation when wave conditions normalize.

The scope of this phase of the project encompasses out-of-water testing of the entire OPT PowerBuoy assembly. At the end of this phase of the project and based on the results of out-of-water testing, OPT will then decide if the buoy is suitable for in-water testing and will then carry out that testing outside the scope of this initial phase of the project. The DOE funding will be used to help fund the fabrication, assembly and factory testing of the first PowerBuoy for Reedsport, OR.

C. TASKS TO BE PERFORMED

Task 1 — Design Engineering

1.1 Requirements & Studies

OPT shall work with the customer, an Oregon-based utility company, to establish requirements for the Reedsport PowerBuoy and mooring system. OPT shall prepare a document that captures these requirements.

OPT shall perform several trade studies to determine the optimum configuration of the PowerBuoy to meet the requirements of the Reedsport Site. These trade studies will include the following:

- Electrical configuration: Power conversion, conditioning and control system
- Mechanical configuration: PowerBuoy structure which includes the float, spar and heave plate
- Site Survey
- Mooring

1.2 Preliminary Design

OPT shall perform the preliminary design of the Reedsport PowerBuoy, anchor/mooring system, electrical system, and on-shore station. The requirements set forth in the Reedsport PowerBuoy Requirements Document developed in subtask 1.1 shall be used in the buoy design. The auxiliary system schematics such as [**], the physical configuration is determined, the Power Take-Off (PTO) type is specified, system sizing for energy storage and transfer is determined, and the dimensions, weight and volume of the PowerBuoy physical structure are also determined. A preliminary design data package shall be prepared and a preliminary design review shall be conducted.

1.3 Detailed Design

OPT shall perform the detailed design of the Reedsport PowerBuoy. The requirements set forth in the Reedsport PowerBuoy Requirements Document developed in subtask 1.1 shall be used in the buoy design. A detailed design data package shall be prepared and a final design review shall be conducted. This will be the final design review prior to the release to manufacturing.

Task 2 — PowerBuoy (Structural Steel) Procurement and Fabrication

OPT shall procure the Reedsport PowerBuoy structure from an experienced, qualified steel Oregon-based contractor who will fabricate the PowerBuoy based on OPT's approved, detailed design, drawing package. The key elements of the PowerBuoy structure are [**].

Task 3 — Mooring Equipment Procurement and Fabrication

OPT shall procure the Reedsport PowerBuoy anchor/mooring system from an experienced, qualified Oregon-based contractor who will fabricate the anchor/mooring system based on OPT's approved, detailed design, drawing package.

Task 4 — On-Shore Station Procurement and Assembly

The On-Shore Station will house the supervisory control and data acquisition (SCADA) system used for data collection and control. OPT will procure and configure the SCADA system equipment for the shore station to provide reliable data collection, monitoring and remote operation of the Reedsport PowerBuoy system. The SCADA system will also allow for long-term storage of synchronized data and contain a data link back to OPT's base in Pennington, New Jersey for a continuous data stream and ongoing control capability for monitoring system operation and control. The SCADA system will be utilized during the land-based testing of Assemblies as described in Task 6 below.

Task 5 — Electrical and Power Take-Off System Procurement and Assembly

This task includes activities involved in procurement, fabrication, supplier and QA management for the electrical system which includes the Power-Take-Off (PTO), conditioning and control subsystems. Requests for quote will be distributed to multiple suppliers in order to procure at the lowest possible cost. Long lead-time items will be identified and follow a staggered assembly and test plan to allow the final installation and ocean test schedules to be met. The power take-off and control systems components and sub-assemblies for the Reedsport PowerBuoy will be engineered, assembled and pre-tested for system performance at OPT.

Task 6 — Testing of Assemblies

OPT will [**]. During the testing, efficiency measurements will be taken to insure that all subsystems are performing as expected.

Upon successful completion of the PTO subsystem back-to-back testing, all PowerBuoy power conversion equipment will be shipped to the Oregon-based fabricator's site for final integration into the PowerBuoy structure. Final system testing at that stage will be conducted to insure mechanical system tolerances and key moving components are to design specifications. Integration of the control system with cables and connectors to the mechanical PowerBuoy structure will be performed. Extensive data will be recorded and analyzed.

The fully integrated PowerBuoy subsystems will be tested including [**] to insure that all subsystems are performing as expected. Data collected during testing at the Oregon-based site will be compared to the data collected at OPT to ensure all subsystems are operating as expected.

Task 7 — Program Management

OPT shall assign a Program Manager to the program. The Program Manager will provide the technical direction, monitor and direct the daily technical aspects of the program and coordinate

the specialized talents of management, engineering, finance, manufacturing, and quality assurance with the following tasks:

- Program Planning, Tracking and Technical Management — The OPT Program Manager shall be responsible for resource assignment, technical direction, task direction and schedule management.
- Reports and Other Deliverables — The OPT Program Manager shall prepare and provide reports and other deliverables in accordance with the Federal Assistance Reporting Checklist following the instructions included therein.

Confidential Materials omitted and filed separately with the Securities and Exchange Commission.
Asterisk denote omissions.

**U.S. DEPARTMENT OF ENERGY
NOTICE OF FINANCIAL ASSISTANCE AWARD**

Under the authority of Public Law 109-58, Energy Policy Act (2005)

1. PROJECT TITLE Wave Power Demonstration Project at Reedsport, Oregon		2. INSTRUMENT TYPE <input checked="" type="checkbox"/> GRANT <input type="checkbox"/> COOPERATIVE AGREEMENT	
3. RECIPIENT (Name, address, zip code) Ocean Power Technologies, Inc. 1590 Reed Road Pennington, NJ 08534-5010		4. INSTRUMENT NO. DE-FG36-08GO88017	5. AMENDMENT NO. M001
		6. BUDGET PERIOD FROM: 8/1/2008 THRU: 11/30/2009	7. PROJECT PERIOD FROM: 8/1/2008 THRU: 11/30/2009
8. RECIPIENT PROJECT DIRECTOR (Name, phone and E-mail) Herbert T. Nock Ph: 609-730-0400 E-mail: hnock@oceanpowertech.com		10. TYPE OF AWARD <input type="checkbox"/> NEW <input type="checkbox"/> CONTINUATION <input type="checkbox"/> RENEWAL <input checked="" type="checkbox"/> REVISION <input type="checkbox"/> INCREMENTAL FUNDING	
9. RECIPIENT BUSINESS OFFICER (Name, phone and E-mail) Deborah Montagna Phone: 609-730-0400 E-mail: dmontagna@oceanpowertech.com			
11. DOE PROJECT OFFICER (Name, address, phone and E-mail) Curtis K. Framel Phone: 303-275-4872 Golden Field Office 1617 Cole Blvd Golden, CO. 80401-3393 E-mail: Curtis.Framel@go.doe.gov		12. DOE AWARD ADMINISTRATOR (Name, address, phone and E-mail) Sara Wilson Phone: 303-275-4922 Golden Field Office 1617 Cole Blvd. Golden, CO 80401-3305 E-mail: sara.wilson@go.doe.gov	
13. RECIPIENT TYPE <input type="checkbox"/> STATE GOV'T <input type="checkbox"/> INDIAN TRIBAL GOV'T <input type="checkbox"/> HOSPITAL <input checked="" type="checkbox"/> FOR PROFIT ORGANIZATION <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> LOCAL GOV'T <input type="checkbox"/> INSTITUTION OF HIGHER EDUCATION <input type="checkbox"/> OTHER NONPROFIT ORGANIZATION <input checked="" type="checkbox"/> C <input type="checkbox"/> P <input type="checkbox"/> SP <input type="checkbox"/> OTHER (Specify): _____			
14. ACCOUNTING AND APPROPRIATIONS DATA:			15. EMPLOYER I.D. a. TIN: 22-2535818 b. DUNS: 181079872
16. BUDGET AND FUNDING INFORMATION			
a. CURRENT BUDGET PERIOD INFORMATION		b. CUMULATIVE DOE OBLIGATIONS	
(1) DOE Funds Obligated This Action	\$ 0.00	(1) This Budget Period	\$ 1,968,000.00
(2) DOE Funds Authorized for Carry Over	\$ 0.00	[Total of lines a.(1) and a.(3)]	
(3) DOE Funds Previously Obligated in this Budget Period	\$ 1,968,000.00	(2) Prior Budget Periods	\$ 0.00
(4) DOE Share of Total Approved Budget	\$ 1,968,000.00	(3) Project Period to Date	\$ 1,968,000.00
(5) Recipient Share of Total Approved Budget	\$ [**]	[Total of lines b.(1) and b.(2)]	
(6) Total Approved Budget	\$ [**]		
17. TOTAL ESTIMATED COST OF PROJECT, INCLUDING DOE FUNDS TO FFRDC: \$[**] (This is the current estimated cost of the project. It is not a promise to award nor an authorization to expend funds in this amount.)			
18. AWARD/AGREEMENT TERMS AND CONDITIONS This award/agreement consists of this form plus the following: a. Special terms and conditions. b. Applicable program regulations (Specify) <u>N/A</u> (Date) c. DOE Assistance Regulations, 10 CFR Part 600 at http://ecfr.gpoaccess.gov and if the award is for research and to a university or non-profit, the Research Terms and Conditions and the DOE Agency Specific Requirements at http://www.nsf.gov/bfa/dias/policy/rte/index.jsp . d. Application/proposal as approved by DOE. e. National Policy Assurances to be incorporated as Award Terms in effect on date of award at http://www.management.energy.gov/business_doe/1374.htm .			
19. REMARKS Please see page 2 of this Notice of Financial Assistance Award.			
20. EVIDENCE OF RECIPIENT ACCEPTANCE <u>/s/ Charles F. Dunleavy</u> 16 October 2008 (Signature of Authorized Recipient Official) (Date) <u>Charles F. Dunleavy</u> (Name) <u>CFO</u> (Title)		21. AWARDED BY <u>/s/ Sara Wilson</u> Sep 29, 2008 (Signature) (Date) <u>Sara Wilson</u> (Name) <u>Contracting Officer</u> (Title)	

NFAA Block 19. Remarks: (Continued)

A. The purpose of this amendment is to revise provisions in the Special Terms and Conditions, Attachment 1 to the award; and to revise the Intellectual Property Provisions, Attachment 2 to the award. Therefore, the Grant is amended as follows:

1. In Attachment 1, Special Terms and Conditions of Award A000, Provision 3, Cost Share, is deleted in its entirety and replaced with the following:

3. COST SHARE

a. The Government has determined that the minimum required cost share for this Demonstration project is 50.0%. Accordingly, notwithstanding the Recipient's cost share described below, the Awardee must cost share a minimum of fifty percent of the Total Estimated Project Costs. The Awardee's cost share must derive from non-Federal sources unless otherwise allowed by law. By accepting federal funds under this award, the Awardee agrees to be responsible for its percentage share of total allowable project costs, on a budget period basis, even if the project is terminated early or is not funded to its completion.

b. Total Estimated Project Cost is the sum of the DOE share and Awardee share of the estimated project costs. This cost is shared as follows:

<u>Budget Period No.</u>	<u>Budget Period Start Date</u>	<u>DOE Cost Share \$/%</u>	<u>Awardee Cost Share \$/%</u>	<u>Total Estimated Costs</u>
1	08/01/2008	\$ 1,968,000 / [**]%	\$ [**] / [**]%	\$ [**]
Total Project		\$ 1,968,000 / [**]%	\$ [**] / [**]%	\$ [**]

c. If the Awardee is unable to provide cost share of at least the amount identified in paragraph b of this article, the Awardee shall notify the DOE Award Administrator identified in Block 12 of the Notice of Financial Assistance Award, indicating whether the Awardee will continue or phase out the project, if the project will continue, the notification must describe how replacement cost share will be secured.

d. The Awardee must maintain records of all project costs that are claimed as cost share, including in-kind costs, as well as records of costs to be paid by DOE. Such records are subject to audit.

e. Failure to provide the required 50.0% minimum cost share may result in the subsequent recovery by DOE of some or all the funds provided under the award.

