

**PART I – THE SCHEDULE**

**SECTION H**

**SPECIAL CONTRACT REQUIREMENTS**

**TABLE OF CONTENTS**

<b>H.1 SALES OF CONVERSION PRODUCTS AND EXCESS URANIUM INVENTORY .....</b>	<b>4</b>
<b>H.2 DOE-H-2002 NO THIRD PARTY BENEFICIARIES (OCT 2014) .....</b>	<b>8</b>
<b>H.3 DEFINITIONS .....</b>	<b>8</b>
<b>H.4 HIRING PREFERENCES – PORTSMOUTH, OH, PADUCAH, KENTUCKY AND LEXINGTON, KY .....</b>	<b>9</b>
<b>H.5 DOE-H-1002 EMPLOYEE COMPENSATION: PAY AND BENEFITS .....</b>	<b>15</b>
<b>H.6 SPECIAL PROVISIONS APPLICABLE TO WORKFORCE TRANSITION AND EMPLOYEE COMPENSATION: PAY AND BENEFITS .....</b>	<b>26</b>
<b>H.7 WORKFORCE TRANSITION AND BENEFITS TRANSITION: PLANS AND TIMEFRAMES .....</b>	<b>29</b>
<b>H.8 POST CONTRACT RESPONSIBILITIES FOR PENSION AND OTHER BENEFIT PLANS FOR WHICH DOE REIMBURSES COSTS .....</b>	<b>34</b>
<b>H.9 LABOR RELATIONS .....</b>	<b>35</b>
<b>H.10 WORKFORCE RESTRUCTURING .....</b>	<b>37</b>
<b>H.11 LABOR STANDARDS .....</b>	<b>38</b>
<b>H.12 DOE-H-2003 WORKER’S COMPENSATION INSURANCE (OCT 2014) .....</b>	<b>39</b>
<b>H.13 DOE-H-2006 DEFENSE NUCLEAR FACILITIES SAFETY BOARD (OCT 2014) ...</b>	<b>39</b>
<b>H.14 DOE-H-2014 CONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATION OR ALLEGED VIOLATIONS, FINES, AND PENALTIES (OCT 2014) .....</b>	<b>40</b>
<b>H.15 DOE-H-2016 PERFORMANCE GUARANTEE AGREEMENT (OCT 2014) .....</b>	<b>40</b>
<b>H.16 DOE-H-2017 RESPONSIBLE CORPORATE OFFICIAL AND CORPORATE BOARD OF DIRECTORS (OCT 2014) .....</b>	<b>40</b>
<b>H.17 DOE-H-2019 DISPOSITION OF INTELLECTUAL PROPERTY – FAILURE TO COMPLETE CONTRACT (OCT 2014) .....</b>	<b>42</b>
<b>H.18 DOE-H-2020 PRICE ANDERSON AMENDMENTS ACT NONCOMPLIANCE (OCT 2014) .....</b>	<b>42</b>
<b>H.19 DOE-H-2022 CONTRACTOR BUSINESS SYSTEMS (OCT 2014) – CLIN 0003 .....</b>	<b>43</b>
<b>H.20 DOE-H-2023 COST ESTIMATING SYSTEM REQUIREMENTS (OCT 2014) .....</b>	<b>46</b>
<b>H.21 DOE-H-2025 ACCOUNTING SYSTEM ADMINISTRATION (OCT 2014) .....</b>	<b>50</b>
<b>H.22 DOE-H-2026 CONTRACTOR PURCHASING SYSTEM ADMINISTRATION (OCT 2014) .....</b>	<b>52</b>
<b>H.23 DOE-H-2027 CONTRACTOR PROPERTY MANAGEMENT SYSTEM ADMINISTRATION (OCT 2014) .....</b>	<b>56</b>
<b>H.24 DOE-H-2033 ALTERNATIVE DISPUTE RESOLUTION (OCT 2014) .....</b>	<b>57</b>
<b>H.25 DOE-H-2034 CONTRACTOR INTERFACE WITH OTHER CONTRACTORS AND/OR GOVERNMENT EMPLOYEES (OCT 2014) .....</b>	<b>58</b>

<b>H.26 DOE-H-2035 ORGANIZATIONAL CONFLICT OF INTEREST MANAGEMENT PLAN (OCT 2014)</b> .....	<b>58</b>
<b>H.27 DOE-H-2037 NATIONAL ENVIRONMENTAL POLICY ACT (OCT 2014)</b> .....	<b>59</b>
<b>H.28 DOE-H-2038 NUCLEAR FACILITIES OPERATIONS (OCT 2014)</b> .....	<b>59</b>
<b>H.29 DOE-H-2042 CONTRACTOR PERFORMANCE COMMITMENTS (OCT 2014)</b> ....	<b>60</b>
<b>H.30 DOE-H-2043 ASSIGNMENT AND TRANSFER OF CONTRACTS AND SUBCONTRACTS (OCT 2014)</b> .....	<b>60</b>
<b>H.31 DOE-H-2046 DIVERSITY PROGRAM (OCT 2014)</b> .....	<b>61</b>
<b>H.32 OBSERVANCE OF FEDERAL HOLIDAYS</b> .....	<b>61</b>
<b>H.33 DOE-H-2048 PUBLIC AFFAIRS – CONTRACTOR RELEASES OF INFORMATION (OCT 2014)</b> .....	<b>62</b>
<b>H.34 DOE-H-2049 INSURANCE REQUIREMENTS (OCT 2014)</b> .....	<b>62</b>
<b>H.35 DOE-H-2050 INCORPORATION OF SMALL BUSINESS SUBCONTRACTING PLAN – ALTERNATE I (OCT 2014)</b> .....	<b>63</b>
<b>H.36 DOE-H-2053 WORKER SAFETY AND HEALTH PROGRAM IN ACCORDANCE WITH 10 CFR 851 (OCT 2014)</b> .....	<b>63</b>
<b>H.37 DOE-H-2055 GOVERNMENT FURNISHED PROPERTY (OCT 2014)</b> .....	<b>64</b>
<b>H.38 DOE-H-2058 DESIGNATION AND CONSENT OF MAJOR OR CRITICAL SUBCONTRACTS (OCT 2014)</b> .....	<b>64</b>
<b>H.39 DOE-H-2059 PRESERVATION OF ANTIQUITIES, WILDLIFE AND LAND AREAS (OCT 2014)</b> .....	<b>65</b>
<b>H.40 DOE-H-2062 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL –ALTERNATE I (OCT 2014)</b> .....	<b>65</b>
<b>H.41 DOE-H-2064 USE OF INFORMATION TECHNOLOGY EQUIPMENT, SOFTWARE, AND THIRD PARTY SERVICES – ALTERNATE II (OCT 2014)</b> .....	<b>65</b>
<b>H.42 DOE-H-2070 KEY PERSONNEL (OCT 2014)</b> .....	<b>66</b>
<b>H.43 DOE-H-2071 DEPARTMENT OF ENERGY DIRECTIVES (OCT 2014)</b> .....	<b>67</b>
<b>H.44 DOE-H-2072 USE OF GOVERNMENT VEHICLES BY CONTRACTOR EMPLOYEES (OCT 2014)</b> .....	<b>68</b>
<b>H.45 DOE-H-2073 RISK MANAGEMENT AND INSURANCE PROGRAMS (DEC 2014)</b> .....	<b>69</b>
<b>H.46 TRANSITION TO FOLLOW-ON CONTRACT</b> .....	<b>72</b>
<b>H.47 MODIFICATION AUTHORITY</b> .....	<b>72</b>
<b>H.48 FINANCIAL MANAGEMENT SYSTEMS</b> .....	<b>73</b>
<b>H.49 DOE CONTRACT ADMINISTRATION, OVERSIGHT AND SAFETY OVERSIGHT</b> .....	<b>73</b>
<b>H.50 ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM ACT (EEOICPA)</b> .....	<b>75</b>
<b>H.51 CONTRACT PARTICIPATION BY FOREIGN NATIONALS</b> .....	<b>76</b>
<b>H.52 SOFTWARE MADE AVAILABLE FOR CONTRACTOR’S USE</b> .....	<b>76</b>
<b>H.53 GOVERNMENT-FURNISHED SERVICES AND ITEMS</b> .....	<b>76</b>
<b>H.54 INTEGRATED CONTRACTOR WORK CONTROL SYSTEMS AND REPORTING REQUIREMENTS</b> .....	<b>77</b>
<b>H.55 EMERGENCY CLAUSE</b> .....	<b>83</b>
<b>H.56 INFORMATION</b> .....	<b>83</b>

<b>H.57 PERMITS, APPLICATIONS, LICENSES, AND OTHER REGULATORY DOCUMENTS.....</b>	<b>84</b>
<b>H.58 ALLOCATION OF RESPONSIBILITIES FOR CONTRACTOR ENVIRONMENTAL COMPLIANCE ACTIVITIES .....</b>	<b>85</b>
<b>H.59 PRIVATELY GENERATED RESTRICTED DATA.....</b>	<b>86</b>
<b>H.60 SITE SERVICES.....</b>	<b>86</b>
<b>H.61 EMPLOYEE CONCERNS PROGRAM .....</b>	<b>87</b>
<b>H.62 MENTOR-PROTÉGÉ PROGRAM.....</b>	<b>87</b>
<b>H.63 PAPERLESS DIRECTIVE PROCESSING SYSTEM.....</b>	<b>88</b>
<b>H.64 PRIVACY ACT SYSTEM OF RECORDS .....</b>	<b>89</b>
<b>H.65 GOVERNMENT OWNED PROPERTY AND EQUIPMENT RESPONSIBILITIES FOR CONTRACT TRANSITION OPERATIONS PHASE..</b>	<b>91</b>
<b>H.66 PARTNERING .....</b>	<b>91</b>
<b>H.67 NNSA/EM STRATEGIC SOURCING PARTNERSHIP .....</b>	<b>92</b>
<b>H.68 <del>CONFERENCE MANAGEMENT REPORT AND APPROVAL REQUIREMENTS FOR CONFERENCE RELATED ACTIVITIES (CLIN0002 ONLY)</del>.....</b>	<b>92</b>
<b>H.69 CONTRACTOR COMMUNITY COMMITMENT PLAN .....</b>	<b><u>9592</u></b>
<b>H.70 LITIGATION MANAGEMENT AND SUPPORT .....</b>	<b><u>9694</u></b>

## SECTION H

### SPECIAL CONTRACT REQUIREMENTS

#### H.1 SALES OF CONVERSION PRODUCTS AND EXCESS URANIUM INVENTORY

(a) Definitions:

- (1) "Product" means any saleable material resulting from the DUF6 conversion process, including, but not limited to, Uranium Oxide (UOX), Hydrofluoric Acid (HF), and Calcium Fluoride (CaF<sub>2</sub>).
- (2) "DUF6 Contractor's development and implementation costs," as used in this clause, means those costs incurred by the DUF6 Contractor in developing, testing, preparing, and submitting the proposal, as well as those costs incurred by the DUF6 Contractor to make the contractual changes required for approval by the Contracting Officer.
- (3) "DUF6 Contractor's proposal," as used in this clause, means the proposal the DUF6 Contractor prepares and submits to the Contracting Officer for approval in accordance with this clause.
- (4) "Government costs," as used in this clause, means those agency costs that result directly from developing and implementing the DUF6 Contractor's proposal, such as any net increases in the costs of testing, operations, maintenance, safety reviews, oversight, and logistics support. The term does not include the normal administrative costs of processing the DUF6 Contractor's proposal or any increase in this Contract's cost or price resulting from negative Contract savings (see below).
- (5) "Net acquisition savings" means total acquisition savings under this Contract to include the product proceeds less: (1) the allowable costs associated with the sale that would not otherwise have been incurred during the performance of this Contract except to generate the product proceeds and (2) applicable Government costs.
- (6) "Negative contract savings," as used in this clause, means allowable costs associated with acceptance of the DUF6 Contractor's proposal that exceed the product proceeds.
- (7) "Product proceeds" means the gross revenue obtained by the DUF6 Contractor from the sale of DUF6 or DUF6 conversion products under this Contract.

(b) Sales:

- (1) The DUF6 Contractor shall be responsible for the sale of any product as a sales agent for the Government. Title to any product shall remain with the Government until the product is sold. The DUF6 Contractor shall, upon such terms and conditions as the Contracting Officer may approve, sell such property at a price (including “no-cost” sales) agreed upon by the Contracting Officer and the DUF6 Contractor as the fair value thereof.
  - (2) The Contractor shall provide assistance to DOE, as directed and authorized specifically by the Contracting Officer, to support or conduct sales of UF6 inventory consistent with the Secretarial Policy and DOE Excess Uranium Inventory Management Plan. This shall include moving cylinders, sampling, characterizing, transporting, and other handling activities in support of any uranium sales, independent of who conducts the sale on DOE's behalf.
  - (3) The Contractor will take no action to market or sell any products or inventory items until specifically directed by the Contracting Officer. The Contractor shall not prepare and the DOE will not review any Proposal for sale of product or inventory until such action is initiated by Contracting Officer direction.
  - (4) If and only if allowed by law, sale proceeds may be applied to reduce allowable costs under this Contract as directed by the Contracting Officer. The Contracting Officer will direct the disposition of product proceeds, to be returned to the U.S. Treasury or to be applied to reduce allowable costs under the Contract.
- (c) DUF6 Contractor's Proposal: When directed by the Contracting Officer, the DUF6 Contractor shall prepare a proposal for sale of UF6 inventory or any product and submit it to the Contracting Officer for review and approval. The DUF6 Contractor's proposal should include, at a minimum, the following:
- (1) Description of the product or inventory items.
  - (2) Description of the projected quantities to be sold.
  - (3) Identification of the benefits and disadvantages to DOE of the proposed sale including, but not limited to, financial, technical, environmental, safety, and health.
  - (4) Identification and description of any impact or change to the current or projected conduct of operations.
  - (5) Detailed cost impact to current or projected operations including cost reduction and/or cost increases to the current or projected method of operations and any costs to be incurred in order to conduct sales.

- (6) Projected sales proceeds.
  - (7) Estimated net acquisition savings.
  - (8) Estimated negative Contract savings, if any.
  - (9) Description of how the DUF6 Contractor's accounting system will track the costs and sales proceeds associated with the proposed sale.
  - (10) Identification of increased or decreased funding by fiscal year needed to implement the DUF6 Contractor's proposal, including funds for operations and capital improvements.
  - (11) Description and estimate of Government costs.
  - (12) Any projected impact to the environment and safety or health of project employees, site workers, and general public.
  - (13) Identification of any changes to the Contract requirements, terms or conditions necessary to implement the DUF6 Contractor's proposal.
  - (14) Identification of any permits and/or licenses required.
  - (15) A statement of the time by which a Contract modification accepting the DUF6 Contractor's proposal must be issued in order to achieve the maximum cost reduction or sales proceeds, noting any effect of delay or acceleration of approval on the Contract completion time or delivery schedule.
  - (16) Identification of incurred and estimated DUF6 Contractor's development implementation costs.
  - (17) Identification of the projected customers and their proposed use(s) of proposed sales products or inventory.
- (d) Government Action:
- (1) The Contracting Officer will notify the DUF6 Contractor of the status of the DUF6 Contractor's proposal within thirty calendar days after receipt by the Contracting Officer. If additional time is required, the Contracting Officer will notify the DUF6 Contractor within the thirty day period and provide the reason for the delay and the expected date of the decision. The Government will not be liable for any delay in approving or rejecting the DUF6 Contractor's proposal.

- (2) The DOE decision may include direction to the Contractor for disposition of any product proceeds from the sale.
  - (3) The decision to approve or reject all or any part of the DUF6 Contractor's proposal will be a unilateral decision made solely at the discretion of the Contracting Officer.
- (e) DUF6 Contractor's Development and Implementation Costs
- (1) The DUF6 Contractor will account for all the development and implementation costs under this clause separately from all other Contract costs. The DUF6 Contractor's development and implementation costs will be unallowable Contract costs unless the Contracting Officer specifically approves them in advance or as part of the approval in paragraph (d) above.
  - (2) Approved development and implementation costs shall be included in the calculation of net acquisition savings.
- (f) Data Rights: If a DUF6 Contractor's proposal is approved, the DUF6 Contractor hereby grants the Government unlimited rights in the DUF6 Contractor's proposal and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Government shall have the rights specified in the Contract modification implementing the DUF6 Contractor's proposal and shall appropriately mark the data. (The terms "unlimited rights" and "limited rights" are defined in Part 27 of the Federal Acquisition Regulation.)
- (g) Accounting System:
- (1) The DUF6 Contractor's accounting system shall account for all net acquisition savings including product proceeds. Each proposed and approved DUF6 Contractor proposal for the sale of product or inventory item shall be accounted for separately unless otherwise agreed to by the Contracting Officer. By submitting a proposal under this clause, the DUF6 Contractor grants the Contracting Officer or an authorized representative the right to examine DUF6 Contractor records including books, documents, and other types of factual information including cost and pricing data necessary for an adequate evaluation of claimed net acquisition savings.
  - (2) If the cost of maintaining detailed accounting records is not warranted by the savings to be realized, the Contracting Officer and the DUF6 Contractor may agree on alternative means by which savings can be measured.
- (h) The DUF6 Contractor may not be the sole product sales agent for the Government. The Government reserves the right to use or otherwise dispose of any or all DUF6 and products, including disposition to third parties. In particular, the Government retains the right to encourage and promote third party use of DUF6 or any product.

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

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

## H.3 DEFINITIONS

For purposes of Clauses H.3 through H.10 the following definitions are applicable (unless otherwise specified):

- (A) “BWCS” means BWXT Conversion Services, LLC. (BWCS) and its first and second tier subcontractors performing work under DOE Contract DE- AC30-11CC40015.
- (B) “BWCS Portsmouth” means BWCS and its first and second tier subcontractors at the Portsmouth Gaseous Diffusion Plant Site.
- (C) “BWCS Portsmouth Incumbent Employees” means employees who, as of the date of award (1) hold regular appointments or who are regular employees on the rolls of BWCS; and (2) are employed at the Portsmouth Gaseous Diffusion Plant Site under DOE Contract DE-AC30-11CC40015.
- (D) “BWCS Paducah” means BWCS and its first and second tier subcontractors at the Paducah Gaseous Diffusion Plant Site.
- (E) “BWCS Paducah Incumbent Employees” means employees who, as of the date of award (1) hold regular appointments or who are regular employees on the rolls of BWCS; and (2) are employed at the Paducah Gaseous Diffusion Plant Site under DOE Contract DE-AC30-11CC40015.
- (F) “BWCS Lexington” means BWCS and its first and second tier subcontractors at Lexington, Kentucky.
- (G) “BWCS Lexington Incumbent Employees” means employees who, as of the date of award (1) hold regular appointments or who are regular employees on the rolls of BWCS; and (2) are employed at the BWCS Office located in Lexington, Kentucky (Lexington Office) under DOE Contract DE-AC30-11CC40015.
- (H) “FBP” means Fluor-B&W Portsmouth LLC and its first and second tier subcontractors at Portsmouth Gaseous Diffusion Plant Site under DOE Contract DE-AC30-10CC40017.
- (I) “FFS” means Fluor Federal Services, Inc. and its first and second tier subcontractor at Paducah Gaseous Diffusion Plant Site under DOE Task Order DE-DT0007774.

