

**PART I – THE SCHEDULE**

**SECTION H – SPECIAL CONTRACT REQUIREMENTS**

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## **H.1 NO THIRD PARTY BENEFICIARIES**

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

## **H.2 DEFINITIONS**

For purposes of clauses H.3 through H.9 the following definitions are applicable (unless otherwise specified):

- (A) “Contract Award Date” means the date the contract is signed by the Contracting Officer.
- (B) “Contract Effective Date” means the date the Contractor shall assume full responsibility, also considered the first day after the current incumbent contractor(s)’ period of performance ends.
- (C) “Contract Transition Period” means the 90-day (or less) period between Notice to Proceed and Contract Effective Date.
- (D) “CWI” means CH2M/WG Idaho, LLC under contract DOE-AC07-05ID14516.
- (E) “Incumbent Employees” means employees who hold regular appointments or who are regular employees of CWI and ITG as of the Notice to Proceed for this Contract.
- (F) “ITG” means the Idaho Treatment Group, LLC under contract DE-EM0001467.
- (G) “Non-Incumbent Employees” means new hires, i.e., employees other than Incumbent Employees who are hired by the Contractor after the Notice to Proceed.
- (H) “Notice to Proceed (NTP)” means the authorization issued by DOE which signals the start of the Contract Transition Period. The date of issuance of the NTP is the first day of the Contract Transition Period.

## **H.3 WORKFORCE TRANSITION AND EMPLOYEE HIRING PREFERENCES**

The Contractor shall comply with the hiring preferences set forth below. The Contractor’s failure to comply with this clause may result in the costs being determined to be unallowable. See also Section I. 51, FAR 52.222-17.

(A) The right of first refusal for employment in Section I, FAR 52.222-17 Nondisplacement of Qualified Workers (MAY 2014), is applicable to the service employees employed under the Idaho Treatment Group L.L.C. Contract DE- EM-0001467 (hereinafter ITG DOE Contract), and CH2M/WG Idaho L.L.C. Contract DOE-AC07-05ID14516 (hereinafter CWI DOE Contract), for the same or similar services, which are to be performed by the Contractor and its subcontractors. 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 the ITG and/or CWI DOE Contracts 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 paragraph (B)(1)(a) and (b) below to such employee, but shall provide all other preferences in hiring in Paragraph (B) below, as applicable. The obligation to offer employment under Paragraph (A) above shall continue for 90 days after issuance of the NTP, and also, 90 days after the Contract Effective Date.

(B) The Contractor shall provide, during the transition period and throughout the period of performance, preferences in hiring for vacancies at the Idaho Cleanup Project (ICP Core) 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), any applicable collective-bargaining agreement(s), site seniority and applicable law, as set forth below.

(1) The Contractor shall provide Incumbent Employees the preferences in the following 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 Incumbent Employees held at the time of NTP.
- (b) A preference in hiring for vacancies in non-managerial positions for the Incumbent Employees who meet the qualifications for the position.
- (c) A preference in hiring for vacancies in non-managerial positions for the Incumbent 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.

(2) The Contractor shall give a preference in hiring to individuals (1) who are former employees of CWI and ITG and (2) who are entitled to recall rights consistent with any applicable collective bargaining agreement(s) at the Idaho Cleanup Project (ICP) and the Advanced Mixed Waste Treatment Project (AMWTP).

(3) The Contractor shall give a preference in hiring to individuals set forth below in paragraphs (a) and (b), 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”, consistent with the provisions of any applicable Workforce Restructuring Plan and Departmental guidance on workforce restructuring, as amended from time to time, regarding the preferential hiring of employees:

- (a) Former employees of CWI or ITG.

- (b) 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 ICP and AMWTP; and (2) who were involuntarily separated (other than for cause) from their employment at the ICP and AMWTP; 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 ICP or AMWTP; (2) who are not precluded from seeking employment at the ICP Core 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, to the extent practicable, specifically for the purpose of training individuals for the purpose specified in paragraph (B)(1)(c) above.

#### **H.4 EMPLOYEE COMPENSATION: PAY AND BENEFITS**

For purposes of this Section H.4, the following definitions are applicable, in addition to those set forth in Section H.2 above.

(A) 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 (DB) Pension Plan. Provides a specific benefit at retirement that is determined pursuant to the formula in the pension plan document.
- (4) Defined Contribution (DC) 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."

(B) Contractor Employee Compensation Plan

The Contractor shall submit, for Contracting Officer approval, within 45 days after NTP, 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.

(C) 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.

(D) 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 NTP, and at the time of any subsequent change to their total cash compensation. This should be the same information provided to the Central Contractor Registration (CCR) per FAR 52.204-10.
- (3) An Annual Report of Contractor Expenditures for Employee Supplemental Compensation no later than March 1 of each year.

(E) Pay and Benefit Programs

The Contractor shall establish pay and benefit programs for Incumbent Employees and Non-Incumbent Employees, as defined in Section H.2 and who are engaged in non-construction activities, consistent with the terms and conditions of this Contract, including any applicable collective bargaining agreement(s), and applicable law, including Section 4(c) of the Service Contract Act and the Fair Labor Standards Act, as applicable; 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

- (a) Pay. Subject to the Workforce Transition Clause, the Contractor shall provide equivalent base pay to Incumbent Employees as compared to pay provided by ITG and CWI 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 ITG and CWI. Comparability of the total benefit package shall be determined by the Contracting Officer at his/her sole discretion.

Incumbent Employees shall remain in their existing DB and/or DC 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. All Non-Incumbent Employees shall receive a total pay and benefits package that provides for market-based retirement and medical benefit plans that are competitive with the industry from which the Contractor recruits its employees and in accordance with Contract requirements.

(3) Cash Compensation

- (a) The Contractor shall submit the following to the Contracting Officer for a determination of cost allowability for reimbursement under the Contract:
  - (i) Any proposed major compensation program design changes prior to implementation.
  - (ii) An Annual Compensation Increase Plan (CIP). The Compensation Increase Plan 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. This reimbursement limitation does not prohibit paying compensation to the Contractor's senior executives at a higher rate, but rather only limits the amount of compensation that can be reimbursed by the Government as an allowable contract expense. The Contractor is encouraged to recruit, retain, and compensate the highest quality senior executives to execute the PWS in an efficient and cost-effective manner. Senior executives' compensation, and subsequent increases during the contract term, must be included in the bid proposal cost estimate.