2. In Attachment 1, Special Terms and Conditions of Award A000, Paragraph (c) of Provision 4, Rebudgeting and Recovery of Indirect Costs, is not applicable and is therefore deleted in its entirety.

3. Replace Attachment 2, Intellectual Property Provisions (GSB-1003), with the attached.

B. All other terms and conditions remain the same.

Intellectual Property Provisions (GSB-1003)
Grant
Research, Development, or Demonstration
Domestic Small Businesses

- 01. FAR 52.227-20 Rights in Data — SBIR Program (DEC 2007)
- 02. 10 CFR 600.325 Patent Rights (Small Business Firms and Nonprofit Organizations) (OCT 2003)
 Appendix A
- 03. FAR 52.227-23 Rights to Proposal Data (Technical) (JUN 1987)

NOTE: In reading these provisions, any reference to “contractor” shall mean “recipient,” and any reference to “contract” or “subcontract” shall mean “award” or “subaward.”

01. 52.227-20 Rights in Data—SBIR Program. (Dec 2007)

(a) *Definitions.* As used in this clause—

“Computer database” or “database” means a collection of recorded information in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

“Computer software”—

(1) Means.

(i) Computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and

(ii) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled.

(2) Does not include computer databases or computer software documentation.

“Computer software documentation” means owner’s manuals, user’s manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

“Data” means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing or management information.

“Form, fit, and function data” means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements. For computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

“Limited rights data” means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

“Restricted computer software” means computer software developed at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is copyrighted computer software, including minor modifications of the computer software.

“SBIR data” means data first produced by a Contractor that is a small business concern in performance of a small business innovation research contract issued under the authority of 15 U.S.C. 638 which data are not generally known, and which data without obligation as to its confidentiality have not been made available to others by the Contractor or are not already available to the Government.

“SBIR rights” means the rights in SBIR data set forth in the SBIR Rights Notice of paragraph (d) of this clause.

“Technical data” means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer databases and computer software documentation). This term does not include computer software or financial, administrative, cost or pricing, or management data or other information

incidental to contract administration. The term includes recorded information of a scientific or technical nature that is included in computer databases. (See 41 U.S.C. 403(8).)

“Unlimited rights” means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(b) Allocation of rights.

(1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in—

(i) Data specifically identified in this contract as data to be delivered without restriction;

(ii) Form, fit, and function data delivered under this contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and

(iv) All other data delivered under this contract unless provided otherwise for SBIR data in accordance with paragraph (d) of this clause or for limited rights data or restricted computer software in accordance with paragraph (f) of this clause.

(2) The Contractor shall have the right to—

(i) Assert copyright in data first produced in the performance of this contract to the extent provided in paragraph (c)(1) of this clause;

(ii) Protect SBIR rights in SBIR data delivered under this contract in the manner and to the extent provided in paragraph (d) of this clause;

(iii) Substantiate use of, add, or correct SBIR rights or copyright notices and to take other appropriate action, in accordance with paragraph (e) of this clause; and

(iv) Withhold from delivery those data which are limited rights data or restricted computer software to the extent provided in paragraph (f) of this clause,

(c) Copyright—

(1) Data first produced in the performance of this contract.

(i) Except as otherwise specifically provided in this contract, the Contractor may assert copyright subsisting in any data first produced in the performance of this contract

(ii) When asserting copyright, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and an acknowledgment of Government sponsorship (including contract number).

(iii) For data other than computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government

(2) *Data not first produced in the performance of this contract.* The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data that are not first produced in the performance of this contract unless the Contractor (i) identifies such data and (ii) grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(l) of this clause.

(3) *Removal of copyright notices.* The Government will not remove any copyright notices placed on data pursuant to this paragraph (c), and will include such notices on all reproductions of the data.

(d) Rights to SBIR data.

(1) The Contractor is authorized to affix the following "SBIR Rights Notice" to SBIR data delivered under this contract and the Government will treat the data, subject to the provisions of paragraphs (e) and (f) of this clause, in accordance with the notice:

SBIR RIGHTS NOTICE (DEC 2007)

These SBIR data are furnished with SBIR rights under Contract No. _____ (and subcontract _____, if appropriate). For a period of 4 years, unless extended in accordance with FAR 27.409(h), after acceptance of all items to be delivered under this contract, the Government will use these data for Government purposes only, and they shall not be disclosed outside the Government (including disclosure for procurement purposes) during such period without permission of the Contractor, except that, subject to the foregoing use and disclosure prohibitions, these data may be disclosed for use by support Contractors. After the protection period, the Government has a paid-up license to use, and to authorize others to use on its behalf, these data for Government purposes, but is relieved of all disclosure prohibitions and assumes no liability for unauthorized use of these data by third parties. This notice shall be affixed to any reproductions of these data, in whole or in part.

(END OF NOTICE)

(2) The Government's sole obligation with respect to any SBIR data shall be as set forth in this paragraph (d).

(e) Omitted or incorrect markings.

(1) Data delivered to the Government without any notice authorized by paragraph (d) of this clause shall be deemed to have been furnished with unlimited rights. The Government assumes no liability for the disclosure, use, or reproduction of such data.

(2) If the unmarked data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer in writing for good cause shown) after delivery of the data, permission to have authorized notices placed on the data at the Contractor's expense, and the Contracting Officer may agree to do so if the Contractor—

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure or use of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(3) If the data has been marked with an incorrect notice, the Contracting Officer may—

(i) Permit correction of the notice at the Contractor's expense, if the Contractor identifies the data and demonstrates that the correct notice is authorized; or

(ii) Correct any incorrect notices.

(f) *Protection of limited rights data and restricted computer software.* The Contractor may withhold from delivery qualifying limited rights data and restricted computer software that are not identified in paragraphs (b)(1)(i), (ii), and (iii) of this clause. As a condition to this withholding, the Contractor shall identify the data being withheld, and furnish form, fit, and function data instead.

(g) *Subcontracting.* The Contractor shall obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government those rights, the Contractor shall promptly notify the Contracting Officer of the refusal and not proceed with the subcontract award without further authorization in writing from the Contracting Officer.

(h) *Relationship to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government

(End of clause)

02. 10 CFR Part 600.325 Appendix A, Patent Rights (Small Business Firms and Nonprofit Organizations (OCT 2003))

(a) Definitions

Invention means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.)

Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.

Nonprofit organization means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501 (c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

Practical application means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms.

Small business firm means a small business concern as defined at section 2 of Public Law 85-536 (16 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3 through 121.8 and 13 CFR 121.3 through 121.12, respectively, will be used.

Subject invention means any invention of the Recipient conceived or first actually reduced to practice in the performance of work under this award, provided that in the case of a variety of plant, the date of determination (as defined in section 41 (d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of award performance.

(b) Allocation of Principal Rights

The Recipient may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this Patent Rights clause and 35 U.S.C. 203. With respect to any subject invention in which the Recipient retains title, the Federal Government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the U.S. the subject invention throughout the world.

(c) Invention Disclosure, Election of Title and Filing of Patent Applications by Recipient

(1) The Recipient will disclose each subject invention to DOE within two months after the inventor discloses it in writing to Recipient personnel responsible for the administration of patent matters. The disclosure to DOE shall be in the form of a written report and shall identify the award under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to DOE, the Recipient will promptly notify DOE of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Recipient.

(2) The Recipient will elect in writing whether or not to retain title to any such invention by notifying DOE within two years of disclosure to DOE. However, in any case where publication, on sale, or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the U.S., the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Recipient will file its initial patent application on an invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the U.S. after a publication, on sale, or public use. The Recipient will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application, or six months from the date when permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications when such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure to DOE, election, and filing under subparagraphs (c)(1), (2), and (3) of this clause may, at the discretion of DOE, be granted.

(d) Conditions When the Government May Obtain Title

The Recipient will convey to DOE, upon written request, title to any subject invention:

(1) If the Recipient fails to disclose or elect the subject invention within the times specified in paragraph (c) of this patent rights clause, or elects not to retain title; provided that DOE may only request title within 60 days after learning of the failure of the Recipient to disclose or elect within the specified times;

(2) In those countries in which the Recipient fails to file patent applications within the times specified in paragraph (c) of this Patent Rights clause; provided, however, that if the Recipient has filed a patent application in a country after the times specified in paragraph (c) of this Patent Rights clause, but prior to its receipt of the written request of DOE, the Recipient shall continue to retain title in that country; or

(3) In any country in which the Recipient decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in a reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum Rights to Recipient and Protection of the Recipient Right To File

(1) The Recipient will retain a non-exclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Recipient fails to disclose the subject invention within the times specified in paragraph (c) of this Patent Rights clause. The Recipient's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Recipient is a party and includes the right to grant sublicenses of the same scope of the extent the Recipient was legally obligated to do so at the time the award was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of that part of the Recipient's business to which the invention pertains.

(2) The Recipient's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and the agency's licensing regulation, if any. This license will not be revoked in that field of use or the geographical areas in which the Recipient has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country maybe revoked or modified at discretion of the funding Federal agency to the extent the Recipient, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the funding Federal agency will furnish the Recipient a written notice of its intention to revoke or modify the license, and the Recipient will be allowed thirty days (or such other time as may be authorized by DOE for good cause shown by the Recipient) after the notice to show cause why the license should not be revoked or modified. The Recipient has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and the agency's licensing regulations, if any, concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(f) Recipient Action To Protect Government's Interest

(1) The Recipient agrees to execute or to have executed and promptly deliver to DOE all instruments necessary to:

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions for which the Recipient retains title; and

(ii) Convey title to DOE when requested under paragraph (d) of this Patent Rights clause, and to enable the government to obtain patent protection throughout the world in feat subject invention.