- (J) “Grandfathered Employees” means those employees who meet the definition of “Grandfathered Employees” set out in the B&W Conversion Services, LLC (BWCS) Pension Plan for Grandfathered Employees.
- (K) “LATA KY” means LATA Environmental Services of Kentucky, LLC (LATA KY) and its first and second tier subcontractors under DOE Contract DE-AC30-10CC40020 at the Paducah Gaseous Diffusion Plant Site.
- (L) “SST” means Swift & Staley Mechanical Contractors, Inc.(SST) and its first and second tier subcontractors under DOE Contract DE-AC30-10CC40021 at the Paducah Gaseous Diffusion Plant Site.
- (M) “USEC” means the United States Enrichment Corporation.
- (N) “USEC Employees” means those individuals who were regular employees of USEC at the Paducah Gaseous Diffusion Plant site, or at Portsmouth Gaseous Diffusion Plant site under DOE Contract DE-AC06-01OR22877.
- (O) “WEMS” means Wastren Energx Mission Support, LLC (WEMS) and its first and second tier subcontractors under DOE Contract DE-CI0000004 at the Portsmouth Gaseous Diffusion Plant Site.

#### **H.4 HIRING PREFERENCES – PORTSMOUTH, OH, PADUCAH, KENTUCKY AND LEXINGTON, KY**

The Contractor shall comply with the hiring preferences set forth below for each facility respectively.

##### **PORTSMOUTH, OH**

- (A) The Contractor shall comply with the right of first refusal for employment for service employees and all of the requirements set forth in FAR 52.222-17 Nondisplacement of Qualified Workers for the applicable work and positions before applying any of the hiring preferences in paragraph (B) below. If a service employee employed under DOE Contract DE-AC30-11CC40015 declines a bona fide express offer of employment under Paragraph (A) above, the Contractor need not provide the right of first refusal or the preference in hiring specified in paragraphs (B)(1)(a) and (b) below to such employee, but shall provide all other preferences in hiring in Paragraph (B) below, as applicable.
- (B) The Contractor shall provide, during the transition period and throughout the period of performance, preferences in hiring for vacancies at the Portsmouth Gaseous Diffusion Plant for non-managerial positions (i.e., all those below the first line of supervision) in non-construction activities of the PWS under this Contract, in accordance with the hiring preferences in paragraphs (1) – (5) below (subject to

paragraph (A) above, in descending order of priority, any applicable collective-bargaining agreement(s), applicable law, and applicable site seniority lists as provided to the Contractor by the Contracting Officer), as set forth below.

- (1) The Contractor shall provide BWCS Portsmouth Incumbent Employees employed at the Portsmouth Gaseous Diffusion Plant Site who have been identified by their employer as being at risk of being involuntarily separated, the preferences in paragraphs (a) – (c) in descending order of priority:
  - (a) A right of first refusal for vacancies in non-managerial positions that are substantially equivalent to the positions the above employees held at the time such were identified as being at risk of being involuntarily separated.
  - (b) A preference in hiring for vacancies in non-managerial positions for the above employees who meet the qualifications for the position.
  - (c) A preference in hiring for vacancies in non-managerial positions for the above employees who may not meet the qualifications for the position, but who agree to become qualified and can become qualified by the commencement of active employment under this Contract with the training as provided for in paragraph (6) below.
- (2) The Contractor shall give a preference in hiring to individuals (1) who are former employees of BWCS Portsmouth, FBP, WEMS or USEC and (2) who are entitled to recall rights consistent with any applicable site seniority lists and any applicable collective bargaining agreement(s) at the Portsmouth Gaseous Diffusion Plant Site.
- (3) The Contractor shall give a preference in hiring to individuals set forth below in paragraphs (a) – (c), in descending order of priority, who are eligible for the hiring preference contained in the clause in Section I of this Contract entitled “DEAR 952.226-74, Displaced Employee Hiring Preference” (including USEC Employees who are eligible for the preference pursuant to 42 U.S.C. §2297h-8(a)(5)) consistent with the provisions of any applicable Work Force Restructuring Plan, as amended from time to time, regarding the preferential hiring of employees:
  - (a) Grandfathered Employees who are former employees of BWCS Portsmouth at the Portsmouth Gaseous Diffusion Plant Site,
  - (b) Former employees of USEC under the Cold Shutdown Contract DE-AC06-01OR22877 at Portsmouth or of BWCS Portsmouth, FBP, or WEMS or any other DOE contractor or subcontractor of a DOE contractor at the Portsmouth Gaseous Diffusion Plant Site; and

- (c) Former employees of any other DOE contractor or subcontractor at a DOE defense nuclear facility.
- (4) The Contractor shall give a preference in hiring to individuals (1) who were formerly employed at the Portsmouth Gaseous Diffusion Plant by BWCS Portsmouth or USEC under the Cold Standby/Shutdown Contract DE-AC05-01OR22877 and (2) who were involuntarily separated (other than for cause) from their employment at the Portsmouth Gaseous Diffusion Plant Site; and (3) who are qualified for the position or who may not meet the qualifications for a particular position, but who agree to become qualified and can become qualified by the commencement of active employment under this Contract.
- (5) The Contractor shall give a preference in hiring to individuals (1) who have separated from employment at the Portsmouth Gaseous Diffusion Plant Site, (2) who are not precluded from seeking employment at either the Paducah Gaseous Diffusion Plant Site or Portsmouth Gaseous Diffusion Plant Site by the terms of employee waivers or releases of claims they executed absent repayment of severance consistent with the terms of those agreements; and (3) who are qualified for a particular position or who may not meet the qualifications for a particular position, but who agree to become qualified and can become qualified by the commencement of active employment under this Contract.
- (6) The Contractor will establish a training program specifically for the purpose of training individuals for the purpose specified in paragraph (B)(1)(c) above.

#### **PADUCAH, KY**

- (A) The Contractor shall comply with the right of first refusal for employment for service employees and all of the requirements set forth in FAR 52.222-17 Nondisplacement of Qualified Workers for the applicable work and positions before applying any of the hiring preferences in paragraph (B) below. If a service employee employed under DOE Contract AC3011CC40015 declines a bona fide express offer of employment under Paragraph (A) above, the Contractor need not provide the right of first refusal or the preference in hiring specified in paragraphs (B)(1)(a) and (b) below to such employee, but shall provide all other preferences in hiring in Paragraph (B) below, as applicable.
- (B) The Contractor shall provide, during the transition period and throughout the period of performance, preferences in hiring for vacancies at the Paducah Gaseous Diffusion Plant for non-managerial positions (i.e., all those below the first line of supervision) in non-construction activities of the PWS under this Contract, in accordance with the hiring preferences in paragraphs (1) – (5) below (subject to paragraph (A) above, in descending order of priority, any applicable collective-bargaining agreement(s), applicable law, and applicable site seniority lists as provided to the Contractor by the Contracting Officer), as set forth below.

- (1) The Contractor shall provide BWCS Paducah Incumbent Employees employed at the Paducah Gaseous Diffusion Plant Site who have been identified by their employer as being at risk of being involuntarily separated, the preferences in paragraphs (a) – (c) in descending order of priority:
  - (a) A right of first refusal for vacancies in non-managerial positions that are substantially equivalent to the positions the above employees held at the time such were identified as being at risk of being involuntarily separated.
  - (b) A preference in hiring in for vacancies in non-managerial positions for the above employees who meet the qualifications for the position.
  - (c) A preference in hiring for vacancies in non-managerial positions for the above employees who may not meet the qualifications for the position, but who agree to become qualified and can become qualified by the commencement of active employment under this Contract with the training as provided for in paragraph (6) below.
- (2) The Contractor shall give a preference in hiring to individuals (1) who are former employees of BWCS Paducah, LATA KY, FFS, SST or USEC and (2) who are entitled to recall rights consistent with any applicable site seniority lists and any applicable collective bargaining agreement(s) at the Paducah Gaseous Diffusion Plant Site
- (3) The Contractor shall give a preference in hiring to individuals set forth below in paragraphs (a) – (c), in descending order of priority, who are eligible for the hiring preference contained in the clause in Section I of this Contract entitled “DEAR 952.226-74, Displaced Employee Hiring Preference” (including USEC Employees who are eligible for the preference pursuant to 42 U.S.C. §2297h-8(a)(5)) consistent with the provisions of any applicable Work Force Restructuring Plan, as amended from time to time, regarding the preferential hiring of employees:
  - (a) Grandfathered Employees who are former employees of BWCS Paducah at the Paducah Gaseous Diffusion Plant Site;
  - (b) Former employees of BWCS Paducah, LATA KY, FFS, SST or USEC or any other DOE contractor or subcontractor of a DOE contractor at the Paducah Gaseous Diffusion Plant Site; and
  - (c) Former employees of any other DOE contractor or subcontractor at a DOE defense nuclear facility.
- (4) The Contractor shall give a preference in hiring to individuals (1) who were formerly employed at the Paducah Gaseous Diffusion Plant Site by BWCS Paducah or USEC and (2) who were involuntarily separated (other than for cause)

from their employment at the Paducah Gaseous Diffusion Plant Site, and (3) who are qualified for the position or who may not meet the qualifications for a particular position, but who agree to become qualified and can become qualified by the commencement of active employment under this Contract.

- (5) The Contractor shall give a preference in hiring to individuals (1) who have separated from employment at the Paducah Gaseous Diffusion Plant Site, (2) who are not precluded from seeking employment at the Paducah Gaseous Diffusion Plant Site by the terms of employee waivers or releases of claims they executed absent repayment of severance consistent with the terms of those agreements; and (3) who are qualified for a particular position or who may not meet the qualifications for a particular position, but who agree to become qualified and can become qualified by the commencement of active employment under this Contract.
- (6) The Contractor will establish a training program specifically for the purpose of training individuals for the purpose specified in paragraph (B)(1)(c) above.

## **LEXINGTON, KY**

- (A) The Contractor shall comply with the right of first refusal for employment for service employees and all of the requirements set forth in FAR 52.222-17 Nondisplacement of Qualified Workers for the applicable work and positions before applying any of the hiring preferences in paragraph (B) below. If a service employee employed under DOE Contract AC3011CC40015 declines a bona fide express offer of employment under Paragraph (A) above, the Contractor need not provide the right of first refusal or the preference in hiring specified in paragraphs (B)(1)(a) and (b) below to such employee, but shall provide all other preferences in hiring in Paragraph (B) below, as applicable.
- (B) The Contractor shall provide, during the transition period and throughout the period of performance, preferences in hiring for vacancies at the Lexington office for non-managerial positions (i.e., all those below the first line of supervision) in non-construction activities of the PWS under this Contract, in accordance with the hiring preferences in paragraphs (1) – (5) below (subject to paragraph (A) above, in descending order of priority, any applicable collective-bargaining agreement(s), applicable law, and applicable site seniority lists as provided to the Contractor by the Contracting Officer), as set forth below.
  - (1) The Contractor shall provide BWCS Lexington Incumbent Employees employed at the Lexington office who have been identified by their employer as being at risk of being involuntarily separated, the preferences in paragraphs (a) – (c) in descending order of priority:
    - (a) A right of first refusal for vacancies in non-managerial positions that are substantially equivalent to the positions the above employees held at the time such were identified as being at risk of being involuntarily separated.

- (b) A preference in hiring in for vacancies in non-managerial positions for the above employees who meet the qualifications for the position.
  - (c) A preference in hiring for vacancies in non-managerial positions for the above employees who may not meet the qualifications for the position, but who agree to become qualified and can become qualified by the commencement of active employment under this Contract with the training as provided for in paragraph (6) below.
- (2) The Contractor shall give a preference in hiring to individuals (1) who are former employees of BWCS Lexington or USEC and (2) who are entitled to recall rights consistent with any applicable site seniority lists and any applicable collective bargaining agreement(s) at the Lexington office.
- (3) The Contractor shall give a preference in hiring to individuals set forth below in paragraphs (a) – (c), in descending order of priority, who are eligible for the hiring preference contained in the clause in Section I of this Contract entitled “DEAR 952.226-74, Displaced Employee Hiring Preference” (including USEC Employees who are eligible for the preference pursuant to 42 U.S.C. §2297h-8(a)(5)) consistent with the provisions of any applicable Work Force Restructuring Plan, as amended from time to time, regarding the preferential hiring of employees:
- (a) Grandfathered Employees who are former employees of BWCS Lexington office;
  - (b) Former employees of BWCS Lexington or any other DOE contractor or subcontractor of a DOE contractor at the Lexington office; and
  - (c) Former employees of any other DOE contractor or subcontractor at a DOE defense nuclear facility.
- (4) The Contractor shall give a preference in hiring to individuals (1) who were formerly employed at the Lexington office and (2) who were involuntarily separated (other than for cause) from their employment at the Lexington office; and (3) who are qualified for the position or who may not meet the qualifications for a particular position, but who agree to become qualified and can become qualified by the commencement of active employment under this Contract.
- (5) The Contractor shall give a preference in hiring to individuals (1) who have separated from employment at the Lexington office, (2) who are not precluded from seeking employment at the Lexington office by the terms of employee waivers or releases of claims they executed absent repayment of severance consistent with the terms of those agreements; and (3) who are qualified for a particular position or who may not meet the qualifications for a particular

position, but who agree to become qualified and can become qualified by the commencement of active employment under this Contract.

- (6) The Contractor will establish a training program specifically for the purpose of training individuals for the purpose specified in paragraph (B)(1)(c) above.

## **H.5 DOE-H-1002 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;

- a. Philosophy and strategy for all pay delivery programs.
- b. System for establishing a job worth hierarchy.
- c. Method for relating internal job worth hierarchy to external market.
- d. System that links individual and/or group performance to compensation decisions.
- e. Method for planning and monitoring the expenditure of funds.
- f. Method for ensuring compliance with applicable laws and regulations.
- g. System for communicating the programs to employees.
- h. System for internal controls and self-assessment.
- i. 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" ("Total Compensation System"). 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)(2)(ii) and their total cash compensation at the time of Contract award, annually thereafter 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 of Compensation and Benefits in iBenefits or its successor.

(D) Pay and Benefit Programs

The Contractor shall establish pay and benefit programs for BWCS 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 BWCS Portsmouth Incumbent Employees, BWCS Paducah Incumbent Employees, and BWCS Lexington Incumbent Employees, as defined in H.3.
  - (a) Pay. The Contractor shall provide equivalent base pay to BWCS Incumbent Employees as compared to base pay provided by BWCS 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 BWCS. Comparability of the total package of benefits shall be determined by the CO in his/her sole discretion.

BWCS 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 BWCS 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. Notwithstanding the above, benefits for Grandfathered Employees shall be provided in accordance with Clause H.6.

(3) Cash Compensation

- (a) The Contractor shall submit the following to the Contracting Officer for a determination of cost allowability for reimbursement under the Contract:
- (i) Any proposed major compensation program design changes prior to implementation.
  - (ii) An Annual Compensation Increase Plan (CIP). The Compensation Increase Plan (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 plan 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.
  - (iii) 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 indicated).

- (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 indicated in (e)(3)(A)(iii) above. The base salary reimbursement level for the top contractor official establishes the maximum allowable 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 or Task Order.

(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 for employees until the Contracting Officer makes a determination of cost allowability for reimbursement for new or changed benefit plans.
- (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.

- (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 comparator companies approved by the Contracting Officer. 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 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 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 pension 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 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 the sponsor of the existing pension and other benefit plans (or comparable successor plans), including other post-retirement benefit (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) DOE approval is required prior to implementing any change to a pension plan covering prime cost reimbursement contracts for management and operation of

DOE facilities and other contracts when designated. Changes shall be in accordance with and pursuant to the terms and conditions of the Contract.

- (3) Each contractor pension plan shall be subjected to a limited-scope audit annually that satisfies the requirements of ERISA section 103, except that every third year the contractor must conduct a full-scope audit 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.
- (4) For existing Commingled Plans, the Contractor shall maintain and provide annual Separate Accounting of DOE liabilities and assets as for a Separate Plan.
- (5) 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.
- (6) The Contractor shall comply with the requirements of ERISA if applicable to the pension plan and any other applicable laws.
- (7) The Pension Management Plan shall include the following:
  - (a) A Pension Management Plan (PMP) discussing the Contractor's plans for management and administration of all pension plans consistent with the terms of this Contract. The PMP shall be updated and submitted to the Contracting Officer in draft annually no later than 45 days after the last day of the Plan year along with its draft actuarial valuation.
  - (b) Within thirty (30) days after the date of the submission, appropriate Contractor representatives shall meet with the Contracting Officer to discuss the Contractor's proposed draft annual update of the PMP to specifically discuss any anticipated changes in the projected pension contributions from the prior year's contributions and any discrepancies between the actual contributions made for the most recent year preceding that meeting and the projected contributions for that year which the Contractor had submitted to the Contracting Officer the prior year. The annual revision of the PMP shall include:
    - (i) The Contractor's best projection of the contributions which it will be legally obligated to make to the pension plan(s), beginning with the required contributions for the coming fiscal year, based on the latest actuarial valuation, and continuing for the following four years. This estimate will be based upon compliance with all applicable legal

requirements relating to the determination of contributions and upon the assumptions set out in the plan document(s).

- (ii) If the actuarial valuation submitted pursuant to the annual PMP update indicates that the sponsor of the pension plan must impose pension plan benefit restrictions, the Contractor shall provide the following information:
  - (aa) The type of benefit restriction that will take place,
  - (bb) The number of Contractor employees that potentially could be impacted and the nature of the restriction (e.g., financial impact) by imposition of the required benefit restriction, and
  - (cc) The amount of money that would need to be contributed to the pension plan to avoid legally required benefit restrictions.
  
- (iii) A detailed discussion of how the Contractor intends to manage the pension plan(s) to maximize the contribution predictability (i.e. forecasting accuracy) and contain current and future costs, to include rationale for selection of all plan assumptions that determine the required contributions and which impact the level and predictability of required contributions. The Contractor is required to annually establish a long term (e.g. five year) plan that outlines the projected retirement plan costs, and any planned action steps to be taken to better manage predictability. The contractor must also share the following information with the Department during the meeting:
  - (aa) Strategy for achieving and maintaining fully-funded status of the plan(s)
  - (bb) Investment policy statement for the plan, with any recent updates
  - (cc) Results of recent asset liability studies (required to be performed every 3 years or after a significant event) including rationale for maintaining current asset allocation strategy.
  - (dd) Comparison of budget projections submitted to the Department to actual contributions
  - (ee) Any recent reports, findings, or recommendations provided by plan's investment consultant.
  - (ff) Actuarial experience studies to set the plan's actuarial assumptions (required to be performed every 3-5 years)
  
- (iv) An assessment to evaluate the effectiveness of the Contractor's pension plan(s) investment management/results. The assessment shall include at a minimum: a review and analysis of pension plan investment objectives; the strategies employed to achieve those objectives; the methods used to monitor execution of those strategies and the achievement of the investment objectives; and a comparative analysis of the objectives and performance of other comparable pension plans. The Contractor shall also

identify its plans, if any, for revising any aspect of its pension plan management based on the results of the review.

(H) Reimbursement of Contractors for Contributions to Defined Benefit Pension Plans

- (1) Contractors that sponsor single employer or multiple employer defined benefit pension plans will be reimbursed for the annual required minimum contributions under the Employee Retirement Income Security Act (ERISA), as amended by the Pension Protection Act (PPA) of 2006. Reimbursement above the annual minimum required contribution will require prior approval of the Contracting Officer. Reimbursement amounts will take into consideration all pre-funding balances and funding standard carryover balances.

(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 for approval or disapproval and a determination as to whether the costs are deemed allowable pursuant to FAR 31.205-6, as supplemented by DEAR 970.3102-05-6.

