

PART I – THE SCHEDULE

SECTION H

SPECIAL CONTRACT REQUIREMENTS

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Table of Contents

| | | |
|------|--|------|
| H.1 | DOE-H-2001 EMPLOYEE COMPENSATION: PAY AND BENEFITS (JUN 2022) (REVISED)..... | H-1 |
| H.2 | DOE-H-2002 NO THIRD-PARTY BENEFICIARIES (OCT 2014)..... | H-14 |
| H.3 | DOE-H-2005 ADVANCE UNDERSTANDING(S) (OCT 2014)..... | H-14 |
| H.4 | DOE-H-2011 SUSTAINABLE ACQUISITIONS UNDER CONTRACTS FOR ELECTRONIC PRODUCTS (JUL 2018)..... | H-15 |
| H.5 | DOE-H-2013 CONSECUTIVE NUMBERING (OCT 2014) | H-15 |
| H.6 | DOE-H-2019 DISPOSITION OF INTELLECTUAL PROPERTY – FAILURE TO COMPLETE CONTRACT PERFORMANCE (JUL 2018)..... | H-15 |
| H.7 | DOE-H-2021 WORK STOPPAGE AND SHUTDOWN AUTHORIZATION (OCT 2014)..... | H-16 |
| H.8 | DOE-H-2022 CONTRACTOR BUSINESS SYSTEMS (OCT 2014)..... | H-17 |
| H.9 | DOE-H-2023 COST ESTIMATING SYSTEM REQUIREMENTS (OCT 2014)..... | H-22 |
| H.10 | DOE-H-2024 EARNED VALUE MANAGEMENT SYSTEM (MAR 2019)..... | H-27 |
| H.11 | DOE-H-2025 ACCOUNTING SYSTEM ADMINISTRATION (OCT 2014)..... | H-31 |
| H.12 | DOE-H-2026 CONTRACTOR PURCHASING SYSTEM ADMINISTRATION (OCT 2014) | H-34 |
| H.13 | DOE-H-2027 CONTRACTOR PROPERTY MANAGEMENT SYSTEM\ ADMINISTRATION (OCT 2014)..... | H-38 |
| H.14 | DOE-H-2033 ALTERNATIVE DISPUTE RESOLUTION (OCT 2014)..... | H-40 |
| H.15 | DOE-H-2034 CONTRACTOR INTERFACE WITH OTHER CONTRACTORS AND/OR GOVERNMENT EMPLOYEES (OCT 2014)..... | H-41 |
| H.16 | DOE-H-2035 ORGANIZATIONAL CONFLICT OF INTEREST MANAGEMENT PLAN (OCT 2014)..... | H-41 |

| | | |
|------|--|------|
| H.17 | DOE-H-2041 SUSTAINABLE ACQUISITION UNDER DOE SERVICE CONTRACTS (OCT 2014)..... | H-42 |
| H.18 | DOE-H-2043 ASSIGNMENT AND TRANSFER OF PRIME CONTRACTS AND SUBCONTRACTS (OCT 2014)..... | H-43 |
| H.19 | DOE-H-2044 MATERIAL SAFETY DATA SHEET AVAILABILITY (OCT 2014)..... | H-44 |
| H.20 | DOE-H-2048 PUBLIC AFFAIRS –CONTRACTOR RELEASES OF INFORMATION (OCT 2014) | H-44 |
| H.21 | DOE-H-2050 INCORPORATION OF SMALL BUSINESS SUBCONTRACTING PLAN ALTERNATE I (OCT 2014)..... | H-45 |
| H.22 | DOE-H-2053 WORKER SAFETY AND HEALTH PROGRAM IN ACCORDANCE WITH 10 CFR 851 (OCT 2014)..... | H-45 |
| H.23 | DOE-H-2059 PRESERVATION OF ANTIQUITIES, WILDLIFE AND LAND AREAS (OCT 2014)..... | H-46 |
| H.24 | DOE-H-2062 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (OCT 2014) - ALTERNATE I (OCT 2014)..... | H-47 |
| H.25 | DOE-H-2063 CONFIDENTIALITY OF INFORMATION (FEB 2022) (REVISED)..... | H-47 |
| H.26 | DOE-H-2064 USE OF INFORMATION TECHNOLOGY EQUIPMENT, SOFTWARE, AND THIRD-PARTY SERVICES (OCT 2014) - ALTERNATE II (OCT 2014)..... | H-48 |
| H.27 | DOE-H-2065 REPORTING OF FRAUD, WASTE, ABUSE, CORRUPTION, OR MISMANAGEMENT (OCT 2014)..... | H-49 |
| H.28 | DOE-H-2066 SAFEGUARDS AND SECURITY PROGRAM (OCT 2014) - ALTERNATE I (OCT 2014)..... | H-51 |
| H.29 | DOE-H-2069 PAYMENTS FOR DOMESTIC EXTENDED PERSONNEL ASSIGNMENTS (OCT 2014)..... | H-51 |
| H.30 | DOE-H-2070 KEY PERSONNEL (OCT 2014) - ALTERNATE I (OCT 2014)..... | H-52 |
| H.31 | DOE-H-2071 DEPARTMENT OF ENERGY DIRECTIVES (OCT 2014)..... | H-53 |
| H.32 | DOE-H-2072 USE OF GOVERNMENT VEHICLES BY CONTRACTOR EMPLOYEES (OCT 2014)..... | H-54 |
| H.33 | DOE-H-2073 RISK MANAGEMENT AND INSURANCE PROGRAMS (DEC 2014) (REVISED)..... | H-55 |

| | | |
|------|--|------|
| H.34 | DOE-H-2075 PROHIBITION ON FUNDING FOR CERTAIN NONDISCLOSURE AGREEMENTS (OCT 2014)..... | H-59 |
| H.35 | DOE-H-2077 DEPARTMENT OF ENERGY TRAINING INSTITUTE – OCCUPATIONAL HEALTH, SAFETY, AND EMERGENCY RESPONSE (JAN 2017)..... | H-60 |
| H.36 | DOE-H-2078 MULTIFACTOR AUTHENTICATION FOR INFORMATION SYSTEMS (OCT 2014)..... | H-61 |
| H.37 | DOE-H-7001 FACILITIES (SEP 2017)..... | H-61 |
| H.38 | DOE-H-7003 CONTRACTOR ASSURANCE SYSTEM (SEP 2017)..... | H-62 |
| H.39 | DOE-H-7004 DEFENSE AND INDEMNIFICATION OF EMPLOYEES (SEP 2017)..... | H-63 |
| H.40 | DOE-H-7005 ADVANCED UNDERSTANDINGS REGARDING ADDITIONAL ITEMS OF ALLOWABLE AND UNALLOWABLE COSTS AND OTHER MATTERS (SEP 2017) (REVISED)..... | H-64 |
| H.41 | DOE-H-7006 ADMINISTRATION OF SUBCONTRACTS (SEP 2017) (REVISED)..... | H-65 |
| H.42 | DOE-H-7008 PRIVACY ACT RECORDS (SEP 2017) (REVISED)..... | H-66 |
| H.43 | DOE-H-7009 ADDITIONAL DEFINITIONS (SEP 2017) (REVISED)..... | H-67 |
| H.44 | DOE-H-7010 SERVICE CONTRACT LABOR STANDARDS (SEP 2017) (REVISED)..... | H-69 |
| H.45 | DOE-H-7011 CONTRACTS FOR MATERIALS, SUPPLIES, ARTICLES, AND EQUIPMENT EXCEEDING \$15,000 (SEP 2017)..... | H-69 |
| H.46 | DOE-H-7014 STANDARDS OF CONTRACTOR PERFORMANCE EVALUATION (SEP 2017) (REVISED)..... | H-69 |
| H.47 | DOE-H-7015 CAP ON LIABILITY (SEP 2017) | H-71 |
| H.48 | DOE-H-7016 NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS – SENSE OF CONGRESS (SEP 2017)..... | H-72 |
| H.49 | DOE-H-7018 EXTERNAL REGULATION (SEP 2017) (REVISED)..... | H-72 |
| H.50 | DOE-H-7019 SEPARATE ENTITY AND CORPORATE GUARANTEE (SEP 2017)..... | H-73 |

| | | |
|------|---|------|
| H.51 | DOE-H-7020 RESPONSIBLE CORPORATE OFFICIAL (SEP 2017)..... | H-73 |
| H.52 | DOE-H-7021 POST CONTRACT RESPONSIBILITIES FOR PENSION AND OTHER BENEFIT PLANS (SEP 2017)..... | H-74 |
| H.53 | DOE-H-7022 CONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATIONS OR ALLEGED VIOLATIONS, FINES, AND PENALTIES (SEP 2017)..... | H-75 |
| H.54 | DOE-H-7023 ALLOCATION OF RESPONSIBILITIES FOR CONTRACTOR (SEP 2017)..... | H-76 |
| H.55 | DOE-H-7024 WORKERS' COMPENSATION INSURANCE (SEP 2017)..... | H-77 |
| H.56 | DOE-H-7025 LABOR RELATIONS (SEP 2017)..... | H-77 |
| H.57 | DOE-H-7027 DOE MENTOR-PROTÉGÉ PROGRAM (SEP 2017)..... | H-78 |
| H.58 | DOE-H-7028 LOBBYING RESTRICTIONS (SEP 2017)..... | H-78 |
| H.59 | DOE-H-7030 CONFERENCE SPENDING (MANAGEMENT AND OPERATING CONTRACTS) (SEP 2017)..... | H-78 |
| H.60 | DOE-H-7031 INFORMATION TECHNOLOGY ACQUISITIONS (SEP 2017) (REVISED)..... | H-79 |
| H.61 | DOE-H-7033 SPECIAL FINANCIAL INSTITUTION ACCOUNT AGREEMENT (SEP 2017) (REVISED)..... | H-80 |
| H.62 | DOE-H-7035 ACTIVITIES DURING CONTRACT TRANSITION (SEP 2017) (REVISED)..... | H-80 |
| H.63 | DOE-H-7036 WORKFORCE TRANSITION (SEP 2017) (REVISED)..... | H-82 |
| H.64 | DOE-H-7037 MANAGEMENT AND OPERATING CONTRACTOR (M&O) SUBCONTRACT REPORTING (SEP 2017)..... | H-84 |
| H.65 | INFORMATION TECHNOLOGY AND CYBER SECURITY REQUIREMENTS..... | H-84 |
| H.66 | PROJECT CONTROL SYSTEM..... | H-86 |
| H.67 | REPORTING REQUIREMENTS..... | H-87 |
| H.68 | WORK AUTHORIZATION..... | H-89 |
| H.69 | WITHDRAWAL OF WORK..... | H-91 |

| | | |
|------|--|------|
| H.70 | PERFORMANCE CRITERIA, MEASURES, OUTPUT TARGETS, AND INCENTIVES..... | H-92 |
| H.71 | EMPLOYEE CONCERNS PROGRAM..... | H-92 |
| H.72 | ENVIRONMENT, SAFETY, AND HEALTH (ES&H)..... | H-93 |
| H.73 | ENVIRONMENTAL PERMITS AND APPLICATIONS..... | H-93 |
| H.74 | PROHIBITION OF CONTRACTS WITH PERSONS FALSELY LABELING PRODUCTS AS MADE IN AMERICA..... | H-93 |
| H.75 | GOVERNMENT-OWNED PROPERTY AND EQUIPMENT..... | H-94 |
| H.76 | TRAVEL RESTRICTIONS..... | H-94 |
| H.77 | SERVICES..... | H-94 |
| H.78 | LITIGATION MANAGEMENT PROCEDURES..... | H-95 |
| H.79 | PROVISIONAL PAYMENT OF AWARD FEE | H-95 |

SECTION H

SPECIAL CONTRACT REQUIREMENTS

**H.1 DOE-H-2001 EMPLOYEE COMPENSATION: PAY AND BENEFITS (JUN 2022)
(REVISED)**

(a) Contractor Employee Compensation Plan

A description of the Contractor Employee Compensation Program should include the following components:

- (1) Philosophy and strategy for all pay delivery programs.
- (2) System for establishing a job worth hierarchy.
- (3) Method for relating internal job worth hierarchy to external market.
- (4) System that links individual and/or group performance to compensation decisions.
- (5) Method for planning and monitoring the expenditure of funds.
- (6) Method for ensuring compliance with applicable laws and regulations.
- (7) System for communicating the programs to employees.
- (8) System for internal controls and self-assessment.
- (9) System to ensure that reimbursement of compensation, including stipends, for employees who are on joint appointments with a parent or other organization shall be on a pro-rated basis.

(b) Total Compensation System

The Contractor shall develop, implement, and maintain formal policies, practices, and procedures to be used in the administration of its compensation system consistent with FAR 31.205-6 and DEAR 970.3102-05-6; "Compensation for Personal Services". DOE-approved standards (e.g., set forth in an advance understanding or appendix), if any, shall be applied to the Total Compensation System. The Contractor's Total Compensation System shall be fully documented, consistently applied, and acceptable to the Contracting Officer. Costs incurred in implementing the Total Compensation System shall be consistent with the Contractor's documented Contractor Employee Compensation Plan as approved by the Contracting Officer.

(c) Reports and Information

The Contractor shall provide the Contracting Officer with the following reports and information with respect to pay and benefits provided under this Contract:

- (1) An Annual Contractor Salary-Wage Increase Expenditure Report to include, at a minimum, breakouts for merit, promotion, variable pay, special adjustments, and structure movements for each pay structure showing actual against approved amounts, and planned distribution of funds for the following year.
- (2) A list of the top five most highly compensated executives as defined in FAR 31.205-6(p)(2)(ii) and their total cash compensation at the time of Contract award, and at the time of any subsequent change to their total cash compensation no later than March 1st of each year. Section 702 of the Bipartisan Budget Act of 2013 (BBA; Pub. L. 113-67, December 26, 2013) establishes a cap on the reimbursement of compensation costs for contractor employees, adjusted annually to reflect the change in the Employment Cost Index for all workers as calculated by the Bureau of Labor Statistics (BLS).
- (3) An Annual Compensation and Benefits Report no later than March 15th of each year.

(d) Pay and Benefit Programs

The Contractor shall establish pay and benefit programs for Incumbent Employees and Non-Incumbent Employees as defined in paragraphs (1) and (2) below; provided, however, that employees scheduled to work fewer than 20 hours per week receive only those benefits required by law. Employees are eligible for benefits, subject to the terms, conditions, and limitations of each benefit program.

- (1) Incumbent Employees are the employees who are regular employees of the incumbent contractor.
 - (A) Pay. Subject to the Workforce Transition Clause, the Contractor shall provide equivalent base pay to Incumbent Employees as compared to pay provided by Fluor Federal Petroleum Operations (FFPO) for at least the first year of the term of the Contract.
 - (B) Pension and Other Benefits. The Contractor shall provide a total package of benefits to Incumbent Employees comparable to that provided by FFPO. Comparability of the total benefit package shall be determined by the CO in his/her sole discretion.

Incumbent Employees shall remain in their existing pension plans (or comparable successor plans if continuation of the existing plans is not practicable) pursuant to pension plan eligibility requirements and applicable law.

(2) Non-Incumbent Employees are new hires, i.e., employees other than Incumbent Employees who are hired by the Contractor after date of award. All Non-Incumbent Employees shall receive a total pay and benefits package that provides for market-based retirement and medical benefit plans that are competitive with the industry from which the Contractor recruits its employees and in accordance with Contract requirements.

(3) Cash Compensation

(A) The Contractor shall submit the following to the Contracting Officer for a determination of cost allowability for reimbursement under the Contract:

(i) Any proposed major compensation program design changes prior to implementation.

(ii) Variable pay programs/incentives. If not already authorized under Appendix A of the contract, a justification shall be provided with proposed costs and impacts to budget, if any.

(iii) In the absence of Department policy to the contrary, (e.g., Secretarial pay freeze) a Contractor that meets the criteria as set forth below is not required to submit a Compensation Increase Plan (CIP) request to the Contracting Officer for an advance determination of cost allowability for a Merit Increase fund or Promotion/Adjustment fund:

(1) The Merit Increase fund does not exceed the mean percent increase included in the annual Departmental guidance providing the World at Work Salary Budget Survey's salary increase projected for the CIP year. The Promotion/Adjustment fund does not exceed 3.5% in total.

(2) The budget used for both Merit Increase funds and Promotion/Adjustment funds shall be based on the payroll for the end of the previous CIP year.

(3) Salary structure adjustments do not exceed the mean World at Work structure adjustments projected for the CIP year and communicated through the annual Department CIP guidance.

(4) Please note: No later than the first day of the CIP cycle, Contractors must provide notification to the Contracting Officer of planned increases and position to market data by mutually agreed-upon employment categories. No presumption of allow

ability will exist for employee job classes that exceed market position.

- (iv) If a Contractor does not meet the criteria included in (iii) above, a CIP must be submitted to the Contracting Officer for an advance determination of cost allowability, unless the Contracting Officer, in accordance with subparagraph (n) obtains an audit of the Contractor's compensation and benefits system and of its incurred costs from either DCAA, or an independent public accounting firm under the DOE contract for DCAA for such services. Otherwise, the CIP should include the following components and data:
- (1) Comparison of average pay to market average pay.
 - (2) Information regarding surveys used for comparison.
 - (3) Aging factors used for escalating survey data and supporting information.
 - (4) Projection of escalation in the market and supporting information.
 - (5) Information to support proposed structure adjustments, if any.
 - (6) Analysis to support special adjustments.
 - (7) Funding requests for each pay structure to include breakouts of merit, promotions, variable pay, special adjustments, and structure movement. (a) The proposed plan totals shall be expressed as a percentage of the payroll for the end of the previous CIP year. (b) All pay actions granted under the compensation increase plan are fully charged when they occur regardless of time of year in which the action transpires and whether the employee terminates before year end. (c) Specific payroll groups (e.g., exempt, nonexempt) for which CIP amounts are intended shall be defined by mutual agreement between the Contractor and the Contracting Officer. (d) The Contracting Officer may adjust the CIP amount after approval based on major changes in factors that significantly affect the plan amount (for example, in the event of a major reduction in force or significant ramp-up).

- (8) A discussion of the impact of budget and business constraints on the CIP amount.
 - (9) Comparison of pay to relevant factors other than market average pay.
 - (v) Individual compensation actions for the top Contractor official (e.g., project manager or equivalent) and Key Personnel not included in the CIP. For those Key Personnel included in the CIP, DOE will approve salaries upon the initial contract award and when Key Personnel are replaced during the life of the contract. DOE will have access to all individual salary reimbursements. This access is provided for transparency; DOE will not approve individual salary actions (except as previously stated).
- (B) The Contracting Officer's approval of individual compensation actions will be required only for the top Contractor official (e.g., project manager or equivalent) and Key Personnel as stated in (d)(3)(A)(vi) above. The base salary reimbursement level for the top Contractor official establishes the maximum allowable base salary reimbursement under the contract. Unusual circumstances may require a deviation for an individual on a case-by-case basis. Any such deviations must be approved by the Contracting Officer.
- (C) Severance Pay is not payable to an employee under this Contract if the employee:
- (i) Voluntarily separates, resigns, or retires from employment,
 - (ii) Is offered employment with a successor/replacement Contractor,
 - (iii) Is offered employment with a parent or affiliated company, or
 - (iv) Is discharged for a cause.
- (D) Service Credit for purposes of determining severance pay does not include any period of prior service for which severance pay has been previously paid through a DOE cost-reimbursement contract.
- (e) Pension and Other Benefit Programs
- (1) No presumption of allowability will exist when the Contractor implements a new benefit plan, or makes changes to existing benefit plans, and the Contractor has not provided the Contracting Officer the opportunity to review the

allowability of the changes prior to implementation. The Contractor shall submit for prior approval benefit changes that result in increases to the Department's long-term pension and other actuarial liabilities that are reported in the Department's financial statement and increases in other benefits such as paid time off, insurance, and employer contributions for defined contribution pension plans. Examples of benefits changes that increase the Department's long-term liabilities include defined benefit pension plan changes and postretirement benefits other than pensions. Any changes made by the Contractor shall be in accordance with and pursuant to the terms and conditions of the contract. Advance notification, rather than approval, is required for changes that do not increase costs and are not contrary to Departmental policy or written instruction.

- (2) The "Employee Benefits Value Study" and an "Employee Benefits Cost Survey Comparison" as described below, are methodologies designed to assist the Contracting Officer in contract administration and oversight. As an alternative to Employee Benefits Cost Survey Comparison, the Contracting Officer may obtain an audit of the Contractor's compensation and benefits system and of its incurred costs from either DCAA, or from DOE's independent public accounting firm (under contract with DOE), in accordance with subparagraph (n) to assist in determining whether costs are reasonable, allowable, allocable, and in accordance with the terms of the contract.
- (3) Unless otherwise stated, or as directed by the Contracting Officer, the Contractor shall submit the studies required in paragraphs (A) and (B) below. The studies shall be used by the Contractor in calculating the cost of benefits under existing benefit plans. An Employee Benefits Value (Ben-Val) Study Method using no less than 15 comparator organizations and an Employee Benefits Cost Survey Comparison method shall be used in this evaluation to establish an appropriate comparison method. In addition, the Contractor shall submit updated studies to the Contracting Officer for approval prior to the adoption of any change to a pension or other benefit plan which increases costs.
 - (A) The Ben-Val, every two years for each benefit tier (e.g., group of employees receiving a benefit package based on date of hire), which is an actuarial study of the relative value (RV) of the benefits programs offered by the Contractor to Employees measured against the RV of benefit programs offered by the Contracting Officer approved comparator companies. To the extent that the value studies do not address post-retirement benefits other than pensions, the Contractor shall provide a separate cost and plan design data comparison for the post-retirement benefits other than pensions using external benchmarks derived from nationally recognized and Contracting Officer approved survey sources and,
 - (B) An Employee Benefits Cost Study Comparison, annually for each benefit tier that analyzes the Contractor's employee benefits cost for employees as

a percent of payroll and compares it with the cost as a percent of payroll, including geographic factor adjustments, reported by the U.S. Department of Labor's Bureau of Labor Statistics or other Contracting Officer approved broad based national survey. Alternatively, in accordance with subparagraph (n) the Contracting Officer may obtain an audit of the Contractor's compensation and benefits system and of its incurred costs from either DCAA or from DOE's independent public accounting firm (under contract with DOE), and not require the submission of an Employee Benefits Cost Study.