- (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, or
    - (v) Is a Key Person identified in Section H.31, paragraph (f).
  - (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.
- (4) 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 or 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 its segments of 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 postretirement benefits other than pensions, the Contractor shall provide a separate cost and plan design data comparison for the postretirement 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 postretirement 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 Contract Effective Date.
  - (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 DB and DC plans.
- (1) The Contractor shall become a sponsor of the existing pension and other benefit plans (or comparable successor plans), including other postretirement 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 its segments of those plans consistent with the requirements of the Employee Retirement Income Security Act (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 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.
- (8) The Post Retirement Benefit (PRB) Management Plan for the PRB Plan(s) segment(s) in which the Contractor participates and for which the Department reimburses costs under this Contract shall include:
  - (a) The Contractor's best projection of the benefit payments from its segments of the PRB Plans, a summary of the key actuarial assumptions used in developing the estimates, and a detailed description of the plans included in the projections
  - (b) The impact that any recent plan amendments have had on the expected benefit payments
  - (c) Any possible future amendments to the PRB Plan(s) which the Contractor wishes to make
  - (d) An outline of opportunities that are being used or considered related to strategy, design, and cost containment
- (h) Reimbursement of Contractors for Contributions to DB Pension Plans
  - (1) Contractors that sponsor single employer or multiple employer DB 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.

- (2) Contractors that sponsor multi-employer DB pension plans will be reimbursed for pension contributions in the amounts necessary to ensure that the plans are funded to meet the annual minimum requirement under ERISA, as amended by the PPA. However, reimbursement for pension contributions above the annual minimum contribution required under ERISA, as amended by the PPA, will require prior approval of the Contracting Officer and will be considered on a case by case basis. Reimbursement amounts will take into consideration all pre-funding balances and funding standard carryover balances.

(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 DB 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 the Contracting Officer and receive prior approval for each early-out program, window benefit, disability program, plan-loan feature, employee contribution refund, asset reversion, or incidental benefit.

## **H.5 POST CONTRACT RESPONSIBILITIES FOR PENSION AND OTHER BENEFIT PLANS**

- (a) If this Contract expires or terminates and DOE has awarded a contract under which the new contractor becomes a sponsor and assumes responsibility for management and administration of its segments of the pension or other benefit plans covering active or retired contractor employees with respect to service at the Idaho National Laboratory (collectively, the “Plans”), the Contractor shall cooperate and transfer to the new contractor its responsibility for sponsorship, management and administration of its segments of the Plans consistent with direction from the Contracting Officer. If a Commingled plan is involved, the contractor shall:
- (1) spin off the DOE portion of any Commingled Plan used to cover employees working at the DOE facility into a separate plan. The new plan will normally provide benefits similar to those provided by the commingled plan and shall carry with it the DOE assets on an accrual basis market value, including DOE assets that have accrued in excess of DOE liabilities.
  - (2) bargain in good faith with DOE or the successor contractor to determine the assumptions and methods for establishing the liabilities involved in a spinoff. DOE and the contractor(s) shall establish an effective date of spinoff. On or before the same day as the contractor notifies the IRS of the spinoff or plan termination, all plan assets assigned to a spun-off or terminating plan shall be placed in a low-risk liability matching portfolio until the successor trustee, or an insurance company, is able to assume stewardship of those assets.
- (b) If this Contract expires or terminates and DOE has not awarded a contract to a new contractor under which the new contractor becomes a sponsor and assumes responsibility for management and administration of the Plans, as to this ICP Core segment, 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 its segments of the Plans, the Contractor shall remain the sponsor of its segments 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 its segments of the Plans prior to or at the time of Contract Completion. However, if the parties have not reached agreement on the Contractor's responsibilities for sponsorship, management and administration of the its segments 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 segments, including but not limited to continued sponsorship of the Plans segments, 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.6 WORKER'S COMPENSATION INSURANCE**

(a) The State of Idaho has authorized a program of workers compensation self-insurance for INL contractors pursuant to Idaho Code 72-301A. Contractors, other than those whose workers' compensation coverage is provided through a corporate benefits program, shall pursue a program of self-insurance under Idaho law unless they can demonstrate that commercial insurance is more economical than self-insurance and shall submit to the Contracting Officer for approval all initial proposals for self-insurance and all new compensation policies. 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.7 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, the Contractor shall recognize and bargain with labor organizations representing its employees if it will legally succeed to a predecessor's bargaining obligations.

- (b) The Contractor shall meet with the Contracting Officer or designee(s) for the purpose of reviewing the Contractor's bargaining objectives prior to negotiations of any collective bargaining agreement or revision thereto and shall consult with and obtain the approval of the Contracting Officer regarding appropriate economic bargaining parameters, including those for pension and medical benefit costs, prior to the Contractor entering into the collective bargaining process. During the collective bargaining process, the Contractor shall notify the Contracting Officer before submitting or agreeing to any collective bargaining proposal which can be calculated to affect allowable costs under this Contract or which could involve other items of special interest to the Government. During the collective bargaining process, the Contractor shall obtain the approval of the Contracting Officer before proposing or agreeing to changes in any pension or other benefit plans.
- (c) The Contractor will seek to maintain harmonious bargaining relationships that reflect a judicious expenditure of public funds, equitable resolution of disputes and effective and efficient bargaining relationships consistent with the requirements of FAR, Subpart 22.1 and DEAR, Subpart 970.2201 and all applicable Federal and State Labor Relations laws.
- (d) The Contractor will notify the Contracting Officer or designee in a timely fashion of all labor relations issues and matters of local interest including organizing initiatives, work stoppages, picketing, etc., and will report as required by the Contracting Officer or designee all unfair labor practices, labor arbitrations, and third step grievances, and settlement agreements and will furnish any such additional information as may be required from time to time by the Contracting Officer.
- (e) Provide the Contracting Officer with a "Report of Settlement" after ratification of a collective bargaining agreement by accessing the Labor Relations Module in iBenefits, or its successor system, during the next open quarter.
- (f) INL Site Construction Jurisdiction Procedural Agreement (SJPA) and the INL Site Stabilization Agreement (SSA).

The Contractor and its subcontractors at all tiers performing work covered by the Wage Rate Requirements (Construction) (formerly known as the Davis-Bacon Act) shall become signatory to the INL SJPA and INL SSA. The ICP Core Contractor employees and subcontractor employees performing such work shall receive pay and benefits consistent with the SSA unless otherwise negotiated between the Contractor and the Idaho Building and Construction Trades Council. Copies of the SSA and SJA are available at <http://www.sitelaborcoordinator.com/>. The SJPA and the SSA apply to construction performed under the contract consistent with the terms of the SJPA and the SSA.