- (1) For proposed changes to pension plans and pension plan funding, the Contractor shall provide the following to the Contracting Officer:
  - (A) a copy of the current plan document (as conformed to show all prior plan amendments), with the proposed new amendment indicated in redline/strikeout;

- (B) an analysis of the impact of any proposed changes on actuarial accrued liabilities and costs;
  - (C) except in circumstances where the Contracting Officer indicates that it is unnecessary, a legal explanation of the proposed changes from the counsel used by the plan for purposes of compliance with all legal requirements applicable to private sector defined benefit pension plans;
  - (D) the Summary Plan Description; and,
  - (E) any such additional information as requested by the Contracting Officer.
- (2) Contractors shall submit new benefit plans and changes to plan design or funding methodology with justification to the Contracting Officer for approval. The justification must:
- (A) demonstrate the effect of the plan changes on the contract net benefit value or 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 effect 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 DOL 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.6 SPECIAL PROVISIONS APPLICABLE TO WORKFORCE TRANSITION AND EMPLOYEE COMPENSATION: PAY AND BENEFITS**

- (A) Benefit Plans. The Contractor shall provide pension and other benefit plans, to Grandfathered Employees and all other employees hired by the Contractor and service credit for leave as set forth below:

- (1) Grandfathered Employees. Grandfathered Employees shall be provided pension and other benefits in accordance with applicable law and any applicable collective bargaining agreement(s). Within 90 days after NTP, the Contractor shall become the sponsor of the BWCS Pension Plan for Grandfathered Employees and other existing benefit plans (or comparable successor plans if continuation of the existing plans is not practicable) including post-retirement benefit (PRB) plans, as applicable, for Grandfathered Employees and retired plan participants, with responsibility for management and administration of these plans. The Contractor shall also have responsibility for maintaining the qualified status of the plans. No employee who qualifies as a Grandfathered Employee under the BWCS Pension Plan for Grandfathered Employees shall lose the right to participate in those plans as a result of this transition.
  - (2) Non-Grandfathered Employees. Non-Grandfathered Employees shall receive a 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 this Contract, any applicable collective bargaining agreement(s), and applicable law, including Section 4(c) of the Service Contract Act.
  - (3) Notwithstanding any other clause in this Contract, the Contractor shall ensure that it becomes the sponsor of the BWCS Pension Plan for Grandfathered Employees and existing benefit plans (or comparable successor plans if continuation of the existing plans is not practicable) including post-retirement benefit (PRB) plans, as applicable, for Grandfathered Employees no later than the date that the Contractor becomes the employer for Grandfathered Employees at both the Portsmouth and Paducah Gaseous Diffusion Plant Sites, and at the Lexington office, so that there is uninterrupted and continuous participation by Grandfathered Employees in the foregoing plan(s).
  - (4) Service Credit For Leave. For BWCS Portsmouth Incumbent Employees, BWCS Paducah Incumbent Employees, and BWCS Lexington Incumbent Employees hired by the Contractor pursuant to Clause H.4; the Contractor shall carry over the length of service credit from the previous employer for purposes of determining rates of accruing leave for these employees as required by and consistent with any applicable collective bargaining agreement(s) and applicable law.
  - (5) Service Credit for Fringe Benefits Other Than Leave. Service credit for all individuals hired by the Contractor shall be applied consistent with any applicable collective bargaining agreement(s), applicable law, and the terms of the applicable benefit plan(s). Service credit for purposes of severance pay is subject to Clause H.5.
- (B) Reimbursement of the Contractor Costs for Benefit Plans. The following will be subject to be reimbursed separately on a cost reimbursement basis and are not to be

included as part of the firm fixed price for CLIN 0003 (Section B.2(c), Cylinder Management):

- (1) Employer contributions to the B&W Conversion Services, LLC Pension Plan for Grandfathered Employees for which the Contractor is a sponsor under paragraph A (1) above. The Contractor as sponsor of the B&W Conversion Services, LLC Pension Plan for Grandfathered Employees will be reimbursed for pension contributions in the amounts necessary to meet the annual minimum requirement under ERISA, as amended by the Pension Protection Act (PPA) of 2006. 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.
  - (2) The costs of the post-retirement benefits plan(s) and benefits provided by such plan(s) for the Contractor's employee(s) who meet the eligibility provisions of such plan(s).
  - (3) The costs of administering and maintaining the qualified status of pension and benefit plans, including PRB plans.
  - (4) The costs of the Contractor's severance benefits for those BWCS Portsmouth Incumbent Employees, BWCS Paducah Incumbent Employees, and BWCS Lexington Incumbent Employees that were hired by the Contractor.
  - (5) Consistent with the above, the Contractor shall credit all BWCS Incumbent Employees hired by the Contractor under this Contract with their current length of service toward fringe benefits, which also includes retirement benefits and severance pay. Consistent with the terms of the plan(s), any transition of the employees from BWCS to the Contractor during the first six months of this Contract shall not constitute a break in service under the plan(s).
- (C) Annual Actuarial Evaluations. Notwithstanding the above, the Contractor has responsibility for administering and maintaining the qualified status of all pension and other benefit plans that it sponsors under this Contract consistent with the plan documents. The Contractor shall submit to the Contracting Officer annual actuarial evaluations for all applicable benefit plans as well as certify that the benefit plans are in full compliance with IRC and ERISA requirements. Such certification shall demonstrate that the benefit plans are qualified under the IRC. This evaluation shall include but not be limited to written reports relating to how the benefit plans pass IRC discrimination, participation and coverage testing requirements. Each detailed annual written actuarial evaluation shall identify any conditions that may adversely affect the qualification status of the plans within eighteen months or less of the date of the evaluation, including but not limited to discrimination, participation and coverage testing requirements for the contractor and any of its subcontractors that are participating employers in the plans.

(1) Meeting Test Requirements. With the approval of the Contracting Officer, the Contractor shall establish threshold factors that – based upon the experience of the BWCS Pension Plan for Grandfathered Employees regarding the testing requirements – indicate when the BWCS Pension Plan for Grandfathered Employees may not meet testing requirements within the next two plan years. Every six months the Contractor shall identify when the BWCS Pension Plan for Grandfathered Employees may not meet testing requirements for the current plan year and the following plan year.

(2) Failure to Meet Test Requirements. In the case that the approved threshold factors described above and other factors as approved or requested by the Contracting Officer indicate that the BWCS Pension Plan for Grandfathered Employees may not meet testing requirements, the Contractor shall provide the Contracting Officer with a corrective action plan for addressing the potential or actual failure to meet testing requirements and quarterly updates on the status for testing purposes. After the corrective action plan has been submitted and approved by the Contracting Officer, the Contractor shall provide quarterly updates on the status for testing purposes.

(D) Changes to the BWCS Pension Plan for Grandfathered Employees. In addition to any other provisions of this Contract, including but not limited to Clause H.5, any changes or amendments to the BWCS Pension Plan for Grandfathered Employees are subject to Contracting Officer prior approval and shall be in accordance with applicable law, including compliance with any applicable collective bargaining agreement(s).

(E) Change in Name. The name(s) of the BWCS Pension Plan for Grandfathered Employees, and other benefit plans may change as a result of the change in sponsorship of these plans. Any references to the BWCS Pension Plan for Grandfathered Employees and other benefit plans contained in this Contract apply to these plans as renamed.

## **H.7 WORKFORCE TRANSITION AND BENEFITS TRANSITION: PLANS AND TIMEFRAMES**

(A) Workforce Transition Planning. Notwithstanding timeframes identified elsewhere in the Contract, the Contractor shall perform the following activities in the specified timeframes:

(1) Within ten days after Notice to Proceed, the Contractor shall:

(a) Submit to the Contracting Officer a description of any and all workforce transition agreements that it intends to enter into with BWCS to ensure compliance with Clause H.4 during the first 90 days after Notice to Proceed and during the remaining period of performance under the Contract;

- (b) Establish and submit to the Contracting Officer a draft written communication plan that details the communication that the Contractor and its subcontractors will engage in with BWCS and their employees or former employees, regarding implementation of the requirements set forth in Clause H.4; and
  - (c) Provide estimated costs and detailed breakouts of the costs to accomplish workforce transition activities within the timeframes specified; and
  - (d) Obtain information from BWCS, identifying the employees who have initially been identified as being at risk of being involuntarily separated. Provide and define a process as part of transition agreements required in paragraph (1)(a) above for obtaining updated and continuous information through the Transition Period regarding the identification of employees by BWCS that have been identified as being at risk of being involuntarily separated.
- (2) Within 15 days after Notice to Proceed, the Contractor shall:
- (a) Submit to the Contracting Officer copies of the draft Workforce Transition Plan for the Contractor and its first and second tier subcontractors, describing the processes and procedures regarding how the Contractor will implement and ensure compliance with the hiring preferences set forth in Clause H.4 during the Contract Transition Period and the remaining period of performance under the Contract.
  - (b) Establish a final written communication plan with BWCS employees regarding the implementation of the hiring preferences in Clause H.4 and provide a copy to the Contracting Officer. The communication plan shall also include a communication process among the Contractor, incumbent contractor, DOE, site tenants, and incumbent union(s) representatives.
- (3) Within 30 days after Notice to Proceed, the Contractor shall provide to the Contracting Officer copies of the final Workforce Transition Plan and draft workforce transition agreements it proposes to enter into with BWCS consistent with the requirements of Clause H.4 above.
- (4) Within 60 days after Notice to Proceed, the Contractor shall provide to the Contracting Officer:
- (a) copies of the final workforce transition agreements with BWCS consistent with the requirements of Clause H.4 above;
  - (b) a written description of the process that it will utilize in obtaining information after the Transition Period and throughout the period of performance from BWCS regarding their respective employees that have been identified by their employer as being at risk of being involuntarily separated in order for the Contractor to ensure compliance with Clause H.4; and

- (c) copies of all and any written agreements in which it has entered with BWCS for transitioning their respective employees pursuant to Clause H.4.
  - (5) The Contractor shall submit reports to the Contracting Officer regarding the Contractor's and its subcontractors' implementation of the hiring preferences required by Clause H.4, in accordance with the timeframes set forth below. These reports shall include at a minimum the following information: employee hire dates or anticipated hire dates, employee salary levels, and the names of the former employers of the employees hired by the Contractor and/or hired by the Contractor's first and second tier subcontractors.
    - (a) During the 90 day Contract Transition Period such reports shall be provided to the Contracting Officer on a weekly basis; or
    - (b) More frequently if requested by the Contracting Officer.
  - (6) The Contractor shall implement the transition activities contained in the approved transition plan and such other transition activities as may be authorized or directed by DOE through the Contracting Officer.
- (B) Benefits Transition Planning. The Contractor shall submit a written draft Benefits Transition Plan for the approval of the Contracting Officer, as set forth herein.
- (1) The Benefit Transition Plan will include:
    - (a) A detailed description of the Contractor's plans and procedures showing how the Contractor will comply with Clause H.5, and this Paragraph (B).
    - (b) A detailed description of the Contractor's policies regarding pensions and other benefits for which the Department reimburses costs under this Contract, and how these policies will support at reasonable cost the effective recruitment and retention of a highly skilled, motivated, and experienced workforce.
    - (c) A written description of how the existing pension and other benefit plans provided to employees pursuant to Clause H.5, will be amended or restated on or before the last day of the 90 day Transition Period. If an asset transfer(s) and/or the creation of a new benefit plan(s) are necessary in order for the Contractor to adhere to the benefits sponsorship requirements set forth in this Contract, the Contractor shall provide a description of the necessary transactions, including but not limited to how the Contractor proposes to comply with the Contract and applicable law governing such transactions.
  - (2) The Contractor shall perform the following activities involving benefit transition within the timeframes specified below.

(a) Within ten days after Notice to Proceed, the Contractor shall:

- (1) Provide the Contracting Officer with a list of Contractor personnel who will be responsible for transitioning of the existing pension plan and other existing benefit plans and/or development of new benefit plans, including specifically the personnel responsible for ensuring that the Contractor becomes the sponsor of the B&W Conversion Services, LLC Pension Plan for Grandfathered Employees and contact information for the above personnel; and
- (2) Request BWCS to provide information and documents necessary for the Contractor to adhere to the requirements set forth in this Contract pertaining to sponsorship of existing benefits plans or establishment of any new benefits plans, including but not limited to the transition of the existing pension and other benefit plans or establishment of any new benefits plans on or before the end of the 90-day Transition Period.
- (3) Provide estimated costs and detailed breakouts of the costs to accomplish workforce and benefits transition activities within the timeframes specified, including the costs for enrolled actuaries and counsel.

(b) Within 15 days after Notice to Proceed, the Contractor shall provide to the Contracting Officer:

- (1) A list of the information and documents that the Contractor has requested from BWCS pertaining to the transition existing benefit plans. The Contractor shall notify the Contracting Officer on a timely basis of any issues or problems that it encounters in obtaining information or documents requested from BWCS. Regardless of such notification, the Contractor remains responsible under this Contract for ensuring compliance with the terms of this Contract, including the timeframes set forth in this clause and the requirements in Clause H.5.

(c) Within 20 days of Notice to Proceed, the Contractor shall:

- (1) The draft Benefits Transition Plan; and
- (2) Submit a detailed description of its plans and processes, including timeframes and specific projected dates for accomplishment of each activity necessary to ensure compliance with the requirements set forth in Clause H.5 including requirements pertaining to the transition of employee benefit plans; and
- (3) Meet via televideo, teleconference, and/or in person with relevant personnel who administer the benefit plans for BWCS, if and when

necessary. The meeting shall include the Contractor's benefit plan administrators and personnel, head of human resources, ERISA counsel, actuaries, and any and all other personnel deemed necessary by the Contractor. During such meeting, the Contractor shall discuss all matters necessary to ensure the Contractor adheres to its sponsorship obligations under Clause H.5 and, including execution of transition agreements with BWCS. The minutes of the meeting as well as a written description of any substantive issues identified at the meeting shall be submitted to the Contracting Officer within two days after the meeting.

- (d) Within 30 days after Notice to Proceed, the Contractor shall provide a final written Benefits Transition Plan to the Contracting Officer
- (e) Within 45 days after Notice to Proceed, the Contractor shall:
  - (1) Provide to the Contracting Officer draft or proposed final versions of the following documents as set forth below –
    - (i) drafts of all amendments to or restatements of the pension and other benefit plans presently sponsored by BWCS, including but not limited to amendments effectuating the change in sponsorship. If applicable, the Contractor shall also submit all draft restated benefit plans and draft Summary Plan Descriptions (SPDs) for pension and other benefit plans sponsored by BWCS. Any and all such amendments shall comply with applicable law governing such transactions and changes in sponsorship of the plans.
    - (ii) drafts of any new benefit plan(s) as well as draft SPDs that the Contractor proposes to sponsor.
    - (iii) drafts of the transition agreements which the Contractor will enter into with BWCS, to ensure the Contractor's compliance with the pay and benefits requirements set forth in Clause H.5.
  - (f) No later than 60 days after Notice to Proceed and prior to the adoption or execution of those documents, the Contractor shall submit to the Contracting Officer for approval the proposed final versions of the documents provided in paragraph (e) above.
  - (g) The Contractor shall respond to any comments provided by the Contracting Officer under any of the above paragraphs within two days of receipt of the comments.
  - (h) After the Transition Period and throughout the remaining period of performance of the Contract, the Contractor shall provide the following

information promptly to the Contracting Officer upon the request of the Contracting Officer:

- (1) Documents relating to benefit plans offered to Contractor Employees, including but not limited to SPDs, all Plan documents, applicable amendments, employee handbooks that summarize benefits provided to employees and other documents that describe benefits provided to employees of the Contractor who perform work on this Contract, and
- (2) Any and all other documents pertaining to implementation of and compliance with implementation of the compensation and benefit programs identified in Clause H.5.
- (3) Additionally, the contractor shall provide timely data responses to Departmental annual and ad hoc pension and PRB data requests. Such data responses shall be provided within the timeframe established by the contracting officer for each response and if no timeframe is specified, the contractor shall provide the data response within one calendar day.

#### **H.8 POST CONTRACT RESPONSIBILITIES FOR PENSION AND OTHER BENEFIT PLANS FOR WHICH DOE REIMBURSES COSTS**

(A) If this Contract expires and/or terminates and DOE has awarded a contract under which a new contractor becomes a sponsor and assumes responsibility for management and administration of the pension or other benefit plans covering active or retired employees with respect to service at the Portsmouth Gaseous Diffusion Site, Paducah Gaseous Diffusion Site, and the Lexington Office (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 facilities 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 for which DOE reimburses costs, 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 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. Consistent with applicable labor laws and regulations for work currently performed by members of United Steel, Paper, and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers Union, Paducah Local 550 and Portsmouth Local 689 (USW) on the effective date of this Contract, the Contractor agrees to initially consult with USW regarding the initial terms and conditions of employment and to recognize USW as the collective bargaining representative for employees performing work covered in the scope of this Contract, and to bargain in good faith to a collective bargaining agreement(s) that gives due consideration to applicable terms and conditions of the existing BWCS collective bargaining

- agreement(s) for work at the Paducah Gaseous Diffusion Plant Site and Portsmouth Gaseous Diffusion Plant Site. See also FAR Subpart 22.5.
- (B) The Contractor shall submit its economic bargaining parameters for which DOE reimburses costs to, and obtain the approval of, the Contracting Officer regarding allowability of the costs, and compliance with the terms and conditions of the Contract, including those for pension and medical benefit costs, prior to the Contractor entering into the collective bargaining process. During the collective bargaining negotiations, the Contractor shall notify, and obtain the approval of, the Contracting Officer before submitting or agreeing to any collective bargaining proposal that increases or may increase allowable costs above those previously approved in the economic bargaining parameters, or that could involve changes in any pension or other benefit plans, and such other items of special interest to DOE as are identified by the Contracting Officer. The preliminary approval of the Contracting Officer under this paragraph does not waive any other terms and conditions of the Contract.
- (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 shall use its best efforts to ensure that collective bargaining agreements negotiated under this Contract contain provisions designed to assure no disruption in services during the performance of the Contract. All such agreements entered into the Contract period of performance should, to the extent that the parties voluntarily agree, provide that grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout or other disruption in services. For this purpose, each collective bargaining agreement should provide an effective grievance procedure with arbitration as its final step, unless the parties mutually agree upon some other method of assuring no disruption in services. The Contractor shall include the substance of this subparagraph (D) in any subcontracts.
- (E) The Contractor will notify the Contracting Officer or designee in a timely fashion of all labor relations issues and matters of interest including organizing initiatives, unfair labor practice charges or complaints, work stoppages, picketing, labor arbitrations, National Labor Relations Board charges, legal or judicial proceedings, and settlement agreements and will furnish such additional information as may be required from time to time by the Contracting Officer.
- (F) The Contractor shall immediately notify the Contracting Officer or designee of any planned or actual strike or work stoppage involving its employees or employees of a subcontractor.

- (G) The Contractor shall provide the Contracting Officer or designee a copy of all arbitration decisions issued by an arbitrator within one week of receipt of the decision.
- (H) The Contractor shall provide the Contracting Officer with a "Report of Settlement" after ratification of a collective bargaining agreement by accessing and inputting the information into the Labor Relations Module (GCLR) of DOE's iBenefits reporting system, or its successor system, during the next open quarter. Such information shall include negotiated wages, pension, medical and other benefits costs, a listing of all joint labor-management programs including safety and health, civil rights and productivity committees and a copy of the collective bargaining agreement and any subsequent modifications. If a collective bargaining agreement has been expired for 180 days or, in the event of a newly certified bargaining unit, no collective bargaining agreement has been ratified within 180 days, the Contractor shall provide the Contracting Officer with a monthly written report outlining the Contractor's strategy to achieve a ratified collective bargaining agreement, utilize the office of the Federal Mediation and Conciliation Services, and review the economic parameters with the Contracting Officer. If, after 210 days, the Contractor and the Contractor's labor union do not have a ratified collective bargaining agreement, the Contractor will provide the Contracting Officer with weekly written reports outlining the Contractor's strategy to resolve the outstanding issues.
- (I) The Contractor shall provide to the Contracting Officer a semi-annual report on grievances for which further judicial or administrative proceedings are anticipated and all final grievances or other. Within one day of receipt, the Contractor shall provide information on all arbitration requests. The reports are due June 30 and December 31, of each year, and should include the following information:
1. List of all final grievances filed during the previous six-month period and grievances for which further judicial or administrative proceedings are anticipated, together with the dates filed;
  2. A brief description of issues regarding each grievance;
  3. If settled, the date of settlement, and terms of the settlement. If a denial is made at the final step and the period for requesting arbitration passes, report the matter as closed;
  4. If not settled during the six-month reporting period, carry the item over to the subsequent six-month reporting periods until settlement, request for arbitration, closure, or other proceeding occurs.
  5. A copy of all arbitration decisions.