- (4) When the net benefit value exceeds the comparator group by more than the percentage threshold established by the Head of the Contracting Activity the Contractor shall submit a corrective action plan to the Contracting Officer for approval, when and if requested in writing by the Contracting Officer.
- (5) When the benefit costs as a percent of payroll exceeds the comparator group by more than the percentage threshold established by the Head of the Contracting Activity, the Contractor shall submit a corrective action plan to the Contracting Officer for approval, when and if requested in writing by the Contracting Officer.
- (6) Within two years, or longer period as agreed to between the Contractor and the Contracting Officer, of the Contracting Officer acceptance of the Contractor's corrective action plan, the Contractor shall align employee benefit programs with the benefit value and the cost as a percent of payroll in accordance with its corrective action plan.
- (7) The Contractor may not terminate any benefit plan during the term of the Contract without the prior approval of the Contracting Officer in writing.
- (8) Cost reimbursement for post-retirement benefits other than pensions (PRBs) is contingent on DOE approved service eligibility requirements for PRB that shall be based on a minimum period of continuous employment service not less than 5 years under a DOE cost reimbursement contract(s) immediately prior to retirement. Unless required by Federal or State law, advance funding of PRBs is not allowable.
- (9) Each Contractor sponsoring a defined benefit pension plan and/or postretirement benefit plan will participate in the plan management process which includes written responses to a questionnaire regarding plan management, providing forecasted estimates of future reimbursements in connection with the plan(s) and participating in a conference call to discuss the Contractor submission (see (g)(6) below for Pension Management Plan requirements).
- (10) Each Contractor will respond to quarterly data calls issued through iBenefits, or its successor system.

- (f) Establishment and Maintenance of Pension Plans for which DOE Reimburses Costs
- (1) Employees working for the Contractor shall only accrue credit for service under this Contract after the date of Contract award.
 - (2) Except for Commingled Plans in existence as of the effective date of the Contract, any pension plan maintained by the Contractor for which DOE reimburses costs, shall be maintained as a separate pension plan distinct from any other pension plan that provides credit for service not performed under a DOE cost-reimbursement contract. When deemed appropriate by the Contracting Officer, Commingled Plans shall be converted to Separate Plans at the time of new contract award or the extension of a contract.
- (g) Basic Requirements
- (h) The Contractor shall adhere to the requirements set forth below in the establishment and administration of pension plans that are reimbursed by DOE pursuant to cost reimbursement contracts for management and operation of DOE facilities and pursuant to other cost reimbursement facilities contracts. Pension Plans include Defined Benefit and Defined Contribution plans.
- (1) The Contractor shall become a sponsor of the existing pension and other benefit plans (or comparable successor plans), including other PRB plans, as applicable, with responsibility for management and administration of the plans. The Contractor shall be responsible for maintaining the qualified status of those plans consistent with the requirements of ERISA and the Internal Revenue Code (IRC). The Contractor shall carry over the length of service credit and leave balances accrued as of the date of the Contractor's assumption of Contract performance.
 - (2) Each Contractor defined benefit and defined contribution pension plan shall be subjected to a limited-scope audit annually that satisfies the requirements of ERISA section 103, except that every third year the Contractor must conduct a full-scope audit of defined benefit plan(s) satisfying ERISA section 103. Alternatively, the Contractor may conduct a full-scope audit satisfying ERISA section 103 annually. In all cases, the Contractor must submit the audit results to the Contracting officer. In years in which a limited scope audit is conducted, the Contractor must provide the Contracting Officer with a copy of the qualified trustee or custodian's certification regarding the investment information that provides the basis for the plan sponsor to satisfy reporting requirements under ERISA section 104.

While there is no requirement to submit a full scope audit for defined contribution plans, contractors are responsible for maintaining adequate

controls for ensuring that defined contribution plan assets are correctly recorded and allocated to plan participants.

- (3) For existing Commingled Plans, the Contractor shall maintain and provide annual separate accounting of DOE liabilities and assets as for a Separate Plan.
 - (4) For existing Commingled Plans, the Contractor shall be liable for any shortfall in the plan assets caused by funding or events unrelated to DOE contracts.
 - (5) The Contractor shall comply with the requirements of ERISA if applicable to the pension plan and any other applicable laws.
 - (6) The Pension Management Plan (PMP) shall include a discussion of the Contractor's plans for management and administration of all pension plans consistent with the terms of the Contract. The PMP shall be submitted in the iBenefits system, or its successor system no later than January 31st of each applicable year. A full description of the necessary reporting will be provided in the annual management plan data request. Within sixty (60) days after the date of the submission, appropriate Contractor representatives shall participate in a conference call to discuss the Contractor's PMP submission and any other current plan issues or concerns.
- (i) Reimbursement of Contractors for Contributions to Defined Benefit Pension Plans
- (1) Contractors that sponsor single employer or multiple employer defined benefit pension plans will be reimbursed for the annual required minimum contributions under the Employee Retirement Income Security Act (ERISA), as amended by the Pension Protection Act (PPA) of 2006 and any other subsequent amendments. Reimbursement above the annual minimum required contribution will require prior approval of the Contracting Officer. Minimum required contribution amounts will take into consideration all pre-funding balances and funding standard carryover balances. Early in the fiscal year but no later than the end of November, the Contractor requesting above the minimum may submit/update a business case for funding above the minimum if preliminary approval is needed prior to the Pension Management Plan process. The business case shall include a projection of the annual minimum required contribution and the proposed contribution above the minimum. The submission of the business case will provide the opportunity for the Department to provide preliminary approval, within 30 days after contractor submission, pending receipt of final estimates, generally after January 1st of the calendar year. Final approval of funding will be communicated by the Head of Contracting Activity (HCA) when discount rates are finalized and it is known whether there are any budget issues with the proposed contribution amount.
 - (2) Contractors that sponsor multi-employer DB pension plans will be

reimbursed for pension contributions in the amounts necessary to ensure that the plans are funded to meet the annual minimum requirement under ERISA, as amended by the PPA. However, reimbursement for pension contributions above the annual minimum contribution required under ERISA, as amended by the PPA, will require prior approval of the Contracting Officer and will be considered on a case-by-case basis. Reimbursement amounts will take into consideration all pre-funding balances and funding standard carryover balances. Early in the fiscal year but no later than the end of November, the Contractor requesting above the minimum may submit/update a business case for funding above the minimum if preliminary approval is needed prior to the Pension Management Plan process. The business case shall include a projection of the annual minimum required contribution and the proposed contribution above the minimum. The submission of the business case will provide the opportunity for the Department to provide preliminary approval, within 30 days after contractor submission, pending receipt of final estimates, generally, after January 1st of the calendar year. Final approval of funding will be communicated by the HCA when discount rates are finalized, and it is known whether there are any budget issues with the proposed contribution amount.

(j) Reporting Requirements for Designated Contracts

The following reports shall be submitted to DOE as soon as possible after the last day of the plan year by the Contractor responsible for each designated pension plan funded by DOE but no later than the dates specified below:

- (1) Actuarial Valuation Reports. The annual actuarial valuation report for each DOE-reimbursed pension plan and when a pension plan is commingled, the Contractor shall submit separate reports for DOE's portion and the plan total by the due date for filing IRS Form 5500.
- (2) Forms 5300. Copies of all forms in the 5300 series submitted to the IRS that document the establishment, amendment, termination, spin-off, or merger of a plan submitted to the IRS.

(k) Changes to Pension Plan and PRB Plans

No presumption of allowability will exist when the Contractor makes changes to existing pension plans or PRB plans, and the Contractor has not provided the Contracting Officer the opportunity to review the allowability of the changes prior to implementation. The Contractor shall submit for prior approval changes that result in increases to the Department's long-term pension and PRB liabilities that are reported in the Department's financial statement. Examples of changes that increase the Department's long-term liabilities include defined benefit pension plan changes and PRB plan changes. At least sixty (60) days prior to the adoption of changes to a pension plan, the Contractor shall submit the information required below, to the

Contracting Officer. The Contracting Officer must approve plan changes that increase costs that increase the Department's long-term liabilities as part of a determination as to whether the costs are deemed allowable pursuant to FAR 31.205-6, as supplemented by DEAR 970.3102-05-6.

- (1) For proposed changes to pension plans and pension plan funding, the Contractor shall provide the following to the Contracting Officer:
 - (A) a copy of the current plan document (as conformed to show all prior plan amendments), with the proposed new amendment indicated in redline/strikeout;
 - (B) an analysis of the impact of any proposed changes on actuarial accrued liabilities and costs;
 - (C) except in circumstances where the Contracting Officer indicates that it is unnecessary, a legal explanation of the proposed changes from the counsel used by the plan for purposes of compliance with all legal requirements applicable to private sector defined benefit pension plans;
 - (D) the Summary Plan Description; and,
 - (E) any such additional information as requested by the Contracting Officer.
- (2) Contractors shall submit new benefit plans and changes to plan design or funding methodology with justification to the Contracting Officer for approval. The justification must:
 - (A) demonstrate the effect of the plan changes on the contract net benefit value or percent of payroll benefit costs,
 - (B) provide the dollar estimate of savings or costs, and
 - (C) provide the basis of determining the estimated savings or cost.

(l) Terminating Operations

When operations at a designated DOE facility are terminated and no further work is to occur under the prime contract, the following apply:

- (1) No further benefits for service shall accrue.
- (2) The Contractor shall provide a determination statement in its settlement proposal, defining and identifying all liabilities and assets attributable to the DOE contract.

- (3) The Contractor shall base its pension liabilities attributable to DOE contract work on the market value of annuities or lump sum payments or dispose of such liabilities through a competitive purchase of annuities or lump sum payouts.
- (4) Assets shall be determined using the “accrual-basis market value” on the date of termination of operations.
- (5) DOE and the Contractor(s) shall establish an effective date for spinoff or plan termination. On the same day as the Contractor notifies the IRS of the spinoff or plan termination, all plan assets assigned to a spun-off or terminating plan shall be placed in a low-risk liability matching portfolio until the successor trustee, or an insurance company, is able to assume stewardship of those assets.

(m) Terminating Plans

- (1) DOE contractors shall not terminate any pension plan (Commingled or site specific) without notifying the Department at least 60 days prior to the scheduled date of plan termination.
- (2) To the extent possible, the Contractor shall satisfy plan liabilities to plan participants by the purchase of annuities through competitive bidding on the open annuity market or lump sum payouts. The Contractor shall apply the assumptions and procedures of the Pension Benefit Guaranty Corporation.
- (3) Funds to be paid or transferred to any party as a result of settlements relating to pension plan termination or reassignment shall accrue interest from the effective date of termination or reassignment until the date of payment or transfer.
- (4) If ERISA or IRC rules prevent a full transfer of excess DOE reimbursed assets from the terminated plan, the Contractor shall pay any deficiency directly to DOE according to a schedule of payments to be negotiated by the parties.
- (5) On or before the same day as the Contractor notifies the IRS of the spinoff or plan termination, all plan assets assigned to a spun-off or terminating plan shall be placed in a low-risk liability matching portfolio until the successor trustee, or an insurance company, is able to assume stewardship of those assets.
- (6) DOE liability to a Commingled pension plan shall not exceed that portion which corresponds to DOE contract service. The DOE shall have no other liability to the plan, to the plan sponsor, or to the plan participants.
- (7) After all liabilities of the plan are satisfied, the Contractor shall return to DOE an amount equaling the asset reversion from the plan termination and any earnings which accrue on that amount because of a delay in the payment to DOE. Such amount and such earnings shall be subject to DOE audit. To effect the purposes of this paragraph, DOE and the Contractor may stipulate to a schedule of payments.

(n) Special Programs

Contractors must advise DOE and receive prior approval for each early-out program, window benefit, disability program, plan-loan feature, employee contribution refund, asset reversion, or incidental benefit.

(o) Alternate Contractor Human Resource Requirements

(1) Alternatively, the Contracting Officer may obtain an audit of the Contractor's compensation and benefits system and of its incurred costs from either DCAA or from DOE's independent public accounting firm (under contract with DOE); if the Contracting Officer does, the Contractor will not be required to submit the:

(A) Compensation Increase Plan; and/or

(B) Employee Benefits Cost Study.

(p) Definitions

- (1) **Commingled Plans.** Cover employees from the Contractor's private operations and its DOE contract work.
- (2) **Current Liability.** The sum of all plan liabilities to employees and their beneficiaries. Current liability includes only benefits accrued to the date of valuation. This liability is commonly expressed as a present value.
- (3) **Defined Benefit Pension Plan.** Provides a specific benefit at retirement that is determined pursuant to the formula in the pension plan document.
- (4) **Defined Contribution Pension Plan.** Provides benefits to each participant based on the amount held in the participant's account. Funds in the account may be comprised of employer contributions, employee contributions, investment returns on behalf of that plan participant and/or other amounts credited to the participant's account.
- (5) **Designated Contract.** For purposes of this clause, a contract (other than a prime cost reimbursement contract for management and operation of a DOE facility) for which the Head of the Departmental Contracting Activity determines that advance pension understandings are necessary or where there is a continuing Departmental obligation to the pension plan.
- (6) **Pension Fund.** The portfolio of investments and cash provided by employer and employee contributions and investment returns. A pension fund exists to defray pension plan benefit outlays and (at the option of the plan sponsor) the administrative expenses of the plan.

- (7) Separate Accounting. Account records established and maintained within a commingled plan for assets and liabilities attributable to DOE contract service. NOTE: The assets so represented are not for the exclusive benefit of any one group of plan participants.
- (8) Separate Plan. Must satisfy IRC Sec. 414(l) definition of a single plan, designate assets for the exclusive benefit of employees under DOE contract, exist under a separate plan document (having its own Department of Labor plan number) that is distinct from corporate plan documents and identify the Contractor as the plan sponsor.
- (9) Spun-off Plan. A new plan which satisfies IRC Reg. 1.414(l)-1 requirements for a single plan and which is created by separating assets and liabilities from a larger original plan. The funding level of each individual participant's benefits shall be no less than before the event, when calculated on a "plan termination basis."

(End of clause)

H.2 DOE-H-2002 NO THIRD-PARTY BENEFICIARIES (OCT 2014)

This Contract is for the exclusive benefit and convenience of the parties hereto. Nothing contained herein shall be construed as granting, vesting, creating, or conferring any right of action or any other right or benefit upon past, present, or future employees of the Contractor, or upon any other third party. This provision is not intended to limit or impair the rights which any person may have under applicable Federal statutes.

(End of Clause)

H.3 DOE-H-2005 ADVANCE UNDERSTANDING(S) (OCT 2014)

The following Advance Understanding(s) is (are) made a part of this contract:

TO BE COMPLETED UPON AWARD

(End of Clause)

H.4 DOE-H-2011 SUSTAINABLE ACQUISITIONS UNDER CONTRACTS FOR ELECTRONIC PRODUCTS (JUL 2018)

- (a) Definition. Electronic products, as used in this clause, means products that are dependent on electric currents or electromagnetic fields in order to work properly.
- (b) The contractor, when supplying electronic products in performance of, or delivery under the contract, shall ensure that the equipment is EPEAT-registered at the highest level (Bronze, Silver or Gold) available on the marketplace, which meets technical specifications.

(End of Clause)

H.5 DOE-H-2013 CONSECUTIVE NUMBERING (OCT 2014)

Due to automated procedures employed in formulating this document, clauses and provisions contained within may not always be consecutively numbered.

(End of Clause)

H.6 DOE-H-2019 DISPOSITION OF INTELLECTUAL PROPERTY – FAILURE TO COMPLETE CONTRACT PERFORMANCE (JUL 2018)

The following provision shall apply in the event the Contractor does not complete contract performance for any reason:

- (a) The Government may take possession of and use all technical data, including limited rights data, restricted computer software, and data and software obtained from subcontractors, licensors, and licensees, necessary to complete the work in conformance with this contract, including the right to use the data in any Government solicitations for the completion of the work contemplated under this contract. Technical data includes, but is not limited to, specifications, designs, drawings, operational manuals, flowcharts, software, databases and any other information necessary for of the completion of the work under this contract. Limited rights data and restricted computer software will be protected in accordance with the provisions of the Section I clause DEAR 970.5227-1 Rights in Data — Facilities. The Contractor shall ensure that its subcontractors and licensors make similar rights available to the Government and its contractors.

- (b) The Contractor agrees to and does hereby grant to the Government an irrevocable, non-exclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice by the Contractor, and any other intellectual property, including technical data, which are owned or controlled by the Contractor, at any time through completion of this contract and which are incorporated or embodied in the construction of the facilities or which are utilized in the operation or remediation of the facilities or which cover articles, materials or products manufactured at a facility: (1) to practice or to have practiced by or for the Government at the facility; and (2) to transfer such license with the transfer of that facility. The acceptance or exercise by the Government of the aforesaid rights and license shall not prevent the Government at any time from contesting the enforceability, validity or scope of, or title to, any rights or patents or other intellectual property herein licensed.
- (c) In addition, the Contractor will take all necessary steps to assign permits, authorizations, leases, and licenses in any third-party intellectual property to the Government, or such other third party as the Government may designate, that are necessary for the completion of the work contemplated under this Contract.

(End of Clause)

H.7 DOE-H-2021 WORK STOPPAGE AND SHUTDOWN AUTHORIZATION (OCT 2014)

- (a) Imminent Health and Safety Hazard is a given condition or situation which, if not immediately corrected, could result in a serious injury or death, including exposure to radiation and toxic/hazardous chemicals. Imminent Danger in relation to the facility safety envelope is a condition, situation, or proposed activity which, if not terminated, could cause, prevent mitigation of, or seriously increase the risk of (1) nuclear criticality, (2) radiation exposure, (3) fire/explosion, and/or (4) toxic hazardous chemical exposure.
- (b) Work Stoppage. In the event of an Imminent Health and Safety Hazard, identified by facility line management or operators or facility health and safety personnel overseeing facility operations, or other individuals, the individual or group identifying the imminent hazard situation shall immediately take actions to eliminate or mitigate the hazard (i.e., by directing the operator/implementer of the activity or process causing the imminent hazard to stop-work, or by initiating emergency response actions or other actions) to protect the health and safety of the workers and the public, and to protect U.S. Department of Energy (DOE) facilities and the environment. In the event an imminent health and safety hazard is identified, the individual or group identifying the hazard should coordinate with an appropriate Contractor official, who will direct the shutdown or other actions, as required. Such mitigating action should subsequently be coordinated with the DOE and Contractor management. The suspension or stop-work order should be promptly confirmed in writing by the Contracting Officer.

- (c) Shutdown. In the event of an imminent danger in relation to the facility safety envelope or a non-Imminent Health and Safety Hazard identified by facility line managers, facility operators, health and safety personnel overseeing facility operations, or other individuals, the individual or group identifying the potential health and safety hazard may recommend facility shutdown in addition to any immediate actions needed to mitigate the situation. However, the recommendation must be coordinated with Contractor management, and the DOE Site Manager. Any written direction to suspend operations shall be issued by the Contracting Officer, pursuant to the Clause entitled, “FAR 52.242-15, Stop-Work Order.”
- (d) Facility Representatives. DOE personnel designated as Facility Representatives provide the technical/safety oversight of operations. The Facility Representative has the authority to “stop-work,” which applies to the shutdown of an entire plant, activity, or job. This stop-work authority will be used for an operation of a facility which is performing work the Facility Representative believes:
- (1) Poses an imminent danger to health and safety of workers or the public if allowed to continue;
 - (2) Could adversely affect the safe operation of, or could cause serious damage to the facility if allowed to continue; or
 - (3) Could result in the release of radiological or chemical hazards to the environment in excess of regulatory limits.
- (e) This clause flows down to all subcontractors at all tiers. Therefore, the Contractor shall insert a clause, modified appropriately to substitute “Contractor Representatives” for “the Contracting Officer” in all subcontracts.

(End of Clause)

H.8 DOE-H-2022 CONTRACTOR BUSINESS SYSTEMS (OCT 2014)

Note that this clause is inoperative if award is made to a small business in instances where the solicitation is otherwise unrestricted.

- (a) This clause only applies to fixed-price contract awarded to a large business on the basis of adequate price competition with or without submission of cost or pricing data; or covered contract that is subject to the Cost Accounting Standards under 41 U.S.C. chapter 15, as implemented in regulations found at 48 CFR 9903.201-1(a) and is not exempted at 9903.201-1(b)(1) through (14) (see the 48 CFR Appendix).

(b) Definitions. As used in this clause—

Acceptable contractor business systems means contractor business systems that comply with the terms and conditions of the applicable business system clauses listed in the definition of “contractor business systems” in this clause.

Contractor business systems means—

- (1) Accounting system, if this contract includes the Section H clause Accounting System Administration;
- (2) Earned value management system, if this contract includes the Section H clause Earned Value Management System;
- (3) Estimating system, if this contract includes the Section H clause Cost Estimating System Requirements;
- (4) Property management system, if this contract includes the Section H clause Contractor Property Management System Administration; and
- (5) Purchasing system, if this contract includes the Section H clause Contractor Purchasing System Administration.

Significant deficiency, in the case of a contractor business system, means a shortcoming in the system that materially affects the ability of officials of the Department of Energy to rely upon information produced by the system that is needed for management purposes.

(c) General. The Contractor shall establish and maintain acceptable business systems in accordance with the terms and conditions of this contract. If the Contractor plans to adopt any existing business system from the previous Contractor, the Contractor is responsible for the system and shall comply with the system requirements and criteria required in that specific business system clause.

(d) Significant deficiencies.

- (1) The Contractor shall respond, in writing, within 30 days to an initial determination that there are one or more significant deficiencies in one or more of the Contractor’s business systems.
- (2) The Contracting Officer will evaluate the Contractor’s response and notify the Contractor, in writing, of the final determination as to whether the Contractor’s business system contains significant deficiencies. If the Contracting Officer determines that the Contractor’s business system contains

significant deficiencies, the final determination will include a notice to withhold payments.

- (3) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the final determination as to whether the Contractor's business system contains significant deficiencies. If the Contracting Officer determines that the Contractor's business system contains significant deficiencies, the final determination will include a notice to withhold payments.