(2) The Recipient agrees to require, by written agreement, its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Recipient each subject invention made under this award in order that the Recipient can comply with the disclosure provisions of paragraph (c) of this Patent Rights clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. The disclosure format should require, as a minimum, the information requested by paragraph (c)(1) of this Patent Rights clause. The Recipient shall instruct such employees through the employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Recipient will notify DOE of any decision not to continue prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Recipient agrees to include, within the specification of any U.S. patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under (identify the award) awarded by (identify DOE). The Government has certain rights in this invention."

(g) Subaward/Contract

(1) The Recipient will include this Patent Rights clause, suitably modified to identify the parties, in all subawards/contracts, regardless of tier, for experimental, developmental or research work to be performed by a small business firm or nonprofit organization. The subrecipient/contractor will retain all rights provided for the Recipient in this Patent Rights clause, and the Recipient will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractors' subject inventions.

(2) The Recipient will include in all other subawards/contracts, regardless of tier, for experimental, developmental or research work, the patent rights clause required by 10 CFR 600.325(c).

(3) In the case of subawards/contracts at any tier, DOE, the Recipient, and the subrecipient/contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subrecipient/contractor and DOE with respect to those matters covered by the clause.

(h) Reporting on Utilization of Subject Inventions

The Recipient agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Recipient or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Recipient and such other data and information as DOE may reasonably specify. The Recipient also agrees to provide additional reports in connection with any march-in proceeding undertaken by DOE in accordance with paragraph (j) of this Patent Rights clause. As required by 35 U.S.C. 202(c)(5), DOE agrees it will not disclose such information to persons outside the Government without the permission of the Recipient.

(i) Preference for United States Industry.

Notwithstanding any other provision of this Patent Rights clause, the Recipient agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the U.S. unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the U.S. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Recipient or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the U.S. or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in-Rights

The Recipient agrees that with respect to any subject invention in which it has acquired title, DOE has the right in accordance with procedures at 37 CFR 401.6 and any supplemental regulations of the Agency to require the Recipient, an assignee or exclusive licensee of a subject invention to grant a non-exclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances and if the Recipient, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that:

(1) Such action is necessary because the Recipient or assignee has not taken or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Recipient, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Recipient, assignee, or licensee; or

(4) Such action is necessary because the agreement required by paragraph (i) of this Patent Rights clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the U.S. is in breach of such agreement.

(k) Special Provisions for Awards With Nonprofit Organizations

If the Recipient is a nonprofit organization, it agrees that:

(1) Rights to a subject invention in the U.S. may not be assigned without the approval of DOE, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Recipient;

(2) The Recipient will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when DOE deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Recipient with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific or engineering research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms and that it will give preference to a small business firm if the Recipient determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided that the Recipient is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Recipient. However, the Recipient agrees that the Secretary of Commerce may review the Recipient's licensing program and decisions regarding small business applicants, and the Recipient will negotiate changes to its licensing policies, procedures or practices with the Secretary when the Secretary's review discloses that the Recipient could take reasonable steps to implement more effectively the requirements of this paragraph (k)(4).

(l) Communications

All communications required by this Patent Rights clause should be sent to the DOE Patent Counsel address listed in the Award Document.

(m) Electronic Filing

Unless otherwise Specified in the award, the information identified in paragraphs (f)(2) and (f)(3) may be electronically filed.

[End of clause]

03. FAR 52.227-23 Rights to Proposal Data (Technical) (JUN 1987)

Except for data contained on pages containing financial data, it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the "Rights in Data — SBIR Program" clause contained in this contract) in and to the technical data contained in the proposal dated 03/20/2008, upon which this contract is based.

AWARD/CONTRACT		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350) <input type="checkbox"/>		RATING DO-C9(U)	PAGE OF PAGES 1 16		
2. CONTRACT (PROC. INST. IDENT.) NO. N00014-09-C-0115		3. EFFECTIVE DATE SEE BLOCK 20 C		4. REQUISITION/PURCHASE REQUEST/PROJECT NO. 08PR08225-001048781			
5. ISSUED BY OFFICE OF NAVAL RESEARCH ONR 252: Angela Bruce Dunson (703)695-2577 E-mail: angela.bruce-dunson@navy.mil 875 North Randolph St. Arlington VA 22203-1995		CODE N0014	6. ADMINISTERED BY (if other than item 5) DCMA Philadelphia-S3915A 700 Robbins Avenue Bldg 4A PO Box 11427 Philadelphia, PA 1911-0427		SCD-C	CODE S3915A	
7. NAME AND ADDRESS OF CONTRACTOR (No., street, city, country, State and Zip Code) Ocean Power Technologies, Inc. 1590 Reed Road Pennington, NJ 08534-5010				8. DELIVERY <input type="checkbox"/> FOB ORIGIN <input type="checkbox"/> OTHER (see below)			
				9. DISCOUNT FOR PROMPT PAYMENT N.A.			
				10. SUBMIT INVOICES (4 copies unless otherwise specified) TO THE ADDRESS SHOWN IN:		ITEM See Section G	
CODE 04EP7		FACILITY CODE					
11. SHIP TO/MARK FOR OFFICE OF NAVAL RESEARCH ATTN: Michael Vaccaro, ONR 321 875 North Randolph Street Arlington, VA 22203-1995		CODE N00014	12. PAYMENT WILL BE MADE BY DFAS COLUMB. NORTH ENTL-HQ0337 PO BOX 182266 COLUMBUS, OH 43218-2266		CODE HQ0337		
13. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION <input type="checkbox"/> 10U.S.C.2304(c)() <input type="checkbox"/> 41U.S.C. 253(C)()				14. ACCOUNTING AND APPROPRIATION DATA SEE ATTACHED FINANCIAL ACCOUNTING DATA (FAD) SHEET(S)			
15A. ITEM NO.	15B. SUPPLIES/SERVICES		15C. QUANTITY	15D. UNIT	15E. UNIT PRICE	15F. AMOUNT	
	See Section B of Schedule						
					15G. TOTAL AMOUNT OF CONTRACT	See Section B of Schedule	
16. TABLE OF CONTENTS							
(N)	SEC.		PAGE(S)	(N)	SEC.	DESCRIPTION	PAGE(S)
PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES			
<input checked="" type="checkbox"/>	A	SOLICITATION CONTRACT FORM	1	<input checked="" type="checkbox"/>	I	CONTRACT CLAUSES	9-15
<input checked="" type="checkbox"/>	B	SUPPLIES OR SERVICES AND PRICES/COSTS	2	PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.			
<input checked="" type="checkbox"/>	C	DESCRIPTION/SPECS./WORK STATEMENT	2	<input checked="" type="checkbox"/>	J	LIST OF ATTACHMENTS	16
<input checked="" type="checkbox"/>	D	PACKAGING AND MARKING	2	PART IV - REPRESENTATIONS AND INSTRUCTIONS			
<input checked="" type="checkbox"/>	E	INSPECTION AND ACCEPTANCE	3	<input checked="" type="checkbox"/>	K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	16
<input checked="" type="checkbox"/>	F	DELIVERIES OR PERFORMANCE	3		L	INSTRS., CONDS., AND NOTICES TO OFFERORS	
<input checked="" type="checkbox"/>	G	CONTRACT ADMINISTRATION DATA	3-6	<input type="checkbox"/>	M	EVALUATION FACTORS FOR AWARD	
<input checked="" type="checkbox"/>	H	SPECIAL CONTRACT REQUIREMENTS	6-9				
<i>CONTRACTING OFFICER WILL COMPLETE ITEMS 17 OR 18 AS APPLICABLE</i>							
17. <input checked="" type="checkbox"/> CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this documents and return 2 copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if an, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)				18. <input type="checkbox"/> AWARD (Contractor is not required to sign this document.) Your offer on Solicitation Number including the additions or changes made by you which additions or changes are set forth in full above, is hereby accepted as to items listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) this award/contract. No further document is necessary.			
19A. NAME AND TITLE OF SIGNER (Type or print) George W. Taylor Chief Executor Officer				20A. NAME OF CONTRACTING OFFICER Angela Bruce Dunson Contracting Officer			
19B. NAME OF CONTRACTOR By: /s/GEORGE W. TAYLOR (Signature of person authorized to sign)		19C. DATE SIGNED 10/30/08		20B. UNITED STATES OF AMERICA By: /s/ANGELA BRUCE DUNSON (Signature of Contracting Officer)		20C. DATE SIGNED 10/31/08	
NSN 7540-01-152-8069 PREVIOUS EDITION UNUSABLE		26- 107		STANDARD FORM 26 (REV. 4-85) Prescribed by GSA FAR (48 CFR) 53.214 (a)			

SECTION B — SUPPLIES OR SERVICES AND PRICES/COSTS

<u>ITEM NO.</u>	<u>SUPPLIES/SERVICES</u>	<u>ESTIMATED COST</u>	<u>FIXED FEE</u>	<u>TOTAL ESTIMATED COST & FIXED FEE</u>
0001	The Contractor shall furnish the necessary personnel and facilities to conduct the research effort as described in Section C and provide reports and data in accordance with Exhibit A. 000101 ACRN AA: \$3,020,039.00	\$2,797,025.00	\$223,014.00	\$ 3,020,039.00
0002	Advanced Development Model (ADM) PowerBuoy Unit	NSP	NSP	NSP
TOTAL ESTIMATED CONTRACT CONSIDERATION:		\$2,797,025.00	\$223,014.00	\$ 3,020,039.00

SECTION C — DESCRIPTION/SPECIFICATIONS/WORK STATEMENT

1. The research effort to be performed hereunder shall be subject to the requirements and standards contained in Exhibit A and the following paragraph(s).
2. The Contractor shall conduct the research effort under CLIN 0001 in accordance with Attachment Number 1, entitled “DWADS Advanced Development Model (ADM) PowerBuoy Statement of Work”.

SECTION D — PACKAGING AND MARKING

Preservation, packaging, packing and marking of all deliverable contract line items shall conform to normal commercial packing standards to assure safe delivery at destination.

All reports, briefs, technical documents, etc. submitted to the Government under this contract should contain the following legend:

SBIR OR STTR DATA RIGHTS

Topic Numbers: N95-074 AND N00-116
 Contract No.: N00014-09-C-0115
 Contractor Name: Ocean Power Technologies, Inc.
 Contractor Address: 1590 Reed Road; Pennington, NJ 08534-5010
 Contract Number: N00014-09-C-0115

The Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software marked with this legend are restricted as provided in paragraph (b)(4) of DFARS 252-227-7018, Rights in Noncommercial Technical Data and Computer Software—Small Business Innovative Research (SBIR) Program.

SECTION E — INSPECTION AND ACCEPTANCE

Inspection and acceptance of the final delivery under this contract will be accomplished by the Program Officer designated in Section F of this contract, who shall have thirty (30) days after contractual delivery for acceptance.