## **H.10 WORKFORCE RESTRUCTURING**

Notwithstanding any other provision in this Contract, when the Contractor determines that a reduction of force is necessary, the Contractor shall notify the Contracting Officer in writing. The Contractor shall provide information as directed by the Contracting Officer related to workforce restructuring activities and to enable compliance with

Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 and any other DOE guidance pertaining to workforce restructuring, as may be amended from time to time. The Contractor shall supply workforce restructuring related information and reports as needed by DOE. The Contractor shall extend displaced employee hiring preference in accordance with the Section I Clause entitled, DEAR 952.226-74, Displaced Employee Hiring Preference and Clause H.4, Hiring Preferences.

## H.11 LABOR STANDARDS

- (a) The Contracting Officer will determine the appropriate labor standards that apply to specific work activities in accordance with the Wage Rate Requirements (Construction) statute (formerly known as the Davis-Bacon Act (DBA)), the Service Contract Labor Standards (SCLS) statute (formerly known as the Service Contract Act of 1965 (SCA)), or other applicable Federal labor standards law. Prior to the start of any proposed work activities, the Contractor shall request a labor standards determination from the Contracting Officer for specific work activities by submitting proposed work packages that describe the specific activities to be performed for particular work and other information as necessary for DOE to make a determination regarding the appropriate labor standard(s) for the work or aspects of the work. Once a determination is made and provided to the Contractor, the Contractor shall comply with the determination and shall ensure that appropriate labor standards clauses and requirements are flowed down to and incorporated into any applicable subcontracts.
- (b) The Contractor shall comply, and shall be responsible for compliance by any subcontractor, with the Wage Rate Requirements (Construction), the Service Contract Labor Standards, or other applicable labor standards law. The Contractor shall conduct such payroll and job-site reviews for construction work, including interviews with employees, with such frequency as may be necessary to assure compliance by its subcontractors and as requested or directed by the DOE. When performing work subject to the Wage Rate Requirements (Construction), Contractor shall maintain payroll records for a period of three years from completion of the Contract, for laborers and mechanics performing the work. In accordance with FAR 52.222-41(g) and FAR 52.222-6(b)(4), the Contractor and its subcontractors shall post in a prominent job-site location, the wage determination and, as applicable, Department of Labor Publication: WH-1231, *Notice to Employees Working on Federal or Federally Assisted Construction Projects* and/or WH-1313, *Notice to Employees Working on Government Contracts*.
- (c) For subcontracts determined to be subject to the Service Contract Labor Standards, the Contractor will prepare Standard Form 98 (e98), *Notice of Intention to Make a Service Contract and Response Notice*. This form is available on the Department of Labor website at: <http://www.dol.gov/whd/govcontracts/sca/sf98/index.asp>. The form shall be submitted to the Contracting Officer.

- (d) In addition to any other requirements in the Contract, Contractor shall as soon as possible notify the Contracting Officer of all labor standards issues, including all complaints regarding incorrect payment of prevailing wages and/or fringe benefits, received from contractor or subcontractor employees; significant labor standards violations, as defined in 29 CFR 5.7; disputes concerning labor standards pursuant to 29 CFR parts 4,6, and 8 and as defined in FAR 52.222-41(t); disputed labor standards determinations; Department of Labor investigations; or legal or judicial proceedings related to the labor standards under this Contract or a subcontract. The Contractor shall furnish such additional information as may be required from time to time by the Contracting Officer.
- (e) The Contractor shall prepare and submit, to the Contracting Officer, the DBA Semi-Annual Enforcement Report, Form OMB 1910-5165, by April 21 and October 21 of each year. Form submittal will be administered through the iBenefits system (<https://ibenefits.energy.gov>) or its successor system.

#### **H.12 DOE-H-2003 WORKER'S COMPENSATION INSURANCE (OCT 2014)**

- (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 CO before making any significant change to its workers compensation coverage and shall furnish reports as may be required from time to time by the CO.

#### **H.13 DOE-H-2006 DEFENSE NUCLEAR FACILITIES SAFETY BOARD (OCT 2014)**

The Contractor shall conduct activities in accordance with those DOE commitments to the Defense Nuclear Facilities Safety Board (DNFSB), which are contained in implementation plans, and other DOE correspondence to the DNFSB (Department of Energy Implementation Plan for Defense Nuclear Facilities Safety Board Recommendation 95-1, Improved Safety of Cylinders Containing Depleted Uranium, October 16, 1995). The Contractor shall support preparation of DOE responses to DNFSB issues and recommendations, which affect or can affect Contract work. Based on

the COR's direction, the Contractor shall fully cooperate with the DNFSB and provide access to such work areas, personnel, and information as necessary in a safe and efficient manner. The Contractor shall maintain a document process consistent with the DOE manual on interface with the DNFSB. The Contractor shall be accountable for ensuring that subcontractors adhere to these requirements.

**H.14 DOE-H-2014 CONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATION OR ALLEGED VIOLATIONS, FINES, AND PENALTIES (OCT 2014)**

- (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 fine 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 CO. 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 NOVs/NOAVs and fines and penalties.

**H.15 DOE-H-2016 PERFORMANCE GUARANTEE AGREEMENT (OCT 2014)**

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 J-10.

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.16 DOE-H-2017 RESPONSIBLE CORPORATE OFFICIAL AND CORPORATE BOARD OF DIRECTORS (OCT 2014)**

The Contractor has provided a guarantee of performance from its parent company(s) in the form set forth in the 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.

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: [To Be Proposed]  
Position: [To Be Proposed]  
Company/Organization: [To Be Proposed]  
Address: [To Be Proposed]  
Phone: [To Be Proposed]  
Facsimile: [To Be Proposed]  
Email: [To Be Proposed]

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: [To Be Proposed]  
Position: [To Be Proposed]  
Company/Organization: [To Be Proposed]  
Address: [To Be Proposed]  
Phone: [To Be Proposed]  
Facsimile: [To Be Proposed]  
Email: [To Be Proposed]

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.17 DOE-H-2019 DISPOSITION OF INTELLECTUAL PROPERTY – FAILURE TO COMPLETE CONTRACT (OCT 2014)**

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

- (a) The Government may take possession of and use all the technical data, including limited rights data, restricted computer software, and data and software obtained from subcontractors, licensors, and licensees, necessary to complete the work in conformance with this Contract, including the right to use the data in any Government solicitations for the completion of the work contemplated under this Contract. Technical data includes, but is not limited to, specifications, designs, drawings, operational manuals, flowcharts, software, databases and any other information necessary for the completion of the work under this Contract. Limited rights data and restricted computer software will be protected in accordance with the provisions of the Section I clause entitled "DEAR 970.5227-1 Rights in Data- Facilities." The Contractor shall ensure that its subcontractors and licensors make similar rights available to the Government and its contractors.
- (b) The Contractor agrees to and does hereby grant to the Government an irrevocable, non-exclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice by the Contractor, and any other intellectual property, including technical data, which are owned or controlled by the Contractor, at any time through completion of this Contract and which are incorporated or embodied in the construction of the facilities or which are utilized in the operation or remediation of the facilities or which cover articles, materials or products manufactured at a facility: (1) to practice or to have practiced by or for the Government at the facility; and (2) to transfer such license with the transfer of that facility. The acceptance or exercise by the Government of the aforesaid rights and license shall not prevent the Government at anytime from contesting the enforceability, validity or scope of, or title to, any rights or patents or other intellectual property herein licensed.
- (c) In addition, the Contractor will take all necessary steps to assign permits, authorizations, leases, and licenses in any third party intellectual property to the Government, or such other third party as the Government may designate, that are necessary for the completion of the work contemplated under this Contract.

**H.18 DOE-H-2020 PRICE ANDERSON AMENDMENTS ACT NONCOMPLIANCE (OCT 2014)**

The Contractor shall establish an internal Price-Anderson Amendments Act (PAAA) noncompliance identification, tracking, and corrective action system and shall provide access to and fully support DOE reviews of the system. The Contractor shall also implement a Price- Anderson Amendments Act reporting process which meets applicable

DOE standards. The Contractor shall be accountable for ensuring that subcontractors adhere to these requirements.

**H.19 DOE-H-2022 CONTRACTOR BUSINESS SYSTEMS (OCT 2014) – CLIN 0003**

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

(b) Definitions. As used in this clause-

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

Contractor business systems means— -

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

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

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

(d) Significant deficiencies. (1) The Contractor shall respond, in writing, within 30 days to an initial determination that there are one or more significant deficiencies in one or more of the Contractor's business systems.

(2) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the final determination as to whether the Contractor's

business system contains significant deficiencies. If the Contracting Officer determines that the Contractor's business system contains significant deficiencies, the final determination will include a notice to withhold payments.

(e) Withholding payments.

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

(i) Correct the deficiencies; or

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

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

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

(C) A schedule for implementation; and

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

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

(3) Payment withholding percentage limits.

(i) The total percentage of payments withheld on amounts due on this Contract shall not exceed— -

(A) Five percent for one or more significant deficiencies in any single Contractor business system; and

(B) Ten percent for significant deficiencies in multiple Contractor business systems.

- (ii) If this Contract contains pre-existing withholds, and the application of any subsequent payment withholds will cause withholding under this clause to exceed the payment withhold percentage limits in paragraph (e)(3)(i) of this clause, the Contracting Officer will reduce the payment withhold percentage in the final determination to an amount that will not exceed the payment withhold percentage limits.
  - (4) For the purpose of this clause, payment means invoicing for any of the following payments authorized under this Contract:
    - (i) Interim payments under— -
      - (A) Cost-reimbursement contracts;
      - (B) Incentive type contracts;
      - (C) Time-and-materials contracts; or
      - (D) Labor-hour contracts.
    - (ii) Progress payments to include fixed-price contracts.
    - (iii) Performance-based payments to include fixed-price contracts.
  - (5) Payment withholding shall not apply to payments on fixed-price line items where performance is complete and the items were accepted by the Government.
  - (6) The withholding of any amount or subsequent payment to the Contractor shall not be construed as a waiver of any rights or remedies the Government has under this Contract.
  - (7) Notwithstanding the provisions of any clause in this Contract providing for interim, partial, or other payment withholding on any basis, the Contracting Officer may withhold payment in accordance with the provisions of this clause.
  - (8) The payment withholding authorized in this clause is not subject to the interest-penalty provisions of the Prompt Payment Act.
- (f) Correction of deficiencies.
- (1) The Contractor shall notify the Contracting Officer, in writing, when the Contractor has corrected the business system's deficiencies.
  - (2) Once the Contractor has notified the Contracting Officer that all deficiencies have been corrected, the Contracting Officer will take one of the following actions:
    - (i) If the Contracting Officer determines that the Contractor has corrected all significant deficiencies as directed by the Contracting Officer's final determination, the Contracting Officer will direct the Contractor, in writing, to discontinue the payment withholding from invoices under this Contract associated with the Contracting Officer's final determination, and authorize the Contractor to bill for any monies previously withheld that are not also being withheld due to other significant deficiencies. Any payment withholding

under this Contract due to other significant deficiencies, will remain in effect until the Contracting Officer determines that those significant deficiencies are corrected.

- (ii) If the Contracting Officer determines that the Contractor still has significant deficiencies, the Contractor shall continue withholding amounts from its invoices in accordance with paragraph (e) of this clause, and not invoice for any monies previously withheld.
- (iii) If the Contracting Officer determines, based on the evidence submitted by the Contractor, that there is a reasonable expectation that the corrective actions have been implemented and are expected to correct the significant deficiencies, the Contracting Officer will discontinue withholding payments, and release any payments previously withheld directly related to the significant deficiencies identified in the Contractor notification, and direct the Contractor, in writing, to discontinue the payment withholding from invoices associated with the Contracting Officer's final determination, and authorize the Contractor to bill for any monies previously withheld.
- (iv) If, within 90 days of receipt of the Contractor notification that the Contractor has corrected the significant deficiencies, the Contracting Officer has not made a determination in accordance with paragraphs (f)(2)(i), (ii), or (iii) of this clause, the Contracting Officer will direct the Contractor, in writing, to reduce the payment withholding from invoices directly related to the significant deficiencies identified in the Contractor notification by a specified percentage that is at least 50 percent, but not authorize the Contractor to bill for any monies previously withheld until the Contracting Officer makes a determination in accordance with paragraphs (f)(2)(i), (ii), or (iii) of this clause.
- (v) At any time after the Contracting Officer directs the Contractor to reduce or discontinue the payment withholding from invoices under this Contract, if the Contracting Officer determines that the Contractor has failed to correct the significant deficiencies identified in the Contractor's notification, the Contracting Officer will reinstate or increase withholding and direct the Contractor, in writing, to reinstate or increase the percentage withheld on invoices to the percentage initially withheld, until the Contracting Officer determines that the Contractor has corrected all significant deficiencies as directed by the Contracting Officer's final determination.

## **H.20 DOE-H-2023 COST ESTIMATING SYSTEM REQUIREMENTS (OCT 2014)**

### **(a) Definitions.**

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

- (1) Is maintained, reliable, and consistently applied;
- (2) Produces verifiable, supportable, documented, and timely cost estimates that are an acceptable basis for negotiation of fair and reasonable prices;

- (3) Is consistent with and integrated with the Contractor's related management systems; and
- (4) Is subject to applicable financial control systems.

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

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

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

- (b) General. The Contractor shall establish, maintain, and comply with an acceptable estimating system.
- (c) Applicability. Paragraphs (d) and (e) of this clause apply if the Contractor is a large business to include a contractor teaming arrangement, as defined at 48 CFR 9.601(1) (FAR 9.601), performing a contract in support of a Capital Asset Project (other than a management and operating contract as described at 917.6), as prescribed in DOE Order (DOE O) 413.3B, or current version; or a non-capital asset project and either—
  - (1) The total prime contract value exceeds \$50 million, including options; or
  - (2) The Contractor was notified, in writing, by the Contracting Officer that paragraphs (d) and (e) of this clause apply.
- (d) *System requirements.* (1) The Contractor shall disclose its estimating system to the Contracting Officer, in writing. If the Contractor wishes the Government to protect the information as privileged or confidential, the Contractor must mark the documents with the appropriate legends before submission. If the Contractor plans to adopt the existing system from the previous Contractor, the Contractor is responsible for the system and shall comply with the system requirements required in this clause.

- (2) An estimating system disclosure is acceptable when the Contractor has provided the Contracting Officer with documentation no later than 60 days after Contract award that—
  - (i) Accurately describes those policies, procedures, and practices that the Contractor currently uses in preparing cost proposals; and
  - (ii) Provides sufficient detail for the Government to reasonably make an informed judgment regarding the acceptability of the Contractor's estimating practices.
- (3) The Contractor shall—
  - (i) Comply with its disclosed estimating system; and
  - (ii) Disclose significant changes to the cost estimating system to the Contracting Officer on a timely basis.
- (4) The Contractor's estimating system shall provide for the use of appropriate source data, utilize sound estimating techniques and good judgment, maintain a consistent approach, and adhere to established policies and procedures. An acceptable estimating system shall accomplish the following functions:
  - (i) Establish clear responsibility for preparation, review, and approval of cost estimates and budgets.
  - (ii) Provide a written description of the organization and duties of the personnel responsible for preparing, reviewing, and approving cost estimates and budgets.
  - (iii) Ensure that relevant personnel have sufficient training, experience, and guidance to perform estimating and budgeting tasks in accordance with the Contractor's established procedures.
  - (iv) Identify and document the sources of data and the estimating methods and rationale used in developing cost estimates and budgets.
  - (v) Provide for adequate supervision throughout the estimating and budgeting process.
  - (vi) Provide for consistent application of estimating and budgeting techniques.
  - (vii) Provide for detection and timely correction of errors.
  - (viii) Protect against cost duplication and omissions.
  - (ix) Provide for the use of historical experience, including historical vendor pricing information where appropriate.
  - (x) Require use of appropriate analytical methods.
  - (xi) Integrate information available from other management systems.
  - (xii) Require management review, including verification of compliance with the company's estimating and budgeting policies, procedures, and practices.
  - (xiii) Provide for internal review of, and accountability for, the acceptability of the estimating system, including the budgetary data supporting indirect cost

- estimates and comparisons of projected results to actual results, and an analysis of any differences.
- (xiv) Provide procedures to update cost estimates and notify the Contracting Officer in a timely manner.
  - (xv) Provide procedures that ensure subcontract prices are reasonable based on a documented review and analysis provided with the prime proposal, when practicable.
  - (xvi) Provide estimating and budgeting practices that consistently generate sound proposals that are compliant with the provisions of the solicitation and are adequate to serve as a basis to reach a fair and reasonable price.
  - (xvii) Have an adequate system description, including policies, procedures, and estimating and budgeting practices, that comply with the Federal Acquisition Regulation (FAR) (48 CFR chapter 1) and Department of Energy Acquisition Regulation (DEAR) (48 CFR chapter 9).
- (e) *Significant deficiencies.* (1) The Contracting Officer will provide an initial determination to the Contractor, in writing, of any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.
- (2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's estimating system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing. In the event the Contractor did not respond in writing to the initial determination within the response time, this lack of response shall indicate that the Contractor agrees with the initial determination.
- (3) The Contracting Officer will evaluate the Contractor's response or the Contractor's lack of response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—
- (i) Remaining significant deficiencies;
  - (ii) The adequacy of any proposed or completed corrective action; and
  - (iii) System disapproval, if the Contracting Officer determines that one or more significant deficiencies remain.
- (f) If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the significant deficiencies.
- (g) *Withholding payments.* If the Contracting Officer makes a final determination to disapprove the Contractor's estimating system, and the contract includes the Section H clause Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

## H.21 DOE-H-2025 ACCOUNTING SYSTEM ADMINISTRATION (OCT 2014)

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

(1) *Acceptable accounting system* means a system that complies with the system criteria in paragraph (c) of this clause to provide reasonable assurance that—

- (i) Applicable laws and regulations are complied with;
- (ii) The accounting system and cost data are reliable;
- (iii) Risk of misallocations and mischarges are minimized; and
- (iv) Contract allocations and charges are consistent with billing procedures.

(2) *Accounting system* means the Contractor's system or systems for accounting methods, procedures, and controls established to gather, record, classify, analyze, summarize, interpret, and present accurate and timely financial data for reporting in compliance with applicable laws, regulations, and management decisions, and may include subsystems for specific areas such as indirect and other direct costs, compensation, billing, labor, and general information technology.