(e) Withholding payments

- (1) If the Contracting Officer issues the final determination with a notice to withhold payments for significant deficiencies in a contractor business system required under this contract, the Contracting Officer will direct the Contractor, in writing, to withhold five percent from its invoices until the Contracting Officer has determined that the Contractor has corrected all significant deficiencies as directed by the Contracting Officer's final determination. The Contractor shall, within 45 days of receipt of the notice, either—

(A) Correct the deficiencies; or

(B) Submit an acceptable corrective action plan showing milestones and actions to eliminate the deficiencies. The plan shall contain—

(i) Root cause(s) identification of the problem(s);

(ii) The proposed corrective action(s) to address the root cause(s);

(iii) A schedule for implementation; and

(iv) The name of the person responsible for the implementation.

- (2) If the Contractor submits an acceptable corrective action plan within 45 days of receipt of a notice of the Contracting Officer's intent to withhold payments, and the Contracting Officer, in consultation with the auditor or functional specialist, determines that the Contractor is effectively implementing such plan, the Contracting Officer will direct the Contractor, in writing, to reduce the percentage withheld on invoices to two percent until the Contracting Officer determines the Contractor has corrected all significant deficiencies as directed by the Contracting Officer's final determination. However, if at any time, the Contracting Officer determines that the Contractor has failed to follow the accepted corrective action plan, the Contracting Officer will increase withholding and direct the Contractor,

in writing, to increase the percentage withheld on invoices to the percentage initially withheld, until the Contracting Officer determines that the Contractor has corrected all significant deficiencies as directed by the Contracting Officer's final determination.

- (3) Payment withhold percentage limits.
- (A) The total percentage of payments withheld on amounts due on this contract shall not exceed—
 - (i) Five percent for one or more significant deficiencies in any single contractor business system; and
 - (ii) Ten percent for significant deficiencies in multiple contractor business systems.
 - (B) If this contract contains pre-existing withholds, and the application of any subsequent payment withholds will cause withholding under this clause to exceed the payment withhold percentage limits in paragraph (e)(3)(i) of this clause, the Contracting Officer will reduce the payment withhold percentage in the final determination to an amount that will not exceed the payment withhold percentage limits.
- (4) For the purpose of this clause, payment means invoicing for any of the following payments authorized under this contract:
- (A) Interim payments under—
 - (i) Cost-reimbursement contracts;
 - (ii) Incentive type contracts;
 - (iii) Time-and-materials contracts; or
 - (iv) Labor-hour contracts.
 - (B) Progress payments to include fixed-price contracts.
 - (C) Performance-based payments to include fixed-price contracts.
- (5) Payment withholding shall not apply to payments on fixed-price line items where performance is complete and the items were accepted by the Government.

- (6) The withholding of any amount or subsequent payment to the Contractor shall not be construed as a waiver of any rights or remedies the Government has under this contract.
- (7) Notwithstanding the provisions of any clause in this contract providing for interim, partial, or other payment withholding on any basis, the Contracting Officer may withhold payment in accordance with the provisions of this clause.
- (8) The payment withholding authorized in this clause is not subject to the interest-penalty provisions of the Prompt Payment Act.

(f) Correction of deficiencies.

- (1) The Contractor shall notify the Contracting Officer, in writing, when the Contractor has corrected the business system's deficiencies.
- (2) Once the Contractor has notified the Contracting Officer that all deficiencies have been corrected, the Contracting Officer will take one of the following actions:
 - (A) If the Contracting Officer determines that the Contractor has corrected all significant deficiencies as directed by the Contracting Officer's final determination, the Contracting Officer will direct the Contractor, in writing, to discontinue the payment withholding from invoices under this contract associated with the Contracting Officer's final determination, and authorize the Contractor to bill for any monies previously withheld that are not also being withheld due to other significant deficiencies. Any payment withholding under this contract due to other significant deficiencies, will remain in effect until the Contracting Officer determines that those significant deficiencies are corrected.
 - (B) If the Contracting Officer determines that the Contractor still has significant deficiencies, the Contractor shall continue withholding amounts from its invoices in accordance with paragraph (e) of this clause, and not invoice for any monies previously withheld.
 - (C) If the Contracting Officer determines, based on the evidence submitted by the Contractor, that there is a reasonable expectation that the corrective actions have been implemented and are expected to correct the significant deficiencies, the Contracting Officer will discontinue withholding payments, and release any payments previously withheld directly related to the

significant deficiencies identified in the Contractor notification, and direct the Contractor, in writing, to discontinue the payment withholding from invoices associated with the Contracting Officer's final determination, and authorize the Contractor to bill for any monies previously withheld.

- (D) If, within 90 days of receipt of the Contractor notification that the Contractor has corrected the significant deficiencies, the Contracting Officer has not made a determination in accordance with paragraphs (f)(2)(i), (ii), or (iii) of this clause, the Contracting Officer will direct the Contractor, in writing, to reduce the payment withholding from invoices directly related to the significant deficiencies identified in the Contractor notification by a specified percentage that is at least 50 percent, but not authorize the Contractor to bill for any monies previously withheld until the Contracting Officer makes a determination in accordance with paragraphs (f)(2)(i), (ii), or (iii) of this clause.
- (E) At any time after the Contracting Officer directs the Contractor to reduce or discontinue the payment withholding from invoices under this contract, if the Contracting Officer determines that the Contractor has failed to correct the significant deficiencies identified in the Contractor's notification, the Contracting Officer will reinstate or increase withholding and direct the Contractor, in writing, to reinstate or increase the percentage withheld on invoices to the percentage initially withheld, until the Contracting Officer determines that the Contractor has corrected all significant deficiencies as directed by the Contracting Officer's final determination.

(End of Clause)

H.9 DOE-H-2023 COST ESTIMATING SYSTEM REQUIREMENTS (OCT 2014)

Note that this clause is inoperative if award is made to a small business in instances where the solicitation is otherwise unrestricted.

(a) Definitions.

Acceptable estimating system means an estimating system that complies with the system criteria in paragraph (d) of this clause, and provides for a system that—

- (1) Is maintained, reliable, and consistently applied;
- (2) Produces verifiable, supportable, documented, and timely cost estimates that are an acceptable basis for negotiation of fair and reasonable prices;
- (3) Is consistent with and integrated with the Contractor's related management systems; and
- (4) Is subject to applicable financial control systems.

Estimating system means the Contractor's policies, procedures, and practices for budgeting and planning controls, and generating estimates of costs and other data included in proposals submitted to customers in the expectation of receiving contract awards or contract modifications. Estimating system includes the Contractor's—

- (1) Organizational structure;
- (2) Established lines of authority, duties, and responsibilities;
- (3) Internal controls and managerial reviews;
- (4) Flow of work, coordination, and communication; and
- (5) Budgeting, planning, estimating methods, techniques, accumulation of historical costs, and other analyses used to generate cost estimates.

Significant deficiency means a shortcoming in the system that materially affects the ability of officials of the Department of Energy to rely upon information produced by the system that is needed for management purposes.

(b) General. The Contractor shall establish, maintain, and comply with an acceptable estimating system.

(c) Applicability. Paragraphs (d) and € of this clause apply if the Contractor is a large business to include a contractor teaming arrangement, as defined at 48 CFR 9.601(1), performing a contract in support of a Capital Asset Project (other than a management and operating contract as described at 917.6), as prescribed in DOE Order (DOE O) 413.3B, or current version; or a non-capital asset project and either—

- (1) The total prime contract value exceeds \$50 million, including options; or

- (2) The Contractor was notified, in writing, by the Contracting Officer that paragraphs (d) and (e) of this clause apply.

(d) System requirements.

- (1) The Contractor shall disclose its estimating system to the Contracting Officer, in writing. If the Contractor wishes the Government to protect the information as privileged or confidential, the Contractor must mark the documents with the appropriate legends before submission. If the Contractor plans to adopt the existing system from the previous Contractor, the Contractor is responsible for the system and shall comply with the system requirements required in this clause.
- (2) An estimating system disclosure is acceptable when the Contractor has provided the Contracting Officer with documentation no later than 60 days after contract award that—
 - (A) Accurately describes those policies, procedures, and practices that the Contractor currently uses in preparing cost proposals; and
 - (B) Provides sufficient detail for the Government to reasonably make an informed judgment regarding the acceptability of the Contractor's estimating practices.
- (3) The Contractor shall—
 - (A) Comply with its disclosed estimating system; and
 - (B) Disclose significant changes to the cost estimating system to the Contracting Officer on a timely basis.
- (4) The Contractor's estimating system shall provide for the use of appropriate source data, utilize sound estimating techniques and good judgment, maintain a consistent approach, and adhere to established policies and procedures. An acceptable estimating system shall accomplish the following functions:
 - (A) Establish clear responsibility for preparation, review, and approval of cost estimates and budgets.
 - (B) Provide a written description of the organization and duties of the personnel responsible for preparing, reviewing, and approving cost estimates and budgets.
 - (C) Ensure that relevant personnel have sufficient training, experience, and guidance to perform estimating and budgeting tasks in accordance with the Contractor's established procedures.

- (D) Identify and document the sources of data and the estimating methods and rationale used in developing cost estimates and budgets.
 - (E) Provide for adequate supervision throughout the estimating and budgeting process.
 - (F) Provide for consistent application of estimating and budgeting techniques.
 - (G) Provide for detection and timely correction of errors.
 - (H) Protect against cost duplication and omissions.
 - (I) Provide for the use of historical experience, including historical vendor pricing information, where appropriate.
 - (J) Require use of appropriate analytical methods.
 - (K) Integrate information available from other management systems.
 - (L) Require management review, including verification of compliance with the company's estimating and budgeting policies, procedures, and practices.
 - (M) Provide for internal review of, and accountability for, the acceptability of the estimating system, including the budgetary data supporting indirect cost estimates and comparisons of projected results to actual results, and an analysis of any differences.
 - (N) Provide procedures to update cost estimates and notify the Contracting Officer in a timely manner.
 - (O) Provide procedures that ensure subcontract prices are reasonable based on a documented review and analysis provided with the prime proposal, when practicable.
 - (P) Provide estimating and budgeting practices that consistently generate sound proposals that are compliant with the provisions of the solicitation and are adequate to serve as a basis to reach a fair and reasonable price.
 - (Q) Have an adequate system description, including policies, procedures, and estimating and budgeting practices, that comply with the Federal Acquisition Regulation (48 CFR chapter 1) and Department of Energy Acquisition Regulation (48 CFR chapter 9).
- (e) Significant deficiencies.

- (1) The Contracting Officer will provide an initial determination to the Contractor, in writing, of any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.
- (2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's estimating system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing. In the event the Contractor did not respond in writing to the initial determination within the response time, this lack of response shall indicate that the Contractor agrees with the initial determination.
- (3) The Contracting Officer will evaluate the Contractor's response or the Contractor's lack of response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—
 - (A) Remaining significant deficiencies;
 - (B) The adequacy of any proposed or completed corrective action; and
 - (C) System disapproval, if the Contracting Officer determines that one or more significant deficiencies remain.
- (f) Significant deficiencies. If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the significant deficiencies.
- (g) Withholding payments. If the Contracting Officer makes a final determination to disapprove the Contractor's estimating system, and the contract includes the Section H clause Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

(End of Clause)

H.10 DOE-H-2024 EARNED VALUE MANAGEMENT SYSTEM (MAR 2019)

“Acceptable Earned Value Management System” means an EVMS that complies with system criteria set forth in paragraph (a) this clause.

“Contract Funds Status Report” (CFSR) includes data to support forecasting, planning and decision making. DOE’s CFSR Data Item Description (DID) is to be used for the CFSR.

“Earned Value Management System” (EVMS) means an integrated set of policies, procedures and practices to objectively track performance on a project or program.

“Integrated Master Plan” (IMP) means an event-based plan consisting of a hierarchy of program events, each supported by specific accomplishments, and each accomplishment associated with specific criteria to be satisfied for its completion.

“Integrated Master Schedule” (IMS) means a networked, multi-layered list of tasks required to complete the work captured in a related IMP. The IMS should include all IMP events and accomplishments and support each accomplishment closure criteria. The IMS should contain a critical path and be resource-loaded with labor, material and equipment costs to include unit prices and quantities.

“Integrated Performance Management Report” (IPMR) includes data submitted monthly by the contractor from its EVMS. DOE’s IPMR DID is to be used for the IPMR.

“Over Target Baseline” (OTB) means an overrun to the Contract Budget Base (CBB), which is formally incorporated into the Performance Measurement Baseline (PMB) for management purposes.

“Over Target Schedule” (OTS) means the condition in which a baseline schedule is time-phased beyond the contract completion date.

“Significant deficiency” means a shortcoming in the system that materially affects the ability of DOE officials to rely upon information produced by the EVMS for management purposes.

“Work Breakdown Structure” means a product-oriented hierarchy of tasks to be performed by the project team in support of project objectives.

(a) System criteria. In performing this contract, the Contractor shall establish, maintain, and use—

- (1) Integrated performance management system. Central to this system shall be an EVMS that that complies with the Electronic Industries Alliance Standard 748 (EIA-748, current version at time of award), including a System Description. The EVMS shall be linked to and supported by the contractor’s various management systems, including work definition, planning and scheduling, work authorization

and budgeting, performance measurement and analysis, change management, materials and subcontract management, cost estimating, accounting, and risk management.

(2) Management procedures. The contractor shall have procedures that enable timely, reliable, and verifiable information.

(A) Pursuant to the IPMR and IMS data items under this contract, the contractor shall maintain an IPMR and IMS that logically networks all project activities, reflecting the National Defense Industrial Association (NDIA) Planning & Scheduling Excellence Guide and the GAO Schedule Assessment Guide.

(B) As required by the CFSR data item under this contract, the contractor shall develop and submit a CFSR, and must reconcile the CFSR with the IPMR on a quarterly basis.

(C) All reporting must correspond to the applicable WBS elements and shall be submitted timely and accurately and be current as of the close of the previous month's accounting period. (Note: The contractor should not establish a separate or unique internal performance management system solely for the purposes of the contract.)

(D) IPMR and CFSR data shall be submitted by the Contractor by uploading the data into Project Assessment and Reporting System (PARS) in accordance with the "Contractor Project Performance Upload Requirements" document maintained by the DOE Office of Project Management.

(b) EVMS certification.

(1) For contracts supporting projects valued at \$100M or more, the contractor's EVMS must be formally certified by the cognizant Federal agency as compliant with the EIA-748 guidelines (current version at the time of award). Pursuant to DOE Order 413.3B, the DOE Office of Project Management is DOE's EVMS certifying authority. If, at the time of award, the contractor's EVMS has not been determined to be in compliance with the EIA-748 guidelines, the contractor shall apply its current system to the contract and shall take necessary actions to meet the milestones in its EVMS plan.

(2) For contracts supporting projects valued at less than \$100M but greater than \$50M, the contractor's EVMS must be compliant with EIA-748; however, external certification is not required. The use of the contractor's EVMS for this contract does not imply a Government determination of EIA-748 compliance for application to future contracts.

(c) Changes to the EVMS. The Contractor shall submit notification of all proposed changes to the EVMS procedures and the impact of those changes to the Contracting

- Officer. If the contractor has one or more contracts in support of DOE capital asset projects that are valued at \$100M or more, unless a waiver is granted by DOE, any EVMS changes proposed by the contractor require approval of DOE prior to implementation. DOE will advise the contractor of the acceptability of such changes as soon as practicable (generally within 30 calendar days) after receipt of the contractor's notice of proposed changes. If DOE waives the advance approval requirements, the Contractor shall disclose EVMS changes to DOE at least 14 calendar days prior to the effective date of implementation.
- (d) Integrated baseline reviews. DOE will conduct an Integrated Baseline Review (IBR) not later than 180 calendar days after contract award, the exercise of significant contract options, and the incorporation of major modifications. DOE and the contractor will use the IBR process described in the NDIA IBR Guide (or current version). During IBRs, the project baseline will be jointly scrutinized by the Government and the contractor to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.
 - (e) Access to records. The Contractor shall provide access to all pertinent records and data requested by the Contracting Officer or duly authorized representative to permit surveillance to ensure that the EVMS continues to comply with the criteria referenced in paragraph (a) of this clause.
 - (f) Restructuring actions. In the event that the contractor concludes the performance baseline no longer represents a realistic plan, the contractor may determine that an over-target schedule or over-target baseline restructuring action is necessary. The contractor shall obtain approval of the Contracting Officer prior to implementing such restructuring actions. The request should also include detailed implementation procedures as well as a timeframe in accordance with the System Description. DOE will acknowledge receipt of the request in a timely manner (generally within 30 calendar days).
 - (g) Significant deficiencies.
 - (1) The Contracting Officer will provide a determination to the contractor, in writing, on any significant EVMS deficiencies. The determination will describe the deficiency in sufficient detail to allow the contractor to understand the deficiency.
 - (2) The contractor shall respond within 30 working days to a written determination from the Contracting Officer that identifies significant deficiencies in the contractor's EVMS. If the contractor disagrees with the determination, the contractor shall state, in writing, its rationale for disagreeing. In the event the contractor does not respond in writing to the determination within the response time, this shall indicate that the Contractor agrees with the determination.

- (3) The Contracting Officer will evaluate the contractor's response or lack of response and notify the contractor, in writing, of the Contracting Officer's final determination concerning—
 - (A) Remaining significant deficiencies;
 - (B) The adequacy of any proposed or completed corrective action;
 - (C) System noncompliance, when the contractor's existing EVMS fails to comply with the EVMS guidelines in EIA-748; and
 - (D) System disapproval, if corrections to the contractor's EVMS are not successfully completed within the timeframe set forth by the Contracting Officer. When the Contracting Officer determines that the existing EVMS contains one or more significant deficiencies, the Contracting Officer will use discretion to disapprove the EVMS based on input received from the DOE Office of Project Management.
- (4) When the contractor receives the Contracting Officer's determination of significant deficiencies, the contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the significant deficiencies.
 - (h) Withholding payments. In the event that the contractor's EVMS is disapproved in accordance with subparagraph (g)(3)(iv), the Contracting Officer will withhold payments until which time the contractor has resolved all EVMS deficiencies.
 - (i) Flow down requirements. With the exception of paragraphs (g) and (h) of this clause, for contracts supporting projects requiring EVMS, the contractor shall flow down appropriate EVMS requirements to its subcontractors.
 - (1) The EVMS certification requirement applies to subcontractors meeting the criteria in paragraph (b) of this clause. In this event, the cognizant Federal agency, working through the prime contractor, will assess whether the subcontractor's system satisfies the EVMS guidelines contained in EIA-748.
 - (2) The prime contractor is responsible for reviewing and assuring the validity of all subcontractor reports. Cost and schedule reporting requirements are not to be confused with EVMS certification, as described in paragraph (i)(1) above.

- (3) For subcontracts valued at \$100 million or more, the following subcontractors shall comply with the requirements of this clause, excluding those in paragraphs (g) and (h):

TBD

- (4) For subcontracts valued at less than \$100 million, the following subcontractors shall comply with the requirements of this clause, excluding those in paragraphs (g) and (h):

TBD

- (j) Extending a previous contractor's certified EVMS. If a contractor plans to adopt the existing system from the previous contractor or DOE site, the contractor is responsible for the system and shall comply with the system requirements required in this clause. The existing system shall utilize the same DOE-approved processes and procedures as the previous system. The contractor shall—

- (1) Identify the corporate entity that owns the certified EVMS and provide the certification documentation;
- (2) Obtain prior approval from the Contracting Officer, who will be advised by the Office of Project Management, for proposed EVMS and surveillance changes;
- (3) Be responsible for full compliance with paragraph (a) of this clause; and
- (4) Be responsible for correcting any significant deficiencies previously identified to the previous contractor by the Contracting Officer in accordance with paragraph (g) of this clause. Within 45 days after receiving a copy of the previous contractor's final determination, the contractor shall either correct any significant deficiencies or submit an acceptable corrective action plan. The Contracting Officer, working jointly with the Office of Project Management, will provide a written final determination—to potentially include an implementation review—before extending the certification.

(End of Clause)

H.11 DOE-H-2025 ACCOUNTING SYSTEM ADMINISTRATION (OCT 2014)

Note that this clause is inoperative if award is made to a small business in instances where the solicitation is otherwise unrestricted.

- (a) Definitions. As used in this clause—
- (1) Acceptable accounting system means a system that complies with the system criteria in Paragraph (c) of this clause to provide reasonable assurance that—

- (A) Applicable laws and regulations are complied with;
 - (B) The accounting system and cost data are reliable;
 - (C) Risk of misallocations and mischarges are minimized; and
 - (D) Contract allocations and charges are consistent with billing procedures.
- (2) Accounting system means the Contractor's system or systems for accounting methods, procedures, and controls established to gather, record, classify, analyze, summarize, interpret, and present accurate and timely financial data for reporting in compliance with applicable laws, regulations, and management decisions, and may include subsystems for specific areas such as indirect and other direct costs, compensation, billing, labor, and general information technology.
- (3) Significant deficiency means a shortcoming in the system that materially affects the ability of officials of the Department of Energy to rely upon information produced by the system that is needed for management purposes.
- (b) General. The Contractor shall establish and maintain an acceptable accounting system. If the Contractor plans to adopt the existing system from the previous Contractor, the Contractor is responsible for the system and shall comply with the system criteria required in this clause. The Contractor shall provide in writing to the Contracting Officer documentation that its accounting system meets the system criteria in paragraph (c) of this clause no later than 60 days after contract award. Failure to maintain an acceptable accounting system, as defined in this clause, shall result in the withholding of payments if the contract includes the Section H clause Contractor Business Systems, and also may result in disapproval of the system.
- (c) System criteria. The Contractor's accounting system shall provide for—
- (1) A sound internal control environment, accounting framework, and organizational structure;
 - (2) Proper segregation of direct costs from indirect costs;
 - (3) Identification and accumulation of direct costs by contract;
 - (4) A logical and consistent method for the accumulation and allocation of indirect costs to intermediate and final cost objectives;
 - (5) Accumulation of costs under general ledger control;

- (6) Reconciliation of subsidiary cost ledgers and cost objectives to general ledger;
- (7) Approval and documentation of adjusting entries;
- (8) Management reviews or internal audits of the system to ensure compliance with the Contractor's established policies, procedures, and accounting practices;
- (9) A timekeeping system that identifies employees' labor by intermediate or final cost objectives;
- (10) A labor distribution system that charges direct and indirect labor to the appropriate cost objectives;
- (11) Interim (at least monthly) determination of costs charged to a contract through routine posting of books of account;
- (12) Exclusion from costs charged to Government contracts of amounts which are not allowable in terms of 48 CFR part 31, Contract Cost Principles and Procedures, and other contract provisions;
- (13) Identification of costs by contract line item and by units (as if each unit or line item were a separate contract), if required by the contract;
- (14) Segregation of preproduction costs from production costs, as applicable;
- (15) Cost accounting information, as required—
 - (A) By contract clauses concerning limitation of cost (48 CFR 52.232-20), limitation of funds (48 CFR 52.232-22), or allowable cost and payment (48 CFR 52.216-7); and
 - (B) To readily calculate indirect cost rates from the books of accounts;
- (16) Billings that can be reconciled to the cost accounts for both current and cumulative amounts claimed and comply with contract terms;
- (17) Adequate, reliable data for use in pricing follow-on acquisitions; and
- (18) Accounting practices in accordance with standards promulgated by the Cost Accounting Standards Board, if applicable, otherwise, Generally Accepted Accounting Principles.