SECTION F — DELIVERIES OR PERFORMANCE

1. The research effort performed under CLIN 0001 shall be conducted from date of contract award through eighteen (18) months. CLIN 0002 shall be delivered no later than the end of this period.
2. Distribution, consignment and marking instructions for contract data items 0001 shall be in accordance with Enclosure Number 1 of Exhibit A. Contract line 0002 shall be delivered to the address of the cognizant Program Officer which is as follows:

John Hopkins University
Applied Physics Laboratory
1100 John Hopkins Road
Laurel, MD 20723

Attn: Michael Vaccaro
Ref: Contract N00014-09-C-0115

SECTION G — CONTRACT ADMINISTRATION DATA

1. PAYMENT AND INVOICE INSTRUCTIONS (COST REIMBURSEMENT)

1.1 Submission of Invoices

PAYMENT AND INVOICE INSTRUCTIONS (COST TYPE)

The Office of Naval Research will utilize the new DoD Wide Area Workflow Receipt and Acceptance (WAWF) system. This web based system, located at <https://wawf.eb.mil>, provides the technology for government contractors and authorized Department of Defense (DoD) personnel to generate, capture and process receipt and payment-related documentation in a paperless environment. **Invoices for supplies/services rendered under this contract shall be submitted electronically through WAWF. Submission of hard copy DD250/Invoice/Public Vouchers (SF1034) will no longer be accepted for payment.**

It is recommended that the person in your company designated as the Central Contractor Registration (CCR) Electronic Business (EB) Point of Contact and anyone responsible for the submission of invoices, use the online training system for WAWF at <http://wawftraining.com>. The Vendor, Group Administrator (GAM), and sections marked with an asterisk in the training

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system should be reviewed. Vendor Quick Reference Guides are also available at <http://www.acquisition.navy.mil/navyaos/content/view/full/3521/>). The most useful guides are “Getting Started for Vendors”, “WAWF Vendor Guide”, and “Creating a Cost Voucher Invoice.”

The designated CCR EB point of contact is responsible for activating the company’s CAGE code on WAWF by calling 1-866-618-5988. Once the company is activated, the CCR EB will self-register on the WAWF and follow the instructions for a group administrator. After the company is set-up on WAWF, any additional persons responsible for submitting invoices must self-register at the WAWF

<https://wawf.eb.mil>.

The following required information should automatically fill-in via WAWF; if it does not fill-in, include the following:

Issue By DODAAC: N00014

Admin DODAAC: [Use the 6 character “ADMINISTERED BY” CODE as listed on page one of the award document]

Pay DODAAC: [Use the 6 character “PAYMENT WILL BE MADE BY” CODE as listed on page one of the award document]

Fill-in the following additional information:

DCAA Auditor DODAAC: [Look up via the AUDIT OFFICE LOCATOR at <http://www.dcaa.mil>. If you encounter any problems finding your cognizant audit office, write to dcaaweb@dcaa.mil or call ONR’s DCAA liaison at (703)696-2603]

Service Approver DODAAC: [Use the 6 character “ADMINISTERED BY” CODE as listed on page one of the award document]

The following additional information may need to be filled in: LPO DODAAC: N00014 (*Note — this line is required only when the “PAYMENT WILL BE MADE BY” DODAAC begins with an ‘N’*) After self-registering and logging on to the WAWF system, click on the plus sign next to the word “Vendor” and then click on the “Create New Document” link. Enter the contract number, cage code, and Pay DODAAC (above) and hit submit. Select the “Cost Voucher” invoice type within WAWF-RA. This type of invoice fulfills any requirement for submission of the Material Inspection and Receiving Report, DD Form 250. Back up documentation, 5MB limit, can be included and attached to the invoice in WAWF under the “Misc Info” tab. Fill-in all applicable information under each tab.

Take special care when you enter Line Item information — the Line Item tab is where you will detail your request for payment and material/services that were provided based upon the contract. Be sure to fill in the following two informational items exactly as they appear in the contract:

Contract Number: N00014-09-C-0115

Item Number: If the contract schedule has more than one ACRN listed as sub items under the applicable Contract Line Item Number (CLIN), use the 6 character separately identified Sub Line Item Number (SLIN) (e.g. — 0001AA) or Informational SLIN (e.g. — 000101), otherwise use the 4 character CLIN (e.g. — 0001).

ACRN: Fill-in the applicable 2 alpha character ACRN that is associated with the SLIN or CLIN. (Note — DO NOT INVOICE FOR MORE THAN IS STILL AVAILABLE UNDER ANY ACRN).

Special Payment Instructions for CLIN/SLINs with Multiple ACRNs/Lines of Accounting: (Note — since WAWF does not accept the use of multiple ACRNs for any single CLIN or SLIN on one invoice; multiple invoices may have to be used — use the WAWF “Line Item” “Description” area to note the use of multiple invoices). For all invoices submitted against CLINs with multiple Accounting Classification Reference Numbers (ACRNs), the billing shall be paid from the earliest Fiscal Year (FY) appropriation first. Fiscal Year is determined from the 3rd character in the “Appropriation (Critical)” part (Block 6B) of the Line of Accounting on the Financial Accounting Data Sheet of the contract (e.g., 1741319 for FY 2004 and 1751319 for FY 2005). In the event there are multiple ACRNs with the same FY of appropriation, billings shall be proportionally billed to all ACRNs for that FY in the same ratio that the ACRNs are obligated.

After all required information is included, click on the “Submit” button under the “Header” tab.

Helpful Note: Shipment Number format should be three alpha and 4 numeric (e.g., SER0001).

Note: The contractor shall submit invoices for payment per contract terms and the Government shall process invoices for payment per contract terms.

If you have any questions regarding the WAWF, please contact **the DoD WAWF Assistance Line** at 1-866-618-5988 or the **DoN WAWF Assistance Line** at 1-800-559-9293.

To find out the status of payment due from invoices please contact the following number:

DFAS Columbus Query Number 1-800-756-4571

You may also try the following website:

<https://myinvoice.csd.disa.mil>

1.2 Payment of Allowable Costs and Fixed Fee

As consideration for the proper performance of the work and services required under this contract, the Contractor shall be paid as follows:

(a) Costs, as provided for under the contract clause entitled “Allowable Cost and Payment,” shall not exceed the amount set forth as “Estimated Cost” in Section B, and is subject to the contract clause entitled “Limitation of Cost” or “Limitation of Funds” whichever is applicable.

Contract Number: N00014-09-C-0115

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(b) A fixed fee, in the amount set forth as 'Fixed Fee' in Section B, in accordance with the contract clause FAR 52.216-8 "Fixed Fee", shall be paid upon completion of the work and services required under this contract and upon final acceptance by the Contracting Officer. However, the Contractor, shall bill on each voucher the amount of the fee bearing the same percentage to the total fixed fee as the amount of cost billed bears to the total estimated cost not to exceed the amount set forth as "Fixed Fee" in Section B. The total fixed fee billed, shall not exceed the total fixed fee specified in Section B and is subject to the contract clause entitled "Limitation of Cost" or "Limitation of Funds" whichever applies.

(c) In accordance with FAR 52.216-8, "Fixed Fee", the Administrative Contracting Officer (ACO), in order to protect the Government's interest, shall withhold 10% of the fixed fee amount set forth in Section B or until a reserve is set aside in the amount of \$100,000.00, whichever is less. The ACO shall release 75% of the fixed fee reserve upon acceptance of deliverables identified in section F of this contract. The remaining 25% of the fixed fee reserve will be released after receipt of final rates, the contractor has satisfied all other contract terms and conditions, including the submission of final patent and royalty reports, and is not delinquent in submitting final vouchers of prior years' settlements.

2. PROCURING OFFICE REPRESENTATIVES

In order to expedite administration of this contract, the Administrative Contracting Officer should direct inquiries to the appropriate office listed below. Please do not direct routine inquiries to the person listed in Item 20A on Standard Form 26.

Contract Negotiator — Angela Bruce Dunson, ONR 0252, (703) 696-2577, DSN 426-2577,
E-Mail Address: angela.bruce-dunson@navy.mil

Inspection and Acceptance — Michael Vaccaro, (703) 588-0496, DSN 426-0496, E-Mail Address: michael.vaccaro@navy.mil

Security Matters — Ms. Shelia Neal, ONR 43, (703) 696-8177, DSN 426-8177, E-Mail Address: shelia.neal.@navy.mil

Patent Matters — Mr. James Bechtel, ONR 00CC, (703) 696-4000, DSN 426-4000, Email Address: James.Becht@navy.mil

The Administrative Contracting Officer will forward invention disclosures and reports directly to Corporate Counsel (Code 00CC), Office of Naval Research, Department of the Navy, 875 North Randolph St. Arlington, VA 22203-1995. The Corporate Counsel will return the reports along with a recommendation to the Administrative Contracting Officer. The Corporate Counsel will represent the Contracting Officer with regard to invention reporting matters arising under this contract.

3. TYPE OF CONTRACT

This is a cost-plus-fixed-fee completion contract.

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SECTION H — SPECIAL CONTRACT REQUIREMENTS

1. ONR 5252.235-9714 REPORT PREPARATION (JUL 2005)

Scientific or technical reports prepared by the Contractor and deliverable under the terms of this contract will be prepared in accordance with format requirements contained in ANSI/NISO Z39.18-2005, Scientific and Technical Reports: Elements, Organization, and Design. [NOTE: All NISO American National Standards are available as free, downloadable PDF(s) at <http://www.niso.org/standards/index.html>. NISO standards can also be purchased in hardcopy form from NISO Press Fulfillment, P. O. Box 451, Annapolis Junction, MD 20701-0451 USA. Telephone U.S. and Canada: (877) 736-6476; Outside the U.S. and Canada: 301-362-6904; Fax: 301-206-9789.]

2. INVENTION DISCLOSURES AND REPORTS

The Contractor shall submit all invention disclosures and reports required by the Patent Rights clause of this contract to the Administrative Contracting Officer (ACO). The ACO (Refer to Block 6 of the SF Form 26 for POC information) will forward invention disclosures and reports directly to Corporate Counsel (Code 00CC), Office of Naval Research, Department of the Navy, Arlington, VA 22203. Corporate Counsel will return the reports along with a recommendation to the ACO. Corporate Counsel represents the Contracting Officer regarding invention reporting matters arising under this contract.

3. ONR 5252.219-9717 SPECIAL SMALL BUSINESS INNOVATION RESEARCH (SBIR) REQUIREMENTS (JAN 08)

A minimum of one-half of the SBIR Project shall be carried out by the proposing firm. The primary employment of the principal investigator shall be with the small business firm at the time of award and during the conduct of the proposed effort. Primary employment means that more than one-half of the principal investigator's time is spent with the small business. Primary employment with a small business concern precludes full-time employment at another organization.

All research or research and development work under this contract shall be performed by the small business concern and its subcontractors in the United States. "United States" means the several states, the Territories and possessions of the United States, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the District of Columbia. Joint ventures and limited partnerships are permitted, provided that the entity created qualifies as a small business in accordance with the Small Business Act, 15 USC 631, and the definition included in the SBIR solicitation.