## **H.8 WORKFORCE RESTRUCTURING**

Notwithstanding any other provision in this Contract, when the Contractor determines that a reduction of force is necessary, the Contractor shall comply with all Contracting Officer direction, which shall be consistent with DOE Order 350.3, *Labor Standards Compliance, Contractor Labor Relations, and Contractor Workforce Restructuring Programs, Chapter III, "Reductions in Contractor Employment*, and other Departmental guidance on contractor workforce restructuring, as amended from time to time. 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 employees who may be eligible for provisions of the Act. 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.3, *Workforce Transition and Employee Hiring Preferences*.

## **H.9 WORKFORCE TRANSITION AND BENEFITS TRANSITION: PLANS AND TIMEFRAMES**

(a) Workforce Transition Plan. In addition to the Transition Plan required by Section C.2.0 of this Contract, the Contractor shall submit a written Workforce Transition Plan (WF Transition Plan) describing in detail the Contractor's plans and procedures as to how the Contractor will comply with the hiring preferences set forth in Clause H.3, *Workforce Transition and Employee Hiring Preferences*, Section I.116 "DEAR 952.226-74 Displaced Employee Hiring Preference, and this Paragraph (a). The WF Transition Plan shall also detail the Contractor's plan for incorporating multiple operating unions with separate bargaining agreements and cultures under a single company structure. Notwithstanding timeframes identified elsewhere in the Contract, the Contractor shall perform the following activities in the specified timeframes:

(1) Within ten days after NTP, the Contractor shall:

(A) Submit to the Contracting Officer a description of any and all transition agreements that it intends to enter into with the incumbent contractors (ITG and CWI) to ensure compliance with Clause H. 3, *Workforce Transition and Employee Hiring Preferences* during the first 90 days after NTP;

(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 the incumbent contractors and their employees, regarding implementation of the hiring preference requirements set forth in Clause H. 3, *Workforce Transition and Employee Hiring Preferences*;

(C) Provide estimated costs, detailed breakouts of the costs and a schedule of estimated dates when the costs will be expended to accomplish workforce transition activities within the timeframes specified; and

(D) Obtain information from the incumbent contractors, identifying the Incumbent Employees as defined in Clause H. 2, Definitions. 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 incumbent employees.

(2) Within 15 days after NTP, the Contractor shall:

(A) Submit to the Contracting Officer copies of the draft WF Transition Plan for the Contractor and its first and second tier subcontractors, including processes and procedures regarding how the Contractor will implement and ensure compliance with the hiring preferences set forth in Clause H. 3, *Workforce Transition and Employee Hiring Preferences*.

(B) Establish a final written communication plan with the incumbent contractors regarding the implementation of the hiring preferences in Clause H. 3, *Workforce Transition and Employee Hiring Preferences* and provide a copy to the Contracting Officer. The Communication Plan shall also include a communication process among the Contractor, the incumbent contractors, DOE, site tenants and representatives of the incumbent unions. Communication with union representatives shall be limited to sharing relevant workforce transition information.

(3) Within 30 days after NTP, the Contractor shall provide to the Contracting Officer:

(A) An update to the Staffing Plan required during their proposal submission pursuant to Section L, which shall detail the Contractor's plan for coordinating with ITG and CWI the conduct of any necessary workforce restructuring.

(B) Copies of the final Workforce Transition Plan described in paragraph (a) above.

(4) Within 60 days after NTP, the Contractor shall provide to the Contracting Officer copies of the final transition agreements described in paragraph (a)(1)(A) above.

(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. 3, *Workforce Transition and Employee Hiring Preferences*, 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. The Contractor's failure to comply with the Workforce Transition Clauses, including implementation of the approved workforce transition plan, shall result in the costs being determined to be unallowable.

(b) Benefits Transition. The Contractor shall submit a written draft Benefits Transition Plan within 20 days after NTP, describing in detail the Contractor's plans and procedures as to how the Contractor will comply with Clause H. 4, *Employee Compensation: Pay and Benefits*, and this Paragraph (b). The Contractor shall provide a final written Benefits Transition Plan to the Contracting Officer within 30 days after NTP. All transitions of the existing pension(s) plans and other existing benefit plans, as well as establishment of any new plans, shall be completed within 90 days after NTP.

(1) The Contractor shall perform the following activities within the specified timeframes:

(A) Within ten days after NTP, the Contractor shall:

(i) Provide the Contracting Officer with a list of Contractor personnel who will be responsible for transitioning of the ICP Core segment 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 a sponsor/participating employer of the INL Employee Retirement Plan and contact information for the above personnel;

(ii) Request the incumbent contractors, ITG and CWI, to provide information and documents necessary for the Contractor to adhere to the requirements set forth in this Contract pertaining to sponsorship of the ICP Core segment of the INL Employee Retirement Plan and other 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; and

(iii) 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 NTP, the Contractor shall provide to the Contracting Officer a list of the information and documents that the Contractor has requested from the incumbent contractors pertaining to the transition of the ICP Core segment of the INL Employee Retirement Plan, and other 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 the incumbent contractors. 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. 3, *Workforce Transition and Employee Hiring Preferences*, and Clause H. 4, *Employee Compensation: Pay and Benefits*.

(C) Within 20 days after NTP, the Contractor shall:

(i) Submit a detailed description of its plans (or plan segments) 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. 4, *Employee Compensation: Pay and Benefits*, including requirements pertaining to the transition of employee benefit plans (or plan segments); and

(ii) Meet via televideo, teleconference, and/or in person with relevant personnel who administer the benefit plans for the INL Employee Retirement Plan. 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 Clauses H. 4, *Employee Compensation: Pay and Benefits*, including execution of transition agreements with the incumbent contractors, ITG and CWI, and other applicable entities. 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 NTP, and as part of the written Benefits Transition Plan, the Contractor shall provide a written description of how the existing pension and other benefit plans provided to employees pursuant to Clause H. 4, *Employee Compensation: Pay and Benefits*, will be amended or restated on or before the last day of the 90 day Transition Period. If the creation of a new benefit plan(s) is 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.

(E) Within 45 days after NTP, the Contractor shall:

(i) Submit to the Contracting Officer a draft Contractor Employee Compensation Plan demonstrating how the Contractor will comply with the requirements of this Contract regarding employee compensation. The draft 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.

(ii) Submit to the Contracting Officer drafts of all amendments to or restatements of the pension and other benefit plans presently sponsored by the incumbent contractors, including but not limited to amendments effectuating the change in sponsorship/participating employer in the ICP Core segment of the INL Employee Retirement Plan. 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 the incumbent contractors. Any and all such amendments shall comply with applicable law governing such transactions and changes in sponsorship of the plans.