(d) Significant deficiencies.

- (1) The Contracting Officer will provide an initial determination to the Contractor, in writing, on any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.
- (2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's accounting system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing. In the event the Contractor did not respond in writing to the initial determination within the response time, this lack of response shall indicate that the Contractor agrees with the initial determination.
- (3) The Contracting Officer will evaluate the Contractor's response or the Contractor's lack of response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—
 - (A) Remaining significant deficiencies;
 - (B) The adequacy of any proposed or completed corrective action; and
 - (C) System disapproval, if the Contracting Officer determines that one or more significant deficiencies remain.
- (e) If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the significant deficiencies.
- (f) Withholding payments. If the Contracting Officer makes a final determination to disapprove the Contractor's accounting system, and the contract includes the Section H clause Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

(End of Clause)

**H.12 DOE-H-2026 CONTRACTOR PURCHASING SYSTEM ADMINISTRATION
(OCT 2014)**

Note that this clause is inoperative if award is made to a small business in instances where the solicitation is otherwise unrestricted.

(a) Definitions. As used in this clause—

Acceptable purchasing system means a purchasing system that complies with the system criteria in paragraph (c) of this clause.

Purchasing system means the Contractor's system or systems for purchasing and subcontracting, including make-or-buy decisions, the selection of vendors, analysis of quoted prices, negotiation of prices with vendors, placing and administering of orders, and expediting delivery of materials.

Significant deficiency means a shortcoming in the system that materially affects the ability of officials of the Department of Energy to rely upon information produced by the system that is needed for management purposes.

(b) General. The Contractor shall establish and maintain an acceptable purchasing system. If the Contractor plans to adopt the existing system from the previous Contractor, the Contractor is responsible for the system and shall comply with the system criteria required in this clause. The Contractor shall provide in writing to the Contracting Officer documentation that its purchasing system meets the system criteria in paragraph (c) of this clause no later than 60 days after contract award. Failure to maintain an acceptable purchasing system, as defined in this clause, may result in disapproval of the system by the Contracting Officer and/or withholding of payments.

(c) System criteria. The Contractor's purchasing system shall—

- (1) Have an adequate system description including policies, procedures, and purchasing practices that comply with the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) and the Department of Energy Acquisition Regulation (48 CFR Chapter 9);
- (2) Ensure that all applicable purchase orders and subcontracts contain all flowdown clauses, including terms and conditions and any other clauses needed to carry out the requirements of the prime contract;
- (3) Maintain an organization plan that establishes clear lines of authority and responsibility;
- (4) Ensure all purchase orders are based on authorized requisitions and include a complete and accurate history of purchase transactions to support vendor selected, price paid, and document the subcontract/purchase order files which are subject to Government review;

- (5) Establish and maintain adequate documentation to provide a complete and accurate history of purchase transactions to support vendors selected and prices paid;
- (6) Apply a consistent make-or-buy policy that is in the best interest of the Government;
- (7) Use competitive sourcing to the maximum extent practicable, and ensure debarred or suspended contractors are properly excluded from contract award;
- (8) Evaluate price, quality, delivery, technical capabilities, and financial capabilities of competing vendors to ensure fair and reasonable prices;
- (9) Require management level justification and adequate cost or price analysis, as applicable, for any sole or single source award;
- (10) Perform timely and adequate cost or price analysis and technical evaluation for each subcontractor and supplier proposal or quote to ensure fair and reasonable subcontract prices;
- (11) Document negotiations in accordance with 48 CFR 15.406-3;
- (12) Seek, take, and document economically feasible purchase discounts, including cash discounts, trade discounts, quantity discounts, rebates, freight allowances, and company-wide volume discounts;
- (13) Ensure proper type of contract selection and prohibit issuance of cost-plus-a-percentage-of-cost subcontracts;
- (14) Maintain subcontract surveillance to ensure timely delivery of an acceptable product and procedures to notify the Government of potential subcontract problems that may impact delivery, quantity, or price;
- (15) Document and justify reasons for subcontract changes that affect cost or price;
- (16) Notify the Government of the award of all subcontracts that contain the 48 CFR Chapter 1 and 48 CFR Chapter 9 flowdown clauses that allow for Government audit of those subcontracts, and ensure the performance of audits of those subcontracts;
- (17) Enforce adequate policies on conflict of interest, gifts, and gratuities, including the requirements of the 41 U.S.C. chapter 87, Kickbacks;

- (18) Perform internal audits or management reviews, training, and maintain policies and procedures for the purchasing department to ensure the integrity of the purchasing system;
 - (19) Establish and maintain policies and procedures to ensure purchase orders and subcontracts contain mandatory and applicable flowdown clauses, as required by the 48 CFR chapter 1, including terms and conditions required by the prime contract and any clauses required to carry out the requirements of the prime contract;
 - (20) Provide for an organizational and administrative structure that ensures effective and efficient procurement of required quality materials and parts at the best value from responsible and reliable sources;
 - (21) Establish and maintain selection processes to ensure the most responsive and responsible sources for furnishing required quality parts and materials and to promote competitive sourcing among dependable suppliers so that purchases are reasonably priced and from sources that meet contractor quality requirements;
 - (22) Establish and maintain procedures to ensure performance of adequate price or cost analysis on purchase actions;
 - (23) Establish and maintain procedures to ensure that proper types of subcontracts are selected, and that there are controls over subcontracting, including oversight and surveillance of subcontracted effort; and
 - (24) Establish and maintain procedures to timely notify the Contracting Officer, in writing, if-
 - (A) The Contractor changes the amount of subcontract effort after award such that it exceeds 70 percent of the total cost of the work to be performed under the contract, task order, or delivery order. The notification shall identify the revised cost of the subcontract effort and shall include verification that the Contractor will provide added value; or
 - (B) Any subcontractor changes the amount of lower-tier subcontractor effort after award such that it exceeds 70 percent of the total cost of the work to be performed under its subcontract. The notification shall identify the revised cost of the subcontract effort and shall include verification that the subcontractor will provide added value as related to the work to be performed by the lower-tier subcontractor(s).
- (d) Significant deficiencies.

- (1) The Contracting Officer will provide notification of initial determination to the Contractor, in writing, of any significant deficiencies. The initial determination will describe the in sufficient detail to allow the Contractor to understand the deficiency.
- (2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's purchasing system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing. In the event the Contractor did not respond in writing to the initial determination within the response time, this lack of response shall indicate that the Contractor agrees with the initial determination.
- (3) The Contracting Officer will evaluate the Contractor's response or the Contractor's lack of response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—
 - (A) Remaining significant deficiencies;
 - (B) the adequacy of any proposed or completed corrective action; and
 - (C) System disapproval, if the Contracting Officer determines that one or more significant deficiencies remain.
- (e) If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the deficiencies.
- (f) Withholding payments. If the Contracting Officer makes a final determination to disapprove the Contractor's purchasing system, and the contract includes the Section H clause Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

(End of Clause)

H.13 DOE-H-2027 CONTRACTOR PROPERTY MANAGEMENT SYSTEM ADMINISTRATION (OCT 2014)

Note that this clause is inoperative if award is made to a small business in instances where the solicitation is otherwise unrestricted.

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

Acceptable property management system means a property system that complies with the system criteria in paragraph (c) of this clause.

Property management system means the Contractor's system or systems for managing and controlling Government property.

Significant deficiency means a shortcoming in the system that materially affects the ability of officials of the Department of Energy to rely upon information produced by the system that is needed for management purposes.

- (b) General. The Contractor shall establish and maintain an acceptable property management system. If the Contractor plans to adopt the existing system from the previous Contractor, the Contractor is responsible for the system and shall comply with the system criteria required in this clause. The Contractor shall provide in writing to the Contracting Officer documentation that its property management system meets the system criteria in paragraph (c) of this clause no later than 60 days after contract award. Failure to maintain an acceptable property management system, as defined in this clause, may result in disapproval of the system by the Contracting Officer and/or withholding of payments.
- (c) System criteria. The Contractor's property management system shall be in accordance with paragraph (f) of the contract clause at 48 CFR 52.245-1.
- (d) Significant deficiencies.
 - (1) The Contracting Officer will provide an initial determination to the Contractor, in writing, of any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.
 - (2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's property management system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing. In the event the Contractor did not respond in writing to the initial determination within the response time, this lack of response shall indicate that the Contractor agrees with the initial determination.
 - (3) The Contracting Officer will evaluate the Contractor's response or the Contractor's lack of response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—
 - (A) Remaining significant deficiencies;

- (B) The adequacy of any proposed or completed corrective action; and
 - (C) System disapproval, if the Contracting Officer determines that one or more significant deficiencies remain.
- (e) If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the significant deficiencies.
- (f) Withholding payments. If the Contracting Officer makes a final determination to disapprove the Contractor's property management system, and the contract includes the Section H clause Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

(End of Clause)

H.14 DOE-H-2033 ALTERNATIVE DISPUTE RESOLUTION (OCT 2014)

- (a) The DOE and the Contractor both recognize that methods for fair and efficient resolution of contractual issues in controversy by mutual agreement are essential to the successful and timely completion of contract requirements. Accordingly, DOE and the Contractor shall use their best efforts to informally resolve any contractual issue in controversy by mutual agreement. Issues of controversy may include a dispute, claim, question, or other disagreement. The parties agree to negotiate with each other in good faith, recognizing their mutual interests, and attempt to reach a just and equitable solution satisfactory to both parties.
- (b) If a mutual agreement cannot be reached through negotiations within a reasonable period of time, the parties may use a process of alternate dispute resolution (ADR) in accordance with the clause at FAR 52.233-1 entitled, *Disputes*. The ADR process may involve mediation, facilitation, fact-finding, group conflict management, and conflict coaching by a neutral party. The neutral party may be an individual, a board comprised of independent experts, or a company with specific expertise in conflict resolution or expertise in the specific area of controversy. The neutral party will not render a binding decision but will assist the parties in reaching a mutually satisfactory agreement. Any opinions of the neutral party shall not be admissible as evidence in any subsequent litigation proceedings.
- (c) Either party may request that the ADR process be used. The Contractor shall make a written request to the CO, and the CO shall make a written request to the appropriate official of the Contractor. A voluntary election by both parties is required to participate in the ADR process. The parties must agree on the procedures and terms of the process,

and officials of both parties who have the authority to resolve the issue must participate in the agreed-upon process.

- (d) ADR procedures may be used at any time that the CO has the authority to resolve the issue in controversy. If a claim has been submitted by the Contractor, ADR procedures may be applied to all or a portion of the claim. If ADR procedures are used subsequent to issuance of a CO's final decision under the clause at FAR 52.233-1 entitled, *Disputes*, their use does not alter any of the time limitations or procedural requirements for filing an appeal of the CO's final decision and does not constitute reconsideration of the final decision.
- (e) If the CO rejects the Contractor's request for ADR proceedings, the CO shall provide the Contractor with a written explanation of the specific reasons the ADR process is not appropriate for the resolution of the dispute. If the Contractor rejects the CO's request to use ADR procedures, the Contractor shall provide the CO with the reasons for rejecting the request.

(End of Clause)

H.15 DOE-H-2034 CONTRACTOR INTERFACE WITH OTHER CONTRACTORS AND/OR GOVERNMENT EMPLOYEES (OCT 2014) (REVISED)

The Government may award contracts to other contractors for work to be performed at a DOE-owned or DOE-controlled site or facility. The Contractor shall cooperate fully with all other onsite DOE contractors and Government employees. The Contractor shall coordinate its own work with such other work as may be directed by the CO or a duly authorized representative. The Contractor shall not commit any act which will interfere with the performance of work by any other contractor or by a Government employee and seek CO direction if there is an unresolved conflict.

(End of Clause)

H.16 DOE-H-2035 ORGANIZATIONAL CONFLICT OF INTEREST MANAGEMENT PLAN (OCT 2014)

Within 15 days after the Notice to Proceed, the Contractor shall submit to the CO for approval an Organizational Conflict of Interest (OCI) Management Plan (Plan). The Plan shall describe the Contractor's program to identify, avoid, neutralize, or mitigate potential or actual conflicts of interest that exist or may arise during contract performance and otherwise comply with the requirements of the clause at DEAR 952.209-72 entitled, *Organizational Conflicts of Interest*. The Plan shall be periodically updated as required during the term of the contract. The Plan shall include, as a minimum, the following:

- (a) The procedures for identifying and evaluating past, present, and anticipated contracts of the Contractor, its related entities and other performing entities under the Contract.
- (b) The procedures the Contractor will utilize to avoid, neutralize, or mitigate potential or actual conflicts of interest.
- (c) The procedures for reporting actual or potential conflicts of interest to the CO. The resolution of potential or actual conflicts of interest that exist or may arise during contract performance shall be documented as part of the Plan.
- (d) The procedures the Contractor will utilize to oversee, implement, and update the Plan, to include assigning responsibility for management, oversight and compliance to an individual in the Contractor's organization with full authority to implement the Plan.
- (e) The procedures for ensuring all required representations, certifications and factual analyses are submitted to the CO for approval in a timely manner.
- (f) The procedures for protecting agency information that could lead to an unfair competitive advantage if disclosed including collecting disclosure agreements covering all individuals, subcontractors, and other entities with access to agency-sensitive information and physical safeguarding of such information.
- (g) An OCI training and awareness program that includes periodic, recurring training and a process to evidence employee participation.
- (h) The enforceable, employee disciplinary actions to be used by the Contractor for violation of OCI requirements.

(End of Clause)

H.17 DOE-H-2041 SUSTAINABLE ACQUISITION UNDER DOE SERVICE CONTRACTS (OCT 2014)

- (a) Pursuant to Executive Orders 13423, Strengthening Federal Environmental, Energy and Transportation Management, and 13514, Federal Leadership in Environmental, Energy, and Economic Performance, the Department of Energy is committed to managing its facilities in a manner that will promote the natural environment and protect the health and wellbeing of its Federal employees and contractor service providers. As a service provider at a DOE facility the Contractor is urged to assist us in our efforts. Sustainable acquisition or environmentally preferable contracting has several interacting initiatives. Among the initiatives are the following:
 - (1) Alternative Fueled Vehicles and Alternative Fuels;
 - (2) Biobased Content Products (USDA Designated Products);

- (3) Energy Efficient Products;
 - (4) Non-Ozone Depleting Alternative Products;
 - (5) Recycled Content Products (EPA Designated Products); and
 - (6) Water Efficient Products (EPA Water Sense Labeled Products).
- (b) The Contractor should be familiar with these information resources:
- (1) Recycled Products are described at <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
 - (2) Biobased Products are described at <https://www.biopreferred.gov/BioPreferred/>.
 - (3) Energy efficient products are described at <https://www.energystar.gov/products> for Energy Star products.
 - (4) FEMP designated products are described at <https://www.energy.gov/eere/femp/energy-efficient-products-and-energy-saving-technologies>.
 - (5) Environmentally Preferable Computers are described at <https://www.epeat.net>.
 - (6) Non-Ozone Depleting Alternative Products are described at <https://www.epa.gov/ozone-layer-protection>.
 - (7) Water efficient plumbing fixtures are described at <https://epa.gov/watersense>.
- (c) If, in the course of providing services at the DOE site, the Contractor's services necessitate the acquisition of any of the above types of products, it is expected that the Contractor will acquire the sustainable, environmentally preferable models unless the product is not available competitively within a reasonable time, at a reasonable price, is not life cycle cost efficient in the case of energy consuming products or does not meet reasonable performance standards. While there is no formal reporting, DOE prepares a sustainable acquisition annual report, and the Contractor may be asked by the Contracting Officer to provide information in support of DOE's report.

(End of Clause)

H.18 DOE-H-2043 ASSIGNMENT AND TRANSFER OF PRIME CONTRACTS AND SUBCONTRACTS (OCT 2014)

- (a) Assignment of DOE Prime Contracts. During the period of performance of this contract, it may become necessary for the U.S. Department of Energy (DOE) to

transfer and assign existing or future DOE prime contracts supporting site work to this contract. The Contractor shall accept the transfers and assignments of such contracts. Any recommendations and/or suggestions regarding individual transfers directed by DOE shall be submitted in writing to the Contracting Officer prior to the transfer or assignment.

- (b) Transfer of Subcontracts. As the successor contractor, the Contractor agrees to accept the transfer of existing subcontracts as determined necessary by DOE for continuity of operations. The Contractor shall use its best efforts to negotiate changes to the assigned subcontracts incorporating mandatory flow-down provisions at no cost. If the subcontractor refuses to accept the changes or requests price adjustments, the Contractor will notify the Contracting Officer in writing. DOE reserves the right to direct the Contractor to transfer to DOE or another Contractor any subcontract awarded under this contract.

(End of Clause)

H.19 DOE-H-2044 MATERIAL SAFETY DATA SHEET AVAILABILITY (OCT 2014)

In implementation of the clause at FAR 52.223-3, Hazardous Material Identification and Material Safety Data, the Contractor shall obtain, review and maintain a Material Safety Data Sheet (MSDS) in a readily accessible manner for each hazardous material (or mixture containing a hazardous material) ordered, delivered, stored or used; and maintain an accurate inventory and history of use of hazardous materials at each use and storage location. The MSDS shall conform to the requirements of 29 CFR 1910.1200(g).

(End of Clause)

H.20 DOE-H-2048 PUBLIC AFFAIRS –CONTRACTOR RELEASES OF INFORMATION (OCT 2014)

In implementation of the clause at DEAR 952.204-75, Public Affairs, all communications or releases of information to the public, the media, or Members of Congress prepared by the Contractor related to work performed under the contract shall be reviewed and approved by DOE prior to issuance. Therefore, the Contractor shall, at least ten (10) calendar days prior to the planned issue date, submit a draft copy to the Contracting Officer of any planned communications or releases of information to the public, the media, or Members of Congress related to work performed under this contract. The Contracting Officer will obtain necessary reviews and clearances and provide the Contractor with the results of such reviews prior to the planned issue date.

(End of Clause)

H.21 DOE-H-2050 INCORPORATION OF SMALL BUSINESS SUBCONTRACTING PLAN — ALTERNATE I (OCT 2014)

- (a) In accordance with the clause at FAR 52.219-9, Small Business Subcontracting Plan, the master subcontracting plan contained in Section J, Attachment D, is hereby incorporated into and made a part of this contract.
- (b) Prior to the beginning of each Government fiscal year, or other period as required by the Contracting Officer, the Contractor shall submit an individual subcontracting plan containing the annual subcontracting goals required by the clause at FAR 52.219-9, Small Business Subcontracting Plan, and any changes to the master subcontracting plan. The annual, individual subcontracting plan and changes to the master plan are subject to the Contracting Officer's approval; and the approved plan is incorporated by reference into the contract.

(End of Clause)

H.22 DOE-H-2053 WORKER SAFETY AND HEALTH PROGRAM IN ACCORDANCE WITH 10 CFR 851 (OCT 2014)

- (a) The Contractor shall comply with all applicable safety and health requirements set forth in 10 CFR 851, Worker Safety and Health Program, and any applicable DOE Directives incorporated into the contract. The Contractor shall develop, implement, and maintain a written Worker Safety and Health Program (WSHP) which shall describe the Contractor's method for complying with and implementing the applicable requirements of 10 CFR 851. The WSHP shall be submitted to and approved by DOE. The approved WSHP must be implemented prior to the start of work. In performance of the work, the Contractor shall provide a safe and healthful workplace and must comply with its approved WSHP and all applicable federal and state environment, health, and safety regulations.
- (b) The Contractor shall take all reasonable precautions to protect the environment, health, and safety of its employees, DOE personnel, and members of the public. When more than one contractor works in a shared workplace, the Contractor shall coordinate with the other contractors to ensure roles, responsibilities, and worker safety and health provisions are clearly delineated. The Contractor shall participate in all emergency response drills and exercises related to the Contractor's work and interface with other DOE contractors.
- (c) The Contractor shall take all necessary and reasonable steps to minimize the impact of its work on DOE functions and employees, and immediately report all job-related injuries and/or illnesses which occur in any DOE facility to the Contracting Officer Representative (COR). Upon request, the Contractor shall provide to the COR a copy of occupational safety and health self-assessments and/or inspections of work sites for job hazards for work performed at DOE facilities.

- (d) The Contracting Officer may notify the Contractor, in writing, of any noncompliance with the terms of this clause, and the corrective action(s) to be taken. After receipt of such notice, the Contractor shall immediately take such corrective action(s).
- (e) In the event that the Contractor fails to comply with the terms and conditions of this clause, the Contracting Officer may, without prejudice to any other legal or contractual rights, issue a stop-work order halting all or any part of the work. Thereafter, the Contracting Officer may, at his or her discretion, cancel the stop-work order so that the performance of work may be resumed. The Contractor shall not be entitled to an equitable adjustment of the contract amount or extension of the performance schedule due to any stop-work order issued under this clause.
- (f) The Contractor shall flow down the requirements of this clause to all subcontracts at any tier.
- (g) In the event of a conflict between the requirements of this clause and 10 CFR 851, the requirements of 10 CFR 851 shall take precedence.