Deviations from the above requirements must be approved in writing by the contracting officer.

4. ONR 5252.237-9705 KEY PERSONNEL (DEC 88)

(a) The Contractor agrees to assign to the contract tasks those persons whose resumes were submitted with its proposal and who are necessary to fulfill the requirements of the contract as "key personnel". No substitutions may be made except in accordance with this clause.

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(b) The Contractor understands that during the first ninety (90) days of the contract performance period, no personnel substitutions will be permitted unless these substitutions are unavoidable because of the incumbent's sudden illness, death or termination of employment. In any of these events, the Contractor shall promptly notify the Contracting Officer and provide the information described in paragraph (c) below. After the initial ninety (90) day period the Contractor must submit to the Contracting Officer all proposed substitutions, in writing, at least **30** days in advance (**60** days if security clearance must be obtained) of any proposed substitution and provide the information required by paragraph (c) below.

(c) Any request for substitution must include a detailed explanation of the circumstances necessitating the proposed substitution, a resume for the proposed substitute, and any other information requested by the Contracting Officer. Any proposed substitute must have qualifications equal to or superior to the qualifications of the incumbent. The Contracting Officer or his/her authorized representative will evaluate such requests and promptly notify the Contractor in writing of his/her approval or disapproval thereof.

(d) In the event that any of the identified key personnel cease to perform under the contract and the substitute is disapproved, the contract may be immediately terminated in accordance with the Termination clause of the contract.

The following are identified as key personnel: David B. Stewart

5. ONR 5252.242-9718 TECHNICAL DIRECTION (FEE 2002)

(a) Performance of the work hereunder is subject to the technical direction of the Program Officer/COR designated in this contract, or duly authorized representative. For the purposes of this clause, technical direction includes the following:

(1) Direction to the Contractor which shifts work emphasis between work areas or tasks, requires pursuit of certain lines of inquiry, fills in details or otherwise serves to accomplish the objectives described in the statement of work;

(2) Guidelines to the Contractor which assist in the interpretation of drawings, specifications or technical portions of work description.

(b) Technical direction must be within the general scope of work stated in the contract. Technical direction may not be used to:

(1) Assign additional work under the contract;

(2) Direct a change as defined in the contract clause entitled "Changes";

(3) Increase or decrease the estimated contract cost, the fixed fee, or the time required for contract performance; or

(4) Change any of the terms, conditions or specifications of the contract.

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(c) The only individual authorized to in any way amend or modify any of the terms of this contract shall be the Contracting Officer. When, in the opinion of the Contractor, any technical direction calls for effort outside the scope of the contract or inconsistent with this special provision, the Contractor shall notify the Contracting Officer in writing within ten working days after its receipt. The Contractor shall not proceed with the work affected by the technical direction until the Contractor is notified by the Contracting Officer that the technical direction is within the scope of the contract.

(d) Nothing in the foregoing paragraphs may be construed to excuse the Contractor from performing that portion of the work statement which is not affected by the disputed technical direction.

6. Consent to Subcontract and/or Hire Consultants

The services of the following subcontractors and/or consultants have been identified as necessary for the performance of this contract:

Identified Subcontractor	Estimated Cost
[**]	\$67,200.00

The preceding listing shall constitute the written consent of the Contracting Officer required by Paragraphs (c), (d) and (e) of the contract clause at FAR 52.244-2 entitled "Subcontracts". The Contracting Officer's written consent to subcontract is required for:

- (i) services acquired under a cost-reimbursement, time-and-materials, or labor-hour type subcontract or agreement;
- (ii) fixed price contracts that exceed the greater of \$100,000 or 5 percent of the total estimated cost of the contract;

This consent is based upon the information submitted by the prime contractor in accordance with FAR 52.244-2 (f) (1) (i) through (vii).

SECTION I — CONTRACT CLAUSES

(September 3, 2008)

Cost-Plus-Fixed Fee (SBIR-STTR phase II/III)

(A) FAR 52.252-02 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this address:

Contract Number: N00014-09-C-0115

- * Applies when contract action exceeds \$10,000
- ** Applies when contract action exceeds \$100,000
- + Applies when contract action exceeds \$500,000
- ++ Applies when contract action exceeds \$550,000 and subcontracting possibilities exist. Small Business Exempt.
- # Applies when contract action exceeds \$650,000

All clauses in the Section (A) Tables are required clauses and are applicable, or are applicable at the specified thresholds as designated in accordance with the legend listed above.

I. FEDERAL ACQUISITION REGULATION (FAR) (48 CFR CHAPTER 1) CLAUSES:

- ** FAR 52.202-1 Definitions (JUL 2004)
- ** FAR 52.203-3 Gratuities (APR 1984)
- ** FAR 52.203-5 Covenant Against Contingent Fees (APR 1984)
- ** FAR 52.203-6 Restrictions on Subcontractor Sales to the Government (SEP 2006)
- ** FAR 52.203-7 Anti-Kickback Procedures (JUL 1995)
- ** FAR 52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (JAN 1997)
- ** FAR 52.203-10 Price or Fee Adjustment for Illegal or Improper Activity (JAN 1997)
- ** FAR 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (SEP 2007)
- ** FAR 52.204-4 Printing/Copying Double-Sided on Recycled Paper (AUG 2000)
- FAR 52.204-7 Central Contractor Registration (JUL 2006)
- FAR 52.211-15 Defense Priority and Allocation Requirements (SEP 1990)
- ** FAR 52.215-2 Audit and Records — Negotiation (JUN 1999) and Alternate II (APR 1998) (Alternate II is only applicable with cost reimbursement contracts with State and local Governments, educational institutions, and other non-profit organizations.)
- FAR 52.215-8 Order of Precedence — Uniform Contract Format (OCT 1997)
- # FAR 52.215-10 Price Reduction for the Defective Cost or Pricing Data (OCT 1997) (The provisions of this Clause have been waived by a joint Determination and Findings for the prime contractor only. The clause is applicable to subcontracts over \$550,000.)
- # FAR 52.215-12 Subcontractor Cost or Pricing Data (OCT 1997) (Applicable to subcontracts over \$550,000 only)
- ** FAR 52.215-14 Integrity of Unit Prices (OCT 1997) and Alternate I (OCT 1997) (Alternate I is applicable if the action is contracted under Other Than Full and Open Competition)
- # FAR 52.215-15 Pension Adjustments and Asset Reversions (OCT 2004)
- # FAR 52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other than Pensions (JUL 2005)
- # FAR 52.215-19 Notification of Ownership Changes (OCT 1997) (Applicable when Cost or Pricing Data is required)

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	FAR 52.216-7	Allowable Cost and Payment (DEC 2002)
	FAR 52.216-8	Fixed Fee (MAR 1997)
**	FAR 52.219-4	Notice of Price Evaluation Preference for HUB zone Small Business Concerns (JUL 2005)
	FAR 52.219-6	Notice of Total Small Business Set-Aside (JUN 2003)
**	FAR 52.219-8	Utilization of Small Business Concerns (MAY 2004)
++	FAR 52.219-9	Small Business Subcontracting Plan (APR 2008)
**	FAR 52.219-14	Limitations on Subcontracting (DEC 1996)
++	FAR 52.219-16	Liquidated Damages Subcontracting Plan (JAN 1999)
	FAR 52.219-28	Post Award Small Business Program Representation (JUN 2007)
	FAR 52.222-1	Notice to the Government of Labor Disputes (FEB 1997)
**	FAR 52.222-2	Payment for Overtime Premiums (JUL 1990) (Note: The word “zero” is inserted in the blank space indicated by an asterisk)
	FAR 52.222-3	Convict Labor (JUN 2003) (Reserved when FAR 52.222-20 Walsh Healy Public Contracts Act is applicable)
**	FAR 52.222-4	Contract Work Hours and Safety Standards Act — Overtime Compensation (JUL 2005)
	FAR 52.222-21	Prohibition of Segregated Facilities (FEB 1999)
	FAR 52.222-26	Equal Opportunity (MAR 2007)
**	FAR 52.222-35	Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)
**	FAR 52.222-36	Affirmative Action for Workers with Disabilities (JUN 1998)
**	FAR 52.222-37	Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era , and Other Eligible Veterans (SEP 2006)
	FAR 52.222-50	Combating Trafficking in Persons (AUG 200)(DEVIATION)) (As modified by DoN Class Deviation CL-07-N-901 dated 24 JAN 2007) (Deviation is applicable when contract is with an Educational Institution or a Non-Profit)
**	FAR 52.223-14	Toxic Chemical Release Reporting (AUG 2003)
	FAR 52.225-13	Restrictions on Certain Foreign Purchases (JUN 2008)
**	FAR 52.227-1	Authorization and Consent (DEC 2007) and Alternate I (APR 1984)
**	FAR 52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement (DEC 2007)
	FAR 52.228-7	Insurance Liability to Third Persons (MAR 1996) (Further to paragraph (a)(3), unless otherwise stated in this contract, types and limits of insurance required are as stated in FAR 28.307-2)
	FAR 52.232-9	Limitation on Withholding of Payments (APR 1984)
**	FAR 52.232-17	Interest (JUN 1996)
	FAR 52.232-23	Assignment of Claims (JAN 1986) and Alternate I (APR 1984)
	FAR 52.232-25	Prompt Payment (OCT 2003) and Alternate I (FEB 2002) (The words “the 30th day” are inserted in lieu of “the 7th day” at (a)(5)(i). [When Alternate I is applicable (a)(5)(i) does do not apply] [Use Alternate I when awarding a cost reimbursement contract for services]
	FAR 52.232-33	Payment by Electronic Funds Transfer — Central Contractor Registration (OCT 2003)

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	FAR 52.233-1	Disputes (JULY 2002)
	FAR 52.233-3	Protest After Award (AUG 1996) and Alternate I (JUN 1985)
	FAR 52.242-1	Notice of Intent to Disallow Costs (APR 1984)
#	FAR 52.242-3	Penalties for Unallowable Costs (MAY 2001)
	FAR 52.242-4	Certification of Final Indirect Costs (JAN 1997)
**	FAR 52.242-13	Bankruptcy (JUL 1995)
	FAR 52.242-15	Stop Work Order (AUG 1989) and Alternate I (APR 1984)
	FAR 52.243-2	Changes — Cost-Reimbursement (Aug. 1987) and Alternate V (APR 1984)
	FAR 52.244-2	Subcontracts (JUN 2007) and Alternate I (Jun 2007) [Insert in cost-reimbursement contracts, and letter, time-and-material, and labor-hour contracts exceeding SAP, and fixed price contracts exceeding SAP where un-priced actions are anticipated. Use Alternate I for cost-reimbursement contracts]
**	FAR 52.244-5	Competition in Subcontracting (DEC 1996)
	FAR 52.244-6	Subcontracts for Commercial Items (MAR 2007)
	FAR 52.245-1	Government Property (JUN 2007)
	FAR 52.246-9	Inspection of Research and Development (Short Form) (Apr 1984)
	FAR 52.246-23	Limitation of Liability (FEB 1997)
**	FAR 52.247-64	Preference for Privately Owned U.S. Flag Commercial Vessels (FEB 2006)
	FAR 52.249-6	Termination (Cost-Reimbursement) (May 2004)
	FAR 52.249-14	Excusable Delays (APR 1984)
	FAR 52.251-1	Government Supply Sources (APR 1984)
	FAR 52.253-1	Computer Generated Forms (JAN 1991)