(iii) Submit to the Contracting Officer drafts of any new benefit plan(s) as well as draft SPDs that the Contractor proposes to sponsor.

(iv) Provide draft copies of the transition agreements which the Contractor will enter into with the incumbent contractors, to ensure the Contractor's compliance with the pay and benefits requirements set forth in Clause H. 4, *Employee Compensation: Pay and Benefits*. Copies of these executed transition agreements shall be provided to the Contracting Officer within 45 days.

(F) No later than 60 days after NTP and prior to the adoption of the documents identified in Paragraphs (b)(1)(E)(ii) and (iii) above, the Contractor shall submit to the Contracting Officer the proposed final versions of these documents for approval.

(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.

(2) 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:

(A) 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

(B) Any and all other documents pertaining to implementation of and compliance with implementation of the compensation and benefit programs identified in Clause H. 4, *Employee Compensation: Pay and Benefits*.

## **H.10 DEPARTMENT OF LABOR WAGE DETERMINATIONS**

In the performance of this Contract the Contractor and/or subcontractors shall comply with the requirements of the U.S. Department of Labor Wage Determination(s) located in Section J if the contract or subcontracts are covered by the Service Contract Labor Standards (formerly known as the Service Contract Act) consistent with Section 4(c), if applicable, of the Service Contract Labor Standards, and the Wage Rate Requirements (Construction) (formerly known as the Davis-Bacon Act) Wage Determination located in Section J if the contract or subcontracts are covered by the Wage Rate Requirements (Construction). Each contractor and subcontractor employee performing work covered by the Wage Rate Requirements (Construction) must be paid at least the pay and benefits set forth in the SSA (or other negotiated agreement between the Contractor and the Idaho Building and Construction Trades Council) required in Section H.9(f) or under the applicable Wage Rate Requirements (Construction) wage determination, whichever is higher.

Revised wage determinations shall be required from the Department of Labor and incorporated into this contract at least once every two (2) years, but not more often than yearly. The contractor and/or subcontractors shall comply with the revised wage determinations for Service Contract Labor Standards covered employees.

## **H.11 LABOR STANDARDS**

DOE will determine the appropriate labor standards that apply to work activities in accordance with the Wage Rate Requirements (Construction) (formerly known as the Davis-Bacon Act), the

Service Contract Labor Standards (formerly known as the Service Contract Act), or other applicable labor law. When requested by DOE, the Contractor shall timely provide information necessary for the Government to make the determination. Once a determination is made, the Contractor shall comply with the determination and incorporate appropriate labor standards requirements into subcontracts.

## **H.12 INSURANCE - WORK ON A GOVERNMENT INSTALLATION**

Contractors shall pursue a program of self-insurance unless they can demonstrate to the CO that commercial insurance is more economical. If the CO approves the contractor's request to acquire commercial insurance, the Contractor shall carry the following kinds and minimum amounts of insurance during the performance of this Contract:

- (a) **Worker's compensation and employer's liability insurance:**
  - (1) The amount required by the state in which work is performed under applicable workers' compensation and occupational disease statutes.
  - (2) Employer's liability insurance in the amount of \$500,000.
- (b) **General liability insurance.** Bodily injury liability coverage written on the comprehensive form of policy of at least \$1,000,000 per occurrence.
- (c) **Automobile Liability Insurance.** Coverage shall be provided on a comprehensive basis. It shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performance of this contract. Policies covering automobiles operated in the United States shall provide coverage of at least \$500,000 per person and \$1,000,000 per occurrence for bodily injury and \$100,000 per occurrence for property damage.

The amount of liability coverage on other policies shall be commensurate with any legal requirements of the state and locality, plus sufficient to meet normal and customary claims.

Proof of all required insurance shall be provided to the Contracting Officer prior to the commencement of work

## **H.13 INTEGRATED WORK CONTROL SYSTEMS AND REPORTING REQUIREMENTS (JULY 2012)**

### **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 of the Contract for the work scope and period of performance being authorized. The work control system shall be consistent with Department of Energy (DOE) and EM policies and guidance for

capital asset projects and operations activities contained in Section J Attachment, J-5 “Integrated Contractor Work Control Systems and Reporting Requirements,” paragraphs A.1 and A.2. The Contractor shall submit a Project Controls System Description (PCSD) during the Contract Transition Period that documents the existence of the project controls system specified by this Contract.

The requirements of this clause are in addition to the applicable requirements of DOE Order 413.3B, *Program and Project Management for the Acquisition of Capital Assets*. The Contract Performance Baseline (CPB) should include and reflect the DOE 413.3B requirements, as applicable to the specific work and to the Contractor.

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

The Contractor’s planning and performance reporting processes should provide DOE with the supporting data for an independent assessment of the Contractor’s work execution plan, basis of cost and schedule estimates for work packages and planning packages, 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 (including work defined as Capital Asset under DOE O 413.3B and that work defined as Operations Activities under DOE EM policies and guidance as set forth in Attachment J-5, “Integrated Contractor Work Control Systems and Reporting Requirements,” 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 controlled by the Contractor to demonstrate that the Contractor understands the complexity of work, and has put in place the planning and management processes and qualified personnel to execute the work in a safe and efficient manner.

The CPB will be reviewed by DOE and must be approved by the Contracting Officer (CO). Once the CPB is approved, the Contractor shall follow the approved change control process.

