

**SECTION H**  
**SPECIAL CONTRACT REQUIREMENTS**

**PART 1 – THE SCHEDULE**

**SECTION H**

**SPECIAL CONTRACT REQUIREMENTS**

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## **SECTION H**

### **SPECIAL CONTRACT REQUIREMENTS**

#### **H.1 REPRESENTATIONS AND CERTIFICATIONS**

The Representations, Certifications, and Other Statements of Offeror for this contract as completed by the Contractor are hereby incorporated in this contract by reference.

#### **H.2 MODIFICATION AUTHORITY**

Notwithstanding any of the other provisions of this contract, a Contracting Officer shall be the only individual on behalf of the Government to:

- (a) Accept nonconforming work;
- (b) Waive any requirement of this contract; or
- (c) Modify any term or condition of this contract.

#### **H.3 EMPLOYEE COMPENSATION: PAY AND BENEFITS**

- (a) Contractor Employee Compensation Plan

The Contractor shall submit, for Contracting Officer approval, by close of contract transition, a Contractor Employee Compensation Plan demonstrating how the Contractor will comply with the requirements of this Contract. The Contractor Employee Compensation Plan shall describe the Contractor's policies regarding compensation, pensions and other benefits, and how these policies will support at reasonable cost the effective recruitment and retention of a highly skilled, motivated, and experienced workforce.

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.
- (2) A list of the top five most highly compensated executives as defined in FAR 31.205-6(p)(4)(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. This should be the same information provided to the System for Award Management (SAM) per FAR 52.204-10.
- (3) An Annual Report Compensation and Benefits Report no later than March 1<sup>st</sup> 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 DM Petroleum Operations Company 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 DM Petroleum Operations Company. Comparability of the total benefit package shall be determined by the Contracting Officer 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 below information, as applicable, 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 Section J, Attachment A of the contract, a justification shall be provided with a proposed cost and impacts to budget.

(iii) In the absence of Departmental 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:

- The Merit Increase fund does not exceed the mean percent increase included in the annual Departmental guidance providing the WorldatWork Salary Budget Survey's salary increase projected for the CIP year. The Promotion/Adjustment fund does not exceed .5 percent in total.
- 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.
- Salary structure adjustments do not exceed the mean WorldatWork structure adjustments projected for the CIP year and communicated through the annual Department CIP guidance.
- 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 allowability 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. 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) After receiving DOE CIP approval or if criteria in (d)(3)(A)(iii) was met, Contractors may make minor shifts of up to 10% of approved CIP funds by employment category (e.g., Scientist/Engineer, Admin, Exempt, Non-Exempt) without obtaining DOE approval.
- (vi) Individual compensation actions for the top Contractor official (e.g., laboratory director/plant 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., laboratory director/plant 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 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 that increase costs or are contrary to Departmental policy or written instruction or until the Contracting Officer makes a determination of cost allowability for reimbursement for new or changed benefit plans. Changes 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) Cost reimbursement for Employee pension and other benefit programs sponsored by the Contractor will be based on the Contracting Officer's approval of Contractor actions pursuant to an approved "Employee Benefits Value Study" and an "Employee Benefits Cost Survey Comparison" as described below.
- (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 on a per capita basis per full time equivalent employee and as a percent of payroll and compares it with the cost reported by the U.S. Department of Labor's Bureau of Labor Statistics or other Contracting Officer approved broad based national survey.
- (4) When the net benefit value exceeds the comparator group by more than five percent, the Contractor shall submit a corrective action plan to the Contracting Officer for approval, unless waived in writing by the Contracting Officer.
- (5) When the average total benefit per capita cost or total benefit cost as a percent of payroll exceeds the comparator group by more than five percent, the Contractor shall submit an analysis of the specific plan costs that are above the per capita cost range or total benefit cost as a percent of payroll and a corrective action plan to achieve conformance with a Contracting Officer

directed per capita cost range or total benefit cost as a percent of payroll, unless waived in writing by the Contracting Officer.

- (6) Within two years of Contracting Officer approval of the Contractor's corrective action plan, the Contractor shall align employee benefit programs with the benefit value and per capita cost range or percent of payroll as approved by the Contracting Officer.
  - (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 annual 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

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 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 contributions 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 this Contract. The PMP shall be submitted in the iBenefits system or its successor system no later than January 31<sup>st</sup> 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.

- (h) Reimbursement of Contractors for Contributions to Defined Benefit (DB) 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 1<sup>st</sup> of the calendar year. Final approval of funding will be communicated by the Head of the 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 1<sup>st</sup> 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.

(i) 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 5500. Copies of IRS Forms 5500 with Schedules for each DOE-funded pension plan, no later than that submitted to the IRS.
- 3) 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.

(j) Changes to Pension Plans

At least sixty (60) days prior to the adoption of any changes to a pension plan, the Contractor shall submit the information required below, as applicable, to the Contracting Officer. The Contracting Officer must approve plan changes that increase costs 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, as applicable (see (e)(1) above). The justification must:

- (A) demonstrate the effect of the plan changes on the contract net benefit value or per capita benefit costs,
- (B) provide the dollar estimate of savings or costs, and
- (C) provide the basis of determining the estimated savings or cost.

(k) 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.



(l) Terminating Plans

- (1) DOE Contractors shall not terminate any pension plan (Commingled or site specific) without requesting Departmental approval 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 affect the purposes of this paragraph, DOE and the Contractor may stipulate to a schedule of payments.

(m) 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.

(n) 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."

#### **H.4 LABOR RELATIONS**

- (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, Subpart 22.1 and DEAR, Subpart 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 and will furnish such additional information as may be required from time to time by the Contracting Officer.

#### **H.5 NO THIRD PARTY BENEFICIARIES**

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.

#### **H.6 WORKER'S COMPENSATION INSURANCE**

- (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 (such as salary continuation, 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 the threshold established by the Contracting Officer for DOE approval and submit all settlement claims above the threshold to DOE for 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.

## **H.7 WORKFORCE TRANSITION**

- (a) Right of First Refusal. Subject to the availability of funds, the Contractor shall offer employment to all Incumbent Employees, except as stated in paragraph (b) below, who, as of the date of Contract award, are in good standing and who hold regular appointments and are engaged in performance of work within the PWS under this Contract. Individuals who hold regular appointments are individuals who are employed for an indefinite duration, with either a full-time work schedule of at least 40 hours per week, or a part-time work schedule of fewer than 40 hours per week, but more than 20 hours per week.
- (b) Discretionary Incumbent Management Employees Excepted. It is the Contractor's prerogative to establish its own management structure. Therefore, the right of first refusal set forth in the Workforce Transition clause is not applicable to Discretionary Incumbent Management Employees. Discretionary Incumbent Management Employees are individuals permanently assigned in the positions listed below. The Contractor may offer employment to said employees, in either their current positions or other positions, at the Contractor's sole discretion.
  - (1) For those positions listed below, any changes in job positions or classifications shall be accompanied by a commensurate alteration in compensation.
  - (2) 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.

### **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  
Director, Energy and Sustainability  
General Counsel

## **H.8 POST CONTRACT RESPONSIBILITIES FOR PENSION AND OTHER BENEFIT PLANS**

- (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 Strategic Petroleum Reserve (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 spinoff. DOE and the contractor(s) shall establish an effective date of spinoff. 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.
- (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.

#### **H.9 PERFORMANCE GUARANTEE AGREEMENT**

The Contractor's parent organization(s) or all member organizations if the Contractor is a joint venture, limited liability company, or other similar entity, shall guarantee performance of the contract as evidenced by the Performance Guarantee Agreement incorporated in the contract in Section J, Attachment I.

If the Contractor is a joint venture, limited liability company, or other similar entity where more than one organization is involved, the parent(s) or all member organizations shall assume joint and severable liability for the performance of the contract. In the event any of the signatories to the Performance Guarantee Agreement enters into proceedings related to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer.

#### **H.10 CONTRACTOR PRESS RELEASES**

The DOE policy and procedure on news releases requires that all Contractor press releases be reviewed and approved by DOE prior to issuance. Therefore, the Contractor shall, at least ten (10) days prior to the planned issue date, submit a draft copy to the Contracting Officer of any planned press releases related to work performed under this contract. The Contracting Officer will then obtain necessary reviews and clearances and provide the Contractor with the results of such reviews prior to the planned issue date.

## **H.11 SUSTAINABLE ACQUISITION UNDER DOE SERVICE CONTRACTS**

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 well being of its Federal employees and contractor service providers. As a service provider at a DOE facility you are urged to assist us in our efforts. Sustainable acquisition or environmentally preferable contracting has several interacting initiatives. Among the initiatives are the following:

- Alternative Fueled Vehicles and Alternative Fuels
- Biobased Content Products (USDA Designated Products)
- Energy Efficient Products
- Non-Ozone Depleting Alternative Products
- Recycled Content Products (EPA Designated Products)
- Water Efficient Products (EPA WaterSense Labeled Products)

You should familiarize yourself with these information resources:

- Recycled Products are described at <http://epa.gov/cpg>
- Biobased Products are described at <http://www.biopreferred.gov/>
- Energy efficient products are at <http://energystar.gov/products> for Energy Star products and FEMP designated products are at <http://www.eere.energy.gov/femp/procurement>
- Environmentally Preferable Computers are at <http://www.epeat.net>
- Non-Ozone Depleting Alternative Products at <http://www.epa.gov/ozone/strathome.html>
- Water efficient plumbing fixtures at <http://epa.gov/watersense>

In the course of providing services at the DOE site, if your services necessitate the acquisition of any of these types of products, it is expected that you 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 you may be asked to share information for our report.

## **H.12 TRANSITION ACTIVITIES**

- (a) During the transition period, as specified in the clause in Section F entitled “Period of Performance,” the Contractor shall perform those activities that are necessary to transition the work from the incumbent Contractor in a manner that (1) assures that all work for which the Contractor is responsible under the contract is continued without disruption; (s) provides for an orderly transfer of resources, responsibilities, and accountability from the incumbent Contractor; and (3) allows the Contractor to

perform the work in an efficient, effective, and safe manner. The Contractor is responsible for providing all necessary personnel and logistical support (office space, computers, telephone, etc.) during the transition period, unless specifically directed otherwise by the Contracting Officer.

- (b) The Contractor shall submit a transition plan consistent with the approach in the proposal as the basis for beginning the transition activities immediately upon award of the contract. The Contractor shall submit a transition plan and budget to the Contracting Officer for approval within 7 days after award of the contract.
- (c) After completion of the transition activities contained in the approved transition plan and such other transition activities as may be authorized or directed by the Contracting Officer, the Contractor shall notify the Contracting Officer in writing that it is ready to assume full responsibility for the work. The Contractor shall assume full responsibility for the work upon the date specified in writing by the Contracting Officer.
- (d) The transition plan shall include a schedule of major activities, and address as a minimum:
  - (1) Communication process among the Contractor, incumbent Contractor, and DOE;
  - (2) Identification of key transition issues and milestones;
  - (3) Identification of a transition team (inclusive of consultants and teaming members, if any);
  - (4) Integration of work packages (direct and indirect) and budgets from incumbent Contractor;
  - (5) Approach to minimizing impacts on continuity of operations;
  - (6) Dispute Resolution;
  - (7) Assumption of SPR related programs and projects;
  - (8) Comprehensive human resource management plan as described in the Section H clause entitled "Employee Compensation: Pay and Benefits";
  - (9) Implementation of proposed management systems (e.g., Project Management, Integrated Safety Management, Accounting, Procurement, Property, Budget and Planning);
  - (10) Assumption of all ES&H responsibilities, functions, and activities;



- (11) Identification and prioritization of issues after transition; and
- (12) A detailed cost breakdown by transition activity (include cost breakdown as an appendix to the plan).

**H.13 TECHNICAL DIRECTION – DEAR 952.242-70 (DEC 2000)**

- (a) Performance of the work under this contract shall be subject to the technical direction of the DOE Contracting Officer’s Representative (COR). The term “technical direction” is defined to include, without limitation:
  - (1) Providing direction to the Contractor that redirects contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details, or otherwise serve to accomplish the contractual PWS.
  - (2) Providing written information to the Contractor that assists in interpreting drawings, specifications, or technical portions of the work description.
  - (3) Reviewing and, where required by the contract, approving, technical reports, drawings, specifications, and technical information to be delivered by the Contractor to the Government.
- (b) The Contractor will receive a copy of the written COR designation from the Contracting Officer. It will specify the extent of the COR’s authority to act on behalf of the Contracting Officer.
- (c) Technical direction must be within the PWS stated in the contract. The COR does not have the authority to, and may not, issue any technical direction that—
  - (1) Constitutes an assignment of additional work outside the PWS;
  - (2) Constitutes a change as defined in the contract clause entitled “Changes;”
  - (3) In any manner causes an increase or decrease in the total estimated contract cost, the fee (if any), or the time required for contract performance;
  - (4) Changes any of the expressed terms, conditions or specifications of the contract; or
  - (5) Interferes with the Contractor’s right to perform the terms and conditions of the contract.
- (d) All technical direction shall be issued in writing by the COR.
- (e) The Contractor must proceed promptly with the performance of technical direction duly issued by the COR in the manner prescribed by this clause and within its

authority under the provisions of this clause. If, in the opinion of the Contractor, any instruction or direction by the COR falls within one of the categories defined in (c)(1) through (c)(5) of this clause, the Contractor must not proceed and must notify the Contracting Officer in writing within five (5) working days after receipt of any such instruction or direction and must request the Contracting Officer to modify the contract accordingly. Upon receiving the notification from the Contractor, the Contracting Officer must—

- (1) Advise the Contractor in writing within thirty (30) days after receipt of the Contractor's letter that the technical direction is within the scope of the contract effort and does not constitute a change under the Changes clause of the contract;
  - (2) Advise the Contractor in writing within a reasonable time that the Government will issue a written change order; or
  - (3) Advise the Contractor in writing within a reasonable time not to proceed with the instruction or direction of the COR.
- (f) A failure of the Contractor and Contracting Officer either to agree that the technical direction is within the scope of the contract or to agree upon the contract action to be taken with respect to the technical direction will be subject to the provisions of the clause entitled "Disputes."

#### **H.14 SMALL BUSINESS SUBCONTRACTING PLAN**

The Small Business Subcontracting Plan, submitted by the Contractor consistent with the provisions of the clause entitled "FAR 52.219-9 Small Business Subcontracting Plan" in Section I, and approved by the Contracting Officer is incorporated and made a material part of this contract as an Attachment to Section J.

Prior to the beginning of each Fiscal Year, the Contractor shall also submit an "annual subcontracting plan which shall establish subcontracting goals, as described in paragraph (d)(1) and (2) of Section I clause entitled " FAR 52.219-9 Small Business Subcontracting Plan," to remain in effect for each fiscal year. The annual plan shall be reviewed for approval by the Contracting Officer and shall be incorporated into this contract.

#### **H.15 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.

#### **H.16 SEPARATE CORPORATE ENTITY**

The Contractor under this contract shall be a separate corporate entity from its parent company(ies). The separate corporate entity must be set up solely to perform this contract, and shall be totally responsible for all contract activities.

#### **H.17 RESPONSIBLE CORPORATE OFFICIAL AND CORPORATE BOARD OF DIRECTORS**

Responsible Corporate Official

- (a) The Contractor has provided a guarantee of performance from its parent(s) company(s) in the form set forth in Section J Attachment entitled, "Performance Guarantee Agreement." The individual signing the "Performance Guarantee Agreement" for the parent company(s) should be the Responsible Corporate Official.
- (b) The Responsible Corporate Official is the person who has sole corporate (parent company(s)) authority and accountability for Contractor performance. DOE may contact, as necessary, the single Responsible Corporate Official identified below regarding contract performance issues.

##### **Responsible Corporate Official**

Name: Bruce Stanski  
Position: President  
Company/Organization: Fluor Federal Services, Inc.  
Address: 2300 Clarendon Boulevard, Suite 1110  
Arlington, VA 22201  
Phone: 703-351-6461  
Email: [bruce.stanski@fluor.com](mailto:bruce.stanski@fluor.com)

- (c) Should the Responsible Corporate Official or their contact information change during the period of the contract, the Contractor shall promptly notify the Contracting Officer in writing of the change.

Identified below is each member of the Corporate Board of Directors that will have corporate oversight.