(End of Clause)

H.23 DOE-H-2059 PRESERVATION OF ANTIQUITIES, WILDLIFE AND LAND AREAS (OCT 2014)

- (a) Federal Law provides for the protection of antiquities located on land owned or controlled by the Government. Antiquities include Indian graves or campsites, relics and artifacts. The Contractor shall control the movements of its personnel and its subcontractor's personnel at the job site to ensure that any existing antiquities discovered thereon will not be disturbed or destroyed by such personnel. It shall be the duty of the Contractor to report to the Contracting Officer the existence of any antiquities so discovered.
- (b) The Contractor shall also preserve all vegetation (including wetlands) except where such Vegetation must be removed for survey or construction purposes. Any removal of vegetation shall be in accordance with the terms of applicable habitat mitigation plans and permits. Furthermore, all wildlife must be protected consistent with programs approved by the Contracting Officer.
- (c) Except as required by or specifically provided for in other provisions of this contract, the Contractor shall not perform any excavations, earth borrow, preparation of borrow areas, or otherwise disturb the surface soils within the job site without the prior approval of DOE or its designee.

(End of Clause)

H.24 DOE-H-2062 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (OCT 2014) — ALTERNATE I (OCT 2014)

- (a) Pursuant to the clause at FAR 52.204-9, Personal Identity Verification of Contractor Personnel, the Contractor shall comply with applicable DOE regulations, policies and directives regarding identification, credential and access management for its personnel who have routine physical access to DOE-owned or -controlled sites or facilities or routine access to DOE information systems.
- (b) The Contractor shall comply with the requirements of those DOE directives, or parts thereof, identified elsewhere in the contract pursuant to the clause at DEAR 970.5204-2, Laws, Regulations and DOE Directives.

(End of Clause)

H.25 DOE-H-2063 CONFIDENTIALITY OF INFORMATION (FEB 2022) (REVISED)

- (a) Performance of work under this contract may result in the Contractor having access to confidential information via written or electronic documents, or by virtue of having access to DOE's electronic or other systems. Such confidential information includes personally identifiable information (such as social security account numbers) or proprietary business, technical, or financial information belonging to the Government or other companies or organizations. The Contractor shall treat this information as confidential and agrees not to use this information for its own purposes, or to disclose the information to third parties, unless specifically authorized to do so in writing by the Contracting Officer.
- (b) The restrictions set out in paragraph(a) above, however, do not apply to —
 - (1) Information which, at the time of receipt by the Contractor, is in public domain;
 - (2) Information which, subsequent to receipt by the Contractor, becomes part of the public domain through no fault or action of the Contractor;
 - (3) Information which the Contractor can demonstrate was previously in its possession and was not acquired directly or indirectly as a result of access obtained by performing work under this contract;
 - (4) Information which the Contractor can demonstrate was received from a third party who did not require the Contractor to hold it in confidence; or
 - (5) Information which is subject to release under applicable law.
- (c) These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or

- Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General or the Office of Special Counsel of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.
- (d) The Contractor shall obtain a written agreement from each of its employees who are granted access to, or furnished with, confidential information, whereby the employee agrees that he or she will not discuss, divulge, or disclose any such information to any person or entity except those persons within the Contractor's organization directly concerned with the performance of the contract. The agreement shall be in a form satisfactory to the Contracting Officer.
 - (e) Upon request of the Contracting Officer, the Contractor agrees to execute an agreement with any party which provides confidential information to the Contractor pursuant to this contract, or whose facilities the Contractor is given access to that restrict use and disclosure of confidential information obtained by the Contractor. A copy of the agreement, which shall include all material aspects of this clause, shall be provided to the Contracting Officer for approval.
 - (f) Upon request of the Contracting Officer, the Contractor shall supply the Government with reports itemizing the confidential or proprietary information it receives under this contract and identify the source (company, companies or other organizations) of the information.
 - (g) The Contractor agrees to flow down this clause to all subcontracts issued under this contract.
 - (h) Technical data is addressed in DEAR 970.5227-1.

(End of Clause)

H.26 DOE-H-2064 USE OF INFORMATION TECHNOLOGY EQUIPMENT, SOFTWARE, AND THIRD PARTY SERVICES (OCT 2014) — ALTERNATE II (OCT 2014)

- (a) Acquisition of Information Technology. The Government may provide information technology equipment, existing computer software (as described in 48 CFR 27.405), and third-party services for the Contractor's use in the performance of the contract; and the Contracting Officer may provide guidance to the Contractor regarding usage of such equipment, software, and third-party services. The Contractor is not authorized to acquire (lease or purchase) information technology equipment, existing computer software, or third-party services at the Government's direct expense without prior written approval of the Contracting Officer. Should the Contractor propose to acquire

- information technology equipment, existing computer software, or third-party services, the Contractor shall provide to the Contracting Officer justification for the need, including a complete description of the equipment, software or third-party service to be acquired, and a lease versus purchase analysis if appropriate.
- (b) The Contractor shall immediately provide written notice to the Contracting Officer's Representative when an employee of the Contractor no longer requires access to the Government information technology systems.
 - (c) The Contractor shall not violate any software licensing agreement or cause the Government to violate any licensing agreement.
 - (d) The Contractor agrees that its employees will not use, copy, disclose, modify, or reverse engineer existing computer software provided to it by the Government except as permitted by the license agreement or any other terms and conditions under which the software is made available to the Contractor.
 - (e) If at any time during the performance of this contract the Contractor has reason to believe that its utilization of Government furnished existing computer software may involve or result in a violation of the software licensing agreement, the Contractor shall promptly notify the Contracting Officer, in writing, of the pertinent facts and circumstances. Pending direction from the Contracting Officer, the Contractor shall continue performance of the work required under this contract without utilizing the software.
 - (f) The Contractor agrees to include the requirements of this clause in all subcontracts at any tier.
 - (g) The Contractor shall comply with the requirements of those DOE directives, or parts thereof, identified elsewhere in the contract pursuant to the clause at DEAR 970.5204-2, Laws, Regulations and DOE Directives.

(End of Clause)

H.27 DOE-H-2065 REPORTING OF FRAUD, WASTE, ABUSE, CORRUPTION, OR MISMANAGEMENT (OCT 2014)

The Contractor shall comply with the following:

- (a) Notify employees annually of their duty to report allegations of fraud, waste, abuse, misuse, corruption, criminal acts, or mismanagement relating to DOE programs, operations, facilities, contracts, or information technology systems to an appropriate authority (e.g., OIG, other law enforcement, supervisor, employee concerns office, security officials). Examples of violations to be reported include, but are not limited to, allegations of false statements; false claims; bribery; kickbacks; fraud; DOE

environment, safety, and health violations; theft; computer crimes; contractor mischarging; conflicts of interest; and conspiracy to commit any of these acts. Contractors must also ensure that their employees are aware that they may always report incidents or information directly to the Office of Inspector General (OIG).

- (b) Display the OIG hotline telephone number in buildings and common areas such as cafeterias, public telephone areas, official bulletin boards, reception rooms, and building lobbies.
- (c) Publish the OIG hotline telephone number in telephone books and newsletters under the Contractor's cognizance.
- (d) Ensure that its employees report to the OIG within a reasonable period of time, but not later than 24 hours after discovery, all alleged violations of law, regulations, or policy, including incidents of fraud, waste, abuse, misuse, corruption, criminal acts, or mismanagement, that have been referred to Federal, State, or local law enforcement entities.
- (e) Ensure that its employees report to the OIG any allegations of reprisals taken against employees who have reported to the OIG fraud, waste, abuse, misuse, corruption, criminal acts, or mismanagement.
- (f) Ensure that its managers do not retaliate against DOE contractor employees who report fraud, waste, abuse, misuse, corruption, criminal acts, or mismanagement.
- (g) Ensure that all their employees understand that they must –
 - (1) Comply with requests for interviews and briefings and must provide affidavits or sworn statements, if so requested by an employee of the OIG so designated to take affidavits or sworn statements;
 - (2) Not impede or hinder another employee's cooperation with the OIG; and
 - (3) Not take reprisals against DOE contractor employees who cooperate with or disclose information to the OIG or other lawful appropriate authority.
 - (4) Seek more specific guidance concerning reporting of fraud, waste, abuse, corruption, or mismanagement, and cooperation with the Inspector General, in DOE directives.

(End of Clause)

**H.28 DOE-H-2066 SAFEGUARDS AND SECURITY PROGRAM (OCT 2014) —
ALTERNATE I (OCT 2014)**

- (a) Pursuant to the clause at DEAR 952.204-2, Security Requirements, the Contractor agrees to comply with all security regulations and contract requirements as incorporated into the contract.
- (b) The Contractor shall comply with the requirements of those DOE directives, or parts thereof, identified elsewhere in the contract pursuant to the clause at DEAR 970.5204-2, Laws, Regulations and DOE Directives.

(End of Clause)

**H.29 DOE-H-2069 PAYMENTS FOR DOMESTIC EXTENDED PERSONNEL
ASSIGNMENTS (OCT 2014)**

- (a) Definition. For purposes of this clause, “domestic extended personnel assignments” are defined as any assignment of contractor personnel to a domestic location different than their permanent duty station for a period expected to exceed 30 consecutive calendar days.
- (b) For domestic extended personnel assignments, the Contractor shall be reimbursed the lesser of temporary relocation costs (Temporary Change of Station allowances as described in the Federal Travel Regulation at §302-3.400 - §302-3.429) or a reduced per diem (Extended Travel Duty) in accordance with the allowable cost provisions of the contract and the following:
 - (1) When a reduced per diem method (Extended Travel Duty) is utilized, the allowances are as follows:
 - (A) Lodging. For the first 60 days and last 30 days of the assignment, the Government will reimburse costs associated with lodging at the lesser of actual cost or 100% of the Federal per diem rate at the assignment location. The intervening days lodging will be reimbursed at the lesser of actual cost or 55% of Federal per diem.
 - (B) Meals and Incidental Expenses. For the first 30 days and last 30 days of the

assignment, the Government will reimburse costs associated with meals and incidental expenses (M&IE) at the lesser of actual cost or 100% of the Federal per diem rate at the assignment location. The intervening days M&IE will be reimbursed at the lesser of actual cost or 55% of Federal per diem.

- (2) The Government will not reimburse any costs associated with per diem (except for en-route travel) unless the contractor employee maintains a residence at the permanent duty station.
- (3) The Government will not reimburse costs associated with salary premiums, per diem, lodging, or other subsidies for contractor employees on domestic extended personnel assignments after 3 years (except for the reimbursements described above during the last 30 days of the assignment).
- (4) If an assignment has breaks within a three-year period, the calculation of the total length of the assignment will be as follows: If the break between assignments is less than 12 months, the Government will consider the assignment continuous for purposes of the three-year clock. For instance, if a contractor employee completes a two-year assignment at location A and returns to his/her permanent duty station for 12 months, a subsequent new two-year assignment back to location A will restart the three-year clock. The assignments will be considered two separate, two-year assignments. On the other hand, if in the previous example the employee's return to his/her permanent duty station was six months, the Government would consider the second assignment to be a continuation of the first for purposes of the three-year rule.
- (5) The Government will not reimburse costs associated with salary premiums that exceed 10%.
- (6) The Contractor shall include the substance of this clause in all subcontracts in which travel will be reimbursed at cost.

(End of Clause)

H.30 DOE-H-2070 KEY PERSONNEL (OCT 2014) — ALTERNATE I (OCT 2014)

- (a) Pursuant to the clause at DEAR 952.215-70, Key Personnel, the key personnel for this contract are identified below:

TO BE COMPLETED UPON AWARD

In addition to the requirement for the Contracting Officer's approval before removing,

replacing, or diverting any of the listed key personnel, the Contracting Officer's approval is also required for any change to the position assignment of a current key person.

- (b) Key personnel team requirements. The Contracting Officer and designated Contracting Officer's Representative(s) shall have direct access to the key personnel assigned to the contract. All key personnel shall be permanently assigned to their respective positions.
- (c) Definitions. In addition to the definitions contained in the clause at DEAR 952.215-70, the following shall apply:
 - (1) The term "reasonably in advance" is defined as 60 calendar days.
 - (2) Key personnel are considered "managerial personnel" under the clause at DEAR 970.5245-1, "Property."
- (d) Contract fee reductions for changes to key personnel.
 - (1) Notwithstanding the approval by the Contracting Officer, any time the Project Manager is removed, replaced, or diverted within two (2) years of being placed in the position, the earned fee under the contract maybe permanently reduced by **\$600,000** for each and every such occurrence.
 - (2) Notwithstanding the approval by the Contracting Officer, any time a key person other than the Project Manager is removed, replaced, or diverted within two (2) years of being placed in the position, the earned fee may be permanently reduced by **\$600,000** for each and every such occurrence.
 - (3) The Contractor may request in writing that the Contracting Officer consider waiving all or part of a reduction in earned fee. Such written request shall include the Contractor's basis for the removal, replacement, or diversion of any key personnel. The Contracting Officer shall have the unilateral discretion to make the determination to waive all or part of the reduction in earned fee.

(End of Clause)

H.31 DOE-H-2071 DEPARTMENT OF ENERGY DIRECTIVES (OCT 2014)

- (a) In performing work under this contract, the Contractor shall comply with the requirements of those Department of Energy (DOE) directives, or parts thereof listed in Section J, Attachment F, or identified elsewhere in the contract.

- (b) The Contracting Officer may, at any time, unilaterally amend this clause, or other clauses which incorporate DOE directives, in order to add, modify or delete specific requirements. Prior to revising the listing of directives, the Contracting Officer shall notify the Contractor in writing of the Department's intent to revise the list, and the Contractor shall be provided with the opportunity to assess the effect of the Contractor's compliance with the revised list on contract cost and funding, technical performance, and schedule, and identify any potential inconsistencies between the revised list and the other terms and conditions of the contract. Within 30 days after receipt of the Contracting Officer's notice, the Contractor shall advise the Contracting Officer in writing of the potential impact of the Contractor's compliance with the revised list. Based on the information provided by the Contractor and any other information available, the Contracting Officer shall decide whether to revise the listing of directives and so advise the Contractor not later than 30 days prior to the effective date of the revision.
- (c) Notwithstanding the process described in paragraph(b), the Contracting Officer may direct the Contractor to immediately begin compliance with the requirements of any directive.
- (d) The Contractor and the Contracting Officer shall identify and, if appropriate, agree to any changes to other contract terms and conditions, including cost and schedule, associated with the revision pursuant to the clause of this contract at FAR 52.243-2, "Changes – Cost Reimbursement."
- (e) Regardless of the performer of the work, the Contractor is responsible for compliance with the requirements of this clause. The Contractor shall include this clause in all subcontracts to the extent necessary to ensure the Contractor's compliance with these requirements.

(End of Clause)

H.32 DOE-H-2072 USE OF GOVERNMENT VEHICLES BY CONTRACTOR EMPLOYEES (OCT 2014)

- (a) The Government may provide Government-owned and/or –leased motor vehicles for the Contractor's use in performance of this contract in accordance with the clause FAR 52.251-2, Interagency Fleet Management System (IFMS) Vehicles and Related Services.
- (b) The Contractor shall ensure that its employees use and operate Government-owned and/or –leased motor vehicles in a responsible and safe manner to include the following requirements:
 - (1) Use vehicles only for official purposes and solely in the performance of the contract.

- (2) Do not use vehicles for transportation between an employee's residence and place of employment unless authorized by the Contracting Officer.
 - (3) Comply with Federal, State and local laws and regulations for the operation of motor vehicles.
 - (4) Possess a valid State, District of Columbia, or commonwealth's operator license or permit for the type of vehicle to be operated.
 - (5) Operate vehicles in accordance with the operator's packet furnished with each vehicle.
 - (6) Use seat belts while operating or riding in a Government vehicle.
 - (7) Do not use tobacco products while operating or riding in a Government vehicle.
 - (8) Do not provide transportation to strangers or hitchhikers.
 - (9) Do not engage in "text messaging" while operating a Government vehicle, which includes those activities defined in the clause at FAR 52.223-18, Encouraging Contractor Policies to Ban Text Messaging While Driving.
 - (10) In the event of an accident, provide information as may be required by State, county or municipal authorities and as directed by the Contracting Officer.
- (c) The Contractor shall—
- (1) Establish and enforce suitable penalties against employees who use, or authorize the use of Government vehicles for unofficial purposes or for other than in the performance of the contract; and
 - (2) Pay any expenses or cost, without Government reimbursement, for using Government vehicles other than in the performance of the contract.
- (d) The Contractor shall insert this clause in all subcontracts in which Government-owned and/or –leased vehicles are to be provided for use by subcontractor employees.

(End of Clause)

**H.33 DOE-H-2073 RISK MANAGEMENT AND INSURANCE PROGRAMS (DEC 2014)
(REVISED)**

- (a) Contractor officials shall ensure that the requirements set forth below are applied in the establishment and administration of DOE-funded prime cost reimbursement

contracts for management and operation of DOE facilities and other designated long-lived onsite contracts for which the contractor has established separate operating business units.

(1) Basic Requirements

- (A) Maintain commercial insurance or a self-insured program, (i.e., any insurance policy or coverage that protects the contractor from the risk of legal liability for adverse actions associated with its operation, including malpractice, injury, or negligence) as required by the terms of the contract. Types of insurance include automobile, general liability, and other third party liability insurance. Other forms of coverage must be justified as necessary in the operation of the Department facility and/or the performance of the contract and approved by the DOE.
- (B) Contractors shall not purchase insurance to cover public liability for nuclear incidents without DOE authorization (See DEAR 970.5070, Indemnification, and DEAR 950.70, Nuclear Indemnification of DOE Contractors).
- (C) Demonstrate that insurance programs and costs comply with the cost limitations and exclusions at FAR 28.307 entitled, *Insurance Under Cost Reimbursement Contracts*; and FAR 31.205-19 entitled, *Insurance and Indemnification*, DEAR 931.205-19 entitled, *Insurance and Indemnification*, DEAR 970.3102-05-19 entitled, *Insurance and Indemnification*, DEAR 952.231-71, entitled, *Insurance-Litigation and Claims*, and DEAR 970.5228-1, entitled, *Insurance-Litigation and Claims*.
- (D) Demonstrate that the insurance program is being conducted in the government's best interest and at reasonable cost.
- (E) The contractor shall submit copies of all insurance policies or insurance arrangements to the Contracting Officer no later than 30 days after the purchase date.
- (F) When purchasing commercial insurance, the contractor shall use a competitive process to ensure costs are reasonable.
- (G) Ensure self-insurance programs include the following elements:
 - (i) Compliance with criteria set forth in FAR 28.308, Self-Insurance. Approval of self-insurance is predicated upon submission of verifiable proof that the self-insurance charge does not exceed the cost of purchased insurance. This includes hybrid plans (i.e., commercially purchased insurance with self-insured retention (SIR) such as large deductible, matching deductible, retrospective rating cash flow plans, and other plans

where insurance reserves are under the control of the insured). The SIR components of such plans are self-insurance and are subject to the approval and submission requirements of FAR 28.308, as applicable.

- (ii) Demonstration of full compliance with applicable state and federal regulations and related professional administration necessary for participation in alternative insurance programs.
 - (iii) Safeguards to ensure third party claims and claims settlements are processed in accordance with approved procedures.
 - (iv) Accounting of self-insurance charges.
 - (v) Accrual of self-insurance reserve. The Contracting Officer's approval is required and predicated upon the following:
 - a. The claims reserve shall be held in a special fund or interest bearing account.
 - b. Submission of a formal written statement to the Contracting Officer stating that use of the reserve is exclusively for the payment of insurance claims and losses, and that DOE shall receive its equitable share of any excess funds or reserve.
 - c. (iii) Annual accounting and justification as to the reasonableness of the claims reserve submitted for Contracting Officer's review.
 - d. (iv) Claim reserves, not payable within the year the loss occurred, are discounted to present value based on the prevailing Treasury rate.
- (H) Separately identify and account for interest cost on a Letter of Credit used to guarantee self-insured retention, as an unallowable cost and omitted from charges to the DOE contract.
- (I) Comply with the Contracting Officer's written direction for ensuring the continuation of insurance coverage and settlement of incurred and/or open claims and payments of premiums owed or owing to the insurer for prior DOE contractors.

(2) Plan Experience Reporting

The Contractor shall:

provide the Contracting Officer with annual experience reports for each type of insurance (e.g., automobile and general liability), listing the following for each category:

- (A) The amount paid for each claim.
- (B) The amount reserved for each claim.
- (C) The direct expenses related to each claim.
- (D) A summary for the year showing total number of claims.
- (E) A total amount for claims paid.
- (F) A total amount reserved for claims.
- (G) The total amount of direct expenses.
- (H) provide the Contracting Officer with an annual report of insurance costs and/or self-insurance charges. When applicable, separately identify total policy expenses (e.g., commissions, premiums, and costs for claims servicing) and major claims during the year, including those expected to become major claims (e.g., those claims valued at \$100,000 or greater).
- (I) provide additional claim financial experience data as may be requested on a case-by-case basis.

(3) Terminating Operations.

The Contractor shall:

- (A) Ensure protection of the government's interest through proper recording of cancellation credits due to policy terminations and/or experience rating.
- (B) Identify and provide continuing insurance policy administration and management requirements to a successor, other DOE contractor, or as specified by the Contracting Officer.
- (C) Reach agreement with DOE on the handling and settlement of self-insurance claims incurred but not reported at the time of contract termination; otherwise, the contractor shall retain this liability.

(4) Successor Contractor or Insurance Policy Cancellation

Contractor shall:

- (A) obtain the written approval of the Contracting Officer for any change in program direction; and
- (B) ensure insurance coverage replacement is maintained as required and/or approved by the Contracting Officer.

(End of Clause)

H.34 DOE-H-2075 PROHIBITION ON FUNDING FOR CERTAIN NONDISCLOSURE AGREEMENTS (OCT 2014)

The Contractor agrees that:

- (a) No cost associated with implementation or enforcement of nondisclosure policies, forms or agreements shall be allowable under this contract if such policies, forms or agreements do not contain the following provisions: “These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to:
 - (1) classified information,
 - (2) communications to Congress,
 - (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or
 - (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.”
- (b) The limitation above shall not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.
- (c) Notwithstanding the provisions of paragraph (a), a nondisclosure or confidentiality policy form or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure or confidentiality forms shall also make it

clear that they do not bar disclosures to Congress, or to an authorized official of an executive agency or the Department of Justice, that are essential to reporting a substantial violation of law.