### **1. Initial and Interim Contract Performance Baseline Submittal**

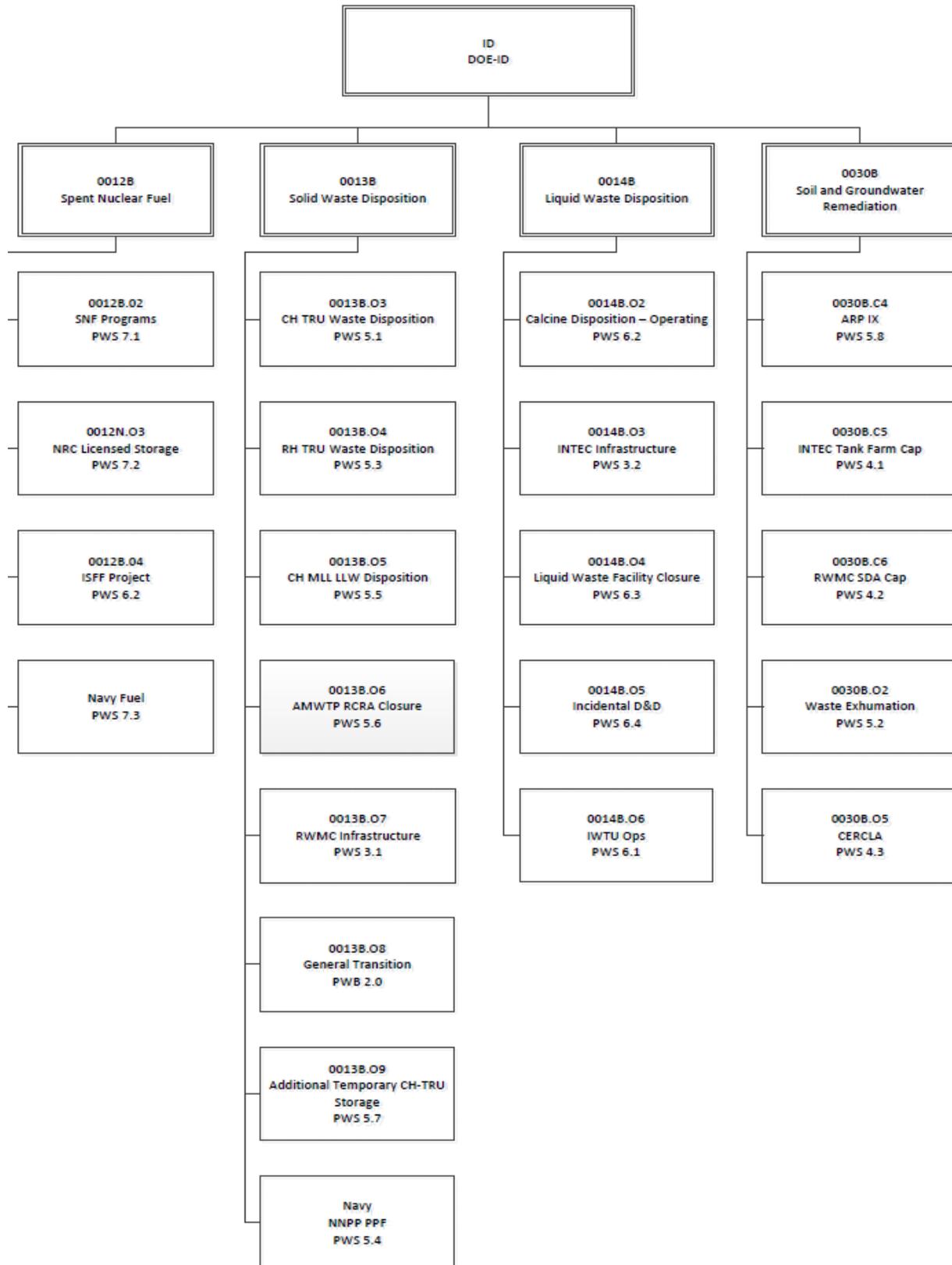
- a. Within the Contract Transition Period as defined in this Contract, the Contractor shall develop and submit for CO approval:

- 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.
- ii. An Interim CPB<sup>2</sup> that provides work planning, measurement and management details as listed below to cover approximately the first 12 months of performance starting from the Notice to Proceed as applicable. 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 and sum to the table 1 WBS as applicable for the ICP Core Contract;
  2. Integrated Resource Loaded Schedule at work-package level to track monthly performance for the interim period;
  3. Work Management Plan that includes 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.

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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.

<sup>2</sup> 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.



**Table 1**

- b. If Contract modifications are negotiated within the Contract Transition Period, 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.
- c. 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. The Contractor is required to have a certified Earned Value Management System (EVMS) compliant with ANSI-EIA 748 (current version), and the Interim CPB shall 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.

## **2. Full Contract Performance Baseline (CPB) Submittal**

During the first six months after the Contract Transition Period, in addition to performing and reporting progress against the Interim CPB, the Contractor shall develop and submit for DOE approval by the DOE contracting officer detailed plans (See section J, Attachment J-5, "Integrated Contractor Work Control Systems and Reporting Requirements," paragraph D.4.g – Typical Baseline Documents) for the entire contract scope and period of performance. These plans will include the development of the full CPB which may entail development of multiple CPB segments.

- a. During the first six months after the Contract Transition Period, the Contractor shall submit for approval by the CO, the full CPB<sup>3</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. CPB segments shall be developed in accordance with applicable policy and guidance documents noted in Section J, Attachment J-5, "Integrated Contractor Work Control Systems and

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<sup>3</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. 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).

- Reporting Requirements,” paragraphs A.1, A.2 and B.1 and follow the format and roll-up to the Table 1 WBS.
- b. The Contractor shall provide monthly status reports regarding the CPB document preparation progress to the CO.
  - c. The full CPB submittal shall include both a hard copy and electronic files.

### **3. 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 shall withhold 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 all provisional fee payments will be withheld until alignment is re-established. However, the CO has the discretion to provide relief for withholding of fee dollars throughout contract execution due to impacts outside of the Contractor’s control.

#### **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. 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 30 days of the issuance of a written change order 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.
4. The project control system must maintain capability to provide Total Estimated Cost, Total Project Cost, Estimate-to-Complete, and Estimate-at-Completion, along with tracking of the Target Cost and Target Schedule. Earned value reporting shall be fully burdened including Budgeted Cost of Work Scheduled and Performed.

5. The project schedule shall clearly depict critical path activities and milestones. Activities shall be resource loaded at the lowest practical level of the WBS, but at a minimum at least one level below the DOE Activity level in Table 1.
6. The Contractor shall analyze DOE proposed or directed funding changes for their impact on technical, schedule, and cost elements of the baseline, along with potential impacts to the Target Cost and Target Schedule and provide impacts if necessary.
7. The Contractor shall prepare Fiscal Year Work Plans (FYWP) that include narrative descriptions of the upcoming fiscal year, monthly spend plans and monthly metrics expected to be achieved. These FYWP will be provided at the WBS activity level shown in Table 1 and be provided for DOE approval for the upcoming fiscal year by August 31.
8. The contractor shall evaluate the Estimate-at-Completion (EAC) of the project on a quarterly basis to ensure that it is consistent with observed trends in performance, emerging or resolved issues, and changes in the assessment of project risk's. The results or the evaluation shall be transmitted to the CO. Current EAC's will be reported on the monthly reports at the DOE WBS Activity Level.

Any proposed changes to the CPB resulting from internal replanning or use of Management Reserve 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.