DOE may contact, as necessary, any member of the Corporate Board of Directors, who is accountable for corporate oversight of the Contractor organization and key personnel.

**Corporate Board of Directors:**

Name: Bruce Stanski  
Position: President  
Company/Organization: Fluor Federal Services, Inc.  
Address: 2300 Clarendon Boulevard, Suite 1110  
Arlington, VA 22201  
Phone: 703-351-6461  
Email: [bruce.stanski@fluor.com](mailto:bruce.stanski@fluor.com)

Name: William Shingler  
Position: Vice President Operations E&N  
Company/Organization: Fluor Government Group  
Address: 100 Fluor Daniel Drive  
Greenville, SC 29607  
Phone: 864-593-9439  
Email: [bill.shingler@fluor.com](mailto:bill.shingler@fluor.com)

Name: Daniel Spinks  
Position: Vice President & General Manager  
Company/Organization: Fluor Sugar Land  
Address: 1 Fluor Daniel Drive, D7-7-10  
Sugar Land, TX 77478  
Phone: 281-263-8933  
Email: [dan.spinks@fluor.com](mailto:dan.spinks@fluor.com)

Should any change occur to the Corporate Board of Directors or their contact information during the period of the contract, the Contractor shall promptly notify the Contracting Officer in writing of the change.

**H.18 HOME OFFICE EXPENSES**

Home office expenses, whether direct or indirect, relating to activities of the Contractor are unallowable, except as otherwise specifically provided in the contract or specifically agreed to in writing by the Contracting Officer.

**H.19 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.

## **H.20 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:
    - (i) Changes to the authorized work; and
    - (ii) Internal replanning in the detail needed by management for effective control.
  - (3) Prohibit retroactive changes to records pertaining to work performed that will change previously reported costs except for correction of errors and routine accounting adjustments.

- (4) Prevent revisions to the contract estimated costs except for Government-directed changes to the contractual effort.
  - (5) 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.

## **H.21 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 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 Clause (H.13) 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 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.

## **H.22 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.

### **H.23 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.

### **H.24 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 442.1A.

## **H.25 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.

## **H.26 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.

## **H.27 CONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATION(S) AND FINES AND PENALTIES**

- (a) The Contractor shall accept, in its own name, notices of violation(s) 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 other provisions of this contract.
- (b) After providing DOE advance written notice, the Contractor shall conduct negotiations with regulators regarding NOVs/NOAVs and fines and penalties. However, the Contractor shall not make any commitments or offers to regulators that would bind the Government, including monetary obligations, without first obtaining written approval from the Contracting Officer. Failure to obtain advance written

approval may result in otherwise allowable costs being declared unallowable and/or the Contractor being liable for any excess costs to the Government associated with or resulting from such offers/commitments.

- (c) The Contractor shall notify DOE promptly when it receives service from the regulators of NOV/NOAVs and fines and penalties.

## **H.28 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 Nonprocurement 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 Nonprocurement 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).

## **H.29 DISPOSITION OF INTELLECTUAL PROPERTY – FAILURE TO COMPLETE CONTRACT PERFORMANCE**

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 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 right to use the data in any Government solicitations for the completion of the work contemplated under this contract. Technical information includes, but is not limited to specifications, designs, drawings, operational manuals, flowcharts, software, databases and any other information necessary for the completion of work under this contract. Limited rights data and restricted computer software will be protected in accordance with the provisions of the Section I clause entitled “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, nonexclusive, 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 of 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, and any licenses in any third party intellectual property to the Government, or such third party as the Government may designate, that are necessary for the completion of the work contemplated under this contract.

### **H.30 GOVERNMENT-OWNED PROPERTY**

On April 1, 2014, the Contractor shall accept the transfer of and accountability for Government-owned property from Contract DE-AC96-03PO92207.

### **H.31 CONFIDENTIALITY OF INFORMATION**

- (a) To the extent that the work under this contract requires that the Contractor be given access to confidential or proprietary business or financial information belonging to the Government or other companies, the Contractor shall, after receipt thereof, treat such information as confidential and agrees not the appropriate such information to its own use or to disclose such information to third parties, unless specifically authorized by the Contracting Officer in writing. The foregoing obligations, however, shall not apply to:
  - (1) Information which, at the time of receipt by the Contractor, is in public domain;
  - (2) Information which is published after receipt thereof by the Contractor or otherwise becomes part of the public domain through no fault of the Contractor;
  - (3) Information which the Contractor can demonstrate was in its possession at the time of receipt thereof and was not acquired directly or indirectly from the Government or other companies;
  - (4) Information which the Contractor can demonstrate was received from a third party who did not require the Contractor to hold it in confidence.
- (b) The Contractor shall obtain the written agreement, in a form satisfactory to the Contracting Officer, of each employee permitted access, whereby the employee agrees that he 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.

- (c) The Contractor agrees, if requested by the Government, to sign an agreement identical, in all material respects, to the provisions of this clause, with each company supplying information to the Contractor under this contract, and to supply a copy of such agreement to the Contracting Officer.
- (d) The Contractor agrees that upon request by DOE it will execute a DOE-approved agreement with any party whose facilities or information data it is given access to or is furnished, restricting the use and disclosure of the information obtained from the facilities. Upon request by DOE, such an agreement shall also be signed by Contractor personnel.
- (e) This clauses shall flow down to all appropriate subcontracts.
- (f) Technical data is addressed in DEAR 970.5227-1.

### **H.32 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, an 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.

### **H.33 LOBBYING RESTRICTIONS**

- (a) The Contractor agrees that none of the funds obligated on this contract to 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 described in 18 U.S.C 1913. This restriction is in addition to those prescribed elsewhere in applicable statute and regulation.

### **H.34 TRANSITION TO FOLLOW-ON CONTRACT**

The Contractor recognizes that the work and services covered by this contract are vital to the DOE mission and must be maintained without interruption, both at the commencement and the expiration of this contract. It is therefore understood and further agreed in recognition of the above that:

At the expiration of the contract term or any earlier termination therefor, the Contractor shall cooperate with a successor Contractor or the Government by allowing either to interview its employees for possible employment, and if such employees accept employment with the replacement Contractor, shall release such employees at the time established by the new employer or by DOE. The Contractor shall cooperate with the replacement Contractor and Government with regard to the termination or transfer arrangements for such employees to assure maximum protection of employee service credits and fringe benefits. After selection by the Government of any successor Contractor, the Contractor and such successor Contractor shall jointly prepare mutual detailed plans for phase-out and phase-in operations. Such plans shall specify a training and orientation program for the successor Contractor to cover each phase of the PWS covered by the contract. A proposed date by which successor Contractor will assume full responsibility for such work shall be established. The Contractor shall assume full responsibility for such work until assumption thereof by the successor Contractor. Execution of the proposed plan or any part thereof shall be accomplished in accordance with the Contracting Officer's direction and approval. This clause shall apply to subcontracts as approved by the Contracting Officer. The Contractor shall be reimbursed for all reasonable phase-in and phase-out costs, i.e., costs incurred within the agreed period after contract expiration that result from phase-in and phase-out operations.

### **H.35 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.



### **H.36 ASSIGNMENT AND ADMINISTRATION OF CONTRACTS AND SUBCONTRACTS**

(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 support site work to this contract. The Contractor shall accept the transfers and assignments of 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) Administration of Subcontracts.

The administration of all subcontracts entered into and/or managed by the Contractor, including responsibility for payment hereunder, shall remain with the Contractor. The Government reserves the right at any time to require that the Contractor submit any or all other contractual arrangements, including but not limited to purchase orders or classes of purchase orders, for approval, and provide information concerning methods, practices, and procedures used or proposed to be used in subcontracting and purchasing. Subcontracts and purchase orders shall be made in the name of the Contractor, shall not bind nor purport to bind the Government, shall not relieve the Contractor of any obligation under this contract (including, among other things, the obligation to properly supervise and coordinate the work of subcontractors), and shall be in such form and contain such provisions as are required by this contract or as the Contracting Officer may prescribe. Any consent by the Contracting Officer to the placement of subcontracts shall not be construed to create subcontractor privity of contract with the Government.

(c) Transfer of Subcontracts.

On April 1, 2014, the Contractor shall assume responsibility for existing contracts and other agreements from the Contract Number DE-AC96-03PO92207. These include: (a) all subcontracts and purchase orders with the exception of incumbent contractor's parent company task orders, mentor-protégé agreements, and teaming agreements (b) consulting agreements, (c) regulatory agreement and permits, (d) site-wide plans (e.g., safety and security plans), and (e) other agreements in effect prior to the execution of this contract.

### **H.37 RECOGNITION OF PERFORMING ENTITY**

- (a) The Contractor and the Government recognize that the parties named below form the performing entity on which the award of this contract was based.

Fluor Federal Petroleum Operations, LLC

- (b) Accordingly, the Contractor and the Government agree that:

The Contractor shall take no action to replace the components of the Offeror named in Paragraph (a) above without the prior written approval of the Contracting Officer.

### **H.38 LITIGATION MANAGEMENT PROCEDURES**

- (a) The Contractor (including entities named in Paragraph (a) of the provision in Section H entitled “Recognition of Performing Entity”) 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.

### **H.39 ADVANCE UNDERSTANDING(S)**

The following Advance Understanding is made a part of this contract:

An advance understanding on certain contractor costs is incorporated in Section J, Attachment A.

### **H.40 PROVISIONAL PAYMENT OF AWARD FEE**

Monthly provisional payments of award fee in the amount of \$250,000 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 I.71 entitled “Interest.”

### **H. 41 Conference Management**

The Contractor agrees that:

- a) The contractor shall ensure that contractor-sponsored conferences reflect the DOE/NNSA's commitment to fiscal responsibility, appropriate stewardship of taxpayer funds and support the mission of DOE/NNSA as well as other sponsors of work. In addition, the contractor will ensure conferences do not include any activities that create the appearance of taxpayer funds being used in a questionable manner.

- b) For the purposes of this clause, "conference" is defined in Attachment 2 to the Deputy Secretary's memorandum of August 17, 2015 entitled "Updated Guidance on Conference-Related Activities and Spending."
- c) Contractor-sponsored conferences include those events that meet the conference definition and either or both of the following:
  - 1) The contractor provides funding to plan, promote, or implement an event, except in instances where a contractor:
    - i) covers participation costs in a conference for specified individuals (e.g. students, retirees, speakers, etc.) in a total amount not to exceed \$10,000 (by individual contractor for a specific conference) or
    - ii) purchases goods or services from the conference planners (e.g., attendee registration fees, renting booth space).
  - 2) The contractor authorizes use of its official seal, or other seals/logos/trademarks to promote a conference. Exceptions include non-M&O contractors who use their seal to promote a conference that is unrelated to their DOE contract(s) (e.g., if a DOE IT contractor were to host a general conference on cyber security).
- d) Attending a conference, giving a speech or serving as an honorary chairperson does not connote sponsorship.
- e) The contractor will provide information on conferences they plan to sponsor with expected costs exceeding \$100,000 in the Department's Conference Management Tool, including:
  - 1) Conference title, description, and date
  - 2) Location and venue
  - 3) Description of any unusual expenses (e.g., promotional items)
  - 4) Description of contracting procedures used (e.g., competition for space/support)
  - 5) Costs for space, food/beverages, audio visual, travel/per diem, registration costs, recovered costs (e.g., through exhibit fees)
  - 6) Number of attendees
- f) The contractor will not expend funds on the proposed contractor-sponsored conferences with expenditures estimated to exceed \$100,000 until notified of approval by the contracting officer.

- g) For DOE-sponsored conferences, the contractor will not expend funds on the proposed conference until notified by the contracting officer.
  - 1) DOE-sponsored conferences include events that meet the definition of a conference and where the Department provides funding to plan, promote, or implement the conference and/or authorizes use of the official DOE seal, or other seals/logos/ trademarks to promote a conference. Exceptions include instances where DOE:
    - i) covers participation costs in a conference for specified individuals (e.g. students, retirees, speakers, etc.) in a total amount not to exceed \$10,000 (by individual contractor for a specific conference) or
    - ii) purchases goods or services from the conference planners (e.g., attendee registration fees; renting booth space); or provide funding to the conference planners through Federal grants.
  - 2) Attending a conference, giving a speech, or serving as an honorary chairperson does not connote sponsorship.
  - 3) The contractor will provide cost and attendance information on their participation in all DOE-sponsored conference in the DOE Conference Management Tool.
- h) For non-contractor sponsored conferences, the contractor shall develop and implement a process to ensure costs related to conferences are allowable, allocable, reasonable, and further the mission of DOE/NNSA. This process must at a minimum:
  - 1) Track all conference expenses.
  - 2) Require the Laboratory Director (or equivalent) or Chief Operating Officer approve a single conference with net costs to the contractor of \$100,000 or greater.
- i) Contractors are not required to enter information on non-sponsored conferences in DOE'S Conference Management Tool.
- j) Once funds have been expended on a non-sponsored conference, contractors may not authorize the use of their trademarks/logos for the conference, provide the conference planners with more than \$10,000 for specified individuals to participate in the conference, or provide any other sponsorship funding for the conference. If a contractor does so, its expenditures for the conference may

be deemed unallowable.

## **H.42 RISK MANAGEMENT AND INSURANCE PROGRAMS**

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 950.5070, 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, Insurance Under Cost Reimbursement Contracts; and FAR 31.205-19, DEAR 931.205-19, and DEAR 970.3102-05-19, Insurance and Indemnification.
- 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:
  - (1) 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 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.

- (2) Demonstration of full compliance with applicable state and federal regulations and related professional administration necessary for participation in alternative insurance programs.
  - (3) Safeguards to ensure third party claims and claims settlements are processed in accordance with approved procedures.
  - (4) Accounting of self-insurance charges.
  - (5) 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) Annual accounting and justification as to the reasonableness of the claims reserve submitted for Contracting Officer's review.
    - (d) 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:
- a. 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:

- (1) The amount paid for each claim.
- (2) The amount reserved for each claim.
- (3) The direct expenses related to each claim.
- (4) A summary for the year showing total number of claims.
- (5) A total amount for claims paid.
- (6) A total amount reserved for claims.
- (7) The total amount of direct expenses.

- b. 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).
- c. 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.**

The 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.

**H.43 MANAGEMENT AND OPERATING CONTRACTOR (M&O) SUBCONTRACT REPORTING (SEP 2015)**

(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 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 cost.

“M&O Subcontract Reporting Capability (MOSRC)” means a DOE system and associated processes to collect key information about M&O first-tier subcontracts for reporting to the Small Business Administration.

“Transaction” means any awarded contract, agreement, order or modification, etc. (other than one involving an employer-employee relationship) entered into by a DOE M&O prime contractor calling for supplies and services (including construction) required solely for performance of the prime contract.

(b) *Limited Interim Reporting.*

- (1) The Contractor shall report no less than the twenty highest dollar value first-tier small business subcontract transactions under the contract by December 1 for the previous fiscal year until the Contractor’s business system can report the required data as set forth in paragraph (c) below. Classified subcontracts shall be excluded from the reporting requirement and shall not be counted towards the total number of transactions of the reporting requirement.
- (2) Transactions with a corporation, company, or subdivision that is an affiliate of the Contractor are not included in these reports.
- (3) The Contractor shall provide the data on first-tier small business subcontract transactions under the contract, as described in the *MOSRC Guide* via the Microsoft Excel spreadsheet co-located at <https://max.gov> in the MOSRC Collaboration Center. The spreadsheet will be submitted to [HQProcurementSystems@hq.doe.gov](mailto:HQProcurementSystems@hq.doe.gov).



(c) *Full Reporting.*

The Contractor shall update their business systems and processes to collect and report data to MOSRC in compliance with the MOSRC Guide. The Contractor shall report data in MOSRC for FY17 (and each year thereafter) for first-tier small business subcontracting transactions under the contract. Classified subcontracts shall be excluded from the reporting requirements. All Contractor systems shall be updated in order to provide the first FY17 report in November 2016 for October 2016 transactions.

(d) Pilot M&Os.

Oak Ridge National Laboratory, the National Security Campus at Kansas City Plant, and the National Renewable Energy Laboratory shall have their business systems updated in order to provide the first FY16 report in April 2016 for March 2016 transactions.

**H.44 MULTIFACTOR AUTHENTICATION FOR DOE INFORMATION SYSTEMS**  
**(JUN 2016)**

The Contractor shall take all necessary actions to achieve multifactor authentication (MFA) for standard and privileged user accounts of all classified and unclassified networks by September 30, 2016. 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."