II. DEPARTMENT OF DEFENSE FAR SUPPLEMENTAL (DFARS) (48 CFR CHAPTER 2) CLAUSES:

**	DFARS 252.203-7001	Prohibition On Persons Convicted of Fraud or Other Defense-Contract-Related Felonies (DEC 2004)
	DFARS 252.204-7003	Control of Government Work Product (APR 1992)
	DFARS 252.204-7004	Alternate A, Central Contractor Registration (SEP 2007)
**	DFARS 252.209-7004	Subcontracting with Firms That Are Owned or Controlled by the Government of a Terrorist Country (DEC 2006)
#	DFARS 252.215-7000	Pricing Adjustments (DEC 1991)
#	DFARS 252.215-7003	Excessive Pass-Through Charges — Identification of Subcontract Effort (MAY 2008)
#	DFARS 252.215-7004	Excessive Pass-Through Charges (MAY 2008)

Contract Number: N00014-09-C-0115

#	DFARS 252.219-7003	Small Business Subcontracting Plan (DoD Contracts) (APR 2007) (Use this clause in solicitations and contracts that contain the clause at FAR 52.219-9, Small Business Subcontracting Plan.)
	DFARS 252.225-7004	Reporting of Contract Performance Outside the United States and Canada-Submission After Award(MAY 2007)
**	DFARS 252.225-7012	Preference for Certain Domestic (MAR 2008)
	DFARS 252.225-7031	Secondary Arab Boycott of Israel (JUN 2005)
+	DFARS 252.226-7001	Utilization of Indian Organizations and Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns(SEP 2004) (Section 8021 of Pub. L.107-248 [and similar sections in subsequent DoD appropriation acts.])
	DFARS 252.227-7016	Rights In Bid Or Proposal Information (JUN 1995)
	DFARS 252-227-7017	Identification And Assertion Of Use, Release, Or Disclosure Restrictions (JUN 1995)
	DFARS 252.227-7018	Rights In Noncommercial Technical Data And Computer Software—Small Business Innovation Research (SBIR) Program (JUN 1995) (Also applies to STTR programs)
	DFARS 252.227-7019	Validation Of Asserted Restrictions—Computer Software (JUN 1995)
	DFARS 252.227-7027	Deferred Ordering of Technical Data or Computer Software (APR 1988)
	DFARS 252.227-7028	Technical Data or Computer Software Previously Delivered to the Government (JUN 1995)
	DFARS 252.227-7030	Technical Data — Withholding of Payment (MAR 2000)
	DFARS 252.227-7037	Validation of Restrictive Markings on Technical Data (SEP 1999)
	DFARS 252.231-7000	Supplemental Cost Principles (DEC 1991)
	DFARS 252.232-7003	Electronic Submissions of Payment Requests (MAR 2007)
	DFARS 252.235-7010	Acknowledgement of Support and Disclaimer (MAY 1995)
	DFARS 252.235-7011	Final Scientific or Technical Report (NOV 2004)
**	DFARS 252.243-7002	Requests for Equitable Adjustment (MAR 1998)

Contract Number: N00014-09-C-0115

- DFARS 252.246-7000 Material Inspection and Receiving Report (MAR 2008)
- ** DFARS 252.247-7023 Transportation of Supplies by Sea (MAY 2002)
- DFARS 252.247-7024 Notification of Transportation of Supplies by Sea (MAR 2000) (Applicable when the Contractor has made a negative response to the inquiry in the representation at DFARS 252.247-7022.)
- DFARS 252.251-7000 Ordering from Government Supply Sources (NOV 2004)

(B) ADDITIONAL FAR AND DFARS CLAUSES

This contract incorporates one or more clauses by reference as indicated by the mark of , with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this address: <http://www.arnet.gov/far/>

- FAR 52.203-14 Display of Hotline Poster(s) (DEC 2007) (Applicable only when contract exceeds \$5,000,000 or when any modification increases the contract amount to more than \$5,000,000)
- FAR 52.204-2 Security Requirements (AUG 1996) (Applicable if contract will generate or require access to classified information and DD Form 254, Contract Security Classification Specification, is issued to the contractor)
- FAR 52.209-6 Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (SEP 2006) (Applicable to contracts exceeding \$25,000 in value.)
- FAR 52.215-17 Waiver of Facilities Capital Cost of Money (OCT 1997)(Use if FAR52.215-16 is not applicable)
- FAR 52.215-21 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data — Modifications (OCT 1997) (Applicable if cost or pricing data or information other than cost or pricing data will be required for modifications)
- FAR 52.217-9 Option to Extend the Term of the Contract (MAR 2000) (In first blank of paragraph (a)[*insert the period of time within which the Contracting Officer may exercise the option*], in second blank of paragraph (a) [*insert 60 days unless a different number of days is inserted*], and in paragraph (c), insert [(*months*)(*years*)] (Applicable if contract contains line

Contract Number: N00014-09-C-0115

item(s) for option(s)) (Complete the spaces in brackets)

- FAR 52.219-3 Notice of Total HUB Zone Set-Aside (JAN 1999)
- FAR 52.222-20 Walsh Healy Public Contracts Act (DEC 1996) (Applicable if the contract includes deliverable materials, supplies, articles or equipment in an amount that exceeds or may exceed \$10,000)
- FAR 52.223-5 Pollution Prevention and Right-to-Know Information (AUG 2003) (Applicable if contract provides for performance, in whole or in part, on a Federal facility)
- FAR 52.223-6 Drug-Free Workplace (MAY 2001) (Applies when contract action exceeds \$100,000 or at any value when the contract is awarded to an individual)
- FAR 52.227-10 Filing of Patent Applications — Classified Subject Matter (DEC 2007)
- FAR 52.227-11 Patent Rights — Ownership by the Contractor (DEC 2007)(Applicable if contractor is a small business or a non profit organization.
- FAR 52.232-20 Limitation of Cost (APR 1984) (Applicable only when contract action is fully funded)
- FAR 52.232-22 Limitation of Funds (APR 1984) (Applicable only when contract action is incrementally funded)
- FAR 52.239-1 Privacy or Security Safeguards (AUG 1996) (Applicable to contracts for information technology which require security of information technology, and/or are for the design, development, or operation of a system of records using commercial information technology services or support services.)
- FAR 52.245-2 Government Property Installation Operation Services (JUN 2007)
- FAR 52.246-08 Inspection of Research and Development — Cost Reimbursement (MAY 2001) (Use instead of FAR 52.246-09 (Inspection of Research and Development — Short Form) (APR 84) when the primary objective of the contract is the delivery of end items other than designs, drawings and reports.)

Contract Number: N00014-09-C-0115

- o DFARS 252.204-7000 Disclosure of Information (DEC 1991) (Applies when Contractor will have access to or generate unclassified information that may be sensitive and inappropriate for release to the public)
- o DFARS 252.204-7005 Oral Attestation of Security Responsibilities (NOV 2001) (Applicable if FAR 52.204-2, Security Requirements Applies)
- o DFARS 252.204-7008 Requirements for Contracts Involving Export-Controlled Items (JUL 2008) (Applicable when export-controlled items are expected to be involved in the performance of the contract.)
- DFARS 252.204-7009 Requirements Regarding Potential Access to Export-Controlled Items (JUL 2008) (Applicable for research and development, except when the clause 252.204-7008 will be included or for supplies and services, or when the requiring activity is unable to determine that export-controlled items will not be involved.)
- DFARS 252.205-7000 Provision of Information to Cooperative Agreement Holders (DEC 1991) (Applicable only when contract action exceeds \$1,000,000 or when any modification increases total contract amount to more than \$1,000,000)
- DFARS 252.211-7003 Item Identification and Valuation (AUG 2008) (Applicable if the contract includes deliverable items (1) with a unit cost of \$5000 or more or (2) that will be serially managed or controlled inventory.)
- DFARS 252.215-7002 Cost Estimating System requirements (DEC 2006) (Applicable only to contract actions awarded on the basis of certified cost or pricing data)
- o DFARS 252.223-7004 Drug-Free Work Force (SEP 1988) (Applicable (a) if contract involves access to classified information: or (b) when the Contracting Officer determines that the clause is necessary for reasons of national security or for the purpose of protecting the health or safety of performance of the contract.
- o DFARS 252.223-7006 Prohibition on Storage and Disposal of Toxic and Hazardous Materials (APR 1993) (Applicable if work requires, may require, or permits contractor performance on a DoD installation)

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- o DFARS 252.225-7001 Buy American Act and Balance of Payments Program (JUN 2005) (Applicable if the contract includes deliverable supplies) (This clause does not apply if an exception to the Buy American Act or Balance of Payments Program is known or if using the clause at 252.225-7007, 252.225-7021, or 252.225-7036.)
- o DFARS 252.225-7002 Qualifying Country Sources as Subcontractors (APR 2003) (Applicable when clause at DFARS 252.225-7001, 252.227-7007, 252.227-7021, or 252.227-7036 applies)
- o DFARS 252.225-7016 Restriction On Acquisition Of Ball And Roller Bearings (MAR 2006) (Applicable if contract includes deliverable supplies, unless Contracting Officer knows that items being acquired do not contain ball or roller bearings)
- o DFARS 252.227-7025 Limitations On The Use Or Disclosure Of Government-Furnished Information Marked With Restrictive Legends (JUN 1995) (Applicable when the Government will provide the contractor, for the performance of its contract, technical data, including software marked with another contractor's restrictive legend(s))
- o DFARS 252.227-7038 Patents — Ownership by the Contractor (Large Business)(DEC 2007)
- DFARS 252.227-7039 Patents — Reporting of Subject Inventions (APR 1990) (Applied when FAR 52.227-11 applies)
- o DFARS 252.235-7002 Animal Welfare (DEC 1991)

SECTION J — LIST OF ATTACHMENTS

1. EXHIBIT A entitled “Contract Data Requirements List” (DD Form 1423) -3 Pages with Enclosure Number 1, entitled “Contract Data Requirements List — Instructions for Distribution.”
2. Attachment Number 1, entitled, “DWADS Advanced Development Model (ADM) PowerBuoy Statement of Work” — 4 pages
3. Attachment Number 2, entitled, “Report Documentation Page” (SF 298) — 1 Page.
4. Attachment Number 3, entitled, “Financial Accounting Data Sheet(s).