#### 4. **Reviews**

- a. After completion of the Contract Transition Period and receipt of the Contractor's Initial and Interim CPB, DOE will complete its review to determine whether they meet the terms and conditions of the Contract. In cases where they don't 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.
- b. The Contractor shall begin earned value reporting no later than the end of the Contract Transition Period. The Contractor shall initiate discussions with the CO to schedule an EVMS certification review immediately after Notice to Proceed is issued and when three months of earned value data is available (and no later than three months after the Contract Transition Period), the Contractor shall submit 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.
- c. 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.

## 5. Performance Reporting

The Contractor shall submit the Contractor's Monthly Cost 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-5, "Integrated Contractor Work Control Systems and Reporting Requirements" paragraph C, Performance Reporting.

The contractor shall provide the CO, or designated authorized representatives, full access to any and all information and documents comprising the contractor's project control and reporting system, including read-only access to associated electronic information systems.

The Contractor shall report the costs incurred in performance of the capital asset work or operations activity when these 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.14 EARNED VALUE MANAGEMENT SYSTEM (FEB 2014)

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

*Acceptable earned value management system* means an earned value management system that generally complies with system criteria in paragraph (b) of this clause.

*Earned value management system* means an earned value management system that complies with the earned value management system guidelines in the ANSI/EIA-748.

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

*Over Target Schedule* means the term used to describe a condition where a baseline schedule is time-phased beyond the contract completion date.

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

(b) *System criteria.* In the performance of this contract, the Contractor shall use—

(1) An Earned Value Management System (EVMS) that complies with the EVMS guidelines in the American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems (ANSI/EIA-748, current version at time of award); and

(2) *Management procedures.*

(i) Management procedures provide for generation of timely, reliable, and verifiable information for DOE Integrated Program Management Report (IPMR) data item of this contract.

(ii) The Contractor shall use Department of Energy's (DOE) modified version of Department of Defense's Data Item Description (DID) Integrated Program Management Report (IPMR), DI-MGMT-81861, (DOE version, current version at time of award) which contains data for measuring cost and schedule performance for this DOE contract. The Contractor shall submit the data electronically by uploading the data into the Project Assessment and Reporting System (PARS II) in accordance with the "Contractor Project Performance Upload Requirements" document maintained by the DOE Office of Acquisition and Project Management (OAPM). All requested data shall be submitted timely and accurately, and shall be current as of the close of the previous month's accounting period.

(c) If the Contractor has one or more DOE contracts valued at \$20,000,000 or greater per contract for a total contract value of \$50,000,000 or more which support DOE Capital Asset Projects, the Contractor shall use an EVMS that has been determined to be acceptable by DOE. If, at the time of award, the Contractor's EVMS has not been determined by DOE to be in compliance with the EVMS guidelines as stated in paragraph (b)(1) of this clause, the Contractor shall apply its current system to the contract and shall take necessary actions to meet the milestones in the Contractor's EVMS plan.

(d) If this contract has a total value of less than \$50,000,000 and does not meet the condition described at (c) above, the Government will not make a formal determination that the Contractor's EVMS complies with the EVMS guidelines in ANSI/EIA-748 with respect to the contract. The use of the Contractor's EVMS for this contract does not imply a Government determination of the Contractor's compliance with the EVMS guidelines in ANSI/EIA-748 for application to future contracts.

(e) The Contractor shall submit notification of all proposed changes to the EVMS procedures and the impact of those changes to DOE. If this contractor has one or more contracts in support of DOE Capital Asset Projects and the total contract values are \$20,000,000 or greater per contract for total contract values of \$50,000,000 or more, unless a waiver is granted by DOE, any EVMS changes proposed by the Contractor require approval of DOE prior to implementation. DOE will advise the Contractor of the

acceptability of such changes as soon as practicable (generally within 30 calendar days) after receipt of the Contractor's notice of proposed changes. If DOE waives the advance approval requirements, the Contractor shall disclose EVMS changes to DOE at least 14 calendar days prior to the effective date of implementation.

(f) *Integrated baseline reviews.*

(1) The purpose of the integrated baseline reviews (IBR) is to verify the technical content and the realism of the related performance budgets, resources, and schedules. It should provide a mutual understanding of the inherent risks in the offerors'/contractors' performance plans and the underlying management control systems, and it should formulate a plan to handle these risks. DOE and the Contractor will use the IBR process described in the National Defense Industrial Association Program Management Systems Committee Integrated Baseline Review (NDIA PMSC IBR) Guide (current version at time of award).

(2) The Government will schedule IBRs as early as practicable, and the review process will be conducted not later than 180 calendar days after—

(i) Notice to Proceed;

(ii) The exercise of significant contract options; and

(iii) The incorporation of major modifications.

During such reviews, the Government and the Contractor will jointly assess the Contractor's baseline to be used for performance measurement to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.

(g) The Contractor shall provide access to all pertinent records and data requested by the Contracting Officer or duly authorized representative as necessary to permit Government surveillance to ensure that the EVMS complies, and continues to comply, with the performance criteria referenced in paragraph (b) of this clause.

(h) When indicated by contract performance, the Contractor shall submit a request for approval to initiate an over-target baseline or over-target schedule to the Contracting Officer. The request shall include a top-level projection of cost and/or schedule growth, a determination of whether or not performance variances will be retained, and a schedule of implementation for the rebaselining. The Government will acknowledge receipt of the request in a timely manner (generally within 30 calendar days).

(i) *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 EVMS. 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, with input from the applicable DOE OAPM or the DOE Program Office functional specialist, 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 noncompliance, when the Contractor's existing EVMS fails to comply with the earned value management system guidelines in the ANSI/EIA-748.

(4) 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.

(j) *Withholding payments.* If the Contracting Officer makes a final determination that one or more significant deficiencies exists and the contract includes the Section H clause Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

(k) With the exception of paragraphs (i) and (j) of this clause, for contracts valued at \$20 million or more requiring EVMS, the contractor shall flow down appropriate EVMS requirements to its subcontractors in order for the contractor to meet all requirements of this clause.

*[Contracting Officer to insert names of subcontractors (or subcontracted effort if subcontractors have not been selected) designated for application of the EVMS requirements of this clause.]*

(1) *Adopting previous Contractor's previously certified earned value management (EVM) process.* If the Contractor plans to adopt the existing system from the previous Contractor or DOE-site, the Contractor is responsible for the system and shall comply with the system requirements required in this clause. The existing system shall utilize the same DOE approved EVM Process Description and the same EVM training as the previous system. The Contractor shall –

- (1) Identify the corporate entity which owns the certified EVM process and provide the certification documentation;
- (2) Obtain DOE prior approval or Advanced Agreement including DOE approval of process changes and joint surveillance;
- (3) Be responsible for compliance with the system criteria required in paragraph (b) of this clause; and
- (4) Be responsible for correcting any significant deficiencies previously identified to the previous Contractor by the Contracting Officer in accordance with paragraph (i) of this clause. Within 45 days after receiving a copy of the previous contractor's final determination, the Contractor shall follow paragraph (i)(4) and either correct any significant deficiencies or submit an acceptable corrective action plan. The Contracting Officer or designee, will provide a copy of the previous contractor's final determination.