The Contractor shall periodically report its progress in achieving the implementation goal by September 30, 2016 as required by the Contracting Officer.

**PART 1 – THE SCHEDULE**

**SECTION I**

**CONTRACT CLAUSES**

**PART 1 – THE SCHEDULE**

**SECTION I**

**CONTRACT CLAUSES**

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Application of FAR and DEAR Clauses is incorporated by reference as explained in FAR 52.252-2. Subsequent changes to FAR and DEAR are not applicable to this contract unless incorporated by Contract Modification. Additional information required by certain clauses is provided below.

I.1	FAR 52.252-2	CLAUSES INCORPORATED BY REFERENCE (FEB 1998)	Full Text
I.2	FAR 52.202-1 DEAR 952.202-1	DEFINITIONS (NOV 2013) (AS MODIFIED BY DEAR DEFINITIONS FEB 2011)	Full Text
I.3	FAR 52.203-3	GRATUITIES (APR 1984)	By Reference
I.4	FAR 52.203-5	COVENANT AGAINST CONTINGENT FEES (MAY 2014)	By Reference
I.5	FAR 52.203-6	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEP 2006)	By Reference
I.6	FAR 52.203-7	ANTI-KICKBACK PROCEDURES (MAY 2014)	By Reference
I.7	FAR 52.203-8	CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (MAY 2014)	By Reference
I.8	FAR 52.203-10	PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (MAY 2014)	By Reference
I.9	FAR 52.203-12	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (OCT 2010)	By Reference

I.10	FAR 52.203-13	CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (OCT 2015)	By Reference
I.11	FAR 52.203-14	DISPLAY OF HOTLINE POSTERS (OCT 2015)	Full Text
I.12	FAR 52.204-1	APPROVAL OF CONTRACT (DEC 1989)	Full Text
I.13	FAR 52.204-4	PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (MAY 2011)	By Reference
I.14	FAR 52.204-7	SYSTEM FOR AWARD MANAGEMENT (JULY 2013)	By Reference
I.15	FAR 52.204-9	PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (JAN 2011)	By Reference
I.16	FAR 52.204-10	REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS (OCT 2015)	By Reference
I.17	FAR 52.209-6	PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (OCT 2015)	By Reference
I.18	FAR 52.209-9	UPDATE OF PUBLICLY AVAILABLE INFORMATION REGARDING RESPONSIBILITY MATTERS (JULY 2013)	By Reference
I.19	FAR 52.211-5	MATERIAL REQUIREMENTS (AUG 2000)	By Reference
I.20	FAR 52.215-8	ORDER OF PRECEDENCE – UNIFORM CONTRACT FORMAT (OCT 1997)	By Reference
I.21	FAR 52.215-17	WAIVER OF FACILITIES CAPITAL COST OF MONEY (OCT 1997)	By Reference
I.22	FAR 52.217-9	OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)	Full Text
I.23	FAR 52.219-8	UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2014)	By Reference

I.24	FAR 52.219-9	SMALL BUSINESS SUBCONTRACTING PLAN (OCT 2015)	By Reference
I.25	FAR 52.219-16	LIQUIDATED DAMAGES-SUBCONTRACTING PLAN (JAN 1999)	By Reference
I.26	RESERVED		
I.27	FAR 52.222-1	NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)	By Reference
I.28	FAR 52.222-2	PAYMENT OF OVERTIME PREMIUM (JULY 1990)	Full Text
I.29	FAR 52.222-3	CONVICT LABOR (JUNE 2003)	By Reference
I.30	FAR 52.222-4	CONTRACT WORK HOURS AND SAFETY STANDARDS OVERTIME COMPENSATION (MAY 2014)	By Reference
I.31	FAR 52.222-6	CONSTRUCTION WAGE RATE REQUIREMENTS (MAY 2014)	By Reference
I.32	FAR 52.222-7	WITHHOLDING OF FUNDS (MAY 2014)	By Reference
I.33	FAR 52.222-8	PAYROLLS AND BASIC RECORDS (MAY 2014)	By Reference
I.34	FAR 52.222-9	APPRENTICES AND TRAINEES (JULY 2005)	By Reference
I.35	FAR 52.222-10	COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)	By Reference
I.36	FAR 52.222-11	SUBCONTRACTS (LABOR STANDARDS) (MAY 2014)	By Reference
I.37	FAR 52.222-12	CONTRACT TERMINATION- DEBARMENT (MAY 2014)	By Reference
I.38	FAR 52.222-13	COMPLIANCE WITH CONSTRUCTION WAGE RATE REQUIREMENTS AND RELATED REGULATIONS (MAY 2014)	By Reference
I.39	FAR 52.222-14	DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)	By Reference

I.40	FAR 52.222-15	CERTIFICATION OF ELIGIBILITY (MAY 2014)	By Reference
I.41	FAR 52.222-16	APPROVAL OF WAGE RATES (MAY 2014)	By Reference
I.42	FAR 52.222-20	CONTRACTS FOR MATEIRALS, SUPPLIES, ARTICLES, AND EQUIPMENT EXCEEDING \$15,000 (MAY 2014)	By Reference
I.43	FAR 52.222-21	PROHIBITION OF SEGREGATED FACILITIES (APRIL 2015)	By Reference
I.44	FAR 52.222-26	EQUAL OPPORTUNITY (APRIL 2015)	By Reference
I.45	FAR 52.222-35	EQUAL OPPORTUNITY FOR VETERANS (OCT 2015)	By Reference
I.46	FAR 52.222-36	EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (JULY 2014)	By Reference
I.47	FAR 52.222-37	EMPLOYMENT REPORTS ON VETERANS (FEB 2016)	By Reference
I.48	FAR 52.222-38	COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING REQUIREMENTS (FEB 2016)	By Reference
I.49	FAR 52.222-40	NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEC 2010)	By Reference
I.50	FAR 52.222-41	SERVICE CONTRACT LABOR STANDARDS (MAY 2014)	By Reference
I.51	FAR 52.222-50	COMBATING TRAFFICKING IN PERSONS (MARCH 2015)	By Reference
I.52	FAR 52.222-54	EMPLOYMENT ELIGIBILITY VERIFICATION ( OCT 2015)	By Reference
I.53	FAR 52.223-2	AFFIRMATIVE PROCUREMENT OF BIOBASED PRODUCTS UNDER SERVICE AND CONSTRUCTION CONTRACTS (SEP 2013)	By Reference

I.54	FAR 52.223-3	HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997) ALTERNATE I (JUL 1995)	Full Text
I.55	FAR 52.223-5	POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (MAY 2011)	By Reference
I.56	FAR 52.223-10	WASTE REDUCTION PROGRAM (MAY 2011)	By Reference
I.57	FAR 52.223-11	OZONE-DEPLETING SUBSTANCES (JUNE 2016)	By Reference
I.58	FAR 52.223-12	MAINTENANCE, SERVICE, REPAIR, OR DISPOSAL OF REFRIGERATION EQUIPMENT AND AIR CONDITIONERS (JUNE 2016)	By Reference
I.59	FAR 52.223-15	ENERGY EFFICIENCY IN ENERGY CONSUMING PRODUCTS (DEC 2007)	By Reference
I.60	FAR 52.223-16	ACQUISITION OF EPEAT®-REGISTERED PERSONAL COMPUTER PRODUCTS (OCT 2015)	By Reference
I.61	FAR 52.223-17	AFFIRMATIVE PROCUREMENT OF EPA-DESIGNATED ITEMS IN SERVICE AND CONSTRUCTION CONTRACTS (MAY 2008)	By Reference
I.62	FAR 52.223-18	ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (AUG 2011)	By Reference
I.63	FAR 52.223-19	COMPLIANCE WITH ENVIRONMENTAL MANAGEMENT SYSTEMS (MAY 2011)	By Reference
I.64	FAR 52.224-1	PRIVACY ACT NOTIFICATION (APR 1984)	By Reference
I.65	FAR 52.224-2	PRIVACY ACT (APR 1984)	By Reference
I.66	FAR 52.225-1	BUY AMERICAN - SUPPLIES (MAY 2014)	By Reference

I.67	FAR 52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUNE 2008)	By Reference
I.68	FAR 52.227-23	RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUN 1987)	Full Text
I.69	FAR 52.230-2	COST ACCOUNTING STANDARDS (OCT 2015)	By Reference
I.70	FAR 52.230-6	ADMINISTRATION OF COST ACCOUNTING STANDARDS (JUNE 2010)	By Reference
I.71	FAR 52.232-17	INTEREST (MAY 2014)	By Reference
I.72	FAR 52.232-23	ASSIGNMENT OF CLAIMS (MAY 2014)	By Reference
I.73	FAR 52.233-1	DISPUTES (MAY 2014) ALTERNATE I (DEC 1991)	By Reference
I.74	FAR 52.233-3	PROTEST AFTER AWARD (AUG 1996) ALTERNATE I (JUN 1985)	By Reference
I.75	FAR 52.233-4	APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (OCT 2004)	By Reference
I.76	FAR 52.234-4	EARNED VALUE MANAGEMENT SYSTEM (MAY 2014)	Full Text
I.77	FAR 52.237-2	PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984)	By Reference
I.78	FAR 52.237-3	CONTINUITY OF SERVICES (JAN 1991)	By Reference
I.79	FAR 52.239-1	PRIVACY OR SECURITY SAFEGUARDS (AUG 1996)	By Reference
I.80	FAR 52.242-13	BANKRUPTCY (JUL 1995)	By Reference
I.81	FAR 52.244-5	COMPETITION IN SUBCONTRACTING (DEC 1996)	By Reference
I.82	FAR 52.244-6	SUBCONTRACTS FOR COMMERCIAL ITEMS (JUNE 2016)	By Reference



I.83	FAR 52.249-6	TERMINATION (COST REIMBURSEMENT) (MAY 2004)	Full Text
I.84	FAR 52.249-14	EXCUSABLE DELAYS (APR 1984)	By Reference
I.85	FAR 52.251-1	GOVERNMENT SUPPLY SOURCES (APR 2012)	By Reference
I.86	FAR 52.251-2	INTERAGENCY FLEET MANAGEMENT SYSTEM VEHICLES AND RELATED SERVICES (JAN 1991)	By Reference
I.87	FAR 52.252-6	AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)	Full Text
I.88	FAR 52.253-1	COMPUTER GENERATED FORMS (JAN 1991)	By Reference
I.89	DEAR 952.203-70	WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000)	By Reference
I.90	DEAR 952.204-2	SECURITY (MAR 2011) (DEVIATION) (OCT 2013)	(Full Text)
I.91	DEAR 952.204-70	CLASSIFICATION/ DECLASSIFICATION (SEP 1997)	By Reference
I.92	DEAR 952.204-75	PUBLIC AFFAIRS (DEC 2000)	By Reference
I.93	DEAR 952.204-77	COMPUTER SECURITY (AUG 2006)	By Reference
I.94	DEAR 952.209-72	ORGANIZATIONAL CONFLICTS OF INTEREST (AUG 2009) ALTERNATE I (FEB 2011)	Full Text
I.95	DEAR 952.215-70	KEY PERSONNEL (DEC 2000)	Full Text
I.96	DEAR 952.217-70	ACQUISITION OF REAL PROPERTY (MAR 2011)	By Reference
I.97	DEAR 952.219-70	MENTOR-PROTÉGÉ PROGRAM (MAY 2000)	By Reference
I.98	DEAR 952.226-74	DISPLACED EMPLOYEE HIRING PREFERENCE (JUNE 1997)	By Reference
I.99	DEAR 952.247-70	FOREIGN TRAVEL (JUNE 2010)	By Reference

I.100	DEAR 952.251-70	CONTRACTOR EMPLOYEE TRAVEL DISCOUNTS (AUG 2009)	By Reference
I.101	DEAR 970.5203-1	MANAGEMENT CONTROLS (JUNE 2007)	By Reference
I.102	DEAR 970.5203-2	PERFORMANCE IMPROVEMENT AND COLLABORATION (MAY 2006)	By Reference
I.103	DEAR 970.5203-3	CONTRACTOR'S ORGANIZATION (DEC 2000)	By Reference
I.104	DEAR 970.5204-1	COUNTERINTELLIGENCE (DEC 2010)	By Reference
I.105	DEAR 970.5204-2	LAWS, REGULATIONS, AND DOE DIRECTIVES (DEC 2000)	By Reference
I.106	DEAR 970.5204-3	ACCESS TO AND OWNERSHIP OF RECORDS (OCT 2014) (DEVIATION MAY 2015)	Full Text
I.107	DEAR 970.5208-1	PRINTING (DEC 2000)	By Reference
I.108	DEAR 970.5211-1	WORK AUTHORIZATION (MAY 2007)	By Reference
I.109	DEAR 970.5215-1	TOTAL AVAILABLE FEE: BASE FEE AMOUNT AND PERFORMANCE FEE AMOUNT (DEC 2000), ALTERNATE II (DEC 2000) AND ALTERNATE IV (DEC 2000)	Full Text
I.110	DEAR 970.5215-3	CONDITIONAL PAYMENT OF FEE, PROFIT, AND OTHER INCENTIVES – FACILITY MANAGEMENT CONTRACTS (AUG 2009), ALTERNATE II (AUG 2009)	Full Text
I.111	DEAR 970.5215-4	COST REDUCTION (AUG 2009)	By Reference
I.112	DEAR 970.5222-1	COLLECTIVE BARGAINING AGREEMENTS-MANAGEMENT AND OPERATING CONTRACTS (DEC 2000)	By Reference
I.113	DEAR 970.5222-2	OVERTIME MANAGEMENT (DEC 2000)	By Reference

I.114	DEAR 970.5223-1	INTEGRATION OF ENVIRONMENT, SAFETY AND HEALTH INTO WORK PLANNING AND EXECUTION (DEC 2000)	By Reference
I.115	DEAR 970.5223-4	WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2010)	By Reference
I.116	DEAR 970.5223-6	EXECUTIVE ORDER 13423, STRENGTHENING FEDERAL, ENVIRONMENTAL, ENERGY, AND TRANSPORTATION MANAGEMENT (OCT 2010)	By Reference
I.117	DEAR 970.5223-7	SUSTAINABLE ACQUISITION PROGRAM (OCT 2010)	By Reference
I.118	DEAR 970.5226-1	DIVERSITY PLAN (DEC 2000)	By Reference
I.119	DEAR 970.5226-3	COMMUNITY COMMITMENT (DEC 2000)	By Reference
I.120	DEAR 970.5227-1	RIGHTS IN DATA—FACILITIES (DEC 2000)	By Reference
I.121	DEAR 970.5227-4	AUTHORIZATION AND CONSENT (AUG 2002)	By Reference
I.122	DEAR 970.5227-5	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 2002)	By Reference
I.123	DEAR 970.5227-6	PATENT INDEMNITY SUBCONTRACTS (DEC 2000)	By Reference
I.124	DEAR 970.5227-8	REFUND OF ROYALTIES (AUG 2002)	By Reference
I.125	DEAR 970.5227-11	PATENT RIGHTS - MANAGEMENT AND OPERATING CONTRACTS, FOR PROFIT CONTRACTOR, NON-TECHNOLOGY TRANSFER (DEC 2000)	By Reference
I.126	DEAR 970.5228-1	INSURANCE-LITIGATION AND CLAIMS (JULY 2013)	By Reference