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

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

(c) *System criteria.* The Contractor's accounting system shall provide for—

- (1) A sound internal control environment, accounting framework, and organizational structure;
- (2) Proper segregation of direct costs from indirect costs;
- (3) Identification and accumulation of direct costs by contract;
- (4) A logical and consistent method for the accumulation and allocation of indirect costs to intermediate and final cost objectives;
- (5) Accumulation of costs under general ledger control;

- (6) Reconciliation of subsidiary cost ledgers and cost objectives to general ledger;
  - (7) Approval and documentation of adjusting entries;
  - (8) Management reviews or internal audits of the system to ensure compliance with the Contractor's established policies, procedures, and accounting practices;
  - (9) A timekeeping system that identifies employees' labor by intermediate or final cost objectives;
  - (10) A labor distribution system that charges direct and indirect labor to the appropriate cost objectives;
  - (11) Interim (at least monthly) determination of costs charged to a contract through routine posting of books of account;
  - (12) Exclusion from costs charged to Government contracts of amounts which are not allowable in terms of 48 CFR part 31, Contract Cost Principles and Procedures, and other contract provisions;
  - (13) Identification of costs by contract line item and by units (as if each unit or line item were a separate contract), if required by the contract;
  - (14) Segregation of preproduction costs from production costs, as applicable;
  - (15) Cost accounting information, as required—
    - (i) By contract clauses concerning limitation of cost (48 CFR 52.232-20), limitation of funds (48 CFR 52.232-22), or allowable cost and payment (48 CFR 52.216-7); and
    - (ii) To readily calculate indirect cost rates from the books of accounts;
  - (16) Billings that can be reconciled to the cost accounts for both current and cumulative amounts claimed and comply with contract terms;
  - (17) Adequate, reliable data for use in pricing follow-on acquisitions; and
  - (18) Accounting practices in accordance with standards promulgated by the Cost Accounting Standards Board, if applicable, otherwise, Generally Accepted Accounting Principles.
- (d) *Significant deficiencies.* (1) The Contracting Officer will provide an initial determination to the Contractor, in writing, on any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's accounting system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing. In the event the Contractor did not respond in writing to the initial determination within the response time, this lack of response shall indicate that the Contractor agrees with the initial determination.

(3) The Contracting Officer will evaluate the Contractor's response or the Contractor's lack of response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—

(i) Remaining significant deficiencies;

(ii) The adequacy of any proposed or completed corrective action; and

(iii) System disapproval, if the Contracting Officer determines that one or more significant deficiencies remain.

(e) If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the significant deficiencies.

(f) *Withholding payments.* If the Contracting Officer makes a final determination to disapprove the Contractor's accounting system, and the contract includes the Section H clause Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

## **H.22 DOE-H-2026 CONTRACTOR PURCHASING SYSTEM ADMINISTRATION (OCT 2014)**

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

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

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

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

(b) *General.* The Contractor shall establish and maintain an acceptable purchasing system. If the Contractor plans to adopt the existing system from the previous Contractor, the Contractor is responsible for the system and shall comply with the system criteria

required in this clause. The Contractor shall provide in writing to the Contracting Officer documentation that its purchasing system meets the system criteria in paragraph (c) of this clause no later than 60 days after Contract award. Failure to maintain an acceptable purchasing system, as defined in this clause, may result in disapproval of the system by the Contracting Officer and/or withholding of payments.

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

- (1) Have an adequate system description including policies, procedures, and purchasing practices that comply with the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) and the Department of Energy Acquisition Regulation (48 CFR Chapter 9);
- (2) Ensure that all applicable purchase orders and subcontracts contain all flowdown clauses, including terms and conditions and any other clauses needed to carry out the requirements of the prime contract;
- (3) Maintain an organization plan that establishes clear lines of authority and responsibility;
- (4) Ensure all purchase orders are based on authorized requisitions and include a complete and accurate history of purchase transactions to support vendor selected, price paid, and document the subcontract/purchase order files which are subject to Government review;
- (5) Establish and maintain adequate documentation to provide a complete and accurate history of purchase transactions to support vendors selected and prices paid;
- (6) Apply a consistent make-or-buy policy that is in the best interest of the Government;
- (7) Use competitive sourcing to the maximum extent practicable, and ensure debarred or suspended contractors are properly excluded from contract award;
- (8) Evaluate price, quality, delivery, technical capabilities, and financial capabilities of competing vendors to ensure fair and reasonable prices;
- (9) Require management level justification and adequate cost or price analysis, as applicable, for any sole or single source award;
- (10) Perform timely and adequate cost or price analysis and technical evaluation for each subcontractor and supplier proposal or quote to ensure fair and reasonable subcontract prices;
- (11) Document negotiations in accordance with 48 CFR 15.406-3;

- (12) Seek, take, and document economically feasible purchase discounts, including cash discounts, trade discounts, quantity discounts, rebates, freight allowances, and company-wide volume discounts;
- (13) Ensure proper type of contract selection and prohibit issuance of cost-plus-a-percentage-of-cost subcontracts;
- (14) Maintain subcontract surveillance to ensure timely delivery of an acceptable product and procedures to notify the Government of potential subcontract problems that may impact delivery, quantity, or price;
- (15) Document and justify reasons for subcontract changes that affect cost or price;
- (16) Notify the Government of the award of all subcontracts that contain the 48 CFR Chapter 1 and 48 CFR Chapter 9 flowdown clauses that allow for Government audit of those subcontracts, and ensure the performance of audits of those subcontracts;
- (17) Enforce adequate policies on conflict of interest, gifts, and gratuities, including the requirements of the 41 U.S.C. chapter 87, Kickbacks;
- (18) Perform internal audits or management reviews, training, and maintain policies and procedures for the purchasing department to ensure the integrity of the purchasing system;
- (19) Establish and maintain policies and procedures to ensure purchase orders and subcontracts contain mandatory and applicable flowdown clauses, as required by the 48 CFR chapter 1, including terms and conditions required by the prime contract and any clauses required to carry out the requirements of the prime contract;
- (20) Provide for an organizational and administrative structure that ensures effective and efficient procurement of required quality materials and parts at the best value from responsible and reliable sources;
- (21) Establish and maintain selection processes to ensure the most responsive and responsible sources for furnishing required quality parts and materials and to promote competitive sourcing among dependable suppliers so that purchases are reasonably priced and from sources that meet Contractor quality requirements;
- (22) Establish and maintain procedures to ensure performance of adequate price or cost analysis on purchasing actions;
- (23) Establish and maintain procedures to ensure that proper types of subcontracts are selected, and that there are controls over subcontracting, including oversight and surveillance of subcontracted effort; and

(24) Establish and maintain procedures to timely notify the Contracting Officer, in writing, if—

(i) The Contractor changes the amount of subcontract effort after award such that it exceeds 70 percent of the total cost of the work to be performed under the Contract, task order, or delivery order. The notification shall identify the revised cost of the subcontract effort and shall include verification that the Contractor will provide added value; or

(ii) Any subcontractor changes the amount of lower-tier subcontractor effort after award such that it exceeds 70 percent of the total cost of the work to be performed under its subcontract. The notification shall identify the revised cost of the subcontract effort and shall include verification that the subcontractor will provide added value as related to the work to be performed by the lower-tier subcontractor(s).

(d) *Significant deficiencies.* (1) The Contracting Officer will provide notification of initial determination to the Contractor, in writing, of any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's purchasing system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing. In the event the Contractor did not respond in writing to the initial determination within the response time, this lack of response shall indicate that the Contractor agrees with the initial determination.

(3) The Contracting Officer will evaluate the Contractor's response or the Contractor's lack of response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—

(i) Remaining significant deficiencies;

(ii) The adequacy of any proposed or completed corrective action; and

(iii) System disapproval, if the Contracting Officer determines that one or more significant deficiencies remain.

(e) If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the deficiencies.

(f) *Withholding payments.* If the Contracting Officer makes a final determination to disapprove the Contractor's purchasing system, and the contract includes the Section H

clause Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

### **H.23 DOE-H-2027 CONTRACTOR PROPERTY MANAGEMENT SYSTEM ADMINISTRATION (OCT 2014)**

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

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

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

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

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

(c) *System criteria.* The Contractor's property management system shall be in accordance with paragraph (f) of the contract clause at 48 CFR 52.245-1.

(d) *Significant deficiencies.* (1) The Contracting Officer will provide an initial determination to the Contractor, in writing, of any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's property management system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing. In the event the Contractor did not respond in writing to the initial determination within the response time, this lack of response shall indicate that the Contractor agrees with the initial determination.

(3) The Contracting Officer will evaluate the Contractor's response or the Contractor's lack of response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—

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

#### **H.24 DOE-H-2033 ALTERNATIVE DISPUTE RESOLUTION (OCT 2014)**

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

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

**H.25 DOE-H-2034 CONTRACTOR INTERFACE WITH OTHER CONTRACTORS AND/OR GOVERNMENT EMPLOYEES (OCT 2014)**

The Government may award contracts to other contractors for work to be performed at a DOE-owned or –controlled site or facility. The Contractor shall cooperate fully with all other on-site DOE contractors and Government employees. The Contractor shall coordinate its own work with such other work as may be directed by the Contracting Officer or a duly authorized representative. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by a Government employee.

**H.26 DOE-H-2035 ORGANIZATIONAL CONFLICT OF INTEREST MANAGEMENT PLAN (OCT 2014)**

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

- (a) The procedures for identifying and evaluating past, present, and anticipated contracts of the Contractor, its related entities and other performing entities under the Contract.
- (b) The procedures the Contractor will utilize to avoid, neutralize, or mitigate potential or actual conflicts of interest.

- (c) The procedures for reporting actual or potential conflicts of interest to the Contracting Officer.
- (d) The procedures the Contractor will utilize to oversee, implement, and update the Plan, to include assigning responsibility for management, oversight and compliance to an individual in the Contractor's organization with full authority to implement the Plan.
- (e) The procedures for ensuring all required representations, certifications and factual analyses are submitted to the Contracting Officer for approval in a timely manner.
- (f) The procedures for protecting agency information that could lead to an unfair competitive advantage if disclosed including collecting disclosure agreements covering all individuals, subcontractors, and other entities with access to agency-sensitive information and physical safeguarding of such information.
- (g) An OCI training and awareness program that includes periodic, recurring training and a process to evidence employee participation.
- (h) The enforceable, employee disciplinary actions to be used by the Contractor for violation of OCI requirements.

#### **H.27 DOE-H-2037 NATIONAL ENVIRONMENTAL POLICY ACT (OCT 2014)**

The work under this Contract requires activities to be subject to the National Environmental Policy Act of 1969 (NEPA). The Contractor shall supply to DOE certain environmental information, as requested, in order for DOE to comply with NEPA and its implementing policies and regulations. Funds obligated under this Contract shall only be expended by the Contractor on the activities set out below, unless the Contracting Officer modifies the listed activities or notifies the Contractor that NEPA requirements have been satisfied and the Contractor is authorized to perform the complete work required under the Contract.

**Fill-in 1: [All activities under Section C:  
DESCRIPTION/SPECIFICATIONS/WORK STATEMENT]**

#### **H.28 DOE-H-2038 NUCLEAR FACILITIES OPERATIONS (OCT 2014)**

- (a) The work under this Contract includes the operation of nuclear facilities. The Contractor recognizes that such operations involve the risk of a nuclear incident which, while the chances are remote, could adversely affect the public's health and safety and the environment. Therefore, the Contractor shall exercise a degree of care commensurate with the risks involved.
- (b) As used in this clause, the term "nuclear materials" is a collective term which includes source material, special nuclear material, and those other materials to which, by direction of DOE, the provisions of DOE's Orders or Directives regarding the control

- of nuclear materials, which have been or may be furnished to the Contractor by DOE, apply. The Contractor shall accept existing procedures and, in a manner satisfactory to the Contracting Officer, propose revised, as appropriate, accounting and measurement procedures, maintain current records and institute appropriate control measures for nuclear materials in its possession commensurate with the national security and DOE policy. The Contractor shall make such reports and permits subject to inspection as DOE may require with reference to nuclear materials. The Contractor shall take all reasonable steps and precautions to protect such materials against theft and misappropriations and to minimize all losses of such materials.
- (c) Transfers of nuclear materials shall only be made with the prior written approval of the Contracting Officer, or authorized designee. Nuclear materials in the Contractor's possession, custody, or control shall be used only for furtherance of the work under this Contract. The Contractor shall be responsible for the control of such nuclear materials in accordance with applicable DOE Orders and Directives regarding the control of nuclear materials, which have been or may be issued to the Contractor by DOE. The Contractor shall make a part of each purchase order, subcontract, and other commitment under this Contract involving the use of nuclear materials for which the Contractor has accountability, appropriate terms and conditions for the use of nuclear materials and the responsibilities of the subcontractor or vendor regarding control of nuclear materials. In the case of fixed-price purchase orders, subcontracts, or other commitments involving the use of nuclear materials for which the Contractor has accountability, the terms and conditions with respect to nuclear materials shall also identify who has the financial responsibilities, if any, regarding such items as losses, scrap recovery, product recovery, and disposal.

#### **H.29 DOE-H-2042 CONTRACTOR PERFORMANCE COMMITMENTS (OCT 2014)**

- (a) Sections B through J of the Contract set forth various performance and end state requirements. As part of its proposal dated **Fillin 1: [insert date]**, the Contractor has proposed commitments towards achieving those performance and end state requirements. Identified below in paragraph (b) are performance commitments proposed by the Contractor. These performance commitments may be included in the performance criteria for earning fee in accordance with Section J-13 Performance Evaluation and Measurement Plan.
- (b) Contract Period

**Fillin 3: [insert the list of Contractor Performance Commitments to be accomplished during the basic Contract period.]**

#### **H.30 DOE-H-2043 ASSIGNMENT AND TRANSFER OF CONTRACTS AND SUBCONTRACTS (OCT 2014)**

- (a) Assignment of DOE Prime Contracts. During the period of performance of this Contract, it may become necessary for the U.S. Department of Energy (DOE) to transfer and assign existing or future DOE prime contracts supporting site work to this Contract. The Contractor shall accept the transfers and assignments of such contracts. Any recommendations and/or suggestions regarding individual transfers directed by DOE shall be submitted in writing to the Contracting Officer prior to the transfer or assignment.
- (b) Transfer of Subcontracts. As the successor contractor, the Contractor agrees to accept the transfer of existing subcontracts as determined necessary by DOE for continuity of operations. The Contractor shall use its best efforts to negotiate changes to the assigned subcontracts incorporating mandatory flow-down provisions at no cost. If the subcontractor refuses to accept the changes or requests price adjustments, the Contractor will notify the Contracting Officer in writing. DOE reserves the right to direct the Contractor to transfer to DOE or another Contractor any subcontract awarded under this Contract.

### **H.31 DOE-H-2046 DIVERSITY PROGRAM (OCT 2014)**

- (a) The Contractor shall develop and implement a diversity program consistent with and in support of the DOE's diversity program. A diversity plan covering the full period of performance (base and option periods) shall be submitted to the Contracting Officer for approval within 60 calendar days after the effective date of the Contract. Once the diversity plan is approved by the Contracting Officer, the Contractor shall implement the diversity plan within **60** calendar days of its approval by the Contracting Officer.
- (b) The diversity plan shall address, at a minimum, the Contractor's approach to ensure an effective diversity program (including addressing applicable affirmative action and equal employment opportunity regulations) to include: (1) a statement of the Contractor's policies and practices; and (2) planned initiatives and activities which demonstrate a commitment to a diversity program, including recruitment strategies for hiring a diverse work force. The diversity plan shall also address, as a minimum, the Contractor's approach for promoting diversity through (1) the Contractor's work force; (2) educational outreach, including a mentor-protégé program; (3) stakeholder involvement and outreach; (4) subcontracting; and (5) economic development.
- (c) An annual diversity report shall be submitted pursuant to **Section J-8 List of Deliverables**. This report shall provide a list of accomplishments achieved, both internally and externally during the current reporting period, and projected initiatives during the next reporting period. The report shall also list any proposed changes to the diversity plan which shall be subject to the Contracting Officer's approval.

### **H.32 OBSERVANCE OF FEDERAL HOLIDAYS**

- (a) The on-site Government personnel observe the following holidays:

- (1) New Year's Day
- (2) Birthday of Martin Luther King, Jr.
- (3) Washington's Birthday
- (4) Memorial Day
- (5) Independence Day
- (6) Labor Day
- (7) Columbus Day
- (8) Veterans Day
- (9) Thanksgiving Day
- (10) Christmas Day

(b) Other Federal Holidays. In addition to the holidays specified above in paragraph (a), Federal employees may observe other holidays designated by Federal Statute, Executive Order, or Presidential Proclamation as a one-time, day-off such as Inauguration Day for the President of the United States.

(c) When any holiday falls on a Saturday, the preceding Friday is observed. When any holiday falls on a Sunday, the following Monday is observed. Observance of such days by Government personnel shall not be cause for an additional period of performance or entitlement of compensation except as set forth within the contract

### **H.33 DOE-H-2048 PUBLIC AFFAIRS – CONTRACTOR RELEASES OF INFORMATION (OCT 2014)**

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

### **H.34 DOE-H-2049 INSURANCE REQUIREMENTS (OCT 2014)**

- (a) In accordance with the clause DEAR 952.231-71, Insurance-Litigation and Claims, the following types and minimum amounts of insurance shall be maintained by the Contractor:
- (1) Workers' compensation – Amount in accordance with applicable Federal and State workers' compensation and occupational disease statutes.
  - (2) Employer's liability - \$100,000 (except in States with exclusive or monopolistic funds that do not permit worker's compensation to be written by private carriers).
  - (3) Comprehensive bodily injury liability - \$500,000.

- (4) Property damage liability – None, unless otherwise required by the Contracting Officer.
  - (5) Comprehensive automobile bodily injury liability - \$200,000 per person and \$500,000 per occurrence.
  - (6) Comprehensive automobile property damage - \$20,000 per occurrence.
- (b) The Contractor shall provide evidence of such insurance, if requested by the Contracting Officer; and the Contracting Officer may require such evidence to be provided prior to the commencement of work under the Contract.

**H.35 DOE-H-2050 INCORPORATION OF SMALL BUSINESS SUBCONTRACTING PLAN – ALTERNATE I (OCT 2014)**

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

**H.36 DOE-H-2053 WORKER SAFETY AND HEALTH PROGRAM IN ACCORDANCE WITH 10 CFR 851 (OCT 2014)**

- (a) The Contractor shall comply with all applicable safety and health requirements set forth in 10 CFR 851, Worker Safety and Health Program, and any applicable DOE Directives incorporated into the Contract. The Contractor shall develop, implement, and maintain a written Worker Safety and Health Program (WSHP) which shall describe the Contractor's method for complying with and implementing the applicable requirements of 10 CFR 851. The WSHP shall be submitted to and approved by DOE. The approved WSHP must be implemented prior to the start of work. In performance of the work, the Contractor shall provide a safe and healthful workplace and must comply with its approved WSHP and all applicable federal and state environment, health, and safety regulations.
- (b) The Contractor shall take all reasonable precautions to protect the environment, health, and safety of its employees, DOE personnel, and members of the public. When more than one contractor works in a shared workplace, the Contractor shall coordinate with the other contractors to ensure roles, responsibilities, and worker safety and health provisions are clearly delineated. The Contractor shall participate in all emergency response drills and exercises related to the Contractor's work and interface with other DOE contractors.