(End of Clause)

H.35 DOE-H-2077 DEPARTMENT OF ENERGY TRAINING INSTITUTE – OCCUPATIONAL HEALTH, SAFETY, AND EMERGENCY RESPONSE (JAN 2017)

- (a) The Contractor shall utilize the Department of Energy (DOE) Training Institute (DTI) resources to the maximum extent practical for occupational, health, safety, and emergency response training. The Contractor, as applicable, shall use DTI by utilizing the reciprocity program, instructor-certification, mobile training teams, and use of common core curriculum as applicable.
- (1) Reciprocity: The DTI Training Reciprocity program evaluates and certifies training programs and core content against DOE requirements, establishing a basis for consistent training. Reciprocity reduces redundant training to improve employee mobility and project mobilization, saving time and resources. Reference DOE Policy 364.1.
- (2) Common Core Curriculum: Courses in the Common Core Training Program are developed and maintained by DTI instructional designers and subject matter experts. These courses are available enterprise-wide for delivery by DTI-certified instructors. Common Core Training eliminates duplicative course development and maintenance activities while providing maximum flexibility for delivery.
- (3) Instructor-Certification: The DTI Instructor Certification Program recognizes subject matter experts and experienced trainers who are qualified to deliver common core courses across the DOE enterprise. The Contractor selects instructors to be certified by DTI.
- (4) Mobile Training Teams: Mobile Training Teams are available to DOE locations who do not maintain the capability to deliver a specific course. Courses are delivered by certified DTI instructors who are subject matter experts in the topical area.
- (b) DTI course offerings, information on becoming a certified DTI trainer, enrollment, and contact information can be found on <https://ntc.doe.gov/>.
- (c) DTI training shall be considered common core fundamental material. Contractors are expected to provide gap training needed to address site specifics identified through their approved Integrated Safety Management (ISM) Program and associated program plans required by existing DOE requirements. Gap training shall not repeat fundamental training core content.

- (d) DTI training is funded by DOE with no cost to the Contractors.
- (e) The Contractor shall first consider DTI for all applicable training needs and only obtain such training outside of DTI after written approval of the Contracting Officer (CO) following the Contractor's written request containing the following:
 - (1) rationale describing in detail why DTI provided material, including contractor supplemented site specific material, is insufficient,
 - (2) rationale supporting the increased cost, scope, and schedule of maintaining a local course and capability for training instruction proposed in place of DTI training, and
 - (3) rationale as to why the loss of standardization DOE is seeking by using alternative materials is of value to the DOE. Prior to requesting CO approval, the contractor shall complete the course request form at <https://ntc.doe.gov/>. DTI will respond within 10 working days on the availability of DTI course materials that might provide the course or assist in the development of the Contractor course.
- (f) This contract clause shall be flowed down to all subcontractors, and the Contractor is responsible for compliance by its employees and subcontractors.

(End of Clause)

H.36 DOE-H-2078 MULTIFACTOR AUTHENTICATION FOR INFORMATION SYSTEMS (OCT 2014)

The Contractor shall take all necessary actions to achieve multifactor authentication (MFA) for standard and privileged user accounts of all classified and unclassified networks. In so doing, the Contractor shall comply with the requirements and procedures established in the document "U.S. Department of Energy Multifactor Authentication Implementation Approach" and its appendices as determined by the Contracting Officer.

(End of Clause)

H.37 DOE-H-7001 FACILITIES (SEP 2017)

- (a) DOE agrees to furnish and make available to the Contractor, for its possession and use in performing the work under this contract, the facilities designated as follows:
 - (1) The Government-owned or leased land, buildings, utilities, equipment and other facilities situated at or near the Strategic Petroleum Reserve Project Management Office at 900 Commerce Road East, New Orleans, LA 70123;

- (2) Government-owned or leased facilities at such other locations as may be approved by DOE for use under this contract; and
 - (3) Subject to mutual agreement, other facilities may be used in the performance of the work under this contract.
- (b) DOE reserves the right to make part of the above-mentioned land or facilities available to other Government agencies or other users on the basis that the responsibilities and undertakings of the Contractor will not be unreasonably interfered with. Before exercising its right to make any part of the land or facilities available to another agency or user, DOE will confer with the Contractor.

(End of Clause)

H.38 DOE-H-7003 CONTRACTOR ASSURANCE SYSTEM (SEP 2017)

- (a) The Contractor shall develop a contractor assurance system that is executed by the Contractor's Board of Directors (or equivalent corporate oversight entity) and implemented throughout the Contractor's organization. This system provides reasonable assurance that the objectives of the contractor management systems are being accomplished and that the systems and controls will be effective and efficient. The contractor assurance system, at a minimum, shall include the following key attributes:
- (1) A comprehensive description of the assurance system with processes, key activities, and accountabilities clearly identified.
 - (2) A method for verifying/ensuring effective assurance system processes. Third party audits, peer reviews, independent assessments, and external certification (such as VPP and ISO 9001 or ISO 14001) may be used.
 - (3) Timely notification to the Contracting Officer of significant assurance system changes prior to the changes.
 - (4) Rigorous, risk-based, credible self-assessments, and feedback and improvement activities, including utilization of nationally recognized experts, and other independent reviews to assess and improve the Contractor's work process and to carry out independent risk and vulnerability studies.
 - (5) Identification and correction of negative performance/compliance trends before they become significant issues.
 - (6) Integration of the assurance system with other management systems including Integrated Safety Management.

- (7) Metrics and targets to assess performance, including benchmarking of key functional areas with other DOE contractors, industry and research institutions. Assure development of metrics and targets that result in efficient and cost effective performance.
 - (A) Continuous feedback and performance improvement.
 - (B) An implementation plan (if needed) that considers and mitigates risks.
 - (C) Timely and appropriate communication to the Contracting Officer, including electronic access, of assurance related information.
- (8) The initial contractor assurance system description shall be approved by the Contracting Officer.
- (9) The Government may revise its level and/or mix of oversight of this contract when the Contracting Officer determines that the assurance system is or is not operating effectively.

(End of Clause)

H.39 DOE-H-7004 DEFENSE AND INDEMNIFICATION OF EMPLOYEES (SEP 2017)

- (a) The Parties recognize that, under applicable State law, the Contractor could be required to defend and indemnify its officers and employees from and against civil actions and other claims which arise out of the performance of work under this contract. Except for defense costs made unallowable by law, Section I Clause entitled “DEAR 970.5232-2 – Payments and Advances”, or the Major Fraud Act (41 U.S.C. §256(k)), the costs and expenses, including judgments, resulting from the defense and indemnification of employees from and against such civil actions and claims shall be allowable costs under this contract if incurred pursuant to the terms of Section I Clause entitled “DEAR 970.5228-1 – Insurance—Litigation and Claims”.
- (b) Costs and expenses, including judgments, resulting from the defense and indemnification of employees from civil fraud actions filed in federal court by the Government will be unallowable where the employee pleads nolo contendere or the action results in a judgment against the defendant.
- (c) Where in accordance with applicable State law, the Contractor determines it must defend an employee in a criminal action, DOE will consider in good faith, on a case-by-case basis, whether the Contractor has such an obligation. If DOE concurs, the costs and expenses, including judgments, resulting from the defense and indemnification of employees shall be allowable.

- (d) The Contractor shall immediately furnish the Contracting Officer written notice of any such claim or civil action filed against any employee of the Contractor arising out of the work under this contract together with copies of all pleadings filed. The Contractor shall furnish to the Contracting Officer a written determination by the Contractor's counsel that the defense or indemnity of the employee is required by the provisions of applicable State law, that the employee was acting within the course and scope of employment at the time of the acts or omissions which gave rise to the claim or civil action, and that any exclusions set forth under applicable State law for fraud, corruption, malice, willful misconduct, or lack of good faith on the part of the employee does not apply. A copy of any letter asserting a reservation of rights under applicable State law with respect to the defense or indemnification of such employee shall also be provided to the Contracting Officer. The costs associated with the settlement of any such claim or civil action shall not be treated as an allowable cost unless approved in writing by the Contracting Officer.

(End of Clause)

H.40 DOE-H-7005 ADVANCED UNDERSTANDINGS REGARDING ADDITIONAL ITEMS OF ALLOWABLE AND UNALLOWABLE COSTS AND OTHER MATTERS (SEP 2017) (REVISED)

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

(a) Items of allowable costs:

- (1) Cost for the defense and indemnification of employees in accordance with the provisions of Section H Clause entitled "Defense and Indemnification of Employees."
- (2) Rentals and leases of land, buildings, and equipment owned by third parties, allowances in lieu of rental, charges associated therewith and costs of alteration, remodeling and restorations where such items are used in the performance of the contract, except that such rentals and leases directly chargeable to the contract shall be subject to such approval by the Contracting Officer.
- (3) Notwithstanding the provisions of FAR 31.205-44(e), stipends and payments made to reimburse travel or other expenses of researchers and students who are not employed under this contract but are participating in research, educational or training activities under this contract to the extent such costs are incurred in connection with fellowship, international agreements, or other research, educational or training programs approved by the Contracting Officer.

- (4) Notwithstanding the provisions of FAR 31.205-44(e), payments to educational institutions for tuition and fees, or institutional allowances, in connection with fellowship or other research, educational or training programs for researchers and students who are not employed under this contract.
 - (5) Costs incurred or expenditures made by the Contractor, as directed, approved or ratified by the Contracting Officer and not otherwise unallowable under any other provisions of this contract.
 - (6) Subject to any other limitations on allowability contained in this contract, costs incurred, and expenditures made by the Contractor's Board of Directors (or equivalent corporate oversight entity), its members, committees, panels and support personnel in connection with performance of work under this contract. The Contractor shall provide to the Contracting Officer, for an allowability determination, an annual accounting of these costs incurred and expenditures made.
- (b) Items of unallowable costs:
- (1) Salaries or other salary-like compensation of the Contractor's Board members, or that of members of subcommittees of the Board who are employees of the Contractor, or the equivalent corporate oversight entity/entities.
 - (2) Home office expenses, whether direct or indirect, relating to activities of the Contractor, except as otherwise specifically agreed to elsewhere in this contract or subsequently in writing by the Contracting Officer.
- (c) Other Matter:

Pursuant to Section I Clause entitled "DEAR 970.5208-1 – Printing," the Contractor is authorized to certify, prior to the printing of individual jobs, that the use of more than one color of ink fulfills a specific functional need in accordance with the guidance provided in the Government Printing and Binding Regulations, Title 44 of the U.S. Code and DOE directives related thereto. This authorization is subject to the Contractor providing to the Contracting Officer, on an annual basis, a report on all multicolor printing activities supported with DOE funds.

(End of Clause)

H.41 DOE-H-7006 ADMINISTRATION OF SUBCONTRACTS (SEP 2017) (REVISED)

- (a) The administration of all subcontracts entered into and/or managed by the Contractor, including responsibility for payment hereunder, shall remain with the Contractor unless assigned at the direction of DOE.

- (b) The DOE reserves the right to direct the Contractor to assign to the DOE, or another Contractor, any subcontract awarded under this contract.
- (c) The DOE reserves the right to identify specific work activities in Section C entitled “Description/Specifications/Statement of Work” to be removed (de-scoped) from the contract. In order to contract directly for the specific work activities. The Department will work with the Contractor to identify the areas of work that can be performed by small businesses in order to Maximize direct federal contracts with small businesses. The Contractor agrees to facilitate these actions. This facilitation will include identifying direct contracting opportunities valued at \$5 million or above for small businesses for work presently performed under subcontracts, as well as work performed by contractor employees. The Contractor shall notify the DOE one-year in advance of the expiration of any of its subcontracts valued at \$5 million or above, or if applicable, one-year prior to the exercise of an option and/or the option notification requirement, if any, contained in the subcontracts. The DOE will review this information and the requirements of the Contractor to determine the appropriateness for small business opportunities. This review may result in the DOE electing to enter in contracts directly with small businesses for these areas of work. The Contracting Officer will give notice to the Contractor not less than 120 calendar days prior to the date for exercising the option and/or the expiration of the subcontract and/or prior to entering into contract for work being performed by contractor employees. Following award of these direct federal contracts, DOE may assign administration of these contracts to the Contractor. The Contractor agrees to accept assignments from the DOE for the administration of these contracts. The parameters of the Contractor’s responsibilities for the small business contracts and/or changes, if any, to this contract will be incorporated via a modification to the contract. The Contractor will accept management and administration responsibilities, if so determined.
- (d) To the extent that DOE removes (de-scopes) work from this contract, any such removed or withdrawn work shall be treated as a change in accordance with Section I Clause entitled “DEAR 970.5243-1 – Changes.” A “material change” for the purpose of this clause is defined as cumulative changes during a fiscal year that result in a plus or minus 10% change to the annual fee base. To the extent that DOE assigns the administration of a contract to the Contractor, or removes (de-scopes) work, the Parties reserve the right to negotiate an equitable adjustment in the Contractor’s annual available performance fee. The negotiation of fee will be in accordance with the Section I Clause entitled “DEAR 970.5215-1 – Total Available Fee: Base Fee Amount and Performance Fee Amount.” The Parties will also negotiate appropriate adjustments to the Contractor’s Subcontracting Plan or any other applicable contract terms and conditions impacted by such withdrawal or addition of work scope to recognize the changes to the Contractor’s subcontracting base and goals.

(End of Clause)

H.42 DOE-H-7008 PRIVACY ACT RECORDS (SEP 2017) (REVISED)

- (a) In accordance with the Privacy Act of 1974, 5 U.S.C. 552a (Public Law 93-579) and implementing DOE Regulations (10 CFR 1008), the Contractor shall maintain the following “Systems of Records” on individuals in order to accomplish the United States Department of Energy functions:
- (1) “Personnel Medical Records” (DOE-33) (Excepting Contractor Employees).
 - (2) “Firearms Qualifications Records” (DOE-31) respecting security guards authorized by DOE to carry firearms.
 - (3) “Employee and Visitor Access Control Records” (DOE-51).
 - (4) “Access Control Records of International Visits, Assignments, and Employment at DOE Facilities and Contractor Sites” (DOE-52).
 - (5) “Physical Fitness Test Records” (DOE-77).
- (b) The parenthetical Department of Energy number designations for each system of records refers to the official “System of Records” number published by the United States Department of Energy in the Federal Register pursuant to the Privacy Act.
- (c) If DOE requires the Contractor to design, develop, or maintain additional systems of Government-owned records on individuals to accomplish an agency function in accordance with the Privacy Act of 1974 and 10 CFR 1008, the Contracting Officer, or designee, shall so notify the Contractor, in writing, and such Privacy Act system shall be deemed added to the above list whether incorporated by formal contract modification or not. The Parties shall mutually agree to a schedule for implementation of the Privacy Act with respect to each such system.

(End of Clause)

H.43 DOE-H-7009 ADDITIONAL DEFINITIONS (SEP 2017) (REVISED)

- (a) “SPRPMO” means the Strategic Petroleum Reserve Project Management Office.
“SPR” means the Strategic Petroleum Reserve.
- (b) “Contractor” means “the Offeror” as specified in Block 15A of Standard Form 33, Section A entitled “Solicitation, Offer and Award” of the contract.
- (c) The term “DOE” means the Department of Energy, “NNSA” means the National Nuclear Security Administration.

- (d) The term “DOE Directive” means DOE Policies, Orders, Notices, Manuals, Regulations, Technical Standards and related documents, and Guides, including for purposes of this contract those portions of DOE’s Accounting and Procedures Handbook applicable to integrated Contractors, issued by DOE. The term does not include temporary written instructions by the Contracting Officer for the purpose of addressing short-term or urgent DOE concerns relating to health, safety, or the environment.
- (e) “Head of Agency” means: (i) The Secretary; (ii) Deputy Secretary; (iii) Under Secretaries of the Department of Energy; and (iv) the Chairman, Federal Energy Regulatory Commission.
- (f) “Head of Contracting Activity” for the SPRPMO means the Project Manager.
- (g) The term “non-profit organization” means:
 - (1) a university or other institution of higher education,
 - (2) an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 as amended and exempt from taxation under section 501(a) and the Internal Revenue Code,
 - (3) any nonprofit scientific or educational organization qualified as a nonprofit by the laws of the State of its organization or incorporation, or
 - (4) a combination of qualifying entities organized for a nonprofit purpose (e.g., partnership, joint venture or limited liability company) each member of which meets the requirements of (1), (2), or (3) above.
- (h) The term “Senior Procurement Executive” means for:
 - (1) Department of Energy – Director, Office of Acquisition Management; and
 - (2) National Nuclear Security Administration – Associate Administrator for Acquisition and Project Management.

(End of Clause)

H.44 DOE-H-7010 SERVICE CONTRACT LABOR STANDARDS (SEP 2017)
(REVISED)

- (a) The Service Contract Labor Standards statute (formerly known as The Service Contract Act of 1965) is not applicable to this contract. However, in accordance with Section I Clause entitled “DEAR 970.5244-1 – Contractor Purchasing System,” subcontracts awarded by the Contractor are subject to the Standards to the same extent and under the

same conditions as contracts awarded by DOE. Service Contract Labor Standards Wage Determinations are included in Section J, Attachment E.

(End of Clause)

H.45 DOE-H-7011 CONTRACTS FOR MATERIALS, SUPPLIES, ARTICLES, AND EQUIPMENT EXCEEDING \$15,000 (SEP 2017)

Except as otherwise may be approved, in writing, by the Contracting Officer, the Contractor agrees to insert the following provision in noncommercial Purchase Orders and subcontracts under this contract.

“If this contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed \$15,000.00 and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S. Code 35-45), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect.”

(End of Clause)

H.46 DOE-H-7014 STANDARDS OF CONTRACTOR PERFORMANCE EVALUATION (SEP 2017) (REVISED)

- (a) Use of objective standards of performance, self-assessment and performance evaluation:
 - (1) The Parties agree that the Contractor will utilize a comprehensive performance-based management approach for Management & Operation of the SPR. The performance-based management approach will include the use of objective performance goals and indicators, agreed to in advance of each performance evaluation period, as standards against which the Contractor’s overall performance of the mission obligations under this contract will be assessed. The performance criteria will be limited in number and focus on results to drive improved performance and increased effective and efficient Management & Operation of the SPR. The Parties agree to utilize the process described within Section J, Attachment J entitled “Performance Evaluation and Measurement Plan” (PEMP) to evaluate performance. The Parties further agree that the evaluation process described in Section J, Attachment J will be reviewed annually and modified, if necessary, by agreement of the Parties. If agreement of the Parties cannot be reached, the Contracting Officer has the unilateral right to establish the evaluation process.

- (2) The Parties agree that the Contractor will conduct an ongoing self-assessment process as the principal means of determining its compliance with the contract Performance Work Statement and performance indicators identified within Section J, Attachment J. To assist the DOE in accomplishing the appropriate level of oversight, the Contractor shall work in partnership and cooperation with DOE and other external organizations, as appropriate, in the self-assessment process. This work includes, but is not limited to, the development and execution of self-assessments and the utilization of the results for continuous improvement.
- (3) The Contractor shall provide periodic updates, as requested by the DOE, on the performance against Section J, Attachment J.
- (4) DOE, as a part of its responsibility for oversight, evaluation, and information exchange, shall provide an annual programmatic appraisal and other appraisals, and reviews of the Contractor's performance of authorized work in accordance with the terms and conditions of this contract. The Strategic Petroleum Reserve's Office of the Project Manager has the lead responsibility for oversight of the programs and activities conducted by the Contractor.
- (5) The Contracting Officer shall annually provide a written assessment of the Contractor's performance which shall be based upon the process described in Section J, Attachment J. The Parties acknowledge that the performance levels achieved against the specific performance objectives and measures shall be the primary, but not sole, criteria for determining the Contractor's final performance evaluation and rating. The Contractor's self-assessment results, to include results of any third party reviews which may have been conducted during the evaluation period, will be considered at all levels to assess and evaluate the Contractor's performance. The Contracting Officer may also consider other relevant information not specifically measured by the objectives and measures established within Section J, Attachment J that is deemed to have an impact (either positive or negative) on the Contractor's performance. Other relevant information that may be used by the Contracting Officer may include, but is not limited to, information gained from peer reviews, operational awareness, outside agency reviews (i.e., Office of Inspector General (OIG), Government Accountability Office (GAO), Defense Contract Audit Agency (DCAA), etc.) conducted throughout the year, annual reviews (if needed), and DOE "for cause" reviews. Contractor success or failure in meeting performance expectations in a management or operating area may affect the level and/or mix of oversight attributed to a particular functional element.

(b) Standards of performance measure review:

- (1) The Parties agree to review the PEMP elements (goals, objectives, performance indicators, and expected levels of performance) contained in Section J, Attachment J annually and to modify them upon the agreement of the Parties; provided, however, that if the Parties cannot reach agreement on all the goals, objectives, performance indicators, and expected levels of performance for the next period, the Contracting

Officer shall have the unilateral right to establish reasonable new goals, objectives, performance indicators and expected levels of performance and/or to modify and/or delete existing goals, objectives, performance indicators and expected levels of performance. It is expected that the goals, objectives, performance indicators, and expected levels of performance will be modified by the Contractor and the DOE as new areas of emphasis or priorities emerge which the Parties may agree warrant recognition in the performance-based integrated management approach.

- (2) Failure to include an objective or performance indicator in the contract Section J, Attachment J does not eliminate the Contractor's obligation to comply with all applicable terms and conditions as set forth elsewhere within the contract. In the event the Contracting Officer decides to exercise the rights set forth in paragraphs (a)(2), (a)(6) or (b)(1) above, he/she will notify the Contractor, in writing, of the intended decision 10 days prior to issuance.

(c) DOE Quality Assurance Surveillance Plan:

DOE's Quality Assurance Surveillance Plan (QASP) for evaluating the Contractor's performance under the contract shall consist primarily of the PEMP as called for within the Section I Clause entitled "DEAR 970.5203-1 – Management Controls." The QASP establishes the process DOE shall use to ensure that the Contractor has performed in accordance with the performance standards and expectations and acceptable quality levels for each task, describes how performance will be monitored and measured; describes how the results will be evaluated; and states how the results will affect contract payment.

(End of Clause)

H.47 DOE-H-7015 CAP ON LIABILITY (SEP 2017)

- (a) The Parties have agreed that the Contractor's liability, for certain obligations it has assumed under this contract, shall be limited as set forth in paragraph (b) below. These limitations or caps shall only apply to obligations the Contractor has assumed pursuant to the following clauses:
 - (1) The Section I Clause entitled "DEAR 970.5245-1 – Property", paragraph (f)(1)(i)(C);
 - (2) The Section I Clause entitled "DEAR 970.5228-1 – Insurance—Litigation and Claims", paragraph (f); with respect to prudent business judgment only; and
 - (3) The Section I Clause entitled "DEAR 970.5228-1 – Insurance—Litigation and Claims", paragraph (g)(2); except for punitive damages resulting from the willful misconduct or lack of good faith on the part of the Contractor's managerial

personnel as defined in the Section I Clause entitled “DEAR 970.5245-1 – Property.”