I.127	DEAR 970.5229-1	STATE AND LOCAL TAXES (DEC 2000)	By Reference
I.128	DEAR 970.5231-4	PREEXISTING CONDITIONS (DEC 2000) ALTERNATE II (DEC 2000)	Full Text
I.129	DEAR 970.5232-1	REDUCTION OR SUSPENSION OF ADVANCE, PARTIAL, OR PROGRESS PAYMENTS (DEC 2000)	By Reference
I.130	DEAR 970.5232-2	PAYMENTS AND ADVANCES (DEC 2000) ALTERNATE II (DEC 2000), ALTERNATE III (DEC 2000)	Full Text
I.131	DEAR 970.5232-3	ACCOUNTS, RECORDS, AND INSPECTION (DEC 2010)	By Reference
I.132	DEAR 970.5232-4	OBLIGATION OF FUNDS (DEC 2000)	Full Text
I.133	DEAR 970.5232-5	LIABILITY WITH RESPECT TO COST ACCOUNTING STANDARDS (DEC 2000)	By Reference
I.134	DEAR 970.5232-6	STRATEGIC PARTNERSHIP PROJECTS FUDNING AUTHORIZATION (APRIL 2015)	By Reference
I.135	DEAR 970.5232-7	FINANCIAL MANAGEMENT SYSTEM (DEC 2000)	By Reference
I.136	DEAR 970.5232-8	INTEGRATED ACCOUNTING (DEC 2000)	By Reference
I.137	DEAR 970.5236-1	GOVERNMENT FACILITY SUB- CONTRACT APPROVAL (DEC 2000)	By Reference
I.138	DEAR 970.5242-1	PENALTIES FOR UNALLOWABLE COSTS (AUG 2009)	By Reference
I.139	DEAR 970.5243-1	CHANGES (DEC 2000)	By Reference
I.140	DEAR 970.5244-1	CONTRACTOR PURCHASING SYSTEM (JAN 2013) (DEVIATION MAY 2015)	Full Text
I.141	DEAR 970.5245-1	PROPERTY (JAN 2013)	By Reference

I.142	FAR 52.243-2	CHANGES – COST REIMBURSEMENT (AUG 1987)	By Reference
I.143	FAR 52.203-17	CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (APRIL 2014)	By Reference
I.144	FAR 52.204-13	SYSTEM FOR AWARD MANAGEMENT MAINTENANCE (JULY 2013)	By Reference
I.145	FAR 52.209-10	PROHIBITION ON CONTRACTING WITH INVERTED DOMESTIC CORPORATIONS (NOV 2015)	By Reference
I.146	FAR 52.242-1	NOTICE OF INTENT TO DISALLOW COSTS (APR 1984)	By Reference
I.147	FAR 52.223-13	ACQUISITION OF EPEAT®-REGISTERED IMAGING EQUIPMENT (JUNE 2014)	By Reference
I.148	FAR 52.223-14	ACQUISITION OF EPEAT®-REGISTERED TELEVISIONS (JUNE 2014)	By Reference
I.149	FAR 52.225-9	BUY AMERICAN – CONSTRUCTION MATERIALS (MAY 2014)	By Reference
I.150	FAR 52.222-55	MINIMUM WAGES UNDER EXECUTIVE ORDER 13658 (DEC 2015)	By Reference
I.151	FAR 52.203-99	PROHIBITION ON CONTRACTING WITH ENTITIES THAT REQUIRE CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS – REPRESENTATIONS (DEVIATION 2015-02) (FEB 2015)	Full Text

**I.1 FAR 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)**

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

<http://farsite.hill.af.mil>, <http://www.acquisition.gov/far/>

<http://energy.gov/sites/prod/files/maprod/documents/EDEARMarch142011-OPAM-Policy.pdf>

**I.2 FAR 52.202-1 DEFINITIONS (NOV 2013) AS MODIFIED BY DEAR 952.202-1 DEFINITIONS (FEB 2011)**

- (a) When a solicitation provision or contract clause uses a word or term that is defined in the Federal Acquisition Regulation (FAR), the word or term has the same meaning as the definition in FAR 2.101 in effect at the time the solicitation was issued, unless—
- (1) The solicitation, or amended solicitation, provides a different definition;
  - (2) The contracting parties agree to a different definition;
  - (3) The part, subpart, or section of the FAR where the provision or clause is prescribed provides a different meaning; or
  - (4) The word or term is defined in FAR Part 31, for use in the cost principles and procedures.
- (b) When a solicitation provision or contract clause uses a word or term that is defined in the Department of Energy Acquisition Regulation (DEAR) (48 CFR chapter 9), the word or term has the same meaning as the definition in 48 CFR 902.101 or the definition in the part, subpart, or section of 48 CFR chapter 9 where the provision or clause is prescribed in effect at the time the solicitation was issued, unless an exception in (a) applies.

**I.11 52.203-14 DISPLAY OF HOTLINE POSTER(S) (OCT 2015)**

- (a) Definition.

“United States,” as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

- (b) Display of fraud hotline poster(s). Except as provided in paragraph (c)—

- (1) During contract performance in the United States, the Contractor shall prominently display in common work areas within business segments performing work under this contract and at contract work sites—
  - (i) Any agency fraud hotline poster or Department of Homeland Security (DHS) fraud hotline poster identified in paragraph (b)(3) of this clause; and
  - (ii) Any DHS fraud hotline poster subsequently identified by the Contracting Officer.
- (2) Additionally, if the Contractor maintains a company website as a method of providing information to employees, the Contractor shall display an electronic version of the poster(s) at the website.
- (3) Any required posters may be obtained as follows:

Poster(s): Obtain from:  
DOE Hotline:  
<http://energy.gov/ig/downloads/office-inspector-general-hotline-poster>
- (c) If the Contractor has implemented a business ethics and conduct awareness program, including a reporting mechanism, such as a hotline poster, then the Contractor need not display any agency fraud hotline posters as required in paragraph (b) of this clause, other than any required DHS posters.
- (d) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts that exceed \$5.5 million, except when the subcontract—
  - (1) Is for the acquisition of a commercial item; or
  - (2) Is performed entirely outside the United States.

**I.12 52.204-1 APPROVAL OF CONTRACT (DEC 1989)**

This contract is subject to the written approval of the DOE Procurement Executive or designee and shall not be binding until so approved.

**I.22 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)**

- (a) The Government may extend the term of this contract by written notice to the Contractor within 180 days of the expiration of the base contract; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 12 months before the contract expires. The preliminary notice does not commit the Government to an extension.

- (b) If the Government exercises this option, the extended contract shall be considered to include this option clause.
- (c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 10 years.

**I.28 52.222-2 PAYMENT FOR OVERTIME PREMIUM (JUL 1990)**

- (a) The use of overtime is authorized under this contract if the overtime premium does not exceed [\*] or the overtime premium is paid for work –
  - (1) Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;
  - (2) By indirect-labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;
  - (3) To perform tests, industrial processes, laboratory procedures, loading or unloading of transportation conveyances, and operations in flight or afloat that are continuous in nature and cannot reasonably be interrupted or completed otherwise; or
  - (4) That will result in lower overall costs to the Government.
- (b) Any request for estimated overtime premiums that exceeds the amount specified above shall include all estimated overtime for contract completion and shall –
  - (1) Identify the work unit; *e.g.*, department or section in which the requested overtime will be used, together with present workload, staffing, and other data of the affected unit sufficient to permit the Contracting Officer to evaluate the necessity for the overtime;
  - (2) Demonstrate the effect that denial of the request will have on the contract delivery or performance schedule;
  - (3) Identify the extent to which approval of overtime would affect the performance or payments in connection with other Government contracts, together with identification of each affected contract; and
  - (4) Provide reasons why the required work cannot be performed by using multishift operations or by employing additional personnel.

*\* Overtime premium established annually by modification.*



**I.54 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997) - ALTERNATE I (JUL 1995)**

- (a) Hazardous material, as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).
- (b) The offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

**MATERIAL (*COMPLETE AS REQUIRED*)**

(If none, insert None)	Identification No.
------------------------	--------------------

_____	_____
_____	_____
_____	_____

- (c) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.
- (d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.
- (e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.
- (f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.
- (g) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations

(including the obtaining of licenses and permits) in connection with hazardous material.

- (h) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:
- (1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to –
    - (i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;
    - (ii) Obtain medical treatment for those affected by the material; and
    - (iii) Have others use, duplicate, and disclose the data for the Government for these purposes.
  - (2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.
  - (3) The Government is not precluded from using similar or identical data acquired from other sources.
    - (i) Except as provided in paragraph (i)(2), the Contractor shall prepare and submit a sufficient number of Material Safety Data Sheets (MSDS's), meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous materials identified in paragraph (b) of this clause.
      - (A) For items shipped to consignees, the Contractor shall include a copy of the MSDS's with the packing list or other suitable shipping document which accompanies each shipment. Alternatively, the Contractor is permitted to transmit MSDS's to consignees in advance of receipt of shipments by consignees, if authorized in writing by the Contracting Officer.
      - (B) For items shipped to consignees identified by mailing address as agency depots, distribution centers or customer supply centers, the Contractor shall provide one copy of the MSDS's in or on each shipping container. If affixed to the outside of each container, the MSDS's must be placed in a weather resistant envelope.

**I.68 FAR 52.227-23 RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUN 1987)**

Except for data in Volumes II and III, it is agreed that as a condition of award of this contract and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the “Rights in Data—General” clause contained in this contract) in and to the technical data contained in the proposal dated June 28, 2012, upon which this contract is based.

**I.76 FAR 52.234-4 EARNED VALUE MANAGEMENT SYSTEM (MAY 2014)**

- (a) The Contractor shall use an earned value management system (EVMS) that has been determined by the Cognizant Federal Agency (CFA) to be compliant with the guidelines in ANSI/EIA Standard - 748 (current version at the time of award) to manage this contract. If the Contractor’s current EVMS has not been determined compliant at the time of award, see paragraph (b) of this clause. The Contractor shall submit reports in accordance with the requirements of this contract.
- (b) If, at the time of award, the Contractor’s EVM System has not been determined by the CFA as complying with EVMS guidelines or the Contractor does not have an existing cost/schedule control system that is compliant with the guidelines in ANSI/EIA Standard - 748 (current version at time of award), the Contractor shall—
  - (1) Apply the current system to the contract; and
  - (2) Take necessary actions to meet the milestones in the Contractor’s EVMS plan approved by the Contracting Officer.
- (c) The Government will conduct an Integrated Baseline Review (IBR). If a pre-award IBR has not been conducted, a post award IBR shall be conducted as early as practicable after contract award.
- (d) The Contracting Officer may require an IBR at—
  - (1) Exercise of significant options; or
  - (2) Incorporation of major modifications.
- (e) Unless a waiver is granted by the CFA, Contractor proposed EVMS changes require approval of the CFA prior to implementation. The CFA will advise the Contractor of the acceptability of such changes within 30 calendar days after receipt of the notice of proposed changes from the Contractor. If the advance approval requirements are waived by the CFA, the Contractor shall disclose EVMS changes to the CFA at least 14 calendar days prior to the effective date of implementation.
- (f) The Contractor shall provide access to all pertinent records and data requested by the Contracting Officer or an authorized representative as necessary to permit

Government surveillance to ensure that the EVMS conforms, and continues to conform, with the performance criteria referenced in paragraph (a) of this clause.

- (g) The Contractor shall require the subcontractors specified below to comply with the requirements of this clause: (Insert list of applicable subcontractors.)

As Required.

**I.83 FAR 52.249-6 - TERMINATION (COST REIMBURSEMENT) (MAY 2004))**

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

- (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this contract; approval or ratification will be final for purposes of this clause.
  - (6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government-
    - (i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated;
    - (ii) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government; and
    - (iii) The jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this contract, the cost of which the Contractor has been or will be reimbursed under this contract.
  - (7) Complete performance of the work not terminated.
  - (8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.
  - (9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in paragraph (c)(6) of this clause; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.
- (d) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.
  - (e) After expiration of the plant clearance period as defined in Subpart 49.001 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting

Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept the items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

- (f) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.
- (g) Subject to paragraph (f) of this clause, the Contractor and the Contracting Officer may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The contract shall be amended, and the Contractor paid the agreed amount.
- (h) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor, and shall pay that amount, which shall include the following:
  - (1) All costs reimbursable under this contract, not previously paid, for the performance of this contract before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue those costs as rapidly as practicable.
  - (2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in paragraph (h)(1) of this clause.
  - (3) The reasonable costs of settlement of the work terminated, including-
    - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

- (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
  - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the Contractor's termination settlement proposal may be included.
- (4) A portion of the fee payable under the contract, determined as follows:
- (i) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination proposals, less previous payments for fee.
  - (ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by the Government is to the total number of articles (or amount of services) of a like kind required by the contract.
- (5) If the settlement includes only fee, it will be determined under paragraph (h)(4) of this clause.
- (i) The cost principles and procedures in Part 31 of the Federal Acquisition Regulation in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.
- (j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (f), (h), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (f) and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (f), (h) or (l) of this clause, the Government shall pay the Contractor-
- (1) The amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken; or
  - (2) The amount finally determined on an appeal.

- (k) In arriving at the amount due the Contractor under this clause, there shall be deducted-
- (1) All unliquidated advance or other payments to the Contractor, under the terminated portion of this contract;
  - (2) Any claim which the Government has against the Contractor under this contract; and
  - (3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under this clause and not recovered by or credited to the Government.
- (l) The Contractor and Contracting Officer must agree to any equitable adjustment in fee for the continued portion of the contract when there is a partial termination. The Contracting Officer shall amend the contract to reflect the agreement.
- (m) (1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.
- (2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.
- (n) The provisions of this clause relating to fee are inapplicable if this contract does not include a fee.

**I.87 FAR 52.252-6 - AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)**

- (a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.
- (b) The use in this solicitation or contract of any Department of Energy Regulation (48 CFR Part 9) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.



**I.90 DEAR 952.204-2 SECURITY (MAR 2011) (DEVIATION) (OCT 2013)**

- (a) Responsibility. It is the Contractor's duty to protect all classified information, special nuclear material, and other DOE property. The Contractor shall, in accordance with DOE security regulations and requirements, be responsible for protecting all classified information and all classified matter (including documents, material and special nuclear material) which are in the Contractor's possession in connection with the performance of work under this contract against sabotage, espionage, loss or theft. Except as otherwise expressly provided in this contract, the Contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter or special nuclear material in the possession of the Contractor or any person under the Contractor's control in connection with performance of this contract. If retention by the Contractor of any classified matter is required after the completion or termination of the contract, the Contractor shall identify the items and classification levels and categories of matter proposed for retention, the reasons for the retention, and the proposed period of retention. If the retention is approved by the Contracting Officer, the security provisions of the contract shall continue to be applicable to the classified matter retained. Special nuclear material shall not be retained after the completion or termination of the contract.
- (b) Regulations. The Contractor agrees to comply with all security regulations and contract requirements of DOE as incorporated into the contract.
- (c) Definition of Classified Information. The term Classified Information means information that is classified as Restricted Data or Formerly Restricted Data under the Atomic Energy Act of 1954, or information determined to require protection against unauthorized disclosure under Executive Order 12958, Classified National Security Information, as amended, or prior executive orders, which is identified as National Security Information.
- (d) Definition of Restricted Data. The term Restricted Data means all data concerning design, manufacture, or utilization of atomic weapons; production of special nuclear material; or use of special nuclear material in the production of energy, but excluding data declassified or removed from the Restricted Data category pursuant to 42 U.S.C. 2162 (Section 142, as amended, of the Atomic Energy Act of 1954).
- (e) Definition of Formerly Restricted Data. The term "Formerly Restricted Data" means information removed from the Restricted Data category based on a joint determination by DOE or its predecessor agencies and the Department of Defense that the information- (1) relates primarily to the military utilization of atomic weapons; and (2) can be adequately protected as National Security Information. However, such information is subject to the same restrictions on transmission to other countries or regional defense organizations that apply to Restricted Data.

- (f) Definition of National Security Information. The term “National Security Information” means information that has been determined, pursuant to Executive Order 12958, Classified National Security Information, as amended, or any predecessor order, to require protection against unauthorized disclosure, and that is marked to indicate its classified status when in documentary form.
- (g) Definition of Special Nuclear Material. The term “special nuclear material” means-
  - (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which, pursuant to 42 U.S.C. 2071 (section 51 as amended, of the Atomic Energy Act of 1954) has been determined to be special nuclear material, but does not include source material; or
  - (2) any material artificially enriched by any of the foregoing, but does not include source material.
- (h) Access authorizations of personnel.
  - (1) The Contractor shall not permit any individual to have access to any classified information or special nuclear material, except in accordance with the Atomic Energy Act of 1954, and the DOE’s regulations and contract requirements applicable to the particular level and category of classified information or particular category of special nuclear material to which access is required.
  - (2) The Contractor must conduct a thorough review, as defined at 48 CFR 904.401, of an uncleared applicant or uncleared employee, and must test the individual for illegal drugs, prior to selecting the individual for a position requiring a DOE access authorization.
    - (i) a review must- verify an uncleared applicant’s or uncleared employee’s educational background, including any high school diploma obtained within the past five years, and degrees or diplomas granted by an institution of higher learning; contact listed employers for the last three years and listed personal references; conduct local law enforcement checks when such checks are not prohibited by state or local law or regulation and when the uncleared applicant or uncleared employee resides in the jurisdiction where the Contractor is located; and conduct a credit check and other checks as appropriate.
    - (ii) Contractor reviews are not required for an applicant for DOE access authorization who possesses a current access authorization from DOE or another Federal agency, or whose access authorization may be reapproved without a federal background investigation pursuant to Executive Order 12968, Access to Classified Information (August 4, 1995), Sections 3.3(c) and (d).
    - (iii) In collecting and using this information to make a determination as to whether it is appropriate to select an uncleared applicant or uncleared employee to a position requiring an access authorization, the

Contractor must comply with all applicable laws, regulations, and Executive Orders, including those- (A) governing the processing and privacy of an individual's information, such as the Fair Credit Reporting Act, Americans with Disabilities Act (ADA), and Health Insurance Portability and Accountability Act; and (b) prohibiting discrimination in employment, such as under the ADA, Title VII and the Age Discrimination in Employment Act, including with respect to pre- and post-offer of employment disability related questioning.