- (c) The Contractor shall take all necessary and reasonable steps to minimize the impact of its work on DOE functions and employees, and immediately report all job-related injuries and/or illnesses which occur in any DOE facility to the Contracting Officer Representative (COR). Upon request, the Contractor shall provide to the COR a copy of occupational safety and health self-assessments and/or inspections of work sites for job hazards for work performed at DOE facilities.
- (d) The Contracting Officer may notify the Contractor, in writing, of any noncompliance with the terms of this clause, and the corrective action(s) to be taken. After receipt of such notice, the Contractor shall immediately take such corrective action(s).
- (e) In the event that the Contractor fails to comply with the terms and conditions of this clause, the Contracting Officer may, without prejudice to any other legal or contractual rights, issue a stop-work order halting all or any part of the work. Thereafter, the Contracting Officer may, at his or her discretion, cancel the stop-work order so that the performance of work may be resumed. The Contractor shall not be entitled to an equitable adjustment of the Contract amount or extension of the performance schedule due to any stop-work order issued under this clause.
- (f) The Contractor shall flow down the requirements of this clause to all subcontracts at any tier.
- (g) In the event of a conflict between the requirements of this clause and 10 CFR 851, the requirements of 10 CFR 851 shall take precedence.

**H.37 DOE-H-2055 GOVERNMENT FURNISHED PROPERTY (OCT 2014)**

In accordance with the clause FAR 52.245-1 GOVERNMENT PROPERTY (APR 2012), the Government will provide the property **listed in Section J, Attachment J-16 Government Furnished Equipment.**

**H.38 DOE-H-2058 DESIGNATION AND CONSENT OF MAJOR OR CRITICAL SUBCONTRACTS (OCT 2014)**

- (a) In accordance with the clause at FAR 52.244-2(d), Subcontracts, the following subcontracts have been determined to be major or critical subcontracts:

*[Insert the names of major or critical subcontracts subject to the operation of this clause]*

- (b) In the event that the Contractor plans either to award or use a new major or critical subcontract or replace an existing, approved major or critical subcontract identified in paragraph (a) above, the Contractor shall provide advance notification to, and obtain consent from, the Contracting Officer, notwithstanding the consent requirements under any approved purchasing system or any other terms or conditions of the

Contract. Consent to these subcontracts is retained by the Contracting Officer and will not be delegated.

**H.39 DOE-H-2059 PRESERVATION OF ANTIQUITIES, WILDLIFE AND LAND AREAS (OCT 2014)**

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

**H.40 DOE-H-2062 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL –ALTERNATE I (OCT 2014)**

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

**H.41 DOE-H-2064 USE OF INFORMATION TECHNOLOGY EQUIPMENT, SOFTWARE, AND THIRD PARTY SERVICES – ALTERNATE II (OCT 2014)**

Acquisition of Information Technology. The Government may provide information technology equipment, existing computer software (as described in 48 CFR 27.405), and third party services for the Contractor's use in the performance of the Contract; and the Contracting Officer may provide guidance to the Contractor regarding usage of such equipment, software, and third party services. The Contractor is not authorized to acquire

(lease or purchase) information technology equipment, existing computer software, or third party services at the Government's direct expense without prior written approval of the Contracting Officer. Should the Contractor propose to acquire information technology equipment, existing computer software, or third party services, the Contractor shall provide to the Contracting Officer justification for the need, including a complete description of the equipment, software or third party service to be acquired, and a lease versus purchase analysis if appropriate.

**H.42 DOE-H-2070 KEY PERSONNEL (OCT 2014)**

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

**DESIGNATED KEY PERSONNEL**

NAME	TITLE
_____	Project Manager
_____	Environment, Safety, Health and Quality Manager
_____	Plant Manager- Portsmouth
_____	Plant Manager- Paducah
_____	_____
_____	_____
_____	_____
_____	_____

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

(b) Key personnel team requirements. The Contracting Officer and designated Contracting Officer's Representative(s) shall have direct access to the key personnel assigned to the Contract. All key personnel shall be permanently assigned to their respective positions.

(c) Definitions. In addition to the definitions contained in the clause at DEAR 952.215-70, the following shall apply:

- (1) The term “reasonably in advance” is defined as 30 calendar days.
  - (2) Key personnel are considered “managerial personnel” under the clause at DEAR 952.231-71, Insurance – Litigation and Claims.
- (d) Contract fee reductions for changes to key personnel.
- (1) Notwithstanding the approval by the Contracting Officer, any time the Project Manager (the initial Project Manager or any substitution approved by the Contracting Officer) is removed, replaced, or diverted within two (2) years of being placed in the position, the earned fee under the Contract may be permanently reduced by \$750,000 for each and every such occurrence.
  - (2) Notwithstanding the approval by the Contracting Officer, any time a key person other than the Project Manager is removed, replaced, or diverted within two (2) years of being placed in the position, the earned fee may be permanently reduced by \$350,000 for each and every such occurrence.
  - (3) The Contractor may request in writing that the Contracting Officer consider waiving all or part of a reduction in earned fee. Such written request shall include the Contractor’s basis for the removal, replacement, or diversion of any key personnel. The Contracting Officer shall have the unilateral discretion to make the determination to waive all or part of the reduction in earned fee.

**H.43 DOE-H-2071 DEPARTMENT OF ENERGY DIRECTIVES (OCT 2014)**

- (a) In performing work under this Contract, the Contractor shall comply with the requirements of those Department of Energy (DOE) directives, or parts thereof listed in Section J, Attachment J-1 or identified elsewhere in the Contract.
- (b) The Contracting Officer may, at any time, unilaterally amend this clause, or other clauses which incorporate DOE directives, in order to add, modify or delete specific requirements. Prior to revising the listing of directives, the Contracting Officer shall notify the Contractor in writing of the Department's intent to revise the list, and the Contractor shall be provided with the opportunity to assess the effect of the Contractor's compliance with the revised list on Contract cost and funding, technical performance, and schedule, and identify any potential inconsistencies between the revised list and the other terms and conditions of the Contract. Within 30 days after receipt of the Contracting Officer's notice, the Contractor shall advise the Contracting Officer in writing of the potential impact of the Contractor's compliance with the revised list. Based on the information provided by the Contractor and any other information available, the Contracting Officer shall decide whether to revise the listing of directives and so advise the Contractor not later than 30 days prior to the effective date of the revision.

- (c) Notwithstanding the process described in paragraph (b), the Contracting Officer may direct the Contractor to immediately begin compliance with the requirements of any directive.
- (d) The Contractor and the Contracting Officer shall identify and, if appropriate, agree to any changes to other Contract terms and conditions, including cost and schedule, associated with the revision pursuant to the Section I clause (s) of this Contract at FAR 52.243-2 CHANGES- COST REIMBURSEMENT (AUG 1987), ALTERNATE I (APR 1984) and FAR 52.243-1 CHANGES- FIXED PRICE (AUG 1987), ALTERNATE II (APR 1984).
- (e) Regardless of the performer of the work, the Contractor is responsible for compliance with the requirements of this clause. The Contractor shall include this clause in all subcontracts to the extent necessary to ensure the Contractor's compliance with these requirements.

**H.44 DOE-H-2072 USE OF GOVERNMENT VEHICLES BY CONTRACTOR EMPLOYEES (OCT 2014)**

- (a) The Government may provide Government-owned and/or –leased motor vehicles for the Contractor's use in performance of this Contract in accordance with the clause FAR 52.251-2, Interagency Fleet Management System (IFMS) Vehicles and Related Services.
- (b) The Contractor shall ensure that its employees use and operate Government-owned and/or –leased motor vehicles in a responsible and safe manner to include the following requirements:
  - (1) Use vehicles only for official purposes and solely in the performance of the Contract.
  - (2) Do not use vehicles for transportation between an employee's residence and place of employment unless authorized by the Contracting Officer.
  - (3) Comply with Federal, State and local laws and regulations for the operation of motor vehicles.
  - (4) Possess a valid State, District of Columbia, or commonwealth's operator license or permit for the type of vehicle to be operated.
  - (5) Operate vehicles in accordance with the operator's packet furnished with each vehicle.
  - (6) Use seat belts while operating or riding in a Government vehicle.
  - (7) Do not use tobacco products while operating or riding in a Government vehicle.

- (8) Do not provide transportation to strangers or hitchhikers.
  - (9) Do not engage in “text messaging” while operating a Government vehicle, which includes those activities defined in the clause at FAR 52.233-18, Encouraging Contractor Policies to Ban Text Messaging While Driving.
  - (10) In the event of an accident, provide information as may be required by State, county or municipal authorities and as directed by the Contracting Officer.
- (c) The Contractor shall -
- (1) Establish and enforce suitable penalties against employees who use, or authorize the use of Government vehicles for unofficial purposes or for other than in the performance of the Contract; and
  - (2) Pay any expenses or cost, without Government reimbursement, for using Government vehicles other than in the performance of the Contract.
- (d) The Contractor shall insert this clause in all subcontracts in which Government-owned and/or –leased vehicles are to be provided for use by subcontractor employees.

#### **H.45 DOE-H-2073 RISK MANAGEMENT AND INSURANCE PROGRAMS (DEC 2014)**

Contractor officials shall ensure that the requirements set forth below are applied in the establishment and administration of DOE-funded prime cost reimbursement contracts for management and operation of DOE facilities and other designated long-lived onsite contracts for which the Contractor has established separate operating business units.

1. BASIC REQUIREMENTS.
  - a. Maintain commercial insurance or a self-insured program, (i.e., any insurance policy or coverage that protects the Contractor from the risk of legal liability for adverse actions associated with its operation, including malpractice, injury, or negligence) as required by the terms of the Contract. Types of insurance include automobile, general liability, and other third party liability insurance. Other forms of coverage must be justified as necessary in the operation of the Department facility and/or the performance of the Contract, and approved by the DOE.
  - b. Contractors shall not purchase insurance to cover public liability for nuclear incidents without DOE authorization (See DEAR 970.5070, Indemnification, and DEAR 950.70, Nuclear Indemnification of DOE Contractors).
  - c. Demonstrate that insurance programs and costs comply with the cost limitations and exclusions at FAR 28.307, Insurance Under Cost Reimbursement Contracts, FAR

- 31.205-19, Insurance and Indemnification, DEAR 952.231-71 Insurance-Litigation and Claims, and DEAR 970.5228-1, Insurance-Litigation and Claims.
- d. Demonstrate that the insurance program is being conducted in the government's best interest and at reasonable cost.
  - e. The Contractor shall submit copies of all insurance policies or insurance arrangements to the Contracting Officer no later than 30 days after the purchase date.
  - f. When purchasing commercial insurance, the Contractor shall use a competitive process to ensure costs are reasonable.
  - g. Ensure self-insurance programs include the following elements:
    - (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 not exceed the cost of purchased insurance. This includes hybrid plans (i.e., commercially purchased insurance with self-insured retention (SIR) such as large deductible, matching deductible, retrospective rating cash flow plans, and other plans where insurance reserves are under the control of the insured). The SIR components of such plans are self-insurance and are subject to the approval and submission requirements of FAR 28.308, as applicable.
    - (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 from 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 of 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 recorded 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.46 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:

- (a) At the expiration of the Contract term or any earlier termination thereof, the Contractor shall cooperate with a successor contractor or the Government by allowing its employees to interview for possible employment. For those employees who accept employment with the successor contractor, such employees shall be released in coordinated manner with the successor contractor. The Contractor shall cooperate with the successor 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.
- (b) Within fifteen (15) days after the Notice to Proceed, the Contractor and the outgoing contractor shall jointly prepare a mutual detailed plan for the phase-out and phase-in of operations. This plan shall specify a training and orientation program to cover each phase of the scope of work covered by the Contract. A proposed date by which the Contractor will assume responsibility from the outgoing contractor for such work shall be established. The outgoing contractor will maintain full responsibility for such work until assumption thereof by the Contractor. Execution of the proposed plan or any part thereof shall be accomplished in accordance with the Contracting Officer's direction and approval.
- (c) This clause shall apply to subcontracts as approved by the Contracting Officer.

#### H.47 MODIFICATION AUTHORITY

Notwithstanding any of the other clauses of this Contract, the Contracting Officer shall be the only individual authorized to:

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

#### **H.48 FINANCIAL MANAGEMENT SYSTEMS**

- (a) The Contractor shall operate and maintain a timely, accurate and reliable financial management system that is responsive to the reporting requirements of the Department and conforms to Generally Accepted Accounting Principles, Federal Financial Accounting Standards, and Cost Accounting Standards.
- (b) The Contractor shall submit a plan for CO approval of any substantive change to the financial management and business systems or subsystems at least 30 days in advance of implementation. This plan must identify the cost and schedule for changing from the existing financial systems, and provide a comparison of the capabilities of the new system(s) to the existing system(s). Any new system modifications are subject to review and audit.

#### **H.49 DOE CONTRACT ADMINISTRATION, OVERSIGHT AND SAFETY OVERSIGHT**

- (a) The PWS presents significant work scope challenges to the Contractor, and makes it imperative that DOE has a focused approach to oversight of Contractor work. The approach shall provide effective DOE oversight of project work, yet it must not present the Contractor with burdensome or "non-value added" work related distractions.
- (b) DOE's oversight approach shall include reviews of periodic administrative progress reports submitted by the Contractor and direct observation by DOE employees of Contractor work in progress. Additionally, DOE's oversight approach will rely heavily on the established Contractor Assurance System, as defined and required by DOE O 226.1, Implementation of Department of Energy Oversight Policy.
- (c) DOE's oversight of work in progress will include specific provisions for the designation and qualification of DOE employees conducting oversight activities. This will include the following elements:
  - (1) The number of DOE employees providing technical direction to the Contractor will be limited and formally designated, by name, in writing by the CO; and
  - (2) DOE employees assigned oversight responsibilities will be trained and qualified in areas of technical competency. The areas of technical competency will focus on the work conducted by the Contractor (e.g., waste packaging, facility demolition, facility

decontamination, crane operation, heavy-lifting safety, nuclear and general safety oversight.)

(d) DOE's oversight activities will focus primarily on assuring the safe operation of DUF6 conversion facilities at Portsmouth, OH and Paducah, KY. DOE's oversight will be conducted in a tailored and proactive manner with minimal interference with project progress. The Contractor shall respond to DOE oversight and to concerns, findings and observations as identified by the CO or COR during the conduct of these oversight activities. The six fundamental areas of oversight are as follows:

- (1) **Project Management Oversight:** This includes daily field inspections and the monthly and quarterly assessment of project status, which will be used to determine and validate project performance.
- (2) **Contract Management Oversight:** Administration and monitoring of the prime Contract will be in accordance with the Contract terms and conditions which include, but are not limited to, the oversight required under FAR Subchapter G – Contract Management (FAR Parts 42-51) and its supplements.
- (3) **Financial Management Oversight:** DOE will review budgetary data submitted by the Contractor to be provided into the Integrated Planning, Accountability, and Budgeting System (IPABS). DOE will review the status of designated management commitments. DOE or its designee will monitor and audit Contractor financial management systems funds management practices and procedures, and accounting practices to ensure compliance with applicable regulations and statutes.
- (4) **Daily Oversight:** DOE Facility Representatives, Project Managers and Subject Matter Experts will conduct daily oversight. The purpose of this oversight will be to assess compliance with the terms and conditions of the Contract and to assure effective safety oversight. In addition to this daily involvement, the Contractor shall support:
  - (1) DOE's safety oversight, which includes the capability for examining, assessing and auditing by all levels of the DOE organization;
  - (2) Senior Management walkthroughs, conducted in areas or locations where work is ongoing;
  - (3) Periodic Walkthroughs by regulators, Defense Nuclear Facilities Safety Board (DNFSB), or DOE Headquarters personnel; and
  - (4) Employee concerns elevated to DOE for evaluation
- (5) **Cyber Security Assessments:** DOE Mission Information Protection Program subject matter experts will conduct cyber security assessments and site assist visits that will include a review of cyber security documentation, NIST SP 800-53 security control implementation and active penetration testing of the IT infrastructure.
- (6) **Scheduled Assessments:** DOE will publish a quarterly oversight schedule of assessments on the PPPO web site. Adjustments will be made no fewer than 30 days

prior to any planned assessment (with the exception of a “For Cause” review.) Assessment reports will be formally transmitted to the Contractor for development of a corrective action plan, if required. DOE will verify and validate the Contractor’s effectiveness in correcting the root cause problem of the concerns and findings.

- (e) The CO shall designate the COR for giving technical direction by separate letter. The Contractor shall use the COR as the primary point of contact on technical matters (See the Correspondence Procedures clause, Section G, for definition), subject to the restrictions of Section I clause entitled *DEAR 952.242-70 Technical Direction*. Other individuals, to be identified by the CO, may be delegated with administrative COR authority.

#### **H.50 ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM ACT (EEOICPA)**

The Contractor shall provide support of the EEOICPA established under Title XXXVI of the National Defense Authorization Act of 2001 (Public Law 106-398). The Contractor shall provide records in accordance with the Section I Clause entitled, DEAR 970.5204-3, Access to and Ownership of Records, in support of EEOICPA claims and the claim process under the EEOICPA.

The Contractor shall:

- (a) Verify employment and provide other records which contain pertinent information for compensation under the EEOICPA. The Contractor shall provide this support for itself and any named subcontractors’ employees.
- (b) Provide reports as directed by the U.S. Department of Energy (DOE), such as costs associated with EEOICPA.
- (c) Provide an EEOICPA point-of-contact; this employee shall attend meetings, as requested by DOE.
- (d) Locate, retrieve and provide a minimum of two (2) copies of any personnel and other program records as requested.
- (e) Perform records research needed to complete the Department of Labor (DOL) claims or to locate records needed to complete the claims.
- (f) Perform/coordinate records declassification activities required for the processing of claims forms.
- (g) Keep Federal Compensation Program Act (FCPA) information current on EEOICPA claims activities.
- (h) Ensure that up-to-date cost information is input to the FCPA electronic reporting system by the 10th of each month.
- (i) Ensure all EEOICPA claims received are completed and returned to DOE within 45 calendar days of the date entered in the FCPA electronic reporting system.

The FCPA electronic reporting system will be provided to the Contractor.

### **H.51 CONTRACT PARTICIPATION BY FOREIGN NATIONALS**

- (a) The Contractor shall notify the Contracting Officer, in writing, prior to the employment of or participation by any foreign national in the performance of work under the Contract.
- (b) The Contractor shall notify the Contracting Officer, in writing, prior to any visit to sites covered by this Contract by any foreign national in connection with the work being performed under this Contract. This notification shall be made at least 75 days prior to the planned visit.

### **H.52 SOFTWARE MADE AVAILABLE FOR CONTRACTOR'S USE**

- (a) The Government, from time to time, may make certain software acquired under license available to the Contractor for its use in the performance of this Contract.
- (b) The Contractor recognizes and acknowledges that such software or data contained therein may be proprietary and confidential to a third party.
- (c) The Contractor agrees that it and its employees will not use, copy, disclose, modify, or reverse engineer such software except as permitted by the license and any other terms and conditions under which the software is made available to the Contractor.
- (d) The Contractor is not authorized to violate any software licensing agreement, or to cause the Government to violate any licensing agreement. If, at any time during the performance of this Contract, the Contractor has reason to believe that its utilization of Government-furnished software may involve or result in a violation of DOE's licensing agreement, the Contractor shall promptly notify the CO, in writing, of the pertinent facts and circumstances. Pending direction from the CO, the Contractor shall continue to perform to the full extent possible without utilizing the software in question.
- (e) Paragraphs (a) through (d) of this clause shall flow down to all subcontracts.