- (b) Unless otherwise prohibited by law or regulation, the Contractor shall be liable each fiscal year for an amount not-to-exceed 1.25 times the maximum performance fee available for that fiscal year. The annual cap which will apply shall be based on the fiscal year in which the Contractor’s act or failure to act was the proximate cause of the liability assumed by the Contractor. In the event the Contractor’s act or failure to act overlaps more than one (1) fiscal year, the limitation will be the annual limitation for the last fiscal year in which the Contractor’s act or failure to act occurred. If the Contractor’s cumulative obligations for a fiscal year equal the amount of the annual limitation of liability, the Contractor shall have no further responsibility for the costs of the liabilities it has assumed for that fiscal year pursuant to (a)(1) through (3) above.

(End of Clause)

H.48 DOE-H-7016 NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS – SENSE OF CONGRESS (SEP 2017)

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.

(End of Clause)

H.49 DOE-H-7018 EXTERNAL REGULATION (SEP 2017) (REVISED)

The Parties commit to full cooperation with regard to complying with any statutory mandate regarding external regulation of Strategic Petroleum Reserve facilities, whether by the Occupational Safety and Health Administration, and/or state and local entities with regulatory oversight authority and including but not limited to the conduct of pilot programs simulating external regulation, and the application for materials, facilities, or other licenses by or on behalf of the DOE.

(End of Clause)

H.50 DOE-H-7019 SEPARATE ENTITY AND CORPORATE GUARANTEE (SEP 2017)

- (a) The work performed under this contract shall be by a separate entity, either an autonomous organization or an identifiable separate operating unit of a parent organization. The separate entity, whether a new corporate or legal entity formed solely to perform this contract or as a qualifying part of an existing legal or corporate entity, must be set up solely to perform this contract.

- (1) The separate entity shall perform no other commercial work for work for other Government agencies except as may be authorized under the terms of this contract.
 - (2) The contractor shall not utilize or otherwise divert contractor employees to other corporate work except as may be authorized under the terms of this contract or as otherwise authorized by the Contracting Officer.
- (b) If the Contractor forms a new separate corporate or legal entity from its parent organization(s) to perform the work under this contract, the new separate corporate or legal entity shall also be totally responsible for all contract activities.
- (1) The Contractor shall provide a guarantee of performance from its parent company in the form set forth in Section J, Attachment I entitled "Performance Guarantee Agreement." If the Contractor is a joint venture, newly formed Limited Liability Company (LLC), or other similar entity where more than one company is involved in a business relationship created for the purpose of this procurement, the parent companies of all the entities forming the new entity shall each provide Guarantees for joint and severable liability for the performance of the Contractor.
 - (2) In the event any of the signatories to the Guarantee of performance enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer.

(End of Clause)

H.51 DOE-H-7020 RESPONSIBLE CORPORATE OFFICIAL (SEP 2017)

- (a) The Government may contact, as necessary, the single responsible corporate official identified below, who is at a level above the Contractor separate entity performing the contract, and who is accountable for the Contractor regarding Contractor performance issues:

Responsible Corporate Official: [Offeror Fill-In]

Name: _____

Position: _____

Company/Organization _____

Address: _____

Phone: _____

Facsimile: _____

Email: _____

Should the responsible parent corporate official change during the period of the contract, the Contractor shall promptly notify the Contracting Officer in writing of the change.

(End of Clause)

H.52 DOE-H-7021 POST CONTRACT RESPONSIBILITIES FOR PENSION AND OTHER BENEFIT PLANS (SEP 2017)

- (a) If this contract expires or terminates and DOE has awarded a contract under which the new Contractor becomes a sponsor and assumes responsibility for management and administration of the pension or other benefit plans covering active or retired contractor employees with respect to service at the SPR (collectively, the “Plans”), the Contractor shall cooperate and transfer to the new Contractor its responsibility for sponsorship, management and administration of the Plans consistent with direction from the Contracting Officer. If a commingled plan is involved, the Contractor shall:
 - (1) Spin-off the DOE portion of any commingled plan used to cover employees working at the DOE facility into a separate plan. The new plan will normally provide benefits similar to those provided by the commingled plan and shall carry with it the DOE assets on an accrual basis market value, including DOE assets that have accrued in excess of DOE liabilities.
 - (2) Bargain in good faith with DOE or the successor Contractor to determine the assumptions and methods for establishing the liabilities involved in a spin-off. DOE and the Contractor(s) shall establish an effective date of spin-off. On or before the same day as the Contractor notifies the IRS of the spin-off or plan termination, all plan assets assigned to a spun-off or terminating plan shall be placed in a low-risk liability matching portfolio until the successor trustee, or an insurance company, is able to assume stewardship of those assets.

- (b) If this contract expires or terminates and DOE has not awarded a contract to a new Contractor under which the new Contractor becomes a sponsor and assumes responsibility for management and administration of the Plans, or if the Contracting Officer determines that the scope of work under the contract has been completed (any one such event may be deemed by the Contracting Officer to be “Contract Completion” for purposes of this clause), whichever is earlier, and notwithstanding any other obligations and requirements concerning expiration or termination under any other clause of this contract, the following actions shall occur regarding the Contractor’s obligations regarding the Plans at the time of Contract Completion:
- (1) Subject to subparagraph (2) below, and notwithstanding any legal obligations independent of the contract the Contractor may have regarding responsibilities for sponsorship, management, and administration of the Plans, the Contractor shall remain the sponsor of the Plans, in accordance with applicable legal requirements.
 - (2) The Parties shall exercise their best efforts to reach agreement on the Contractor’s responsibilities for sponsorship, management and administration of the Plans prior to or at the time of Contract Completion. However, if the Parties have not reached agreement on the Contractor’s responsibilities for sponsorship, management and administration of the Plans prior to or at the time of Contract Completion, unless and until such agreement is reached, the Contractor shall comply with written direction from the Contracting Officer regarding the Contractor’s responsibilities for continued provision of pension and welfare benefits under the Plans, including but not limited to continued sponsorship of the Plans, in accordance with applicable legal requirements. To the extent that the Contractor incurs costs in implementing direction from the Contracting Officer, the Contractor’s costs will be reimbursed pursuant to applicable contract provisions.

(End of Clause)

H.53 DOE-H-7022 CONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATIONS OR ALLEGED VIOLATIONS, FINES, AND PENALTIES (SEP 2017)

- (a) The Contractor shall accept, in its own name, service of notices of violations or alleged violations (NOVs/NOAVs) issued by Federal or State regulators to the Contractor resulting from the Contractor’s performance of work under this contract, without regard to liability. The allowability of the costs associated with fines and penalties shall be subject to the other provisions of this contract.
- (b) The Contractor shall notify DOE promptly when it receives service from the regulators of NOVs/NOAVs and fines and penalties.

(End of Clause)

H.54 DOE-H-7023 ALLOCATION OF RESPONSIBILITIES FOR CONTRACTOR
(SEP 2017)

- (a) The Parties commit to full cooperation with regard to acquiring any necessary permits or licenses required by environmental, safety and health (ES&H) laws, codes, ordinances, and regulations of the United States, states or territories, municipalities or other political subdivisions, and which are applicable to the performance of work under this contract. It is recognized that certain ES&H permits will be obtained jointly as co-permittees, and other permits will be obtained by either party as the sole permittee. The Contractor, unless otherwise directed by the Contracting Officer, shall procure all necessary non-ES&H permits or licenses.
- (b) This clause allocates the responsibilities of DOE and the Contractor, referred to collectively as the “Parties”, for implementing the environmental requirements at facilities within the scope of the contract. In this clause, the term “environmental requirements” means requirements imposed by applicable Federal, State, and local environmental laws and regulations, including, without limitation, statutes, ordinances, regulations, court orders, consent decrees, administrative orders, or compliance agreements, including the Interagency Agreement (Administrative Docket No.: II-CERCLA-FFA-00202, Spring 1992), consent orders, permits, and licenses.
- (c)
- (i) Liability and responsibility for civil fines or penalties arising from or related to violations of environmental requirements shall be borne by the party causing the violation irrespective of the fact that the cognizant regulatory authority may assess any such fine or penalty upon either party or both Parties without regard to the allocation of responsibility or liability under this contract. This contractual allocation of liability for any such fine or penalty is effective regardless of which party signs permit applications, manifests, reports, or other required documents, is a permittee, or is the named subject of an enforcement action or assessment of a fine or penalty. The allowability of the costs associated with fines and penalties assessed against the Contractor shall be subject to the other provisions of this contract.
- (ii) In the event that the Contractor is deemed to be the primary party causing the violation, and the costs of fines and penalties proposed by the regulatory agency to be assessed against the Government (or the Government and Contractor jointly) are determined by the Government to be presumptively unallowable if allocated against the Contractor, then the Contractor shall be afforded the opportunity to participate in negotiations to settle or mitigate the penalties with the regulatory authority. If the Contractor is the sole party of the enforcement action, the Contractor shall take the lead role in the negotiations and the Government shall participate and have final authority to approve or reject any settlement involving costs charged to the contract.

(d) DOE agrees that if bonds, insurance, or administrative fees are required as a condition for permits obtained by the Contractor under this contract, and the Contractor has been directed by the Contracting Officer to obtain such permits after the Contractor has notified the Contracting Officer of the costs of complying with such conditions, such costs shall be allowable. In the event such costs are determined by DOE to be excessive or unreasonable, DOE shall provide the regulatory agency with the acceptable form of financial responsibility. Under no circumstances shall the Contractor be required to provide any corporate resources or corporate guarantees to satisfy such regulatory requirements.

(End of Clause)

H.55 DOE-H-7024 WORKERS' COMPENSATION INSURANCE (SEP 2017)

- (a) Contractors, other than those whose workers' compensation coverage is provided through a state funded arrangement or a corporate benefits program, shall submit to the Contracting Officer for approval all new compensation policies and all initial proposals for self-insurance (contractors shall provide copies to the Contracting Officer of all renewal policies for workers compensation).
- (b) Workers' compensation loss income benefit payments, when supplemented by other programs (e.g., salary continuation and/or short-term disability) are to be administered so that total benefit payments from all sources shall not exceed 100 percent of the employee's net pay.
- (c) Contractors approve all workers compensation settlement claims up to \$100,000. Settlement claims above the \$100,000 require Contracting Officer approval.
- (d) The Contractor shall obtain approval from the Contracting Officer before making any significant change to its workers compensation coverage and shall furnish reports as may be required from time to time by the Contracting Officer.

(End of Clause)

H.56 DOE-H-7025 LABOR RELATIONS (SEP 2017)

- (a) The Contractor shall respect the right of employees to organize and to form, join, or assist labor organizations, to bargain collectively through their chosen labor representatives, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of these activities.
- (b) The Contractor shall meet with the Contracting Officer or designee(s) for the purpose of reviewing the Contractor's bargaining objectives prior to negotiations of any collective bargaining agreement or revision thereto and shall consult with and obtain

the approval of the Contracting Officer regarding appropriate economic bargaining parameters, including those for pension and medical benefit costs, prior to the Contractor entering into the collective bargaining process. During the collective bargaining process, the Contractor shall notify the Contracting Officer before submitting or agreeing to any collective bargaining proposal which can be calculated to affect allowable costs under this contract or which could involve other items of special interest to the Government. During the collective bargaining process, the Contractor shall obtain the approval of the Contracting Officer before proposing or agreeing to changes in any pension or other benefit plans.

- (c) The Contractor will seek to maintain harmonious bargaining relationships that reflect a judicious expenditure of public funds, equitable resolution of disputes and effective and efficient bargaining relationships consistent with the requirements of FAR 22.1 and DEAR 970.2201 and all applicable Federal and State Labor Relations laws.
- (d) The Contractor will notify the Contracting Officer or designee in a timely fashion of all labor relations issues and matters of local interest including organizing initiatives, unfair labor practice, work stoppages, picketing, labor arbitrations, and settlement agreements (to be reported in iBenefits) and will furnish such additional information as may be required from time to time by the Contracting Officer.

(End of Clause)

H.57 DOE-H-7027 DOE MENTOR-PROTÉGÉ PROGRAM (SEP 2017)

The Department of Energy has established a Mentor-Protégé Program to encourage its prime contractors to assist small businesses, firms certified under section 8(a) of the Small Business Act by SBA, other small disadvantaged businesses, women-owned small businesses, Historically Black Colleges and Universities and Minority Institutions, other minority institutions of higher learning and small business concerns owned and controlled by service disabled veterans in enhancing their business abilities. Consistent with the provisions set forth in DEAR 919.70, the Contractor shall mentor at least one (1) active Protégé company at all times during the performance of this contract. Mentor and Protégé firms will develop and submit “lessons learned” evaluations to DOE at the conclusion of the contract.

(End of Clause)

H.58 DOE-H-7028 LOBBYING RESTRICTIONS (SEP 2017)

- (a) The Contractor agrees that none of the funds obligated on this 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 USC § 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

(End of Clause)

H.59 DOE-H-7030 CONFERENCE SPENDING (MANAGEMENT AND OPERATING CONTRACTS) (SEP 2017)

The Contractor agrees that:

- (a) No cost associated with conference activities shall be allowable under this contract unless the conference is directly and programmatically related to the purpose of the contract and the specific work authorization/order/task directing the conference activities.
- (b) The Contractor shall follow the most current guidance issued by DOE concerning reporting of conference related activities and spending. The Contractor shall request, obtain approval (if \$100,000 or greater), and report all conference activities through the Conference Management Reporting and Approval Tool on the DOE iPortal at <https://iportal.doe.gov>.
- (c) While a conference may be approved by DOE based on estimated cost and attendance to ensure federal funds are used for purposes that are appropriate, cost effective, and important to the core mission, only the Contracting Officer has authority to determine if the costs incurred by the Contractor are allowable, allocable, and reasonable.
- (d) The Contractor and its employees, its sponsors, hosts and attendees shall aggressively seek to limit costs associated with a conference. Conference expenditures shall be kept to the minimum necessary to carry out the Department's mission and consistent with applicable portions of the Federal Travel Regulation, and 48 CFR Chapter 1, the Federal Acquisition Regulation.
- (e) The Contractor shall ensure its conference attendees conduct themselves with the highest level of professionalism and ethical behavior consistent with that expected of DOE employees.
- (f) The Contracting Officer will ensure conference activities are included in the Contractor's annual audit plan.

(End of Clause)

**H.60 DOE-H-7031 INFORMATION TECHNOLOGY ACQUISITIONS (SEP 2017)
(REVISED)**

All information technology acquisitions shall include the appropriate information technology security policies and requirements, including use of common security configurations available

from the National Institute of Standards and Technology's website at <https://nvd.nist.gov/ncp/repository> commensurate with the mission of the contract. This requirement shall be included in all subcontracts which are for information technology acquisitions; and the Contractor's CIO shall annually certify to the Contracting Officer that this requirement is being incorporated into information technology acquisitions.

(End of Clause)

H.61 DOE-H-7033 SPECIAL FINANCIAL INSTITUTION ACCOUNT AGREEMENT (SEP 2017) (REVISED)

The contractor shall use a Special Financial Institution Account Agreement that is in accordance with DOE requirements (Financial Management Handbook, Chapter 6) and appended to the contract in Section J, Attachment C entitled "Special Financial Institution Account Agreement for Use with the Payments Cleared Financing Agreement."

(End of Clause)

H.62 DOE-H-7035 ACTIVITIES DURING CONTRACT TRANSITION (SEP 2017) (REVISED)

(a) The Contractor will commence Transition Activities as soon as possible after the award of the contract and complete the following activities (to the extent identified in the Contractor's proposal) within 60 days after contract award, except as otherwise authorized by the Contracting Officer. It is currently estimated that transition activities will be completed by August 31, 2024. After completion of these activities, and such other Transition Activities as may be authorized by the Contracting Officer, the Contractor shall advise the Contracting Officer that it is ready to assume full responsibility for the contract. Upon receipt of written notification from the Contracting Officer that the Transition Activities are considered complete, the Contractor shall assume full responsibility for the contract, effective 12:01 A.M., September 1, 2024.

- (1) Management Systems. Analyze and initiate enhancements, if needed, to the existing management systems {e.g., Finance, Property, Procurement, Human Resources, Information Management, Life Cycle Asset Management, Integrated Safety Management System (including the Environmental Management System)} to assure system adequacy.
- (2) Assignment of Existing Agreements. Initiate and complete the planning to assume the responsibility for existing regulatory (e.g., environmental permits) and commercial agreements (e.g., subcontracts, purchase orders, etc.) to be assigned to the Contractor by the Incumbent Contractor, or otherwise taken over by the Contractor.

- (3) Joint Reconciliation Property Inventory. Initiate and complete the planning for a joint reconciliation property inventory with the Incumbent Contractor, as stated in Section I Clauses entitled “DEAR 970.5244-1(k) – Contractor Purchasing System” and “DEAR 970.5245-1(i)(2)(ii) – Property”, in accordance with overall guidance provided by the Contracting Officer.
- (4) Litigation Management. Contractor shall consult with the Incumbent Contractor and DOE to determine whether the Contractor should assume some level of management of any litigation resulting from operations predating the effective date of this contract. The decision should be based on consideration of cost efficiency, named parties and DOE litigation management regulations and guidelines.
- (5) Human Resources
 - (A) The Contractor will transition the workforce without break in service as operations cease under Contract No. DE-FE0011020.
 - (B) The Contractor will conduct work force planning, documented in the form of a plan, to be submitted to the Contracting Officer for review and approval at the end of the transition period. The Plan will identify critical-skills necessary to meet mission and contract requirements, provide a gap analysis, and outline the strategy for the recruitment and/or retention of those skills.
 - (C) If the Contractor intends to utilize “Joint Appointees”, determine how said “Joint Appointees” will be utilized; terms to be utilized; and a description of the reimbursement process to be negotiated with the appointees’ home organization(s).
 - (D) Review applicable collective bargaining agreements and initiate contact with the representatives of the various unions.
 - (E) Provide to the Contracting Officer for approval, the Contractor Employee Total Compensation Plan required under the Section H Clause entitled “Employee Compensation: Pay and Benefits”, specifically addressing:
 - (i) The framework for the pension and health/welfare benefits applicable to the transferring workforce, with assessments in the form of a Benefit Value Study and Cost Comparison Survey, as described under the Section H Clause entitled “Employee Compensation: Pay and Benefits”, demonstrating comparability of value and cost relative to the pension and benefits provided by the Incumbent Contractor Fluor Federal Petroleum Operations, LLC. Guidance on acceptable Benefit Value and Cost Comparison tools will be provided by the Contracting Officer.

- (ii) The framework of the total compensation package applicable to new hires under the contract.
 - (F) Determine the strategy for meeting the requirements identified in Section H Clause entitled “Employee Compensation: Pay and Benefits” pertaining to pensions.
 - (G) If desired, propose an incentive compensation strategy for “Key Personnel,” other management personnel, and other employees, as appropriate, that meets the criteria of the DOE Acquisition Guide, Chapter 70.5, which can be located on the internet at <http://energy.gov/management/downloads/acquisition-guide>.
 - (H) Initiate the change in sponsorship of benefit programs, as applicable.
 - (I) Initiate analysis of workers’ compensation program relative to Strategic Petroleum Reserve liabilities.
- (b) Contractor agrees to perform the activities set forth in paragraph (a) above, including relocation of Contractor’s “Key Personnel,” as described in its Cost Proposal, at an allowable cost not to exceed **\$TO BE DETERMINED** (as provided by Offeror). The Contractor’s transition costs shall be separately accounted for and maintained after the transition period. In the event the actual cost of said activities exceeds such amount, including any costs for relocation of Contractor’s “Key Personnel” incurred after the conclusion of the transition period, Contractor agrees that it will be solely responsible for costs greater than said amount.
- (c) Under the prior contract for the management and operation of Strategic Petroleum Reserve, the Contractor performed work which was subject to indemnification under P.L. 85-804. Such work may continue under the Statement of Work for this new contract. If the awardee determines that it requires P.L. 85-804 indemnification, the awardee shall prepare and submit to the Contracting Officer, a P.L. 85-804 indemnification request as early as possible to ensure continuity of work.

(End of Clause)

H.63 DOE-H-7036 WORKFORCE TRANSITION (SEP 2017) (REVISED)

- (a) Hiring Preference. Subject to the availability of funds, the Contractor shall offer employment to all Incumbent Employees in “Regular” or “Term” appointments, as defined in (c), below, who, as of the date the Contractor assumes responsibility for the contract, are in good standing and are engaged in performance of work within the scope of work under this contract. Nothing in this paragraph shall preclude the Contractor

from separating employees when in its judgment it is appropriate to do so based on the employee's performance or conduct.

- (b) Discretionary Incumbent Management Employees Excepted. It is the Contractor's prerogative to establish its own management structure. Therefore, the hiring preference set forth in paragraph (a) above is not applicable to Discretionary Incumbent Management Employees. Discretionary Incumbent Management Employees are individuals permanently assigned to the positions listed below in addition to those assigned to Key Personnel positions as listed in Contract Number DE-FE0011020, in Section J, Attachment G entitled "Key Personnel" as of the date of release of the RFP, including any subsequent changes of these personnel after release. The Contractor may offer employment to said employees, in either their current positions or other positions, at the Contractor's sole discretion. For those Key Personnel positions listed in Contract No. DE-FE0011020 any changes in job positions or classifications shall be accompanied by a commensurate alteration in compensation.

Discretionary Incumbent Management:

Site Director, West Hackberry
Site Director, Bayou Choctaw
Site Director, Bryan Mound
Site Director, Big Hill
Director, Cavern Integrity
Director, Data Systems
Director, Security and Emergency Preparedness
Director, Human Resources and Development
Manager, Energy and Sustainment
General Counsel

- (c) Incumbent Employees.