- (iv) In addition to a review, each candidate for a DOE access authorization must be tested to demonstrate the absence of any illegal drug, as defined in 10 CFR 707.4. All positions requiring access authorizations are deemed testing designated positions in accordance with 10 CFR part 707. All employees possessing access authorizations are subject to applicant, random or for cause testing for use of illegal drugs. DOE will not process candidates for a DOE access authorization unless their tests confirm the absence from their system of any illegal drug.
  - (v) When an uncleared applicant or uncleared employee receives an offer of employment for a position that requires a DOE access authorization, the Contractor shall not place that individual in such a position prior to the individual's receipt of a DOE access authorization, unless an approval has been obtained from the head of the cognizant local security office. If the individual is hired and placed in the position prior to receiving an access authorization, the uncleared employee may not be afforded access to classified information or matter or special nuclear material (in categories requiring access authorization) until an access authorization has been granted.
  - (vi) The Contractor must maintain a record of information concerning each uncleared applicant/employee who is selected for a position requiring an access authorization, and to furnish background review information only upon request of the cognizant local DOE Security Office.
- (i) Criminal liability. It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to protect any classified information, special nuclear material, or other Government property that may come to the Contractor or any person under the Contractor's control in connection with work under this contract, may subject the Contractor, its agents, employees, or Subcontractors to criminal liability under the laws of the United States (see the Atomic Energy Act of 1954, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794).

- (j) Foreign Ownership, Control, or Influence.
- (1) The Contractor shall immediately provide the cognizant security office written notice of any change in the extent and nature of foreign ownership, control or influence over the Contractor which would affect any answer to the questions presented in the Standard Form (SF) 328, Certificate Pertaining to Foreign Interests, executed prior to award of this contract. Contractors are encouraged to submit this information through the use of the online tool at <https://foci.td.anl.gov/>. When completed the Contractor must print and sign one copy of the SF 328 and submit it to the Contracting Officer. In addition, any notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice, shall also be furnished concurrently to the Contracting Officer.
  - (2) If a Contractor has changes involving foreign ownership, control, or influence, DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, DOE will consider proposals made by the Contractor to avoid or mitigate foreign influences.
  - (3) If the cognizant security office at any time determines that the Contractor is, or is potentially, subject to foreign ownership, control, or influence, the Contractor shall comply with such instructions as the Contracting Officer shall provide in writing to protect any classified information or special nuclear material.
  - (4) The Contracting Officer may terminate this contract for default either if the Contractor fails to meet obligations imposed by this clause or if the Contractor creates a foreign ownership, control, or influence situation in order to avoid performance or a termination for default. The Contracting Officer may terminate this contract for convenience if the Contractor becomes subject to foreign ownership, control, or influence and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the foreign ownership, control, or influence problem.
- (k) Employment announcements. When placing announcements seeking applicants for positions requiring access authorizations, the Contractor shall include in the written vacancy announcement, a notification to prospective applicants that reviews, and tests for the absence of any illegal drug as defined in 10 CFR 707.4, will be conducted by the employer and a background investigation by the Federal government may be required to obtain an access authorization prior to employment, and that subsequent reinvestigations may be required. If the position is covered by the Counterintelligence Evaluation Program regulations at 10 CFR 709, the announcement should also alert applicants that successful completion of a

counterintelligence evaluation may include a counterintelligence-scope polygraph examination.

- (1) Flow down to subcontracts. The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph, in all subcontracts under its contract that will require subcontractor employees to possess access authorizations. Additionally, the Contractor must require such subcontractors to have an existing DOD or DOE facility clearance or submit a completed SF 328, Certificate Pertaining to Foreign Interests, as required in 48 CFR 952.204-73, Facility Clearance, and obtain a foreign ownership, control and influence determination and facility clearance prior to award of a subcontract. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the Contracting Officer. For purposes of this clause, subcontractor means any subcontractor at any tier and the term "Contracting Officer" means the DOE Contracting Officer. When this clause is included in a subcontract, the term "Contractor" shall mean subcontractor and the term "contract" shall mean subcontract.

**I.94 DEAR 952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST (AUG 2009)-  
ALTERNATE I (FEB 2011)**

- (a) Purpose. The purpose of this clause is to ensure that the Contractor (1) is not biased because of its financial, contractual, organizational, or other interests which relate to the work under this contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.
- (b) Scope. The restrictions described herein shall apply to performance or participation by the Contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "Contractor") in the activities covered by this clause as a prime Contractor, subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.
  - (1) Use of Contractor's Work Product.
    - (i) The Contractor shall be ineligible to participate in any capacity in Department contracts, subcontracts, or proposals therefore (solicited and unsolicited) which stem directly from the Contractor's performance of work under this contract for a period of three (3) years after the completion of this contract. Furthermore, unless so directed in writing by the Contracting Officer, the Contractor shall not perform any advisory and assistance services work under this contract on any of its products or services or the products or services of another firm if the Contractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall

preclude the Contractor from competing for follow-on contracts for advisory and assistance services.

- (ii) If, under this contract, the Contractor prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the Contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The Contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the Contracting Officer, in which case the restriction in this subparagraph shall not apply.
  - (iii) Nothing in this paragraph shall preclude the Contractor from offering or selling its standard and commercial items to the Government.
- (2) Access to and use of information.
- (i) If the Contractor, in the performance of this contract, obtains access to information, such as Department plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data which has not been released or otherwise made available to the public, the Contractor agrees that without prior written approval of the Contracting Officer it shall not-
    - (A) Use such information for any private purpose unless the information has been released or otherwise made available to the public;
    - (B) Compete for work for the Department based on such information for a period of six (6) months after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first;
    - (C) Submit an unsolicited proposal to the Government which is based on such information until one year after such information is released or otherwise made available to the public; and
    - (D) Release such information unless such information has previously been released or otherwise made available to the public by the Department.
  - (ii) In addition, the Contractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical,

business, or financial information under this contract, it shall treat such information in accordance with any restrictions imposed on such information.

- (iii) The Contractor may use technical data it first produces under this contract for its private purposes consistent with paragraphs (b)(2)(i) (A) and (D) of this clause and the patent, rights in data, and security provisions of this contract.
- (c) Disclosure after award.
- (1) The Contractor agrees that, if changes, including additions, to the facts disclosed by it prior to award of this contract, occur during the performance of this contract, it shall make an immediate and full disclosure of such changes in writing to the Contracting Officer. Such disclosure may include a description of any action which the Contractor has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. The Department may, however, terminate the contract for convenience if it deems such termination to be in the best interest of the Government.
  - (2) In the event that the Contractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to the Contracting Officer, DOE may terminate this contract for default.
- (d) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this contract, including the existence of an actual or potential organizational conflict of interest at the time of or after award, the Government may terminate the contract for default, disqualify the Contractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this contract.
- (e) Waiver. Requests for waiver under this clause shall be directed in writing to the Contracting Officer and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the Government, the Contracting Officer may grant such a waiver in writing.
- (f) Subcontracts.
- (1) The Contractor shall include a clause, substantially similar to this clause, including this paragraph (f), in subcontracts expected to exceed the simplified acquisition threshold determined in accordance with 48 CFR part 13 and involving the performance of advisory and assistance services as that term is defined at 48 CFR 2.101. The terms “contract,” “Contractor,” and “Contracting Officer” shall be appropriately modified to preserve the Government’s rights.

- (2) Prior to the award under this contract of any such subcontracts for advisory and assistance services, the Contractor shall obtain from the proposed subcontractor or consultant the disclosure required by 48 CFR 909.507-1, and shall determine in writing whether the interests disclosed present an actual or significant potential for an organizational conflict of interest. Where an actual or significant potential organizational conflict of interest is identified, the Contractor shall take actions to avoid, neutralize, or mitigate the organizational conflict to the satisfaction of the Contractor. If the conflict cannot be avoided or neutralized, the Contractor must obtain the approval of the DOE Contracting Officer prior to entering into the subcontract.

**I.95 DEAR 952.215-70 KEY PERSONNEL (DEC 2000)**

- (a) The personnel listed below or elsewhere in this contract, Section J, Attachment G are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel, the Contractor must:
  - (1) Notify the Contracting Officer reasonably in advance;
  - (2) Submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract; and
  - (3) Obtain the Contracting Officer's written approval. Notwithstanding the foregoing, if the Contractor deems immediate removal or suspension of any member of its management team is necessary to fulfill its obligation to maintain satisfactory standards of employee competency, conduct, and integrity under the clause at 48 CFR 970.5203-3, Contractor's Organization, the Contractor may remove or suspend such person at once, although the Contractor must notify Contracting Officer prior to or concurrently with such action.
- (b) The list of personnel may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel.

**I.106 DEAR 970.5204-3 ACCESS TO AND OWNERSHIP OF RECORDS (OCT 2014) (DEVIATION)**

- (a) Government-owned records. Except as provided in paragraph (b) of this clause, all records acquired or generated by the Contractor in its performance of this contract, including records series described within the contract as Privacy Act systems of records shall be the property of the Government and shall be maintained in accordance with 36 Code of Federal Regulations (CFR), Chapter XII, -- Subchapter B, "Records Management." The contractor shall ensure records classified as



Privacy Act system of records are maintained in accordance with FAR 52.224-2  
“Privacy Act.”

- (b) Contractor-owned records. The following records are considered the property of the Contractor and are not within the scope of paragraph (a) of this clause.
- (1) Employment-related records (such as worker’s compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns; records generated during the course of responding to allegations of research misconduct; records generated during other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/health-related records and similar files), and non-employee patient medical/health-related records, except those records described by the contract as being operated and maintained by the Contractor in Privacy Act systems of records.
  - (2) Confidential contractor financial information, internal corporate governance records and correspondence between the Contractor and other segments of the Contractor located away from the DOE facility (i.e., the Contractor’s corporate headquarters);
  - (3) Records relating to any procurement action by the Contractor, except for records that under 48 CFR 970.5232-3 are described as the property of the Government; and
  - (4) Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges; and
  - (5) The following categories of records maintained pursuant to the technology transfer clause of this contract:
    - (i) Executed license agreements, including exhibits or appendices containing information on royalties, royalty rates, other financial information, or commercialization plans, and all related documents, notes and correspondence.
    - (ii) The Contractor’s protected Cooperative Research and Development Agreement (CRADA) information and appendices to a CRADA that contain licensing terms and conditions, or royalty or royalty rate information.
    - (iii) Patent, copyright, mask work, and trademark application files and related contractor invention disclosures, documents and correspondence, where the Contractor has elected rights or has

permission to assert rights and has not relinquished such rights or turned such rights over to the Government.

- (c) Contract completion or termination. Upon contract completion or termination, the Contractor shall ensure final disposition of all Government-owned records to a Federal Record Center, the National Archives and Records Administration, to a successor contractor, its designee, or other destinations, as directed by the Contracting Officer.
- (d) Inspection, copying, and audit of records. All records acquired or generated by the Contractor under this contract in the possession of the Contractor, including those described at paragraph (b) of this clause, shall be subject to inspection, copying, and audit by the Government or its designees at all reasonable times, and the Contractor shall afford the Government or its designees reasonable facilities for such inspection, copying, and audit; provided, however, that upon request by the Contracting Officer, the Contractor shall deliver such records to a location specified by the Contracting Officer for inspection, copying, and audit. The Government or its designees shall use such records in accordance with applicable federal laws (including the Privacy Act), as appropriate.
- (e) Applicability. This clause applies to all records created, received and maintained by the Contractor without regard to the date or origination of such records including all records acquired from a predecessor contractor.
- (f) Records maintenance and retention. Contractor shall create, maintain, safeguard, and disposition records in accordance with 36 Code of Federal Regulations (CFR), Chapter XII, -- Subchapter B, "Records Management" and the National Archives and Records Administration (NARA)-approved Records Disposition Schedules. Records retention standards are applicable for all classes of records, whether or not the records are owned by the Government or the Contractor. The Government may waive application of the NARA-approved Records Disposition Schedules, if, upon termination or completion of the contract, the Government exercises its right under paragraph (c) of this clause to obtain copies of records described in paragraph (b) and delivery of records in paragraph (a) of this clause.
- (g) Subcontracts.
  - (1) The Contractor shall include the requirements of this clause in all subcontracts that contain the *Radiation Protection and Nuclear Criticality* clause at 952.223-72, or whenever an on-site subcontract scope of work (i) could result in potential exposure to: A) radioactive materials; B) beryllium; or C) asbestos or (ii) involves a risk associated with chronic or acute exposure to toxic chemicals or substances or other hazardous materials that can cause adverse health impacts, in accordance with 10 CFR part 851. In determining its flow-down responsibilities, the Contractor shall include the requirements of this clause in all on-site subcontracts where the scope of work is performed in:

(A) Radiological Areas and/or Radioactive Materials Areas (as defined at 10 CFR 835.2); (B) areas where beryllium concentrations exceed or can reasonably be expected to exceed action levels specified in 10 CFR 850; (C) an Asbestos Regulated area (as defined at 29 CFR 1926.1101 or 29 CFR 1910.1001); or (D) a workplace where hazard prevention and abatement processes are implemented in compliance with 10 CFR 851.21 to specifically control potential exposure to toxic chemicals or substances or other hazardous materials that can cause long term health impacts.

- (2) The Contractor may elect to take on the obligations of the provisions of this clause in lieu of the subcontractor, and maintain records that would otherwise be maintained by the subcontractor.

**I.109 DEAR 970.5215-1 TOTAL AVAILABLE FEE: BASE FEE AMOUNT AND PERFORMANCE FEE AMOUNT (DEC 2000), ALTERNATE II (DEC 2000), ALTERNATE IV (DEC 2000)**

- (a) Total available fee. Total available fee, consisting of a base fee amount (which may be zero) and a performance fee amount (consisting of an incentive fee component for objective performance requirements, an award fee component for subjective performance requirements, or both) determined in accordance with the provisions of this clause, is available for payment in accordance with the clause of this contract entitled, "Payments and advances."
- (b) Fee Negotiations. Prior to the beginning of each fiscal year under this contract, or other appropriate period as mutually agreed upon and, if exceeding one year, approved by the Senior Procurement Executive, or designee, the Contracting Officer and Contractor shall enter into negotiation of the requirements for the year or appropriate period, including the evaluation areas and individual requirements subject to incentives, the total available fee, and the allocation of fee. The Contracting Officer shall modify this contract at the conclusion of each negotiation to reflect the negotiated requirements, evaluation areas and individual requirements subject to incentives, the total available fee, and the allocation of fee. In the event the parties fail to agree on the requirements, the evaluation areas and individual requirements subject to incentives, the total available fee, or the allocation of fee, a unilateral determination will be made by the Contracting Officer. The total available fee amount shall be allocated to a twelve month cycle composed of one or more evaluation periods, or such longer period as may be mutually agreed to between the parties and approved by the Senior Procurement Executive, or designee.
- (c) Determination of Total Available Fee Amount Earned.
- (1) The Government shall, at the conclusion of each specified evaluation period, evaluate the Contractor's performance of all requirements, including performance based incentives completed during the period, and determine the total available fee amount earned. At the Contracting Officer's discretion,

evaluation of incentivized performance may occur at the scheduled completion of specific incentivized requirements.