### **H.53 GOVERNMENT-FURNISHED SERVICES AND ITEMS**

- (a) DOE and the Contractor recognize that implementation of the PWS in an optimized fashion is dependent upon many activities, including the Government Furnished Services and Items (GFSI) identified below.
- (b) Within thirty (30) days after the Notice to Proceed and by September 1 prior to each fiscal year end, the Contractor shall provide the CO a projection of its needed GFSI for the upcoming fiscal year in the format of updating Section J, Attachments J-4b and J-5, and Table H-1. The Contractor shall also provide quarterly updates to this projection, if changes occur, to the CO. Amendments to the projection, if any, shall be provided to the CO 45 days in advance of the GFSI need date

- (c) DOE will review each Contractor submittal of GFSI needs and, within 15 calendar days, notify the contractor whether it will provide the requested GFSI. If DOE will not provide the GFSI by the need date requested by the Contractor, DOE will identify when it will provide the requested GFSI within 30 days of the request.
- (d) All equipment, supplies and other materials needed to perform this work and not included as Government furnished equipment shall be supplied by the Contractor. The listing of Government furnished property for this Contract can be found in Section J-16, Government Furnished Equipment.

<b>Table H-1 DETAILED DESCRIPTION OF GOVERNMENT-FURNISHED SERVICES AND ITEMS</b>		
<b>Scope</b>	<b>Requirement</b>	<b>GFS/I</b>
The Contractor shall support the operations of the DUF6 Conversion Facilities at Portsmouth, OH and Paducah, KY by performing activities as described in Section C, Performance Work Statement	DOE shall ensure Government controlled data systems are available for Contractor access as needed to provide infrastructure activities	DOE will ensure the following systems are available to the Contractor throughout the period of performance of this Contract: -Integrated Planning Accountability and Budget - System (IPABS) -Facility Information Management System (FIMS) -Computerized Accident/Incident Reporting System (CAIRS) -Non-Compliance Tracking System (NTS) database -Occurrence Reporting and Processing System (ORPS) -Foreign Access Central Tracking System (FACTS) database -Federal Telephone System Access Condition Assessment Information System (CAIS) -Work Force Information System (WFIS)

**H.54 INTEGRATED CONTRACTOR WORK CONTROL SYSTEMS AND REPORTING REQUIREMENTS**

**A. Project Control System**

The Contractor shall establish, maintain and use a work control system that accurately records and reports the Contract performance against the requirements of the Contract and accurately reflects the total estimated cost of the Contract exclusive of fee as stated in Section B.2 of the Contract for the work scope and period of performance being authorized for CLIN 0002. The work control system shall employ the Earned Value Management method or an alternate performance management method and shall be consistent with Department of Energy (DOE) and EM policies and guidance for operations activities contained in Section J Attachment, J-15 “Integrated Contractor Work Control Systems and Reporting Requirements Clause,” paragraphs A.1. The Contractor shall submit a Work Controls System Description (WCSD) or a Project Controls System Description (PCSD) during the Transition Operations Phase.

If the WCSD or PCSD is based on the Earned Value Management method, the Control System Description and its implementation shall comply with the American National Standards Institute (ANSI)/Electronic Industries Alliance (EIA)-748 (current) Earned Value Management Systems (EVMS) Standard.

Alternately, if the control system is not based on EVM, but on other performance metrics, the Control System Description must fully describe the alternate performance management system and must be evaluated and approved by the DOE.

### **B. Baseline Development and Performance Reporting**

The Contractor's planning and performance reporting processes shall provide DOE with the supporting data for an independent assessment of the Contractor's work execution plan, basis of cost and schedule estimates, measurement basis of progress reporting and change control process. The Contract Performance Baseline (CPB) represents the cost, schedule, and scope as it relates to the total estimated cost of the Contract exclusive of fee and any Contract overrun as stated in Section B of the Contract for the work scope and performance period being authorized. The CPB includes all work identified in this Contract consistent with policies and guidance as set forth in Attachment J-15, "Integrated Contractor Work Control Systems and Reporting Requirements Clause," and this Contract).

The CPB cost and schedule allocations must be documented at a WBS level where work activities, their costs and schedule, are planned and managed by the Contractor and are consistent with the schedule of prices in the Contract as ratified. The CPB supporting documentation should demonstrate that the Contractor has put in place planning and management processes and qualified personnel to execute the work in a safe and efficient manner

The CPB shall be submitted for review by DOE and approval by the Contracting Officer (CO). Once the CPB is approved, the Contractor shall follow the approved change control process.

- **Initial and Interim Contract Performance Baseline Submittal**

- Within the Contract Transition Operations Phase as defined in this Contract, the Contractor shall develop and submit for CO approval:
  - i. An Initial CPB<sup>1</sup> for the Contract performance period that reflects the Contractor's cost proposal with any revisions resulting from negotiations leading to Contract award. (See Section J, Deliverable List)

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<sup>1</sup> Initial CPB is simply the baseline plan at Contract award. It should be the scope, cost and schedule as submitted with the Contractor's proposal with any revisions resulting from negotiations leading to Contract award.

ii. An interim CPB<sup>2</sup> that provides work planning, measurement and management details as listed below to cover approximately the first 15 months<sup>3</sup> of performance starting from the award date or Notice to Proceed as applicable. **(See Section J, Deliverable List)** The Contracting Officer will notify the Contractor of the exact timeframe to be used for the Interim CPB. The Interim CPB shall include:

1. Product-Oriented Work Breakdown Structure (WBS) and WBS dictionary aligned with work scope deliverables;
  2. Integrated Resource Loaded Schedule at work-package level to track monthly performance for the interim period;
  3. Work Management Plan that includes Work (or Project) Control System description, Change Control process description, Contractor's project team with roles and responsibilities; and
  4. Annual work plans covering the interim CPB planning period for operations activities.
- If Contract modifications are negotiated within the Transition Operations Phase, the Contractor shall incorporate these approved modifications into the Interim CPB. Subsequent modifications negotiated after the Contract Implementation Period will be incorporated in the Interim CPB through Contract modification and baseline change approvals.
  - The Contractor shall immediately begin performance reporting against the Interim CPB as submitted to the Contracting Officer and before receiving approval of the Interim CPB. If the Contractor plans to use an EVMS, the system must be certified to be compliant with ANSI-EIA 748 (current version), and the Interim CPB must have the necessary data elements to support EVMS certification requirements.

NOTE: If the Contractor's Initial CPB has the details described above for Interim CPB, the Contractor may request that the CO waive the separate submission requirement.

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<sup>2</sup> Interim CPB is generally required within 90 days from Contract award or Notice to Proceed and will cover the first 15 months of the Contract (i.e., the Transition Operations Phase plus the first year of operations). The Interim CPB must match the scope and cost for this period in the Contract. When the Contract includes multiple projects and operations activities the Interim CPB allows tracking of the scope, cost and schedule for each CPB segment until the full CPB with its unique segments are in place.

<sup>3</sup> The interim period will vary based on Contract award date by plus or minus 6 months, to align the end of interim period with the fiscal year. For a Contract award made on January 1, the interim period will be 21 months and for every month after that the interim period will be reduced by a month.

- **Full Contract Performance Baseline (CPB) Submittal**

- During the first six months after the Transition Operations Phase, in addition to performing and reporting progress against the Interim CPB, the Contractor shall develop and submit for DOE approval by the DOE CO the full CPB (See section J, Attachment J-15, “Integrated Contractor Work Control Systems and Reporting Requirements Clause,” paragraph D.4.g – Typical Baseline Documents) for the remaining Contract term. These plans will include the development of the full CPB which may entail development of multiple CPB segments.
- During the first six months after the Transition Operations Phase, the Contractor shall submit for approval by the CO, the full CPB<sup>4</sup> for the full scope of the Contract that is made up of CPB segments for each capital asset project and for each operations activity, and the required data to support EVMS reviews if EVMS is used. CPB segments shall be developed in accordance with applicable policy and guidance documents noted in Section J, Attachment J-15, “Integrated Contractor Work Control Systems and Reporting Requirements Clause,” paragraphs A.1 and B.1.
- The Contractor shall provide monthly status reports regarding the CPB document preparation progress to the CO.
- The full CPB submittal shall include both a hard copy and electronic files.

- **CPB and Contract Alignment**

It is critically important to DOE that the CPB remain aligned with the Contract, including any modifications, throughout the Contract period of performance. The Government may withhold some or all provisional fee payments until the Contractor has obtained CO’s approval of the interim CPB when the interim CPB is expected or the full CPB when the full CPB is expected. Similarly, if at any time during Contract performance the CPB is not aligned with the Contract some or all provisional fee payments may be withheld until alignment is re-established.

### **Contract Baseline Management**

1. The approved CPB is the source document for reporting scope, cost and schedule performance. The CPB and changes to the CPB (initial, interim and full CPB) at all levels shall be managed using formal documented procedures as approved by the CO.

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<sup>4</sup> The full Contract Performance Baseline (CPB) represents the cost, schedule, and the entire scope and entire period of performance as it relates to the total estimated cost of the Contract exclusive of fee as stated in Section B of the Contract for CLIN 0002. Contract Budget Base (CBB) is the cost element of the CPB and equals the estimated cost of Contract minus Fee (CBB=estimated cost of Contract- fee/profit and cost overruns).

The CPB does not replace or modify the Contract terms and conditions and does not create DOE obligations.

2. The CPB must remain aligned with the Contract. For the cost element, alignment means that the sum total cost of all CPB segments must equal total estimated cost of the Contract exclusive of fee and any Contract overrun as stated in Section B of the Contract; for the schedule element, alignment means that the end date of full CPB schedule is the same as the Contract end date; and for the scope element alignment means that the WBS dictionary supporting the full CPB includes all scope in the Contract statement of work.
3. If a change to the Contract scope is required and is in accordance with the Changes clause, the Contractor shall submit the CPB change proposal concurrently with a request for Contract change proposal to the CO within the time frame specified by the CO. If the CO issues a unilateral or bilateral Contract modification, the Contractor shall submit a revised CPB in accordance with direction accompanying the Contract modification.

Any proposed changes to the CPB resulting from internal replanning shall be provided to the CO for information and/or approval consistent with the change control procedures as approved by the CO as part of the full CPB documentation.

- **Reviews**

- After completion of the Transition Operations Phase and receipt of the Contractor's Initial and Interim CPBs, DOE will complete its review to determine whether they meet the terms and conditions of the Contract. In cases where they do not meet the requirements, the Contractor shall submit a corrective action plan to the CO for DOE approval within 15 days of receipt of DOE's comments. All corrective actions shall be completed in the time frames established in the approved corrective action plan.
- Review of Contractor's Work (or Project) Control System that is based on alternate performance management (non- EVMS) process:

If the Contractor plans to use an alternate (non-EVMS) work control system, the WCSD shall be submitted to the CO within one month of Notice to Proceed, requesting CO approval. The alternate system shall enable the Contractor to track work progress against an established baseline plan and/or against established targeted milestones. The alternate performance management system shall gather reliable information in a timely manner to assist management in making decisions that affect positive change on task performance. The DOE will evaluate the

alternate performance management system to assess whether the system enables the Contractor and the Government to track and assess cost, schedule and technical performance.

- Review of Contractor's Work (or Project) Control System if the Contractor chooses to use EVMS:

If the Contractor chooses to use EVMS, the system must be certified to be in conformance with ANSI/EIA-748 standards. The Contractor shall begin earned value measurement during the month following the end of the Transition Operations Phase, and begin reporting the month thereafter. The Contractor shall initiate discussions with the CO within 15 days after award to schedule an EVMS certification review and, when six months of earned value data are available (and no later than three months after the Transition Operations Phase), the Contractor shall have in place all documentation necessary to obtain EVMS certification in conformance with ANSI/EIA-748 standards. The Contractor shall provide the CO, or designated representative(s), access to any and all information and documents supporting the Contractor's project control and reporting system.

1. For Contracts with contract values greater than or equal to \$50 million, DOE will evaluate the Contractor's EVMS against the ANSI Standard.
2. For Contracts with total contract values less than \$50 million, the Contractor must perform self-evaluation against the ANSI standard by an internal entity that is preferably independent to this specific contract.

- After receipt by the CO of the Contractor's full CPB, DOE will review to determine whether the full CPB and required supporting documentation meet the terms and conditions of the Contract. The Contractor shall submit a corrective action plan to the Contracting Officer for approval within 15 days of receipt of DOE's comments. All corrective actions shall be completed in the time-frames established in the approved corrective action plan.

- **Performance Reporting**

The Contractor shall submit the Contractor's Monthly Performance Report to the CO with copy to the Office of Project Assessment at [ContractorsMPR@hq.doe.gov](mailto:ContractorsMPR@hq.doe.gov) not later than the eighth business day prior to the end of each calendar month. The report will provide the prior month's performance for each CPB segment and an update of the performance to date. Format, timing and manner of reporting will vary based on the type of work in the CPB segment. For the monthly reporting requirements for the various types of projects, contracts or operating activities, see the table in Section J, Attachment J-15, "Integrated Contractor Work Control Systems and Reporting Requirements" paragraph C, Performance Reporting.

The Contractor shall report the costs incurred in performance of the work as the CPB segments are completed or at the end of the Contract in compliance with the Environmental Cost Element Structure (ECES), ASTM International Designation E: 2150-02 and in a format ready for incorporation into EM's Environmental Cost Analysis System (ECAS) database. The report should be provided to the Federal Project Director and the CO, with a copy provided to the EM Consolidated Business Center, Office of Cost Estimating & Project Management Support.

#### **H.55 EMERGENCY CLAUSE**

- (a) The U.S. Department of Energy (DOE) Portsmouth/Paducah Project Office (PPPO) Manager or designee shall have sole discretion to determine when an emergency situation exists at the site. In the event that either the DOE-PPPO Manager or designee determines such an emergency exists, the applicable DOE Manager or designee will have the authority to direct any and all activities of the Contractor and subcontractors necessary to resolve the emergency situation. The applicable DOE Manager or designee may direct the activities of the Contractor and subcontractors throughout the duration of the emergency.
- (b) The Contractor shall include this clause in all subcontracts at any tier for work performed at the site.

#### **H.56 INFORMATION**

- (a) Management of Information Resources. The Contractor shall design and implement Information Resources Management (IRM) capabilities as required to execute this contract in accordance with the Office of Management and Budget (OMB) Circular A-130, Management of Federal Information Resources.
- (b) Release of Information. The Contractor shall provide timely, accurate, and complete responses to information requested by DOE to comply with Freedom of Information Act and Privacy Act requirements. The Contractor shall develop, plan and coordinate proactive approaches to dissemination of timely information regarding DOE unclassified activities. This will be accomplished through coordination with DOE. Proactive communications or public affairs programs will include or make use of a variety of tools including, open houses, newsletters, press releases and/or conferences, audio/visual presentations, speeches, forums, and tours. The Contractor shall implement this responsibility through coordination with DOE in such a manner that the public, whether it is the media, citizen's groups, private citizens or local, state or Federal Government officials, has a clear understanding of DOE activities at the DUF6 Facilities.
- (c) Confidentiality of Information. To the extent that the work under this contract requires that the Contractor be given access to confidential or proprietary business, technical, or financial information belonging to the Government or other companies, the Contractor shall, after receipt thereof, treat such information as confidential and agrees not to 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 the 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 by it from a third party that did not require the Contractor to hold it in confidence.
- (d) The Contractor shall obtain the written agreement, in a form satisfactory to the Contracting Officer, of each employee permitted access to such information, whereby the employee agrees that he/she will not discuss, divulge or disclose any such information or data to any person or entity except those persons within the Contractor's organization directly concerned with the performance of the contract.
- (e) The Contractor agrees, if requested by the Government, to sign an agreement identical, in all material respects, to the provisions of this subparagraph (f), with each company supplying information to the Contractor under this contract, and to supply a copy of such agreement to the Contracting Officer. Upon request from the Contracting Officer, the Contractor shall supply the Government with reports itemizing information received as confidential or proprietary and setting forth the company or companies from which the Contractor received such information.
- (f) The Contractor agrees that upon request by DOE, it will execute a DOE-approved agreement with any party whose facilities or proprietary data it is given access or is furnished, restricting use and disclosure of the data or the information obtained from the facilities. Upon request by DOE, such an agreement shall also be signed by Contractor personnel.
- (g) The Government reserves the right to require the Contractor to include this Clause or a modified version of this Clause in any subcontract as directed in writing by the Contracting Officer.

#### **H.57 PERMITS, APPLICATIONS, LICENSES, AND OTHER REGULATORY DOCUMENTS**

- (a) The Contractor shall be responsible for becoming a party to all regulatory compliance agreements/orders associated with scope under this contract including those previously executed. The Contractor is responsible for complying with all permits, licenses, certifications, authorizations and approvals from federal, state, and local regulatory agencies that are necessary for all activities under this contract (hereinafter referred to collectively as "permits"). Except as specifically provided in this section and to the extent not prohibited by law or cognizant regulatory authority, the Contractor (or, if applicable, its subcontractors) will be the sole applicant for any such

- permits required for its activities. The Contractor must take all appropriate actions to obtain transfer of existing permits, and DOE will use all reasonable means to facilitate transfer of existing permits. If DOE determines it is appropriate or if DOE is required by cognizant regulatory authority to sign permit applications, DOE may elect to sign as owner or similar designation, but the Contractor (or, if applicable, its subcontractors) must also sign as operator or similar designation reflecting its responsibility under the permit unless DOE waives this requirement in writing.
- (b) Unless otherwise authorized by the Contracting Officer, the Contractor must submit to DOE for DOE's review and comment all permit applications, reports or other documents required to be submitted to regulatory authorities. Such draft documents must be provided to DOE within a time frame, identified by DOE, sufficient to allow DOE substantive review and comment; and DOE will use its best efforts to perform such substantive review and comment within such time frame. When providing DOE with documents that are to be signed or co-signed by DOE, the Contractor will accompany such document with a certification statement, signed by the appropriate Contractor corporate officer, attesting to DOE that the document has been prepared in accordance with all applicable requirements and the information is, to the best of its knowledge and belief, true, accurate, and complete.
- (c) Except as specifically provided in this clause and to the extent not prohibited by law or cognizant regulatory authority, the Contractor (or, if applicable, its subcontractors) will be the signatory for reports, hazardous waste manifests, and other similar documents required under environmental permits or applicable environmental laws and regulations.
- (d) 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, or DOE will accept responsibility for such permits and the Contractor shall be relieved of all future liability and responsibility resulting from the acts or omissions of the successor Contractor or DOE.

#### **H.58 ALLOCATION OF RESPONSIBILITIES FOR CONTRACTOR ENVIRONMENTAL COMPLIANCE ACTIVITIES**

- (a) In this Clause:
- (1) "Environmental" requirements means requirements imposed by applicable Federal, state, and local environmental laws and regulations, including, without limitation, statutes, ordinances, regulations, court orders, consent decrees, administrative orders, or compliance agreements, consent orders, permits, and licenses; and
- (2) "Party" means either the Contractor or DOE.

- (b) Responsibility and liability for fines or penalties arising from or related to violations of environmental requirements shall be borne by the party causing the violation regardless of which party:
  - (1) The cognizant regulatory authority fines or penalizes;
  - (2) Signs permit applications (including situations where DOE signs defective or non-conforming permit applications or other environmental submittals prepared by or under the direction of the Contractor), manifests, reports, or other required documents;
  - (3) Is a permittee; or
  - (4) Is the named subject of an enforcement action or assessment of a fine or penalty.
- (c) Consequently, if the Contractor causes a violation:
  - (1) All fines and penalties arising from or related to violations of environmental requirements are unallowable costs. If DOE pays a fine or penalty for a violation that the Contractor caused, the amount of the fine or penalty shall be due from the Contractor, and DOE may immediately offset that amount against payments to which the Contractor is otherwise entitled for allowable costs and fee, or any other funds otherwise owed by the Government to the Contractor; and
  - (2) Costs of challenging or defending actions brought against the Contractor for violations of environmental requirements are to be borne by the Contractor.