#### **H.15 CONTRACTOR BUSINESS SYSTEMS**

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

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

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

*Contractor business systems* means—

- (1) Accounting system, if this contract includes the Section H clause Accounting System Administration;
- (2) Earned value management system, if this contract includes the Section H clause Earned Value Management System;

(3) Estimating system, if this contract includes the Section H clause Cost Estimating System Requirements;

(4) Property management system, if this contract includes the Section H clause Contractor Property Management System Administration; and

(5) Purchasing system, if this contract includes the Section H clause Contractor Purchasing System Administration.

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

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

(d) *Significant deficiencies*.

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

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

(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 withhold 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.16 COST ESTIMATING SYSTEM REQUIREMENTS**

### *(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), 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 Notice to Proceed 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 (48 CFR chapter 1) and Department of Energy Acquisition Regulation (48 CFR chapter 9).
  - (xviii) Develop estimates at the same level as costs are collected and be able to provide comparisons of estimate results to actual results at all levels of the WBS and provide an analysis of any differences when requested.
- (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.17 ACCOUNTING SYSTEM ADMINISTRATION**

(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 Notice to Proceed. 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, Generally Accepted Accounting Principles, and Federal Financial Accounting Standards.
- (19) Identification and segregation of cost related to asset acquisition and/or fabrication/construction that can be capitalized.

(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.18 CONTRACTOR PURCHASING SYSTEM ADMINISTRATION**

- (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 Notice to Proceed. 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.19 CONTRACTOR PROPERTY MANAGEMENT SYSTEM ADMINISTRATION**

(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 the NTP. 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.20 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.21 MANDATORY CHANGE ORDER ACCOUNTING**

(a) In accordance with FAR 52.243-6, the Contractor must establish change order accounting for each change or series of related changes whose estimated cost exceeds \$100,000.

(b) The Government has no obligation under this clause or any other term or condition of this contract to remind the Contractor of its obligations under this clause. The Government may or may not, for example, refer to this clause when issuing change orders.

(c) If the Contractor separately identifies costs in its invoices that pertain to the changed work, the Contractor may invoice costs for both changed work and other work in the same invoice.

(d) If the Contractor fails to provide an adequate, auditable definitization proposal within 120 days of the Contracting Officer's request for such proposal, the Government may consider some or all of the associated bid and proposal costs to be unallowable.

(e) If the Contractor fails to comply fully with the requirements of this clause, the Government may reflect the Contractor's failure in its—  
(1) determination of otherwise earned fee under the contract; and/or  
(2) past performance evaluation of the Contractor's performance.

## **H.22 INDIRECT RATE CEILING**

NOTE: As per Section L.8 (h)(ix) instructions, clause shall be incorporated into the Contract that addresses an indirect rate cap for labor overhead and G&A rates (including any and all joint venture partners and Corporate Home Office Allocations) for each FY as ceiling rates.

## **H.23 ASSIGNMENT AND ADMINISTRATION OF SUBCONTRACTS**

- (a) Assignment of DOE Prime Contracts. During the period of performance of this Contract it may become necessary for the U.S. Department of Energy (DOE) to transfer and assign existing or future DOE prime contracts supporting site work to this contract. The Contractor shall accept the transfers and assignments of subcontracts. Any recommendations and/or suggestions on individual transfers shall be submitted in writing to the Contracting Officer prior to the transfer or assignment.
- (b) Administration of Subcontracts. The administration of all subcontracts entered into and/or managed by the Contractor, including responsibility for payment hereunder, shall remain with the Contractor. The Government reserves the right at any time to require that the Contractor submit any or all other contractual arrangements, including but not limited to purchase orders or classes of purchase orders, for approval, and provide information concerning methods, practices, and procedures used or proposed to be used in subcontracting and purchasing. Subcontracts and purchase orders shall be made in the name of the Contractor, shall not bind nor purport to bind the Government, shall not relieve the Contractor of any obligation under this contract (including, among other things, the obligation to properly supervise and coordinate the work of subcontractors), and shall be in such form and contain such provisions as are required by this contract or as the Contracting Officer may prescribe. Any consent by the Contracting Officer to the placement of subcontracts shall not be construed to create subcontractor privity of contract with the Government.
- (c) Transfer of Subcontracts. As the successor contractor, the Contractor agrees to accept the transfer of existing subcontracts as determined necessary by DOE for continuity of operations. This includes (a) all subcontracts and purchase orders, (b) cooperative research and development agreements, (c) consent orders, (d) regulatory agreements and permit requirements, lawsuits and other litigation matters and (e) other agreements in effect upon execution of this contract. The Contractor shall attempt 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.24 MAJOR OR CRITICAL SUBCONTRACTS - DESIGNATION AND CONSENT**

- (a) The following subcontractors have been determined to be major or critical subcontractors:

**[Contractor Fill-In, insert major or critical subcontractors]**

- (b) If the Contractor proposes to use any new major or critical subcontractors other than those named above the Contractor shall provide notification to, and obtain consent from, the CO regardless of any exceptions that may be stated in the Subcontracts clause of this contract. Consent to these subcontracts is retained by the Contracting Officer and will not be delegated. The Contracting Officer may unilaterally designate additional subcontracts as “critical” without such action constituting a basis for adjustment to any other terms of the contract.
- (c) Any major or critical subcontracts shall include provisions that hold the subcontractor directly accountable for performance and delivery of quality products on time and shall also include incentives and disincentives for performance.

**H.25 SMALL BUSINESS SUBCONTRACTING PLAN**

The Small Business Subcontracting Plan dated **[To be completed by DOE]** submitted by the Contractor for this contract, consistent with the provisions of the Section I clause entitled, “FAR 52.219-9 Small Business Subcontracting Plan,” and approved by the Contracting Officer on **[To be completed by DOE at the time of Contract Award]**, is incorporated in and made a material part of this contract as Section J, Attachment J-10.

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

Performance against the above Plan will be considered in the past performance evaluation conducted annually by the CO.

**H.26 RESERVED**

**H.27 RESERVED**

**H.28 RESERVED**

**H.29 RESERVED**

**H.30 RESERVED**

**H.31 KEY PERSONNEL**

- (a) Introduction.