- (2) The DOE Operations/Field Office Manager, or designee, will be the Deputy Assistant Secretary for Petroleum Reserves. The Contractor agrees that the determination as to the total available fee earned is a unilateral determination made by the DOE Operations/Field Office Manager, or designee.
  - (3) The evaluation of Contractor performance shall be in accordance with the Performance Evaluation and Measurement Plan(s) described in subparagraph (d) of this clause unless otherwise set forth in the contract. The Contractor shall be promptly advised in writing of the fee determination, and the basis of the fee determination. In the event that the Contractor's performance is considered to be less than the level of performance set forth in the Statement of Work, as amended to include the current Work Authorization Directive or similar document, for any contract requirement, it will be considered by the DOE Operations/Field Office Manager, or designee, who may at his/her discretion adjust the fee determination to reflect such performance. Any such adjustment shall be in accordance with the clause entitled, "Conditional Payment of Fee, Profit, and Other Incentives-Facility Management Contracts" if contained in the contract.
  - (4) Award fee not earned during the evaluation period shall not be allocated to future evaluation periods.
- (d) Performance Evaluation and Measurement Plan(s). To the extent not set forth elsewhere in the contract:
- (1) The Government shall establish a Performance Evaluation and Measurement Plan(s) upon which the determination of the total available fee amount earned shall be based. The Performance Evaluation and Measurement Plan(s) will address all of the requirements of contract performance specified in the contract directly or by reference. A copy of the Performance Evaluation and Measurement Plan(s) shall be provided to the Contractor-
    - (i) Prior to the start of an evaluation period if the requirements, evaluation areas, specific incentives, amount of fee, and allocation of fee to such evaluation areas and specific incentives have been mutually agreed to by the parties; or
    - (ii) Not later than thirty days prior to the scheduled start date of the evaluation period, if the requirements, evaluation areas, specific incentives, amount of fee, and allocation of fee to such evaluation areas and specific incentives have been unilaterally established by the Contracting Officer.

- (2) The Performance Evaluation and Measurement Plan(s) will set forth the criteria upon which the Contractor will be evaluated relating to any technical, schedule, management, and/or cost objectives selected for evaluation. Such criteria should be objective, but may also include subjective criteria. The Plan(s) shall also set forth the method by which the total available fee amount will be allocated and the amount earned determined.
- (3) The Performance Evaluation and Measurement Plan(s) may, consistent with the contract statement of work, be revised during the period of performance. The Contracting Officer shall notify the contractor-
  - (i) Of such unilateral changes at least ninety calendar days prior to the end of the affected evaluation period and at least thirty calendar days prior to the effective date of the change;
  - (ii) Of such bilateral changes at least sixty calendar days prior to the end of the affected evaluation period; or
  - (iii) If such change, whether unilateral or bilateral, is urgent and high priority, at least thirty calendar days prior to the end of the evaluation period.
- (e) Schedule for total available fee amount earned determinations. The DOE Operations/Field Office Manager, or designee, shall issue the final total available fee amount earned determination in accordance with: the schedule set forth in the Performance Evaluation and Measurement Plan(s); or as otherwise set forth in this contract. However, a determination must be made within sixty calendar days after the receipt by the Contracting Officer of the Contractor's self-assessment, if one is required or permitted by paragraph (f) of this clause, or seventy calendar days after the end of the evaluation period, whichever is later, or a longer period if the Contractor and Contracting Officer agree. If the Contracting Officer evaluates the Contractor's performance of specific requirements on their completion, the payment of any earned fee amount must be made within seventy calendar days (or such other time period as mutually agreed to between the Contracting Officer and the Contractor) after such completion. If the determination is delayed beyond that date, the Contractor shall be entitled to interest on the determined total available fee amount earned at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the payment date. This rate is referred to as the "Renegotiation Board Interest Rate," and is published in the Federal Register semiannually on or about January 1 and July 1. The interest on any late total available fee amount earned determination will accrue daily and be compounded in 30-day increments inclusive from the first day after the schedule determination date through the actual date the determination is issued. That is, interest accrued at the end of any 30-day period will be added to the determined amount of fee earned and be subject to interest if not paid in the succeeding 30-day period.

- (f) Contractor self-assessment. Following each evaluation period, the Contractor may submit a self-assessment, provided such assessment is submitted within five (5) work days after the end of the period. This self-assessment shall address both the strengths and weaknesses of the Contractor's performance during the evaluation period. Where deficiencies in performance are noted, the Contractor shall describe the actions planned or taken to correct such deficiencies and avoid their recurrence. The DOE Operations/Field Office Manager, or designee, will review the Contractor's self-assessment, if submitted, as part of its independent evaluation of the Contractor's management during the period. A self-assessment, in and of itself may not be the only basis for the award fee determination.

**I.110 DEAR 970.5215-3 - CONDITIONAL PAYMENT OF FEE, PROFIT, AND OTHER INCENTIVES — FACILITY MANAGEMENT CONTRACTS (AUG 2009) ALTERNATE II (AUG 2009)**

- (a) General.
- (1) The payment of earned fee, fixed fee, profit, or share of cost savings under this contract is dependent upon –
    - (i) The Contractor's or Contractor employees' compliance with the terms and conditions of this contract relating to environment, safety and health (ES&H), which includes worker safety and health (WS&H), including performance under an approved Integrated Safety Management System (ISMS); and
    - (ii) The Contractor's or Contractor employees' compliance with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information.
  - (2) The ES&H performance requirements of this contract are set forth in its ES&H terms and conditions, including the DOE approved Contractor ISMS or similar document. Financial incentives for timely mission accomplishment or cost effectiveness shall never compromise or impede full and effective implementation of the ISMS and full ES&H compliance.
  - (3) The performance requirements of this contract relating to the safeguarding of Restricted Data and other classified information are set forth in the clauses of this contract entitled, "Security" and "Laws, Regulations, and DOE Directives," as well as in other terms and conditions.
  - (4) If the Contractor does not meet the performance requirements of this contract relating to ES&H or to the safeguarding of Restricted Data and other classified information during any performance evaluation period established under the contract pursuant to the clause of this contract entitled, "Total

Available Fee: Base Fee Amount and Performance Fee Amount, ” otherwise earned fee, fixed fee, profit or share of cost savings may be unilaterally reduced by the Contracting Officer.

(b) Reduction Amount.

- (1) The amount of earned fee, fixed fee, profit, or share of cost savings that may be unilaterally reduced will be determined by the severity of the performance failure pursuant to the degrees specified in paragraphs (c) and (d) of this clause.
- (2) If a reduction of earned fee, fixed fee, profit, or share of cost savings is warranted, unless mitigating factors apply, such reduction shall not be less than 26% nor greater than 100% of the amount of earned fee, fixed fee, profit, or the Contractor’s share of cost savings for a first degree performance failure, not less than 11% nor greater than 25% for a second degree performance failure, and up to 10% for a third degree performance failure.
- (3) In determining the amount of the reduction and the applicability of mitigating factors, the Contracting Officer must consider the Contractor’s overall performance in meeting the ES&H or security requirements of the contract. Such consideration must include performance against any site specific performance criteria/requirements that provide additional definition, guidance for the amount of reduction, or guidance for the applicability of mitigating factors. In all cases, the Contracting Officer must consider mitigating factors that may warrant a reduction below the applicable range (see 48 CFR 970.1504-1-2). The mitigating factors include, but are not limited to, the following ((v), (vi), (vii) and (viii) apply to ES&H only).
  - (i) Degree of control the Contractor had over the event or incident.
  - (ii) Efforts the Contractor had made to anticipate and mitigate the possibility of the event in advance.
  - (iii) Contractor self-identification and response to the event to mitigate impacts and recurrence.
  - (iv) General status (trend and absolute performance) of: ES&H and compliance in related areas; or of safeguarding Restricted Data and other classified information and compliance in related areas.
  - (v) Contractor demonstration to the Contracting Officer’s satisfaction that the principles of industrial ES&H standards are routinely practiced (e.g., Voluntary Protection Program, ISO 14000).

- (vi) Event caused by “Good Samaritan” act by the Contractor (e.g., offsite emergency response).
  - (vii) Contractor demonstration that a performance measurement system is routinely used to improve and maintain ES&H performance (including effective resource allocation) and to support DOE corporate decision-making (e.g., policy, ES&H programs).
  - (viii) Contractor demonstration that an Operating Experience and Feedback Program is functioning that demonstrably affects continuous improvement in ES&H by use of lessons-learned and best practices inter- and intra-DOE sites.
- (4)
- (i) The amount of fee, fixed fee, profit, or share of cost savings that is otherwise earned by a Contractor during an evaluation period may be reduced in accordance with this clause if it is determined that a performance failure warranting a reduction under this clause occurs within the evaluation period.
  - (ii) The amount of reduction under this clause, in combination with any reduction made under any other clause in the contract, shall not exceed the amount of fee, fixed fee, profit, or the Contractor’s share of cost savings that is otherwise earned during the evaluation period.
  - (iii) For the purposes of this clause, earned fee, fixed fee, profit, or share of cost savings for the evaluation period shall mean the amount determined by the Contracting Officer or Fee Determination Official as otherwise payable based on the Contractor’s performance during the evaluation period. Where the contract provides for financial incentives that extend beyond a single evaluation period, this amount shall also include: any provisional amounts determined otherwise payable in the evaluation period; and, if provisional payments are not provided for, the allocable amount of any incentive determined otherwise payable at the conclusion of a subsequent evaluation period. The allocable amount shall be the total amount of the earned incentive divided by the number of evaluation periods over which it was earned.
  - (iv) The Government will effect the reduction as soon as practicable after the end of the evaluation period in which the performance failure occurs. If the Government is not aware of the failure, it will effect the reduction as soon as practical after becoming aware. For any portion of the reduction requiring an allocation the Government will effect the reduction at the end of the evaluation period in which it determines the total amount earned under the incentive. If at any time a reduction causes the sum of the payments the Contractor has received for fee,



fixed fee, profit, or share of cost savings to exceed the sum of fee, fixed fee, profit, or share of cost savings the Contractor has earned (provisionally or otherwise), the Contractor shall immediately return the excess to the Government. (What the Contractor “has earned” reflects any reduction made under this or any other clause of the contract.)

- (v) At the end of the contract –
  - (A) The Government will pay the Contractor the amount by which the sum of fee, fixed fee, profit, or share of cost savings the Contractor has earned exceeds the sum of the payments the Contractor has received; or
  - (B) The Contractor shall return to the Government the amount by which the sum of the payments the Contractor has received exceeds the sum of fee, fixed fee, profit, or share of cost savings the Contractor has earned. (What the Contractor “has earned” reflects any reduction made under this or any other clause of the contract.)
- (c) Environment, Safety and Health (ES&H). Performance failures occur if the Contractor does not comply with the contract’s ES&H terms and conditions, including the DOE approved Contractor ISMS. The degrees of performance failure under which reductions of earned or fixed fee, profit, or share of cost savings will be determined are:
  - (1) First Degree: Performance failures that are most adverse to ES&H. Failure to develop and obtain required DOE approval of an ISMS is considered first degree. The Government will perform necessary review of the ISMS in a timely manner and will not unreasonably withhold approval of the Contractor’s ISMS. The following performance failures or performance failures of similar import will be considered first degree.
    - (i) Type A accident (defined in DOE Order 225.1A).
    - (ii) Two Second Degree performance failures during an evaluation period.
  - (2) Second Degree: Performance failures that are significantly adverse to ES&H. They include failures to comply with an approved ISMS that result in an actual injury, exposure, or exceedence that occurred or nearly occurred but had minor practical long-term health consequences. They also include breakdowns of the Safety Management System. The following performance failures or performance failures of similar import will be considered second degree:

- (i) Type B accident (defined in DOE Order 225.1A).
  - (ii) Non-compliance with an approved ISMS that results in a near miss of a Type A or B accident. A near miss is a situation in which an inappropriate action occurs, or a necessary action is omitted, but does not result in an adverse effect.
  - (iii) Failure to mitigate or notify DOE of an imminent danger situation after discovery, where such notification is a requirement of the contract.
- (3) Third Degree: Performance failures that reflect a lack of focus on improving ES&H. They include failures to comply with an approved ISMS that result in potential breakdown of the System. The following performance failures or performance failures of similar import will be considered third degree:
- (i) Failure to implement effective corrective actions to address deficiencies/non-compliances documented through: external (e.g., Federal) oversight and/or reported per DOE Order 231.1-2 requirements; or internal oversight of DOE Order 440.1A requirements.
  - (ii) Multiple similar non-compliances identified by external (e.g., Federal) oversight that in aggregate indicate a significant programmatic breakdown.
  - (iii) Non-compliances that either have, or may have, significant negative impacts to the worker, the public, or the environment or that indicate a significant programmatic breakdown.
  - (iv) Failure to notify DOE upon discovery of events or conditions where notification is required by the terms and conditions of the contract.
- (d) Safeguarding Restricted Data and Other Classified Information. Performance failures occur if the Contractor does not comply with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information. The degrees of performance failure under which reductions of fee, profit, or share of cost savings will be determined are as follows:
- (1) First Degree: Performance failures that have been determined, in accordance with applicable law, DOE regulation, or directive, to have resulted in, or that can reasonably be expected to result in, exceptionally grave damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered first degree:

- (i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating a risk of, loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a Special Access Program (SAP), information identified as sensitive compartmented information (SCI), or high risk nuclear weapons-related data.
  - (ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.
  - (iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.
  - (iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.
- (2) Second Degree: Performance failures that have been determined, in accordance with applicable law, DOE regulation, or directive, to have actually resulted in, or that can reasonably be expected to result in, serious damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered second degree:
- (i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.
  - (ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Secret Restricted Data, or other information classified as Secret.
  - (iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Restricted Data or other classified information

regardless of classification (except for information covered by paragraph (d)(1)(iii) of this clause).

- (iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Secret Restricted Data or other classified information classified as Secret.
- (3) Third Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, undue risk to the common defense and security. In addition, this category includes performance failures that result from a lack of Contractor management and/or employee attention to the proper safeguarding of Restricted Data and other classified information. These performance failures may be indicators of future, more severe performance failures and/or conditions, and if identified and corrected early would prevent serious incidents. The following are examples of performance failures or performance failures of similar import that will be considered third degree:
- (i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Restricted Data or other information classified as Confidential.
  - (ii) Failure to promptly report alleged or suspected violations of laws, regulations, or directives pertaining to the safeguarding of Restricted Data or other classified information.
  - (iii) Failure to identify or timely execute corrective actions to mitigate or eliminate identified vulnerabilities and reduce residual risk relating to the protection of Restricted Data or other classified information in accordance with the Contractor's Safeguards and Security Plan or other security plan, as applicable.
  - (iv) Contractor actions that result in performance failures which unto themselves pose minor risk, but when viewed in the aggregate indicate degradation in the integrity of the Contractor's safeguards and security management system relating to the protection of Restricted Data and other classified information.
- (e) Minimum requirements for specified level of performance.
- (1) At a minimum the Contractor must perform the following:
    - (i) The requirements with specific incentives which do not require the achievement of cost efficiencies in order to be performed at the level

of performance set forth in the Statement of Work, Work Authorization Directive, or similar document unless an otherwise minimum level of performance has been established in the specific incentive;

- (ii) All of the performance requirements directly related to requirements specifically incentivized which do not require the achievement of cost efficiencies in order to be performed at a level of performance such that the overall performance of these related requirements is at an acceptable level; and
  - (iii) All other requirements at a level of performance such that the total performance of the contract is not jeopardized.
- (2) The evaluation of the Contractor's achievement of the level of performance shall be unilaterally determined by the Government. To the extent that the Contractor fails to achieve the minimum performance levels specified in the Statement of Work, Work Authorization Directive, or similar document, during the performance evaluation period, the DOE Operations/Field Office Manager, or designee, may reduce any otherwise earned fee, fixed fee, profit, or shared net savings for the performance evaluation period. Such reduction shall not result in the total of earned fee, fixed fee, profit, or shared net savings being less than 25% of the total available fee amount. Such 25% shall include base fee, if any.
- (f) Minimum requirements for cost performance.
- (1) Requirements incentivized by other than cost incentives must be performed within their specified cost constraint and must not adversely impact the costs of performing unrelated activities.
  - (2) The performance of requirements with a specific cost incentive must not adversely impact the costs of performing unrelated requirements.
  - (3) The Contractor's performance within the stipulated cost performance levels for the performance evaluation period shall be determined by the Government. To the extent the Contractor fails to achieve the stipulated cost performance levels, the DOE Operations/Field Office Manager, or designee, may reduce in whole or in part any otherwise earned fee, fixed fee, profit, or shared net savings for the performance evaluation period. Such reduction shall not result in the total of earned fee, fixed fee, profit, or shared net savings being less than 25% of the total available fee amount. Such 25% shall include base fee, if any.