#### **H.59 PRIVATELY GENERATED RESTRICTED DATA**

The DOE will not itself be providing any classified information as part of this contract. However, in the event that the Contractor introduces new or unique technology into the Conversion Process, the requirements of 10 CFR 1045.21, "Privately generated restricted data" may apply. If there is a chance that such technology will be utilized, the Contractor shall coordinate with DOE as soon as it is known that such technology will be used.

#### **H.60 SITE SERVICES**

- (a) The Contractor will be performing work at sites where other entities are conducting various activities, including other DOE prime contractors, subcontractors, and other organizations. These entities, including the Contractor, need to acquire or perform certain services in support of their activities that may be common to other entities on the site. In some instances it is to the net benefit to DOE for these services to be provided by one central source at the respective sites. Refer to Section J-4a "DUF6 Services & Contract Interface Requirements Matrix for Paducah" and Section J-4b "DUF6 Services & Contract Interface Requirements Matrix for Portsmouth".

- (b) The Contractor may receive services from and provide services to other prime contractors, subcontractors, or other organizations at the sites as approved by the CO or designee. These services may be provided in one of the following categories:
- (1) Services that are the responsibility of the Contractor, but the Contractor elects, or the CO or designee directs the Contractor, to purchase the service from another prime contractor, subcontractor, or other organization rather than perform the work with its own employees or acquire the service from one of its subcontractors.
  - (2) Services that are common to the Contractor, other prime contractors, subcontractors, or other organizations where the Contractor elects, or the CO or designee directs the Contractor, to provide such services to such entities where it is to the overall net benefit to DOE.
- (c) When services are acquired under these provisions, the Contractor shall maintain control and accountability for the work under this contract and shall execute appropriate agreements with the other entities.
- (d) Services which the Contractor is expected to purchase from other prime contractors, subcontractors, or other entities at the sites include protective services, fire protection, emergency response, and other services of this general nature where it is not to the overall benefit of DOE for there to be multiple sources for such services.

#### **H.61 EMPLOYEE CONCERNS PROGRAM**

The Contractor shall submit an implementation plan to the Contracting Officer for approval within 90 days of issuance of the Notice to Proceed that describes an Employee Concerns Program (ECP) that implements all programmatic requirements in DOE Order 442.1A Department of Energy Employee Concerns Program, and all superseding versions.

#### **H.62 MENTOR-PROTÉGÉ PROGRAM**

The Department of Energy has established a Mentor-Protégé Program to encourage its prime contractors to assist firms certified under section 8(a) of the Small Business Act by SBA, other small disadvantaged businesses, women-owned small businesses, Historically Black Colleges and Universities and Minority Institutions, other minority institutions of higher learning and small business concerns owned and controlled by service disabled veterans in enhancing their business abilities. The Contractor's performance as a Mentor may be evaluated as part of the award fee plan. Mentor and Protégé firms will develop and submit "lessons learned" evaluations to DOE at the conclusion of the contract. Any DOE contractor that is interested in becoming a Mentor should refer to the applicable regulations at 48 CFR 919.70 and should contact the Department of Energy's Office of Small and Disadvantaged Business Utilization.

### H.63 PAPERLESS DIRECTIVE PROCESSING SYSTEM

- (a) The Contractor, in addition to complying with applicable laws, rules, and other regulations, shall comply with those DOE orders and other directives applicable to Contractors, with the applicable departmental policies, plans, programs, and management directives, and with all changes to assigned work as agreed to by the Contractor and the Contracting Officer or designee.
- (b) DOE has developed a list of applicable DOE Directives, and is appended to the contract as Section J, Attachment J-2. The Contractor shall comply with the directives identified in such list. The Contractor shall make no claim, including a claim for equitable adjustment under the Changes clauses of this contract, for additional costs, fee or extension of time of performance relating to compliance with the directives in such list.
- (c) The List of Applicable DOE Directives to the contract will be revised and issued, by the DOE Contracting Officer, as a contract modification, as necessary. The Contracting Officer may direct the Contractor to comply with additional DOE Directives and local directives and revisions thereto, as follows:
  - (A) Pursuant to and in accordance with the Changes clause of the contract with respect to changes in directives within the general scope of this contract.
  - (B) Pursuant to any Environment, Safety, and Health provisions of this contract, and in accordance with the Changes clause of this contract with respect to changes in directives involving safety, environment, health, and quality.
- (d) At least once a month, the Contractor will extract directives from the DOE Paperless Directive System utilizing the Internet as notification of their availability by DOE electronic prompting. Copies of DOE directives may be obtained without charge from the Contracting Officer or by citing the number of this contract in a written request sent to the following address:

U.S. DOE  
Distribution Section  
1000 Independence Ave S.W.  
Washington, DC 20585  
James V. Forrestal Building
- (e) The Contracting Officer and his/her representative(s) expressly authorized in writing to do so are the only Government officials authorized to provide explanations as to the applicability of directives. The Contracting Officer is the only Government Official authorized to resolve possible conflicting requirements involving directives.
- (f) Upon receipt of a new or revised directive, the Contractor shall review it for consistency with the other terms of this contract and for impacts on funding,

manpower and other provisions of the contract. If the Contractor considers the directive to be consistent with the other terms of this contract and it can be implemented within existing funds, manpower, and other provisions of the contract and the implementation will not have a negative impact on the cost, schedule, or other obligations of the Contractor, the Contractor shall establish an implementation schedule, and so advise the Contracting Officer within 30 calendar days of receipt. In the event the Contractor considers the directive to be inconsistent with the other terms of this contract or the requirements of the directive cannot be implemented within existing funding, manpower, and other provisions of the contract, the Contractor shall so advise the Contracting Officer within 30 calendar days of receipt. Such notice shall include the basis for the claimed inconsistency and the projected cost of implementation in excess of current funding, manpower, and other provisions of the contract. After evaluation of the Contractor's position, the Contracting Officer shall issue direction to the Contractor, pursuant to the applicable Changes clause in this contract, concerning appropriate implementation of the directive.

- (g) The Contractor will, at least quarterly, notify DOE of those directives obtained from the DOE Paperless Directive System as described in (d) above. The Contractor cognizant personnel will review these directives and recommend for concurrence disposition of the directives to DOE-PPPO.
- (h) Upon agreement between the Contractor and DOE, the directive will be implemented as outlined in a Contractor Management Summary or Implementation Plan, whichever is appropriate, and the directive added to Attachment J-2, Portsmouth List of Applicable DOE Directives (List B), of the contract and issued by the Contracting Officer. The same process will be utilized for deletion of directives.
- (i) The Contractor shall incorporate the substance of this clause with respect to applicable directives, excluding any reference to the Changes clause, in subcontracts for performance of work at the site and as directed by the Contracting Officer.

**H.64 PRIVACY ACT SYSTEM OF RECORDS**

- (a) The Contractor shall design, develop, or adopt the following systems of records on individuals to accomplish an agency function pursuant to the Section I Clause entitled, FAR 52.224-2, Privacy Act.

<b>DOE Privacy Act System Number</b>	<b>DOE Privacy Act System Description</b>
DOE-5	Personnel Records of Former Contractor Employees (includes all former workers)
DOE-10	Energy Employees Occupational Illness Compensation Program Act Files
DOE-14	Report of Compensation
DOE-28	General Training Records

DOE-33	Personnel Medical Records (present and former DOE employees and Contractor employees)
DOE-35	Personnel Radiation Exposure Records
DOE-38	Occupational and Industrial Accident Records
DOE-43	Personnel Security Clearance Files
DOE-48	Security Education and/or Infraction Reports
DOE-51	Employee and Visitor Access Control Records
DOE-52	Access Control Records of International Visits, Assignments, and Employment at DOE Facilities and Contractor Sites
DOE-55	Freedom of Information Act and Privacy Act (FOIA/PA) Requests for Records
DOE-88	Epidemiologic and Other Health Studies, Surveys, and Surveillances

- (b) If the above list does not address all of the systems of records that are generated based on contract performance, then the Contractor shall notify the Contracting Officer prior to contract award or as soon as the discrepancy is discovered. The Contractor shall monitor the identified systems and notify the Contracting Officer immediately if there is a change to an existing system or if a new system is needed. Lack of notification does not exempt the Contractor from complying with the Privacy Act. To ensure that systems are monitored consistently, the Contractor must review the list annually and notify the Contracting Officer, in writing, that the list is accurate and up to date.
- (c) The above list shall be revised by mutual agreement between the Contractor and the Contracting Officer, in consultation with the local PAO and/or General Counsel, as necessary, to keep it current. A formal modification to the Contract is not required to incorporate these revisions; however, the revisions become effective upon mutual written agreement of the parties. The mutually agreed upon revisions shall have the same effect as if they were actually among the systems listed in the table above, for the purpose of satisfying the listing requirement contained in paragraph (a)(1) of the contract clause for FAR 52.224-2, Privacy Act. The revisions will be formally incorporated at the next convenient contract modification. Additional information on Privacy Act Systems of Records can be found on the DOE Privacy Office home page.
- (d) The “Privacy Act Notification” (FAR 52.224-1) and “Privacy Act” (FAR 52.224-2) clauses are mandatory flow-down clauses that must be included in any subcontract requiring design, development, or operation of a Privacy Act system of record, including third-party medical services contracts. Such subcontracts also require flow down of clauses specifically identifying applicable Privacy Act systems of records into the subcontracts. For example, medical services contracts must include the substance of this H clause identifying system of record DOE-33, “Personnel Medical Records,” along with language on records turnover. Subcontracts must also contain scope requirements necessary to ensure DOE and Contractor compliance with applicable records management and Privacy Act requirements.

## **H.65 GOVERNMENT OWNED PROPERTY AND EQUIPMENT RESPONSIBILITIES FOR CONTRACT TRANSITION OPERATIONS PHASE**

All real and personal property currently accountable to the incumbent contractor for contract performance will be provided to the Contractor. During the Transition Operations Phase, an inventory record of such property in the DOE Facilities Information Management System (FIMS) and current contractor's personal property databases will be provided to the Contractor. Specifically, the following property acceptance requirements will be implemented:

- (a) The Contractor must perform a joint wall-to-wall physical inventory with the current contractor(s) of all accountable high-risk and sensitive property during the Transition Operations Phase and accept full accountability for the high-risk property at the end of the Transition Operations Phase.
- (b) The Contractor must accept, at the end of the Transition Operations Phase, transfer of accountability for the remaining government-owned real and personal property not covered under paragraph (1), based on existing inventory records, on an "as-is, where-is" basis, or perform a wall-to-wall inventory within 120 calendar days of the Notice to Proceed. Any discrepancies from the existing inventory records shall be reported to the Contracting Officer. As the formal inventories are completed, the Contractor shall assume responsibility and liability for subsequent losses and damages. If the physical inventory is not accomplished within the allotted time frame, the previous Contractor's records will become the inventory baseline.

## **H.66 PARTNERING**

In order to most effectively accomplish this Contract, the Government proposes to form a cohesive partnership with the Contractor. It is a way of doing business based upon trust, dedication to common goals, and an understanding and respect of each other's expectations and values. The process creates a teambuilding environment, which fosters better communication and problem solving, and a mutual trust between the participants. These key elements create a climate in which issues can be raised, openly discussed, and jointly settled, without getting into an adversarial relationship. In this way, partnering is a mindset, and a way of doing business. It is an attitude toward working as a team, and achieving successful project execution. This endeavor seeks an environment that nurtures team building cooperation, and trust between the Government and the Contractor. The partnership strives to draw on the strengths of each organization in an effort to achieve a quality project done right the first time, within budget, and on schedule.

Participation in the partnership will be totally voluntary by the parties. Any cost associated with effectuating this partnership will be agreed to by both parties during Contract performance.

## H.67 NNSA/EM STRATEGIC SOURCING PARTNERSHIP

The Contractor shall participate in the National Nuclear Security Administration (NNSA)/Environmental Management (EM) Strategic Sourcing Partnership. Under this partnership, EM contractors shall work with the NNSA/EM Supply Chain Management Center (SCMC) to yield an enterprise-wide, synergistic strategic sourcing solution that leverages NNSA and EM purchasing power to gain pricing, processing, and report efficiencies to reduce costs overall for the Government.

## H.68 ~~REPORT AND APPROVAL REQUIREMENTS FOR CONFERENCE RELATED ACTIVITIES~~ CONFERENCE MANAGEMENT (CLIN0002 ONLY)

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) "Conference" is defined in the Federal Travel Regulation as, "[a] meeting, retreat, seminar, symposium, or event that involves attendee travel. The term 'conference' also applies to training activities that are considered to be conferences under 5 C.F.R 410.404." However, this definition is only a starting point. What constitutes a conference for the purpose of this guidance is a factbased determination based on an evaluation of the criteria established in this attachment.

Conferences subject to this guidance are also often referred to by names other than "conference." Other common terms used include conventions, expositions, symposiums, seminars, workshops, or exhibitions. They typically involve topical matters of interest to, and the participation of, multiple agencies and/or nongovernmental participations. Indicia of a formal conference often include but are not limited to registration, registration fees, a published substantive agenda, and scheduled speakers, or discussion panels. Individual events may qualify as conferences without meeting all of the indicia listed above, but will generally meet some of them. Please note that some training events may qualify as conferences for the purposes of this guidance, particularly if they take place in a hotel or conference center.

Local Conferences. Events within the local duty location that do not require advance travel authorization may also qualify as a conference for the purposes of this guidance if the event exhibits other key indicia of a conference, especially the payment of a registration, exhibitor, sponsor, or conference fee.

Exemptions. For the purposes of this guidance, the exemptions below apply and these types of activities should not be considered to be conferences even if the event meets the general definition of conference in section I above. Even where an event is

considered exempt from this guidance, organizations are expected to continue to apply strict scrutiny to DOE's participation to ensure the best use of government funds and adherence with not only all applicable laws and policy, but the underlying spirit or principles, including ensuring that only personnel attend events that have a mission-essential need to do so, that expenses be kept to a minimum, and that participation in any associated social events be limited and restrained to the greatest degree practicable to avoid the appearance of impropriety. Exemptions from this guidance should be granted sparingly and only when events fully meet the definition and intent of the criteria below:

- 1) Meetings necessary to carry out statutory oversight functions. This exemption would include activities such as investigations, inspections, audits, or non-conference planning site visits.
  - 2) Meetings to consider internal agency business matters held in Federal facilities. This exemption would include activities such as meetings that take place as part of an organization's regular course of business, do not exhibit indicia of a formal conference as outlined above, and take place in a Federal facility.
  - 3) Bi-lateral and multi-lateral international cooperation engagements that do not exhibit indicia of a formal conference as outlined above that are focused on diplomatic relations.
  - 4) Formal classroom training which does not exhibit indicia of a formal conference as outlined above.
  - 5) Meetings such as Advisory Committee and Federal Advisory Committee meetings, Solicitation/Funding Opportunity Announcement Review Board meetings, peer review/objective review panel meetings, evaluation panel/board meetings, and program kick-off and review meetings (including those for grants and contracts).
- 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 contactor 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. The Contractor is required to report and obtain approval from the Contracting Officer before incurring any costs associated with conference related activities. Conference expenses are defined as follows:~~

~~Conference expenses are defined as all direct and indirect conference costs paid by the Government, whether paid directly by agencies or reimbursed by agencies to contractors, travelers or others associated with the conference, but do not include funds paid under Federal grants to grantees. Conference expenses include any associated authorized travel and per diem expenses, rental of rooms for official business, audiovisual use, light refreshments, registration fees, ground transportation, and other expenses as defined by the Federal Travel Regulations (FTR). All outlays for conference preparation and planning should be included, but employee time for conference preparation should not be included. The FTR provides some examples of direct and indirect conference costs included within conference expenses. See 41 CFR 301-74.2. Conference expenses should be net of any fees or revenue received by the agency or contractor through the conference.~~

## **H.69 CONTRACTOR COMMUNITY COMMITMENT PLAN**

DOE and the Contractor are charged with carrying out the critical mission of the DUF6 Project including cylinder surveillance and maintenance and DUF6 conversion activities. The Project has benefited from its location in Ohio and Kentucky and from the workforce and other resources provided by these regions. In recognition of these benefits, the Contractor shall take meaningful actions to implement its community commitment as described in DEAR 970.5226-3 which is included in Section I of the contract.

DOE will not prescribe which community commitment activities the Contractor may engage in but identifies the activities listed in (A), (B) and (C) below as worthwhile endeavors for its consideration. The list is not intended to preclude other constructive community activities.

The Contractor shall submit to DOE an annual plan for the community commitment activities and report on program success semi-annually.

The Contractor may use fee dollars for these or other community commitment activities as it deems appropriate. All costs to be incurred by the Contractor for community commitment activities are unallowable and non-reimbursable under the contract.

### **(A) Regional Educational Outreach Programs**

The objectives of these programs include teacher enhancement, student support, curriculum enhancement, educational technology, public understanding, and providing the services of Project employees to schools, colleges, and universities.

The Regional Educational Outreach Programs could involve providing Contractor employees an opportunity to improve their employment skills and opportunities by an educational assistance allowance, provision for outside training programs either during or outside regular work hours, or executive training programs for non-executive employees. This could also involve participating in activities that foster relationships with regional educational institutions and other institutions of higher learning or encouraging students to pursue science, engineering, and technology careers.

(B) Regional Purchasing Programs

The Contractor could conduct business alliances with regional vendors. These alliances may include training and mentoring programs to enable regional vendors to compete effectively for Project subcontracts and purchase orders and/or assistance with the development of business systems (accounting, budget, payroll, property, etc.) to enable regional vendors to meet the audit and reporting requirements of the Project and DOE. These alliances may also serve to encourage the formation of regional trade associations which will better enable regional businesses to satisfy Project needs.

The Contractor could coordinate and cooperate with the Chambers of Commerce, Small Business Development Centers, and like organizations, and make prospective regional vendors aware of any assistance that may be available from these entities.

DOE encourages the use of regional vendors in fulfilling Project requirements.

The Contractor shall encourage its subcontractors, at all tiers, to participate in these activities.

(C) Community Support

The Contractor may directly sponsor specific local community activities or sponsor individual employees available to work with a specific local community activity. The Contractor may provide support and assistance to community service organizations. The Contractor may support strategic partnerships with professional and scientific organizations to enhance recruitment into all levels of the Project's organization.

The Contractor may support other community involvement activities as it deems appropriate.

**H.70 LITIGATION MANAGEMENT AND SUPPORT**

- (a) The Contractor shall maintain a legal function to support litigation, arbitration, environmental, procurement, employment, labor, and the Price-Anderson Amendments Act areas of law. The Contractor shall provide sound litigation

management practices. Within 60 days of the Notice to Proceed (NTP), the Contractor shall provide a Legal Management Plan (defined as a document describing the Contractor's practices for managing legal costs and legal matters for which it procures the services of retained legal counsel) compliant with Code of Federal Regulations Title 10 Subpart 719, Contractor Legal Management Requirements. The Plan shall describe the Contractor's practices for managing legal costs and matters for which it procures the services of retained legal counsel. In doing so, the plan shall describe the matters in-house counsel will perform as well as anticipates performing throughout the life of the contract. The Contractor should not retain outside counsel for matters that can be performed by in-house counsel. The Contractor shall provide an annual legal budget to Department Counsel along with the Legal Management Plan. Within 30 days of the conclusion of the period covered by each annual legal budget, the Contractor shall provide a report to Department Counsel comparing its budgeted and actual legal costs.

- (b) As required by the Contracting Officer and upon mutual agreement of the parties to allow such costs under the contract, the Contractor shall provide support to the Government on regulatory matters, third-party claims, and threatened or actual litigation. Support includes, but is not necessarily limited to: case preparation, document retrieval, review and reproduction, witness preparation, expert witness testimony, and assistance with discovery or other information requests responsive to any legal proceeding.