Contract Number: N00014-09-C-0115

SECTION K — REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS

1. The Contractor's ORCA validation dated from: 28 FEB 2008 to: 28 FEB 2009 is hereby incorporated into this contract by reference. The DFARS and Contract Specific Representations and Certifications, dated 25 JUN 2008 are hereby incorporated by reference

Contract Number: N00014-09-C-0115

CONTRACT DATA REQUIREMENTS LIST
(2 Data Items)

Form Approved
OMB No. 0704-0188

The public reporting burden for this collection of information is estimated to average 110 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports (0701-0188), 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number. Please DO NOT RETURN your form to the above address. Send completed form to the Government Issuing Contracting Officer for the Contract/PR No. Listed in Block E.

A. CONTRACT LINE ITEM NO. 0001		B. EXHIBIT A		C. CATEGORY Top TM Other X			
D. SYSTEM/ITEM Research and Development1			E. CONTRACT/PR NO. N00014-09-C-0115		F. CONTRACTOR Ocean Power Technologies, Inc.		
1. DATA ITEM NO. A001	2. TITLE OF DATA ITEM Progress Reports			3. SUBTITLE			
4. AUTHORITY (Data Acquisition Document No.)		5. CONTRACT REFERENCE Section H.1 of Schedule		6. REQUIRING OFFICE See Section F			
7. DD 150 REQ LT	9. DIST STATEMENT REQUIRED	10. FREQUENCY *	12. DATE OF FIRST SUBMISSION *	14. DISTRIBUTION			
8. APP CODE	N/A	11. AS IF DATE *	13. DATE OF SUBSEQUENT SUBMISSION *	a. ADDRESSEE	b. COPIES		
16. REMARKS As required by the Program Officer, these reports shall be submitted in accordance with Task 9 of the statement of work.				SEE ENCLOSURE NUMBER 1	Final		
					Draft	Reg	Repro
15. TOTAL →							
1. DATA ITEM NO. A002	2. TITLE OF DATA ITEM System Specification Document			3. SUBTITLE			
4. AUTHORITY (Data Acquisition Document No.)		5. CONTRACT REFERENCE Section H.1 of Schedule		6. REQUIRING OFFICE See Section F			
7. DD 150 REQ See Remarks*	9. DIST STATEMENT REQUIRED A	10. FREQUENCY ONCE	12. DATE OF FIRST SUBMISSION	14. DISTRIBUTION			
8. APP CODE		11. AS IF DATE	13. DATE OF SUBSEQUENT SUBMISSION	a. ADDRESSEE	b. COPIES		
16. The contractor shall submit the system specification document in accordance with Task 1.1 of the statement of work.				SEE ENCLOSURE NUMBER 1	Final		
					Draft	Reg	Repro
15. TOTAL →							
G. PREPARED BY Angela Bruce Dunson, ONR 252		H. DATE 18 Sep 08		I. APPROVED BY Michael Vaccaro			
				J. DATE 18 Sep 08			

17. PRICE GROUP
18. ESTIMATED TOTAL PRICE

17. PRICE GROUP
18. ESTIMATED TOTAL PRICE

CONTRACT DATA REQUIREMENTS LIST

(2 Data Items)

*Form Approved
OMB No. 0704-0188*

The public reporting burden for this collection of information is estimated to average 110 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports (0701-0188), 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number. Please DO NOT RETURN your form to the above address. Send completed form to the Government Issuing Contracting Officer for the Contract/PR No. Listed in Block E.

A. CONTRACT LINE ITEM NO. 0001		B. EXHIBIT A		C. CATEGORY Top TM Other X	
D. SYSTEM/ITEM Research and Development			E. CONTRACT/PR NO. N00014-09-C-0115		F. CONTRACTOR Ocean Power Technologies, Inc.
1. DATA ITEM NO. A003	2. TITLE OF DATA ITEM System Design Documents			3. SUBTITLE	
4. AUTHORITY (Data Acquisition Document No.)		5. CONTRACT REFERENCE Section H.1 of Schedule		6. REQUIRING OFFICE See Section F	
7. DD 250 REQ See Remarks*	9. DIST STATEMENT REQUIRED A	10. FREQUENCY ASREQ	12. DATE OF FIRST SUBMISSION *	14. DISTRIBUTION	
8. APP CODE		11. AS IF DATE *	13. DATE OF SUBSEQUENT SUBMISSION *	a. ADDRESSEE	b. COPIES
16. REMARKS The contractor shall submit the system design documents in accordance with Tasks 1.3, 2, and 3 of the statement of work. The final detailed design should be delivered with the ADM PowerBuoy Unit reflecting the as-built design.				SEE ENCLOSURE NUMBER 1	Final
				Draft	Reg
					Repro
				15. TOTAL →	
1. DATA ITEM NO. A004	2. TITLE OF DATA ITEM Test Plan			3. SUBTITLE	
4. AUTHORITY (Data Acquisition Document No.)		5. CONTRACT REFERENCE Section H.1 of Schedule		6. REQUIRING OFFICE See Section F	
7. DD 250 REQ See Remarks*	9. DIST STATEMENT REQUIRED A	10. FREQUENCY ONCE	12. DATE OF FIRST SUBMISSION *	14. DISTRIBUTION	
8. APP CODE		11. AS IF DATE *	13. DATE OF SUBSEQUENT SUBMISSION *	a. ADDRESSEE	b. COPIES
16. REMARKS The contractor shall submit the test plan in accordance with Task 1.2 of the statement of work.				SEE ENCLOSURE NUMBER 1	Final
				Draft	Reg
					Repro
				15. TOTAL →	
G. PREPARED BY Angela Bruce Dunson, ONR 252		H. DATE 18 Sep 2008		I. APPROVED BY Michael Vaccaro	
				J. DATE 18 Sep 2008	

17. PRICE GROUP
18. ESTIMATED TOTAL PRICE

17. PRICE GROUP
18. ESTIMATED TOTAL PRICE

CONTRACT DATA REQUIREMENTS LIST

(2 Data Items)

*Form Approved
OMB No. 0704-0188*

The public reporting burden for this collection of information is estimated to average 110 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports (0701-0188), 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number. Please DO NOT RETURN your form to the above address. Send completed form to the Government Issuing Contracting Officer for the Contract/PR No. Listed in Block E.

A. CONTRACT LINE ITEM NO. 0001		B. EXHIBIT A		C. CATEGORY Top TM Other X	
D. SYSTEM/ITEM Research and Development			E. CONTRACT/PR NO. N00014-09-C-0115		F. CONTRACTOR Ocean Power Technologies, Inc.
1. DATA ITEM NO. A005	2. TITLE OF DATA ITEM Test Report			3. SUBTITLE	
4. AUTHORITY (Data Acquisition Document No.)			5. CONTRACT REFERENCE Section H.1 of Schedule		6. REQUIRING OFFICE See Section F
7. DD 250 REQ See Remarks*	9. DIST STATEMENT REQUIRED A	10. FREQUENCY Once	12. DATE OF FIRST SUBMISSION		14. DISTRIBUTION
8. APP CODE		11. AS OF DATE *	13. DATE OF SUBSEQUENT SUBMISSION		
16. REMARKS *The contractor shall submit the test report in accordance with Task 8 of the statement of work.			SEE ENCLOSURE NUMBER 1		
1. DATA ITEM NO. A006			2. TITLE OF DATA ITEM Final Report		3. SUBTITLE
4. AUTHORITY (Data Acquisition Document No.)			5. CONTRACT REFERENCE Section H.1 of Schedule		6. REQUIRING OFFICE
7. DD 250 REQ DD*	9. DIST STATEMENT REQUIRED A	10. FREQUENCY OTIME	12. DATE OF FIRST SUBMISSION		14. DISTRIBUTION
8. APP CODE		11. AS OF DATE See block 16	13. DATE OF SUBSEQUENT SUBMISSION		
16. REMARKS *DD 250 required only for acceptance by the Program Officer designated in Section F. Information copies of this report shall be distributed in accordance with Enclosure Number 1.			SEE ENCLOSURE NUMBER 1		
G. PREPARED BY Angela Bruce Dunson, ONR 252		H. DATE 18 Sep 2008		I. APPROVED BY Michael Vaccaro	
				J. DATE 18 Sep 2008	

17. PRICE GROUP
18. ESTIMATED TOTAL PRICE

17. PRICE GROUP
18. ESTIMATED TOTAL PRICE

ENCLOSURE NUMBER 1
 CONTRACT DATA REQUIREMENTS LIST
 INSTRUCTIONS FOR DISTRIBUTION

DISTRIBUTION OF PROGRESS REPORTS

The minimum distribution for progress reports is as follows:

<u>ADDRESSEE</u>	<u>DODAAC CODE</u>	<u>NUMBER OF COPIES UNCLASSIFIED / LIMITED AND CLASSIFIED</u>
SBIR PROGRAM MANAGER ATTN: TRACY FROST OFFICE OF NAVAL RESEARCH 800 NORTH QUINCY STREET 875N RANDLOPHRANDOLPH STREET ARLINGTON, VA 22203-1995 Phone: (703)696-3196 E-mail: frostt@onr.navy.mil REF: N00014-09-C-0115	N00014	1
Program Officer: Michael Vaccaro E-mail: michael.vaccaro@navy.mil REF: N00014-09-C-0115	N00014	1
Administrative Contracting Officer* Fax: 856-338-3640	S3915A	1

DISTRIBUTION OF TECHNICAL REPORTS AND FINAL REPORT

(A SF-298 must accompany the final report)

* Send only a copy of the transmittal letter to the Administrative Contracting Officer; do not send actual reports to the Administrative Contracting Officer.

<u>ADDRESSEE</u>	<u>DODAAC CODE</u>	<u>NUMBER OF COPIES UNCLASSIFIED / LIMITED AND CLASSIFIED</u>
Program Officer: Michael Vaccaro E-mail: michael.vaccaro@navy.mil Office of Naval Research 875 North Randolph Street Arlington, VA 22203 Administrative Contracting Officer* Fax: 856-338-3640	N00014	1 w/SF-298
Administrative Contracting Officer*	S3915A	1 w/SF-298
SBIR PROGRAM MANAGER ATTN: TRACY FROST	N00014	1

ADDRESSEE	DODAAC CODE	NUMBER OF COPIES UNCLASSIFIED / LIMITED AND CLASSIFIED
OFFICE OF NAVAL RESEARCH 800 NORTH QUINCY STREET875 N RANDLOPHRANDOLPH STREET ARLINGTON, VA 22203-1995 Phone: (703)696-3196 E-mail: frostt@onr.navy.mil REF: N00014-09-C-0115 Defense Technical Information Center 8725 John J. Kingman Road STE 0944	HJ4701	2 w/SF-298
Ft. Belvoir, VA 22060-6218 E-mail: TR@dtic.mil Director, Naval Research Lab Attn: Code 5227 4555 Overlook Avenue, SW Washington, D.C. 20375-5320 E-mail: reports@librarv.nrl.navy.mil	N00173	1 w/SF-298

**DWADS Advanced Development Model (ADM) PowerBuoy
Statement of Work**

1 Systems Engineering

1.1 PowerBuoy Advanced Development Model Requirements Generation

OPT shall work with the customer to establish requirements for the ADM PowerBuoy, mooring system, and any required ocean test, installation and recovery equipment. OPT shall prepare a document that captures these requirements. For determining Phase II program costs, a set of requirements has been assumed by OPT. These requirements are presented in Section 6.1 of the technical proposal.