**I.128 DEAR 970.5231-4 PREEXISTING CONDITIONS (DEC 2000) -- ALTERNATE II (DEC 2000)**

- (a) The Department of Energy agrees to reimburse the Contractor, and the Contractor shall not be held responsible, for any liability (including without limitation, a claim involving strict or absolute liability and any civil fine or penalty), expense, or remediation cost, but limited to those of a civil nature, which may be incurred by, imposed on, or asserted against the Contractor arising out of any condition, act, or failure to act which occurred before the Contractor assumed responsibility on April 1, 2014. To the extent the acts or omissions of the Contractor cause or add to any liability, expense or remediation cost resulting from conditions in existence prior to April 1, 2014, the Contractor shall be responsible in accordance with the terms and conditions of this contract.
- (b) The obligations of the Department of Energy under this clause are subject to the availability of appropriated funds.
- (c) The Contractor has the duty to inspect the facilities and sites and timely identify to the Contracting Officer those conditions which it believes could give rise to a liability, obligation, loss, damage, penalty, fine, claim, action, suit, cost, expense, or disbursement or areas of actual or potential noncompliance with the terms and conditions of this contract or applicable law or regulation. The Contractor has the responsibility to take corrective action, as directed by the Contracting Officer and as required elsewhere in this contract.

**I.130 DEAR 970.5232-2 PAYMENTS AND ADVANCES (DEC 2000) -- ALTERNATE II (DEC 2000), ALTERNATE III (DEC 2000)**

- (a) Payment of Total Available fee: Base Fee and Performance Fee. The base fee amount, if any, is payable in equal monthly installments. Total available fee amount earned is payable following the Government's Determination of Total Available Fee Amount Earned in accordance with the clause of this contract entitled "Total Available Fee: Base Fee Amount and Performance Fee Amount." Base fee amount and total available fee amount earned payments shall be made by direct payment or withdrawn from funds advanced or available under this contract, as determined by the Contracting Officer. The Contracting Officer may offset against any such fee payment the amounts owed to the Government by the Contractor, including any amounts owed for disallowed costs under this contract. No base fee amount or total available fee amount earned payment may be withdrawn against the payments cleared financing arrangement without the prior written approval of the Contracting Officer.
- (b) Payments on Account of Allowable Costs. The Contracting Officer and the Contractor shall agree as to the extent to which payment for allowable costs or payments for other items specifically approved in writing by the Contracting Officer (for example, negotiated fixed amounts) shall be made from advances of Government

funds. When pension contributions are paid by the Contractor to the retirement fund less frequently than quarterly, accrued costs therefore shall be excluded from costs for payment purposes until such costs are paid. If pension contributions are paid on a quarterly or more frequent basis, accrual therefore may be included in costs for payment purposes, provided that they are paid to the fund within 30 days after the close of the period covered. If payments are not made to the fund within such 30-day period, pension contribution costs shall be excluded from cost for payment purposes until payment has been made.

- (c) Special financial institution account-use. All advances of Government funds shall be withdrawn pursuant to a payments cleared financing arrangement prescribed by DOE in favor of the financial institution or, at the option of the Government, shall be made by direct payment or other payment mechanism to the Contractor, and shall be deposited only in the special financial institution account referred to in the Special Financial Institution Account Agreement, which is incorporated into this contract as Appendix-. No part of the funds in the special financial institution account shall be commingled with any funds of the Contractor or used for a purpose other than that of making payments for costs allowable and, if applicable, fees earned under this contract, negotiated fixed amounts, or payments for other items specifically approved in writing by the Contracting Officer. If the Contracting Officer determines that the balance of such special financial institution account exceeds the Contractor's current needs, the Contractor shall promptly make such disposition of the excess as the Contracting Officer may direct.
- (d) Title to funds advanced. Title to the unexpended balance of any funds advanced and of any special financial institution account established pursuant to this clause shall remain in the Government and be superior to any claim or lien of the financial institution of deposit or others. It is understood that an advance to the Contractor hereunder is not a loan to the Contractor, and will not require the payment of interest by the Contractor, and that the Contractor acquires no right, title or interest in or to such advance other than the right to make expenditures therefrom, as provided in this clause.
- (e) Financial settlement. The Government shall promptly pay to the Contractor the unpaid balance of allowable costs (or other items specifically approved in writing by the Contracting Officer) and fee upon termination of the work, expiration of the term of the contract, or completion of the work and its acceptance by the Government after-
  - (1) Compliance by the Contractor with DOE's patent clearance requirements; and
  - (2) The furnishing by the Contractor of-
    - (i) An assignment of the Contractor's rights to any refunds, rebates, allowances, accounts receivable, collections accruing to the

Contractor in connection with the work under this contract, or other credits applicable to allowable costs under the contract;

- (ii) A closing financial statement;
  - (iii) The accounting for Government-owned property required by the clause entitled "Property"; and
  - (iv) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract subject only to the following exceptions-
    - (A) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible to exact statement by the Contractor;
    - (B) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided that such claims are not known to the Contractor on the date of the execution of the release; and provided further that the Contractor gives notice of such claims in writing to the Contracting Officer promptly, but not more than one (1) year after the Contractor's right of action first accrues. In addition, the Contractor shall provide prompt notice to the Contracting Officer of all potential claims under this clause, whether in litigation or not (see also Contract Clause, 48 CFR 970.5228-1, "Insurance-Litigation and Claims");
    - (C) Claims for reimbursement of costs (other than expenses of the Contractor by reason of any indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents; and
    - (D) Claims recognizable under the clause entitled, Nuclear Hazards Indemnity Agreement.
- (3) In arriving at the amount due the Contractor under this clause, there shall be deducted-
- (i) Any claim which the Government may have against the Contractor in connection with this contract; and
  - (ii) Deductions due under the terms of this contract and not otherwise recovered by or credited to the Government. The unliquidated



balance of the special financial institution account may be applied to the amount due and any balance shall be returned to the Government forthwith.

- (f) **Claims.** Claims for credit against funds advanced for payment shall be accompanied by such supporting documents and justification as the Contracting Officer shall prescribe.
- (g) **Discounts.** The Contractor shall take and afford the Government the advantage of all known and available cash and trade discounts, rebates, allowances, credits, salvage, and commissions unless the Contracting Officer finds that action is not in the best interest of the Government.
- (h) **Collections.** All collections accruing to the Contractor in connection with the work under this contract, except for the Contractor's fee and royalties or other income accruing to the Contractor from technology transfer activities in accordance with this contract, shall be Government property and shall be processed and accounted for in accordance with applicable requirements imposed by the Contracting Officer pursuant to the Laws, regulations, and DOE directives clause of this contract and, to the extent consistent with those requirements, shall be deposited in the special financial institution account or otherwise made available for payment of allowable costs under this contract, unless otherwise directed by the Contracting Officer.
- (i) **Direct payment of charges.** The Government reserves the right, upon ten days written notice from the Contracting Officer to the Contractor, to pay directly to the persons concerned, all amounts due which otherwise would be allowable under this contract. Any payment so made shall discharge the Government of all liability to the Contractor therefore.
- (j) **Determining allowable costs.** The Contracting Officer shall determine allowable costs in accordance with the Federal Acquisition Regulation subpart 31.2 and the Department of Energy Acquisition Regulation subpart 48 CFR 970.31 in effect on the date of this contract and other provisions of this contract.
- (k) **Review and approval of costs incurred.** The Contractor shall prepare and submit annually as of September 30, a "Statement of Costs Incurred and Claimed" (Cost Statement) for the total of net expenditures accrued (i.e., net costs incurred) for the period covered by the Cost Statement. The Contractor shall certify the Cost Statement subject to the penalty provisions for unallowable costs as stated in sections 306(b) and (i) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 256), as amended. DOE, after audit and appropriate adjustment, will approve such Cost Statement. This approval by DOE will constitute an acknowledgment by DOE that the net costs incurred are allowable under the contract and that they have been recorded in the accounts maintained by the Contractor in accordance with DOE accounting policies, but will not relieve the Contractor of

responsibility for DOE's assets in its care, for appropriate subsequent adjustments, or for errors later becoming known to DOE.

**I.132 DEAR 970.5232-4 OBLIGATION OF FUNDS (DEC 2000)**

- (a) **Obligation of funds.** The amount presently obligated by the Government with respect to this contract is dollars set forth in Section B. Such amount may be increased unilaterally by DOE by written notice to the Contractor and may be increased or decreased by written agreement of the parties (whether or not by formal modification of this contract). Estimated collections from others for work and services to be performed under this contract are not included in the amount presently obligated. Such collections, to the extent actually received by the Contractor, shall be processed and accounted for in accordance with applicable requirements imposed by the Contracting Officer pursuant to the Laws, regulations, and DOE directives clause of this contract. Nothing in this paragraph is to be construed as authorizing the Contractor to exceed limitations stated in financial plans established by DOE and furnished to the Contractor from time to time under this contract.
- (b) **Limitation on payment by the Government.** Except as otherwise provided in this contract and except for costs which may be incurred by the Contractor pursuant to the Termination clause of this contract or costs of claims allowable under the contract occurring after completion or termination and not released by the Contractor at the time of financial settlement of the contract in accordance with the clause entitled "Payments and Advances," payment by the Government under this contract on account of allowable costs shall not, in the aggregate, exceed the amount obligated with respect to this contract, less the Contractor's fee and any negotiated fixed amount. Unless expressly negated in this contract, payment on account of those costs excepted in the preceding sentence which are in excess of the amount obligated with respect to this contract shall be subject to the availability of-
- (1) Collections accruing to the Contractor in connection with the work under this contract and processed and accounted for in accordance with applicable requirements imposed by the Contracting Officer pursuant to the Laws, regulations, and DOE directives clause of this contract; and
  - (2) Other funds which DOE may legally use for such purpose, provided DOE will use its best efforts to obtain the appropriation of funds for this purpose if not otherwise available.
- (c) **Notices-Contractor excused from further performance.** The Contractor shall notify DOE in writing whenever the unexpended balance of available funds (including collections available under paragraph (a) of this clause), plus the Contractor's best estimate of collections to be received and available during the 90 day period hereinafter specified, is in the Contractor's best judgment sufficient to continue contract operations at the programmed rate for only 90 days and to cover the Contractor's unpaid fee and any negotiated fixed amounts, and outstanding

encumbrances and liabilities on account of costs allowable under the contract at the end of such period. Whenever the unexpended balance of available funds (including collections available under paragraph (a) of this clause), less the amount of the Contractor's fee then earned but not paid and any negotiated fixed amounts, is in the Contractor's best judgment sufficient only to liquidate outstanding encumbrances and liabilities on account of costs allowable under this contract, the Contractor shall immediately notify DOE and shall make no further encumbrances or expenditures (except to liquidate existing encumbrances and liabilities), and, unless the parties otherwise agree, the Contractor shall be excused from further performance (except such performance as may become necessary in connection with termination by the Government) and the performance of all work hereunder will be deemed to have been terminated for the convenience of the Government in accordance with the provisions of the Termination clause of this contract.

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

**I. 140 DEAR 970.5244-1 CONTRACTOR PURCHASING SYSTEM (JAN 2013)**  
**(DEVIATION)**

- (a) *General.* The Contractor shall develop, implement, and maintain formal policies, practices, and procedures to be used in the award of subcontracts consistent with this clause and 48 CFR subpart 970.44. The Contractor's purchasing system and methods shall be fully documented, consistently applied, and acceptable to the Department of Energy (DOE) in accordance with 48 CFR 970.4401-1. The Contractor shall maintain file documentation which is appropriate to the value of the purchase and is adequate to establish the propriety of the transaction and the price paid. The Contractor's purchasing performance will be evaluated against such performance criteria and measures as may be set forth elsewhere in this contract.

DOE reserves the right at any time to require that the Contractor submit for approval any or all purchases under this contract. The Contractor shall not purchase any item or service, the purchase of which is expressly prohibited by the written direction of DOE, and shall use such special and directed sources as may be expressly required by the DOE Contracting Officer. DOE will conduct periodic appraisals of the Contractor's management of all facets of the purchasing function, including the Contractor's compliance with its approved system and methods. Such appraisals will be performed through the conduct of Contractor Purchasing System Reviews in accordance with 48 CFR subpart 44.3, or, when approved by the Contracting Officer, through the Contractor's participation in the conduct of the Balanced Scorecard performance measurement and performance management system. The Contractor's approved purchasing system and methods shall include the requirements set forth in paragraphs (b) through (y) of this clause.

- (b) *Acquisition of utility services.* Utility services shall be acquired in accordance with the requirements of subpart 970.41.
- (c) *Acquisition of Real Property.* Real property shall be acquired in accordance with 48 CFR subpart 917.74.
- (d) *Advance Notice of Proposed Subcontract Awards.* Advance notice shall be provided in accordance with 48 CFR 970.4401-3.
- (e) *Audit of Subcontractors.*
  - (1) The Contractor shall provide for-
    - (i) Periodic post-award audit of cost-reimbursement subcontractors at all tiers; and
    - (ii) Audits, where necessary, to provide a valid basis for pre-award or cost or price analysis.
  - (2) Responsibility for determining the costs allowable under each cost-reimbursement subcontract remains with the contractor or next higher-tier subcontractor. The Contractor shall provide, in appropriate cases, for the timely involvement of the Contractor and the DOE Contracting Officer in resolution of subcontract cost allowability.
  - (3) Where audits of subcontractors at any tier are required, arrangements may be made to have the cognizant Federal agency perform the audit of the subcontract. These arrangements shall be made administratively between DOE and the other agency involved and shall provide for the cognizant agency to audit in an appropriate manner in light of the magnitude and nature of the subcontract. In no case, however, shall these arrangements preclude determination by the DOE Contracting Officer of the allowability or

unallowability of subcontractor costs claimed for reimbursement by the Contractor.

- (4) Allowable costs for cost reimbursable subcontracts are to be determined in accordance with the cost principles of 48 CFR part 31, appropriate for the type of organization to which the subcontract is to be awarded, as supplemented by 48 CFR part 931. Allowable costs in the purchase or transfer from contractor-affiliated sources shall be determined in accordance with 48 CFR 970.4402-3 and 48 CFR 31.205-26(e).
- (f) *Bonds and Insurance.*
- (1) The Contractor shall require performance bonds in penal amounts as set forth in 48 CFR 28.102-2(a) for all fixed-priced and unit-priced construction subcontracts in excess of \$100,000. The Contractor shall consider the use of performance bonds in fixed-price non-construction subcontracts, where appropriate.
  - (2) For fixed-price, unit-priced and cost reimbursement construction subcontracts in excess of \$100,000, a payment bond shall be obtained on Standard Form 25A modified to name the Contractor as well as the United States of America as obligees. The penal amounts shall be determined in accordance with 48 CFR 28.102-2(b).
  - (3) For fixed-price, unit-priced and cost-reimbursement construction subcontracts greater than \$25,000, but not greater than \$100,000, the Contractor shall select two or more of the payment protections at 48 CFR 28.102-1(b), giving particular consideration to the inclusion of an irrevocable letter of credit as one of the selected alternatives.
  - (4) A subcontractor may have more than one acceptable surety in both construction and other subcontracts, provided that in no case will the liability of any one surety exceed the maximum penal sum for which it is qualified for any one obligation. For subcontracts other than construction, a co-surety (two or more sureties together) may reinsure amounts in excess of their individual capacity, with each surety having the required underwriting capacity that appears on the list of acceptable corporate sureties.
- (g) *Buy American.* The Contractor shall comply with the provisions of the Buy American Act as reflected in 48 CFR 52.225-1 and 48 CFR 52.225-9. The Contractor shall forward determinations of non-availability of individual items to the DOE Contracting Officer for approval. Items in excess of \$100,000 require the prior concurrence of the Head of Contracting Activity. If, however, the Contractor has an approved purchasing system, the Head of the Contracting Activity may authorize the Contractor to make determinations of non-availability for individual items valued at \$100,000 or less.