- (1) "Regular": An employee within this classification has no specified limitation on job duration.
- (2) "Term": An employee within this classification is appointed for a specified period of time exceeding 6 months. Term appointments expiration dates vary. Reappointment at the expiration of the maximum term is made only by grant of tenure or, when appropriate, by a continuing appointment.
- (3) "Temporary": An employee within this classification is appointed for a specified period of time not exceeding 6 months and is not eligible for hiring preference or benefits.
- (4) "Regular" and "Term" full-time employees are eligible for all benefits offered by the incumbent contractor, Fluor Federal Petroleum Operations Company, subject

to the terms, conditions, and limitations of each benefit program. Regular and Term eligible part-time employees' benefits are prorated according to official work schedule. Regular and Term eligible part-time employees are eligible for all benefits available to full-time employees with the exception of payment for time not worked for doctor/dentist visits.

(End of Clause)

H.64 DOE-H-7037 MANAGEMENT AND OPERATING CONTRACTOR (M&O) SUBCONTRACT REPORTING (SEP 2017)

(a) Definitions. As used in this clause-

"First-tier subcontract" means a subcontract awarded directly by the Contractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the Contractor's supplier agreements with vendors, such as long-term arrangements for materials or supplies that would benefit multiple contracts and/or the costs of which are normally applied to a Contractor's general and administrative expenses or indirect costs.

"Management and Operating Contractor Subcontract Reporting Capability (MOSRC)" means a DOE system and associated processes to collect key information about Management and Operating Contractor first-tier subcontracts for reporting to the Small Business Administration.

"Transaction" means any contract, order, other agreement or modification thereof (other than one involving an employer-employee relationship) entered into by the Contractor acquiring supplies or services (including construction) required solely for performance of the prime contract.

(b) Reporting. The Contractor shall collect and report data via MOSRC necessary for DOE to meet its agency reporting requirements, as determined by the Small Business Administration, in accordance with the most recent reporting instructions at <https://www.energy.gov/sites/prod/files/2018/07/f53/MOSRC%20Guide%20for%20MO%20Contractors%20v1.6.pdf>. The Contractor shall report first-tier subcontract data in MOSRC. Classified subcontracts shall not be reported. Subcontracts with Controlled Unclassified Information marking shall not be reported if restricted by its category. Contact your Contracting Officer if uncertain of information reporting requirements. The MOSRC reporting requirement does not replace any other reporting requirements (e.g. the Electronic Subcontracting Reporting System or the FFATA Subcontracting Reporting System).

(End of Clause)

H.65 INFORMATION TECHNOLOGY AND CYBER SECURITY REQUIREMENTS

- (a) General Computing System Use Policies. DOE policies as well as the Information Technology (IT) policies defined at the SPR are intended to protect computer hardware, software, and data from unauthorized access, intentional compromise or destruction, and inadvertent damage. All users including contractor staff are responsible for the protection of computer resources located in their work areas and those computer resources assigned by the SPR to the user. The following computer security requirements apply to all computer users at the SPR.
- (b) Computer Access Request (Including Foreign National Special Requirements). Before any request can be processed the individual needs to have a DOE ID badge or PIV (Personal Identification Verification) card. In order to be assigned a user ID and be allowed access to the SPR computers and network, the person's manager must submit a computer access request or by using the SPR User Management System. The person must also complete the SPRPMO User Certification For Protection of DOE Sensitive Information. If the individual is a foreign national they must fill out a "Foreign National Request" through the Security Department and be properly vetted before being granted access to SPR information systems or data.
- (c) Password. Your assigned login ID and password are for your use only. Your password is not to be disclosed to anyone. You are responsible for all computer work processed under your assigned logon ID and password in accordance with DOE policy.
- (d) User Responsibilities and Prohibited Use. Users must comply with End-User Rules of Behavior defined in Appendix E of the applicable System Security Plan (SSP) for the SPR system being accessed. Users must attend annual computer security awareness briefings.
- (e) Personally Identifiable Information (PII). Protected PII shall not be stored or transmitted on portable/mobile devices or on removable media, or remotely access Protected PII on DOE systems without specific approval of the Designated Approval Official.
- (f) Remote Access. Users shall only do remote access to SPRPMO systems using two-factor authentication with SPRPMO supplied credentials. Remote access to protected PII on government systems must be approved in writing by the Designated Approval Authority. Remote access is any access to an organizational information system by a user (or an information system) communicating through an external, non-organization-controlled network (e.g., the Internet).
- (g) Restriction on the Use of Portable/Removable Media. SPRPMO policy is to restrict the use of portable and removable media to access, collect, create, process, transmit, disseminate, or store SPR information within and outside SPR security areas. Use of portable and removable media to store or transfer SPR electronic information will be considered the exception rather than the normal operating procedure. Only SPR-issued portable and removable media are allowed to be connected to SPR

information systems or networks. Use of Personally Owned Devices (PODs) are not allowed on SPR information systems without prior written approval of the ISSM (Information System Security Manager) or the SPR Designated Approval Official.

- (h) Restriction on the Use of Cellular Technology. SPRPMO policy is to restrict the use of cellular wireless communications technology to access SPR information system assets or data. Cellular technology must be incapacitated or disabled before connecting to any SPR information system or network.

Additionally, in the performance of the information technology and cyber security requirements of this Contract, the Contractor is responsible for compliance with the following items. Consistent with Section I, DEAR 970.5204-2, *Laws, Regulations, and DOE Directives*, omission of any applicable law or regulation from this list does not affect the obligation of the Contractor to comply with such law or regulation.

(End of Clause)

H.66 PROJECT CONTROL SYSTEM

- (a) In the performance of this Contract, the Contractor shall establish, maintain and use a system for the management and control of projects, which meets the requirements set forth in the Contract. The systems shall be cost-effective and of a level of detail commensurate with management principles necessary for management and control of the project. Specific project control systems guideline requirements and time frames for implementation of these requirements shall be transmitted to the Contractor by the Contracting Officer. The systems shall be reviewed by the Contracting Officer, or duly authorized representative(s), for adequacy in meeting the designated requirements. As part of the review procedure, the Contractor shall furnish the Government a description of the project control system applicable to each project as required by the Contracting Officer. The Contractor agrees to provide access to all pertinent records, data and plans as requested by representatives of the Government for the conduct of this review.
- (b) The description of the project control systems accepted by the Contracting Officer shall be maintained and used by the Contractor in the performance of this Contract.
- (c) Contractor changes to the reviewed systems shall be submitted for review and approval as required by the Contracting Officer. When Contracting Officer approval is required, the Contracting Officer shall advise the Contractor of the acceptability of such changes within sixty (60) calendar days after receipt from the Contractor. When systems existing at the time of contract award do not comply with the designated guidelines, adjustments necessary to assure compliance will be made at no change in contract price or fee.

- (d) The Contractor agrees to provide access to all pertinent records and data requested by the Contracting Officer, or duly authorized representative(s), for the purpose of permitting Government surveillance to insure continuing application of the accepted systems to the project or group of projects under this Contract.
- (e) The Contractor shall require that each selected subcontractor, as determined by the Contracting Officer, meet specific guidelines for the project control systems as set forth in subcontract and shall incorporate in all such subcontracts adequate provisions for review and surveillance of subcontractor's systems to be carried out by the prime Contractor, or by the Government when requested by either the Government, prime or subcontractor.

(End of Clause)

H.67 REPORTING REQUIREMENTS

- (a) Work Breakdown Structure. Except as provided for elsewhere in the contract, the Work Breakdown Structure (WBS), as approved by the Contracting Officer, shall provide the basis for all reports required under this contract. The WBS shall be derived from the PWS described in this contract and shall also conform to any implementation guidance which may be provided by the Contracting Officer.
- (b) Periodic Plans and Reports. The Contractor shall submit periodic cost, schedule, and technical performance plans and reports, in such form and substance as required by the Contracting Officer. These periodic plans and reports shall be submitted at the interval, and to the addresses and in the quantities as specified by the Contracting Officer. Where specific forms are required for individual plans and reports, the Contracting Officer shall provide such forms to the Contractor. The plans and reports expected to be submitted by the Contractor are described generally as follows:

General Management Reports narratively summarize schedule, labor, and cost plans and status, and provide explanations of status variances from plans.

Schedule/Labor Cost Reports provide information on schedule, labor and cost plans and status.

Performance Measurement Reports provide information regarding the actual cost of work performed relative to the budgeted cost for work performed relative to the budgeted cost for work scheduled and provide for reporting data on performance measurement baseline maintenance and estimates at completion.

Technical Reports are the means by which scientific, technical, and engineering information acquired in the performance of the work is disseminated. Plans and reports shall be prepared by the Contractor in such a manner as to provide for—

- (1) Consistency with the contract PWS, the Work Authorization Directives (WADs), and the approved WBS.
- (2) Correlation of data among the various plans and reports.
- (c) Changes in Work Effort. The reporting system established and maintained by the Contractor pursuant to this subsection shall recognize changes in work effort directed by the Contracting Officer, as provided for in the Work Control System. During performance of this contract, the Contractor shall update and/or change, as appropriate, the WBS (including any diagrams, supporting work descriptions, and WBS dictionary) to reflect changes in the PWS or discrete WADs. The Contractor's reporting system shall be able to provide for the following at the WAD level, or such lower level, as specified by the Contracting Officer:
 - (1) Incorporate contractual changes affecting estimated cost and schedule in a timely manner.
 - (2) Reconcile estimated cost for those elements of the WBS identified in the contract as either priced line items or discrete WADs, and for those elements at the lowest level of the project summary WBS with current performance measurement budgets in terms of:
 - (3) Changes to the authorized work; and
 - (4) Internal replanning in the detail needed by management for effective control.
 - (5) Prohibit retroactive changes to records pertaining to work performed that will change previously reported costs except for correction of errors and routine accounting adjustments.
 - (6) Prevent revisions to the contract estimated costs except for Government-directed changes to the contractual effort.
 - (7) Document, internal changes to the performance measurement baseline and, on a timely basis, notify the Contracting Officer of such changes.
- (d) The Contractor agrees to provide the Contracting Officer, or designated authorized representatives, access to any and all information and documents comprising the Contractor's reporting system.
- (e) The Contractor shall include the requirements of this clause in all subcontracts that are cost-reimbursement type of contracts when—
 - (1) The value of the subcontract is greater than \$2 million, unless specifically waived by the Contracting Officer, and,

- (2) The Contracting Officer determines that the contract/subcontract effort is, or involves, a critical task related to the contract.

(End of Clause)

H.68 WORK AUTHORIZATION

- (a) Prior to the start of each fiscal year, the DOE shall provide the Contractor program execution guidance in sufficient detail to develop estimated costs, scope, and schedule for the performance thereof. The Contractor shall submit to the Contracting Officer or other designated authorized representative, a detailed PWS consistent with Section C, "Performance Work Statement," a budget of estimated costs and corresponding schedule of performance for work to be performed during the next fiscal year. The level of work activities, estimated cost, and schedule shall be a task level 2 of the Work Breakdown Structure (WBS), consistent with the PWS or other level as specified by the Contracting Officer.
- (b) Budget Negotiations: Prior to the authorization to proceed with the performance of any work under this contract, the Contractor and the DOE shall mutually establish a budget of estimated costs, a detailed PWS, and schedule of performance for each task at level 2 of the WBS or as otherwise specified by the Contracting Officer for that fiscal year. The established estimated costs, detailed PWS, and schedule of performance shall be incorporated into the contract's Section J, Attachment B entitled "Work Authorization Directives (WADs)," and by modification. If agreement cannot be reached on the scope, schedule, and/or estimated cost for the WADs, the Contracting Officer shall issue a unilateral modification establishing the estimated cost and issue the WAD pursuant to this subsection authorizing Contractor performance, which shall not be subject to the Contract Clause entitled "Disputes - Alternate I."
- (c) No activities shall be authorized and no costs incurred until either the Contracting Officer has issued direction concerning continuation of activities.
- (d) Work Authorization Directives: The WADs authorizing the Contractor to proceed with performance of the annual PWS, shall be provided in writing to the Contractor by the Contracting Officer. Each WAD so issued will include the following:
 - (1) Authorization number and work initiation date.
 - (2) Description of Work.
 - (3) Revision Number.
 - (4) The total estimated cost for the work to be performed under this authorization and current period estimated cost if the WAD performance schedule exceeds the current fiscal year.

- (5) Appropriate schedule and milestone dates.
 - (6) Cost, schedule, and all other reporting requirements.
 - (7) Performance, objectives, measures, and targets.
 - (8) Date of issue.
 - (9) Responsible DOE Designated Official signature.
 - (10) Contracting Officer signature.
- (e) Performance Direction: Government direction of the performance of all work authorized for performance under this contract shall be in accordance with the Contract Clause entitled “Technical Direction.”
- (f) Modification: The Contracting Officer may at any time and without notice issue WADs within the PWS of this contract requiring additional work, or directing the omission of, or changes to the PWS of this contract. A proposal for adjustment in the budget of estimated costs and schedule of performance of work established in accordance with paragraph (g) of this subsection shall be submitted by the Contractor as mutually agreed upon with the Contracting Officer.
- (g) Expenditure of Funds and Incurrence of Cost: The performance of work and the incurrence of cost in the execution of the PWS of this contract shall be initiated only when authorized in accordance with the provisions of this subsection. The expenditure of monies by the Contractor in the performance of all authorized work shall also be governed by the provisions of the Contract Clause entitled “Obligation of Funds.” The Contractor shall notify the Contracting Officer whenever it anticipates under-running a WAD by more than 10% or over-running a WAD in any amount as identified in the Financial Plan and in accordance with the WAD ceilings.
- (h) Remuneration: An annual fee shall be negotiated in accordance with the contract clause entitled “Total Available Fee: Base Fee Amount and Performance Fee Amount” for the performance of work authorized pursuant to this subsection. In accordance with the Contract Clause entitled “Changes,” when a WAD results in a material change in the negotiated budget of total estimated cost or character of the PWS, an equitable adjustment of the fee shall be made in accordance with the agreement of the parties and the contract shall be modified in writing.
- (i) Order of Precedence: This subsection is of lesser order of precedence than the Contract Clauses entitled “Obligation of Funds,” and “Payments and Advances.” The Contractor is not authorized to incur costs on any WAD which are not in compliance with the other terms and conditions of this contract.

- (j) Conflicts: In the event there is a conflict between the requirements of this subsection and Section J, Attachment F entitled “List of Applicable Directives,” as amended, the Contractor shall obtain guidance from the Contracting Officer.
- (k) Reporting: Reporting shall be in accordance with the Special Contract Requirement entitled “Reporting Requirements.”
- (l) Responsibility to Achieve Environmental, Safety and Health Compliance:
Notwithstanding the provisions of this subsection, the Contractor has, in the event of an emergency, authority to authorize corrective actions as may be necessary to sustain operations in a manner consistent with applicable environmental, safety and health statutes, regulations, and procedures. In the event that the Contractor takes such an action, the Contractor shall notify the Contracting Officer within 24 hours after such action was initiated and, with 30 days after such action has been initiated, submit a proposal for adjustment in the estimated costs and schedule of performance of work established in accordance with paragraphs (a) and (b) of this subsection.

(End of Clause)

H.69 WITHDRAWAL OF WORK

- (a) The Contracting Officer reserves the right to have any of the work contemplated by Section C, Performance Work Statement, of this contract performed by either another contractor or Government employees.
- (b) Work may be withdrawn:
 - (1) In order for the Government to conduct pilot programs;
 - (2) If the Contractor’s estimated cost of the work is considered unreasonable;
 - (3) For less than satisfactory performance by the Contractor; or
 - (4) For any other reason deemed by the Contracting Officer to be in the best interest of the Government.
- (c) If any work is withdrawn by the Contracting Officer, the Contractor agrees to fully cooperate with the new performing entity and to provide whatever support is required.
- (d) The contract will be modified to reduce the estimated costs and fee for any work withdrawn by the Contracting Officer.

(End of Clause)

H.70 PERFORMANCE CRITERIA, MEASURES, OUTPUT TARGETS, AND INCENTIVES

The Government will develop performance criteria, measures and output targets for the coming fiscal year which will be set forth in the Work Authorization Directives developed and issued pursuant to the Section H Provision entitled “Work Authorization.” The Contractor may also propose additional performance measures, which will be negotiated prior to placement in the Work Authorization Directives. The evaluation areas and individual requirements that will be subject to incentivization will be included in the Performance Evaluation and Measurement Plan developed and issued pursuant to the Clause in Section I entitled, “Total Available Fee: Base Fee Amount and Performance Fee Amount.” The evaluation of performance against measures will be a consideration in (1) development of fee awards, if any, (2) the DOE decision whether to exercise the option to extend the contract and (3) terminating the contract for default.

NOTE – COST REDUCTION INCENTIVE: The Department of Energy (DOE) expects the contractor to manage and operate the Strategic Petroleum Reserve in an efficient and effective manner. To this end, the contractor will be provided an incentive to achieve significant cost reduction without adversely affecting the level of performance required by the contract. Details implementing this incentive will be set forth in the annual Performance Evaluation and Measurement Plan issued pursuant to Section I Clause entitled “Total Available Fee: Base Fee Amount and Performance Fee Amount” of this contract. DOE anticipates that up to 25 percent of annual available fee will be assigned to this evaluation area in the Performance Evaluation and Measurement Plan incorporated in the contract in Section J, Attachment J.

The baseline for the measurement of the contractor’s performance will be the contractor’s approved Annual Operating Plan established each fiscal year. Reductions resulting from schedule delays, direction given by the DOE or changes in the mission, work scope, or routine reorganization of the contractor due to changes in the budget do not qualify for this incentive.

(End of Clause)

H.71 EMPLOYEE CONCERNS PROGRAM (ECP)

The Contractor shall submit an implementation plan to the Contracting Officer for approval within 90 days of contract award that describes an Employee Concerns Program (ECP) that implements all programmatic requirements of the applicable DOE Order 442.1B.

(End of Clause)

H.72 ENVIRONMENT, SAFETY, AND HEALTH (ES&H)

- (a) The Contractor shall comply with existing system description document in accordance with the Section I Clause DEAR 970.5223-1 entitled, "Integration of ES&H Into Work Planning and Execution." The Contractor shall submit an update to the existing Integrated Safety Management System (ISMS) Description Document within 60 days of contract award and thereafter in accordance with the Work Authorization Directive. Any changes to the ISMS Description Document after the Contracting Officer's or designee's initial approval, shall be approved by the Contracting Officer or designee.
- (b) The initial update of the ISMS Description Document shall include any revisions to ES&H Plans/Programs and include interfaces with other equivalent plans/program approved by DOE as required by the Contract Clause in Section I entitled "Laws, Regulations, and DOE Directives."
- (c) This contract establishes the agreed-upon safety requirements and other operating parameters for the site-wide operations covered by the contract.

(End of Clause)

H.73 ENVIRONMENTAL PERMITS AND APPLICATIONS

Except as otherwise directed by the Contracting Officer, the Contractor is required to prepare all necessary Federal, State, and local permit applications. If any agency or agencies, which regulate the permits, require the signature of an operator on the permit, the Contractor, in recognition of its operator responsibilities, shall sign the permit as required by the regulators. In the event of termination or expiration of this Contract, DOE will require the new Contractor to accept transfer of all environmental permits executed by the Contractor.

(End of Clause)

H.74 PROHIBITION OF CONTRACTS WITH PERSONS FALSELY LABELING PRODUCTS AS MADE IN AMERICA

Pursuant to FAR 9.405(b), awards shall not be made to entities that are included on the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

Any possible violation of the prohibition against falsely labeling products as made in America, and the entity is not on the List of Parties Excluded from Federal Procurement and Non-procurement Programs, should be promptly reported through the Contracting Officer. The DOE Contracting Officer is responsible for reporting of an entity in violation of the prohibition against falsely labeling products as American-Made to the Office of Management Systems, Office of Procurement and Assistance Management, for potential debarment of the entity pursuant to FAR 9.406-2(a)(4) and 9.406-2(b)(1)(iii).

(End of Clause)

H.75 GOVERNMENT-OWNED PROPERTY AND EQUIPMENT

On September 1, 2024, the Contractor shall accept the transfer of and accountability for Government-owned property and equipment from Contract DE-FE0011020.

(End of Clause)

H.76 TRAVEL RESTRICTIONS

(a) Costs incurred for lodging, meals, and incidental expenses are considered reasonable and allowable to the extent that they do not exceed the maximum per diem rates in effect at the time of travel as set forth in:

- (1) Federal Travel Regulations (FTR) for travel within the 48 states;
- (2) Joint Travel Regulations (JTR) for travel in Alaska, Hawaii, the Commonwealth of Puerto Rico, and territories and possession of the United States; or
- (3) Standardized Regulations (SR) for travel allowances in foreign areas.

The definitions of lodging, meals, and incidental expenses, and special or unusual situations of the above regulations are applicable to Contractor travel.

(b) Airfare costs in excess of the lowest customary standard, coach, or equivalent airfare offered during normal business hours are unallowable except when such accommodations require circuitous routing, require travel during unreasonable hours, excessively prolong travel, result in increased cost that would offset transportation savings, are not reasonably adequate for physical or medial needs of the traveler, or are not reasonably available to meet mission requirements. However, in order for airfare costs in excess of the above standard airfare to be allowable, the applicable condition(s) set forth above must be documented and justified.

(End of Clause)

H.77 SERVICES

Services acquired by the Contractor for the Strategic Petroleum Reserve are acquired for the benefit of the Department of Energy and are immediately resold to the Government as a resale of services in accordance with Texas and Louisiana sales tax provisions.

(End of Clause)

H.78 LITIGATION MANAGEMENT PROCEDURES

- (a) The Contractor shall prepare a Management of Litigation Procedure(s) compliant with Code of Federal Regulations Title 10 Subpart 719, which shall be submitted to the Contracting Officer within 60 days after the effective date of the contract and shall be updated thereafter as required.
- (b) The SPR Chief Counsel is the authorized designee of the Contracting Officer for approval of this Procedure.
- (c) Reasonable litigation and other legal expenses are allowable when incurred in accordance with the DOE-approved Contractor legal management procedures (including cost guidelines) as such procedures may be revised from time to time, and if not otherwise made unallowable by law or the provisions of this contract.

(End of Clause)

H.79 PROVISIONAL PAYMENT OF AWARD FEE

Monthly provisional payments of award fee in the amount of **\$TBD** shall be made to the Contractor. In the event that overpayment results from the payment of fee on a provisional basis, the Contractor shall reimburse the Government upon demand, payable with interest in accordance with contract clause in Section I entitled "Interest."

(End of Clause)