Buoy Requirements. OPT shall define the requirements for the design, development, construction, and ocean test of the ADM PowerBuoy.

Mooring System Requirements (inputs to US Navy). OPT shall define the requirements for the ADM mooring system and document those requirements in an ADM PowerBuoy Mooring System Requirements document. OPT will support in the design of the mooring system, but have assumed that the lead-design and build of this element is a US Navy responsibility.

Deployment/Recovery and Test System Requirements (inputs to US Navy). OPT shall define the requirements for the installation and recovery of the ADM PowerBuoy and document those requirements in an ADM PowerBuoy Installation and Retrieval Requirements document. Note that OPT will support in this effort, but has assumed that deployment and recovery are US Navy responsibilities.

1.2 ADM PowerBuoy Test Plan and Procedures

OPT shall prepare a plan that outlines the plans, objectives and methods for the test of the ADM PowerBuoy.

1.3 Trade Studies and ADM PowerBuoy Conceptual Design

OPT shall perform a conceptual design of a Powerbuoy that meets the requirements specified in the ADM PowerBuoy Requirements Document. The conceptual design activity will involve the performance of several trade studies. These trade studies may include, but are not required to include, the following:

[**]

- Power take-off (PTO) design / technologies

1.4 ADM Power Buoy Key Technology Demonstrations

Following the trade studies and ADM PowerBuoy conceptual design, OPT shall identify technologies that require risk reduction demonstrations. Laboratory demonstration of these technologies may be performed.

2 ADM PowerBuoy Preliminary Design

OPT shall perform a preliminary design of the ADM PowerBuoy. The requirements set forth in the ADM PowerBuoy Requirements Document shall be used in the buoy design except under mutual agreement. A preliminary design data package shall be prepared and a preliminary design review shall be conducted.

2.1 PowerBuoy Design

OPT shall perform a preliminary design of the ADM PowerBuoy. The requirements set forth in the ADM PowerBuoy Requirements Document shall be used in the buoy design. OPT's efforts will seek to implement enhancements to its existing PowerBuoy to improve the efficiency, increase the power output, and decrease the size.

2.2 Mooring System Design Support

[**].

2.3 Deployment and Recovery Equipment

OPT shall perform a preliminary design of any required special fixtures and equipment needed for the deployment and recovery of the enhanced PowerBuoy ADM. A preliminary design data package shall be prepared and a preliminary design review shall be conducted.

2.4 Test Equipment

OPT shall perform a preliminary design of special fixtures and equipment needed to test an enhanced PowerBuoy. A preliminary design data package shall be prepared and a preliminary design review shall be conducted.

3 ADM PowerBuoy Detailed Design

OPT shall perform a detailed design of the ADM PowerBuoy. The requirements set forth in the ADM PowerBuoy Requirements Document shall be used in the buoy design unless changed by mutual agreement. A detailed design data package shall be prepared and a final design review shall be conducted.

3.1 PowerBuoy

OPT shall perform a final detailed design of the DWADS ADM. The requirements set forth in the ADM PowerBuoy Requirements Document shall be used in the buoy design unless changed by mutual agreement.

3.2 Mooring System

[**].

3.3 Deployment and Recovery Equipment

OPT shall perform a final detailed design of special fixtures and equipment needed for the deployment and recovery of the DWADS-ADM Powerbuoy. A detailed design data package shall be prepared and a detailed design review shall be conducted.

3.4 Test Equipment

OPT shall perform a final detailed design of modifications to existing fixtures and equipment required to test an enhanced PowerBuoy. A detailed design data package shall be prepared and a detailed design review shall be conducted.

4 Fabrication of ADM PowerBuoy Equipment

4.1 ADM PowerBuoy Fabrication

OPT's development effort includes the fabrication of the ADM PowerBuoy from the approved detailed designs from Section 4.5 of the technical proposal.

4.2 Mooring System Fabrication

[**].

5 Acceptance Testing of ADM PowerBuoy Subsystems

OPT shall perform acceptance testing of the ADM PowerBuoy subsystems to verify functionality and critical performance, where possible.

6 System Staging, Deployment and Recovery of ADM PowerBuoy (US Navy)

[**]

Prior to deployment, OPT will participate in a review with members of the project team that will cover the objectives, methods, equipment, safety, and contingency procedures associated with the handling, deployment, commissioning and operation of the PowerBuoy. This same requirement will be required prior to the retrieval of the PowerBuoy.

[**]

7 Technical Support for Sea Trial of ADM PowerBuoy

OPT shall provide technical support from its headquarters during the sea trial, which is anticipated to be up to three months. During that time period, data from the ADM PowerBuoy systems operations will be collected and entered into OPT's operational database. Many parameters will be monitored electronically from sensors located throughout the system of the

PowerBuoy via the data acquisition system. In addition, data from the Navy or other independent wave monitoring device(s) will also be collected.

8 Sea Trial Test Results — Data Analysis

8.1 Test Results

After completion of the sea trial test, OPT shall analyze the recorded data to identify trends, anomalies and key operational performance characteristics and compare it to expected results. Some of the analysis will be conducted by statistical and event mapping of the data. Based on this analysis, OPT shall make recommendations to optimize the PowerBuoy design for the follow-on systems.

Data will also be obtained from visual inspection of the PowerBuoy and mooring components for corrosion, marine growth and wear.

8.2 Recommendations for Transition to Fleet

Upon completion of the ocean test and subsequent data analysis, OPT shall identify improvements to transition to the US Navy fleet. OPT shall also identify additional development or risk mitigation work that may need to be performed in order to successfully transition from the ADM to fleet production.

9 Program Management

A Program Manager shall be assigned to the program. The Program Manager will provide the technical direction, monitor and direct the daily technical aspects of the program and coordinate the specialized talents of management, engineering, finance, manufacturing, and quality assurance with the following tasks:

- Program Planning, Tracking and Technical Management — The OPT Program Manager shall be responsible for resource assignment, technical direction, task direction and schedule management. OPT will notify the government when the project reaches 75% cost expenditure.
- Program Meetings — The OPT Program Manager shall direct the program meetings which are established to coincide with key technical milestones.
- Progress Reports — OPT Program Manager shall prepare and distribute the minutes from Review Meetings, Monthly Progress Reports, and Major Technical Reports in accordance with the Contract Data Requirements List (CDRL) Items.

The OPT administrative staff will provide the financial and contractual support.

REPORT DOCUMENTATION PAGE*Form Approved
OMB No. 0704-0188*

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1. REPORT DATE (DD-MM-YYYY)		2. REPORT TYPE		3. DATES COVERED (From - To)	
4. TITLE AND SUBTITLE				5a. CONTRACT NUMBER	
				5b. GRANT NUMBER	
				5c. PROGRAM ELEMENT NUMBER	
6. AUTHOR(S)				5d. PROJECT NUMBER	
				5e. TASK NUMBER	
				5f. WORK UNIT NUMBER	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) AND ADDRESS(ES)				8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING / MONITORING AGENCY NAME(S) AND ADDRESS(ES)				10. SPONSOR/MONITOR'S ACRONYM(S)	
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12. DISTRIBUTION / AVAILABILITY STATEMENT					
13. SUPPLEMENTARY NOTES					
14. ABSTRACT					
15. SUBJECT TERMS					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT	18. NUMBER OF PAGES	19a. NAME OF RESPONSIBLE PERSON
a. REPORT	b. ABSTRACT	c. THIS PAGE			19b. TELEPHONE NUMBER (include area code)

Standard Form 298 (Rev. 8-98)
Prescribed by ANSI Std. Z39.18

FINANCIAL ACCOUNTING DATA SHEET - NAVY

1. CONTRACT NUMBER (CRITICAL) N0001409C0115		2. SPIN (CRITICAL)		3. MOD (CRITICAL)		4. PR NUMBER 08PR08225-00									
CLIN/SLIN	6. LINE OF ACCOUNTING										7. AMOUNT (CRITICAL)	NAVY INTERNAL USE ONLY REF DOC/ACRN			
	A. ACRN (CRITICAL)	B. APPROPRIATION (CRITICAL)	C. SUBHEAD (CRITICAL)	D. OBJ CLA	E. PARM	F. RFM	G. SA	H. AAA (CRITICAL)	I. IT	J. PAA			K. COST CODE PROJ UNIT MCC PDLI ASUF		
	AA	1781119	WIND	255	RA	329	0	068342	2 D	0000 00	08B48	000	DWAO	\$3,020,039.00	PR08PR08225-00 FRC:DWAO
PAGE TOTAL													\$3,020,039.00		
GRAND TOTAL													\$3,020,039.00		
PREPARED AUTHORIZED BY: DATE:						COMPTROLLER APPROVAL: FOR FISCAL DATA AND SIGNATURE BY _____ DATE:						for COMPTROLLER, ONR CONTRACT REVIEWED			

FINANCIAL ACCOUNTING DATA SHEET - NON-NAVY DoD ACTIVITIES

1. CONTRACT NUMBER (CRITICAL) N000140PC0115		2. SPIN (CRITICAL)		3. MOD (CRITICAL)		4. PR NUMBER 08PR08215-00			
5. CLIN/SLIN	6. ACRN (CRITICAL)	7. ACCOUNTING CITATION				8. AMOUNT (CRITICAL)	NAVY INTERNAL USE ONLY REF DOC/ACRN		
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						PAGE TOTAL	\$ 00		
						GRANT TOTAL	\$ 00		
PREPARED/AUTHORIZED BY: DATE:					COMPTROLLER APPROVAL: FOR FISCAL DATA AND SIGNATURE BY _____ for COMPTROLLER. ONR CONTRACT REVIEWED DATE:				

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT**

I, George W. Taylor, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Ocean Power Technologies, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors:
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ George W. Taylor

George W. Taylor
Chief Executive Officer

Date: December 10, 2008

**CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO SECTION 302 OF SARBANES-OXLEY ACT**

I, Charles F. Dunleavy, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Ocean Power Technologies, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors:
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Charles F. Dunleavy

Charles F. Dunleavy
Chief Financial Officer

Date: December 10, 2008

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of Ocean Power Technologies, Inc. (the "Company") for the period ended October 31, 2008, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, George W. Taylor, Chief Executive Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ George W. Taylor

George W. Taylor

Chief Executive Officer

Date: December 10, 2008

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of Ocean Power Technologies, Inc. (the "Company") for the period ended October 31, 2008, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, Charles F. Dunleavy, Chief Financial Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Charles F. Dunleavy

Charles F. Dunleavy

Chief Financial Officer

Date: December 10, 2008