- (h) *Construction and Architect-Engineer Subcontracts.*
- (1) *Independent Estimates.* A detailed, independent estimate of costs shall be prepared for all construction work to be subcontracted.
  - (2) *Specifications.* Specifications for construction shall be prepared in accordance with the DOE publication entitled “General Design Criteria Manual.”
  - (3) *Prevention of Conflict of Interest.*
    - (i) The Contractor shall not award a subcontract for construction to the architect-engineer firm or an affiliate that prepared the design. This prohibition does not preclude the award of a “turnkey” subcontract so long as the subcontractor assumes all liability for defects in design and construction and consequential damages.
    - (ii) The Contractor shall not award both a cost-reimbursement subcontract and a fixed-price subcontract for construction or architect-engineer services or any combination thereof to the same firm where those subcontracts will be performed at the same site.
    - (iii) The Contractor shall not employ the construction subcontractor or an affiliate to inspect the firm’s work. The contractor shall assure that the working relationships of the construction subcontractor and the subcontractor inspecting its work and the authority of the inspector are clearly defined.
- (i) *Contractor-Affiliated Sources.* Equipment, materials, supplies, or services from a contractor-affiliated source shall be purchased or transferred in accordance with 48 CFR 970.4402-3.
- (j) *Contractor-Subcontractor Relationship.* The obligations of the Contractor under paragraph (a) of this clause, including the development of the purchasing system and methods, and purchases made pursuant thereto, shall not relieve the Contractor of any obligation under this contract (including, among other things, the obligation to properly supervise, administer, and coordinate the work of subcontractors). Subcontracts shall be in the name of the Contractor, and shall not bind or purport to bind the Government.
- (k) *Government Property.* The Contractor shall establish and maintain a property management system that complies with criteria in 48 CFR 970.5245-1, Property, and 48 CFR 52.245-1, Government Property.

- (l) *Indemnification.* Except for Price-Anderson Nuclear Hazards Indemnity, no subcontractor may be indemnified except with the prior approval of the Senior Procurement Executive.
- (m) *Leasing of Motor Vehicles.* Contractors shall comply with 48 CFR subpart 8.11 and 48 CFR subpart 908.11.
- (n) Reserved.
- (o) *Management, Acquisition and Use of Information Resources.* Requirements for automatic data processing resources and telecommunications facilities, services, and equipment, shall be reviewed and approved in accordance with applicable DOE Orders and regulations regarding information resources.
- (p) *Priorities, Allocations and Allotments.* Priorities, allocations and allotments shall be extended to appropriate subcontracts in accordance with the clause or clauses of this contract dealing with priorities and allocations.
- (q) *Purchase of Special Items.* Purchase of the following items shall be in accordance with the following provisions of 48 CFR subpart 8.5, 48 CFR subpart 908.71, Federal Management Regulation 41 CFR part 102, and the Federal Property Management Regulation 41 CFR chapter 101:
  - (1) Motor vehicles-48 CFR 908.7101
  - (2) Aircraft-48 CFR 908.7102
  - (3) Security Cabinets-48 CFR 908.7106
  - (4) Alcohol-48 CFR 908.7107
  - (5) Helium-48 CFR subpart 8.5
  - (6) Fuels and packaged petroleum products-48 CFR 908.7109
  - (7) Coal-48 CFR 908.7110
  - (8) Arms and Ammunition-48 CFR 908.7111
  - (9) Heavy Water-48 CFR 908.7121(a)
  - (10) Precious Metals-48 CFR 908.7121(b)
  - (11) Lithium-48 CFR 908.7121(c)

- (12) Products and services of the blind and severely handicapped-41 CFR 101-26.701
- (13) Products made in Federal penal and correctional institutions-41 CFR 101-26.702
- (r) *Purchase versus Lease Determinations.* Contractors shall determine whether required equipment and property should be purchased or leased, and establish appropriate thresholds for application of lease versus purchase determinations. Such determinations shall be made-
  - (1) At time of original acquisition;
  - (2) When lease renewals are being considered; and
  - (3) At other times as circumstances warrant.
- (s) *Quality Assurance.* Contractors shall provide no less protection for the Government in its subcontracts than is provided in the prime contract.
- (t) *Setoff of Assigned Subcontractor Proceeds.* Where a subcontractor has been permitted to assign payments to a financial institution, the assignment shall treat any right of setoff in accordance with 48 CFR 932.803.
- (u) *Strategic and Critical Materials.* The Contractor may use strategic and critical materials in the National Defense Stockpile.
- (v) *Termination.* When subcontracts are terminated as a result of the termination of all or a portion of this contract, the Contractor shall settle with subcontractors in conformity with the policies and principles relating to settlement of prime contracts in 48 CFR subparts 49.1, 49.2 and 49.3. When subcontracts are terminated for reasons other than termination of this contract, the Contractor shall settle such subcontracts in general conformity with the policies and principles in 48 CFR subparts 49.1, 49.2, 49.3 and 49.4. Each such termination shall be documented and consistent with the terms of this contract. Terminations which require approval by the Government shall be supported by accounting data and other information as may be directed by the Contracting Officer.
- (w) *Unclassified Controlled Nuclear Information.* Subcontracts involving unclassified uncontrolled nuclear information shall be treated in accordance with 10 CFR part 1017.
- (x) *Subcontract Flowdown Requirements.* In addition to terms and conditions that are included in the prime contract which direct application of such terms and conditions in appropriate subcontracts, the Contractor shall include the following clauses in subcontracts, as applicable:



- (1) Davis-Bacon clauses prescribed in 48 CFR 22.407.
  - (2) Foreign Travel clause prescribed in 48 CFR 952.247-70.
  - (3) Counterintelligence clause prescribed in 48 CFR 970.0404-4(a).
  - (4) Service Contract Act clauses prescribed in 48 CFR 22.1006.
  - (5) State and local taxes clause prescribed in 48 CFR 970.2904-1.
  - (6) Cost or pricing data clauses prescribed in 48 CFR 970.1504-3-1(b).
  - (7) Nondisplacement of Qualified Workers clause prescribed in 48 CFR 22.1207.
  - (8) Minimum Wages Under Executive Order 13658 clause prescribed in 48 CFR 22.1906.
- (y) *Legal Services.* Contractor purchases of litigation and other legal services are subject to the requirements in 10 CFR part 719 and the requirements of this clause.

**I. 151 FAR 52.203-99 PROHIBITION ON CONTRACTING WITH ENTITIES THAT REQUIRE CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS (FEB 2015) (DEVIATION)**

- (a) The Contractor shall not require employees or subcontractors seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.
- (b) The Contractor shall notify employees that the prohibitions and restrictions of any internal confidentiality agreements covered by this clause are no longer in effect.
- (c) The prohibition in paragraph (a) of this clause does not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by the Federal department or agency governing the nondisclosure of classified information.
- (d)
  - (1) In accordance with section 743 of Division E, Title VII, of the Consolidated and Further Continuing Resolution Appropriations Act, 2015 (Pub. L. 113-235), use of funds appropriated (or otherwise made available) under that or any other Act may be prohibited, if the Government determines that the Contractor is not in compliance with the provisions of this clause.
  - (2) The Government may seek any available remedies in the event the Contractor fails to comply with the provisions of this clause.

## **ATTACHMENT B - WORK AUTHORIZATION DIRECTIVES**

The Fiscal Year 2016 Work Authorization Directives for the period October 1, 2015 through September 30, 2016, issued on September 15, 2015 are hereby incorporated by reference.

Work Authorization Directive Numbers 2016-1.A dated 1/14/16 and 2016-1.Y dated 4/26/16 are hereby incorporated by reference.

**PART III – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS**  
**SECTION J**  
**LIST OF ATTACHMENTS**

**ATTACHMENT F – LIST OF APPLICABLE DOE/SPRPMO DIRECTIVES**

Documents are available at:

DOE Directives at: <https://www.directives.doe.gov>.

SPRPMO Directives are available in SharePoint at: <https://myspr.spr.doe.gov/dc/Directives/Forms/SPR%20Publications.aspx>

<b><u>DOE/SPRPMO DIRECTIVES</u></b>	<b><u>DATE</u></b>	<b><u>TITLE</u></b>
DOE O 130.1	09/29/95	Budget Formulation Process
DOE O 142.3A	10/14/10	Unclassified Foreign Visits and Assignments
DOE O 150.1A	03/31/14	Continuity Program
DOE O 151.1C	11/02/05	Comprehensive Emergency Management System
DOE O 200.1A	12/23/08	Information Technology Management
DOE O 205.1B	05/16/11	Department of Energy Cyber Security Program
Change 1	12/07/12	
Change 2	03/11/13	
Change 3	04/29/14	
DOE O 206.1	01/16/09	Department of Energy Privacy Program
DOE O 206.2	02/19/13	Identity, Credential and Access Management (ICAM)
DOE O 210.2A	04/08/11	DOE Corporate Operating Experience Program
DOE O 221.1A	04/19/08	Reporting Fraud, Waste, and Abuse to the Office of Inspector General
DOE O 221.2A	02/25/08	Cooperation with the Office of Inspector General
DOE O 225.1B	03/04/11	Accident Investigations
DOE O 226.1B	04/25/11	Implementation of DOE Oversight Policy
DOE O 227.1A	12/21/15	Independent Oversight Program
DOE O 231.1B	06/27/11	Environment, Safety and Health Reporting
Admin Chg. 1	1/28/12	
DOE O 232.2	08/30/11	Occurrence Reporting and Processing of Operations Information
Admin Chg. 1	03/12/14	
DOE O 243.1B	03/11/13	Records Management Program
DOE O 251.1C	01/15/09	Departmental Directives Program
DOE O 252.1A	02/23/11	Technical Standards
Admin Chg. 1	03/12/13	

<u><i>DOE/SPRPMO DIRECTIVES</i></u>	<u><i>DATE</i></u>	<u><i>TITLE</i></u>
DOE O 350.1 Change 001 Change 002 Change 003 Change 004 Change 005	09/30/96 05/08/98 11/22/09 02/23/10 04/29/13 09/30/14	Contractor Human Resource Management Programs
DOE O 413.1B	10/28/08	Internal Control Program
DOE O 413.3B	11/29/10	Program and Project Management for the Acquisition of Capital Assets
DOE O 414.1D Admin Chg. 1	04/25/11 05/08/13	Quality Assurance
DOE O 415.1 Admin Chg. 1	12/03/12 01/16/13	Information Technology Project Management
DOE O 420.1C Change 1	12/04/12 02/27/15	Facility Safety
DOE O 422.1 Admin Chg. 1 Admin Chg. 2	06/29/10 06/25/13 12/03/14	Conduct of Operations
DOE O 430.1B Change 1 Change 2	09/24/03 02/08/08 04/25/11	Real Property Asset Management
DOE O 436.1	05/02/11	Departmental Sustainability
DOE O 440.2C Admin Chg. 1	06/15/11 06/22/11	Aviation Management and Safety
DOE O 442.1A	06/06/01	Employee Concerns Program
DOE O 442.2	07/29/11	Differing Professional Opinions for Technical Issues Involving Environment, Safety and Health
DOE O 460.1C	05/14/10	Packaging and Transportation Safety
DOE O 460.2A	12/22/04	Departmental Materials Transportation and Packaging Management
DOE O 470.3B	08/12/08	Graded Security Protection Plan
DOE O 470.4B Admin Chg. 1	07/21/11 02/15/13	Safeguards and Security Program
DOE O 470.5	06/02/14	Insider Threat Program
DOE O 470.6	09/02/15	Technical Security Program
DOE O 471.1B	03/01/10	Identification and Protection of Unclassified Controlled Nuclear Information
DOE O 471.3 Admin Chg 1	04/09/03 01/13/11	Identifying and Protecting Official Use Only Information

<u>DOE/SPRPMO DIRECTIVES</u>	<u>DATE</u>	<u>TITLE</u>
DOE O 471.6 Admin Chg. 1 Admin Chg. 2	06/20/11 11/23/12 05/15/15	Information Security
DOE O 472.2 Admin Chg. 1 Change 1	07/27/11 10/08/13 07/09/14	Personnel Security
<sup>1</sup> DOE 473.3A	03/23/16	Protection Program Operations
DOE O 475.1	12/10/04	Counterintelligence Program
DOE O 475.2B	10/03/14	Identifying Classified Information
DOE O 534.1B	01/06/03	Accounting
DOE O 544.1	10/12/04	Priorities and Allocations Program
DOE O 551.1D Change 1	04/02/12 08/13/15	Official Foreign Travel
DOE O 580.1A Change 1	03/30/12 10/22/12	Department of Energy Personal Property Management Program
DOE O 2340.1C	06/08/92	Coordination of General Accounting Office Activities
DOE 5639.8A	07/23/93	Security of Foreign Intelligence Information and Sensitive Compartmented Information Facilities
DOE 5670.1A	01/15/92	Management and Control of Foreign Intelligence
DOE M 441.1-1	03/07/08	Nuclear Material Packaging Manual
DOE M 471.3-1 Admin Chg. 1	04/09/03 01/13/11	Manual for Identifying and Protecting Official Use Only Information
SPRPMO O 130.1C	07/16/15	Management and Operating Contractor's Annual Operating Plan Formulation and Execution
SPRPMO O 151.2D	07/17/14	Drawdown Readiness Program
SPRPMO O 200.2B	03/14/16	Information Management Council and Information Technology Planning Committee
SPRPMO O 200.3A	05/04/16	Information Technology Guidance Implementation Process
SPRPMO O 206.4A	02/02/15	Background Checks and Badging
SPRPMO O 210.1A	09/22/06	Milestone Control
SPRPMO O 210.3	10/23/13	Strategic Petroleum Reserve Lessons Learned Program
SPRPMO O 220.1F	05/25/16	On-Site Management Appraisals
SPRPMO O 220.2E	09/12/13	Observation Reports
SPRPMO O 226.1C	05/16/14	SPRPMO Oversight Program
SPRPMO O 232.1A	01/22/15	Occurrence Reporting and Processing System

<sup>1</sup> CRD incorporated IAW DOE Letter 11-SEOD-030 dated 10/19/11.

<u><i>DOE/SPRPMO DIRECTIVES</i></u>	<u><i>DATE</i></u>	<u><i>TITLE</i></u>
SPRPMO O 410	01/27/14	SPRPMO Configuration Management Program
SPRPMO O 413.2A	11/14/12	Program and Project Management for the Acquisition of Capital Assets
SPRPMO O 413.3 Change 2	12/22/10 12/13/12	Crude Oil Quality and Test Criteria
SPRPMO O 414.1D	06/08/15	Quality Assurance
SPRPMO O 416.1B	10/01/15	SPRPMO Petroleum Accountability Order
SPRPMO O 420.1D	08/28/13	Conduct of Operations Requirements for SPR Facilities
SPRPMO O 430.1C	02/16/16	SPRPMO Reliability, Availability and Maintainability Program
SPRPMO O 431.1A	07/25/11	SPR Design Criteria
SPRPMO O 432.1C	01/28/15	SPR Facilities/Equipment Turnover and Startup Procedure
SPRPMO O 433.1B Chg 1	12/20/11	Maintenance Management Program
SPRPMO O 434.1C	03/12/08	Recovery Program
SPRPMO O 436.1A	06/22/15	Site Sustainability
SPRPMO O 440.2B	02/27/08	Aviation Implementation Plan
SPRPMO O 440.4	08/16/07	Policy on Preventing Violence in the Workplace
SPRPMO O 451.1D	12/22/10	SPRPMO National Environmental Policy Act (NEPA) Implementation Plan
SPRPMO O 470.4A	03/14/16	SPRPMO Security Order
SPRPMO O 471.2	01/08/14	Reporting Security Incidents (Including Cyber Security)
SPRPMO O 534.1B	08/24/15	Financial Accounting for the SPR Crude Oil Inventory
SPRPMO M 442.1-1A Change 1 Change 2	06/04/02 08/25/04 08/31/06	Employee Concerns Manual
SPRPMO N 450.4	05/18/15	Implementation of Environmental, Safety and Health Contractor Requirements Documents
SPRPMO N 450. 10	01/15/16	SPR Environmental, Security, Safety, Health, and Emergency Preparedness Goals, FY 2016