Key Personnel are considered essential to the success of all work being performed under this contract. This Clause provides specific requirements, in addition to the requirements of the clause in Section I entitled, DEAR 952.215-70, *Key Personnel*, for the Key Personnel Team, requirements for changes to Key Personnel, reductions in Contract fee for changes to Key Personnel, and identification of all Key Personnel for this Contract.

(b) Key Personnel Team Requirements.

The Contracting Officer (CO) and designated Contracting Officer's Representative(s) shall have direct access to the Key Personnel. All Key Personnel shall be permanently assigned to the position. In addition to the definition contained in the Section I Clause entitled, DEAR 952.215-70, *Key Personnel*, Key Person(s) are considered managerial personnel.

(c) Definitions

For the purposes of this Clause, Changes to Key Personnel is defined as:

(i) any change to the position assignment of a current Key Person under the contract, except for a person who acts for short periods of time, in the place of a Key Person during his or her absence, the total time of which shall not exceed 30 working days during any given year; (ii) utilizing the services of a new substitute Key Person for assignment to the contract; or (iii) assigning a current Key Person for work outside the Contract.

(d) Contract Fee Reductions for Changes to Key Personnel

(1) Notwithstanding approval by the Contracting Officer, any time the Program Manager (the initial Program Manager or any substitution approved by the Contracting Officer) is changed for any reason within two years of contract award, Earned Fee described in Section B, may be reduced by \$1,000,000 for each and every occurrence of a change.

(2) Notwithstanding approval by the Contracting Officer, any time a Key Person other than the Program Manager (any initial Key Person or *any* substitution approved by the Contracting Officer) is changed for any reason within two years of contract award, Earned Fee described in Section B, may be reduced by \$750,000 for each and every occurrence of a change.

(3) The Contractor may request, in writing, that the CO consider waiving all or part of a reduction in Earned Fee. Such written request shall include the factual basis for the

request. The CO shall have the unilateral discretion to make the determination to waive all or part of the reduction in Earned Fee.

(e) Relocation Costs Associated with Changes to Key Personnel

The Government will only pay the relocation costs for the initial key personnel during the contract period, unless the Government directs a change in key personnel be made.

(f) Key Personnel for this Contract

The Key Personnel for this contract are identified below. This list will be amended during the course of the Contract to change Key Personnel as approved by the Contracting Officer.

<u>Name</u>	<u>Position</u>
	Program Manager
	ESH&Q Manager
	Business Manager

**H.32 RESERVED**

**H.33 QUALITY ASSURANCE SYSTEM**

The Contractor shall implement a DOE-approved Quality Assurance Program (QAP) (see ATTACHMENT J-2: LIST OF CONTRACT DELIVERABLES/SUBMITTALS) in accordance with the current revision of the EM Quality Assurance Program, EM-QA-001, prior to commencement of work affecting nuclear safety. The EM QAP provides the basis to achieve quality across the EM complex for all mission-related work while providing a consistent approach to Quality Assurance (QA). Although DOE Order 414.1D allows 90 days, the QAP shall be submitted to DOE for approval within 30 days of the Notice To Proceed (NTP). DOE approval, with EM Headquarters concurrence, must be documented prior to the contract effective date and the Contractor assuming full responsibility.

EM requires that American Society of Mechanical Engineers (ASME) NQA-1-2008, *Quality Assurance Requirements for Nuclear Facility Applications*, and addenda through 2009 be implemented as part of the Contractor's QA Program for work affecting nuclear safety. The required portions of NQA-1 to be implemented include: Introduction, Part I, and as applicable portions of Part II. NQA-1 Parts III and IV are to be used as guidance for the Contractor's QAP and implementing procedures. Justification must be provided for NQA-1 requirements determined by the Contractor to be not applicable to its scope of work.

Contractors have three options for complying with this contract requirement:

- 1) Develop and submit for DOE approval a new QAP;

- 2) Adopt the prior Contractor's DOE-approved QAP; or
- 3) Modify the prior Contractor's DOE-approved QAP and submit it for DOE approval.

Development of a new QAP, or adoption of an existing or modified version of a QAP from a prior contractor, does not alter a contractor's legal obligation to comply with 10 CFR 830, Nuclear Safety Management, other regulations affecting quality assurance (QA) and DOE Order 414.1D, Quality Assurance.

The Contractor's QAP shall describe the overall implementation of the EM QA requirements and shall be applied to all work performed by the Contractor (e.g., research, design/engineering, construction, operation, budget, mission, safety, and health). Specifically, the contractor's QAP shall also describe the supply chain for electronic subcomponents, require procurement of sub-components only from original equipment manufacturers or original equipment manufacturer authorized distributors, and require electronic subcomponents be procured from vendors with a documented successful history with the supplier.

The Contractor shall develop and implement a comprehensive Issues Management System for the identification, assignment of significance category, and processing of nuclear safety-related and non-safety related issues identified within the Contractor's organization. The significance assigned to the issues shall be the basis for all actions taken by the contractor in correcting the issue from initial causal analysis, reviews for reporting to DOE, through completion of Effectiveness Reviews if required based on the seriousness of the issue.

The Contractor shall, at a minimum, annually review and update as appropriate, their QAP. The review and any changes shall be submitted to DOE for approval. Changes shall be approved before implementation by the Contractor.

The Contractor shall perform activities in connection with a nuclear facility, as defined by Title 10 Code of Federal Regulations (CFR) 820, Procedural Rules for DOE Nuclear Activities; Title 10 CFR 835, Occupational Radiation Protection; and Title 10 CFR 830, Nuclear Safety Management, specifically Section 830.3. The requirements of 10 CFR Part 830 Subpart A shall apply to all work affecting nuclear safety. Additional quality assurance requirements are applicable to specific scopes of work, as follows:

- 1) For activities associated with TRU Waste disposal at the Waste Isolation Pilot Plant (WIPP), the contractor shall comply with the quality assurance requirements specified in the WIPP Hazardous Waste Facility Permit, and the current version of the DOE Carlsbad Field Office (CBFO) Quality Assurance Program Document.
- 2) For spent nuclear fuel/high level waste activities associated with disposal at the monitored geologic repository, the contractor shall comply with the quality assurance requirements specified in DOE/RW-0333P, Office of Civilian Radioactive Waste Management (RW) QA Requirements and Description, Revision 20.

- 3) For activities associated with the DOE-ID Independent Spent Fuel Storage Installations licensed by the Nuclear Regulatory Commission (NRC), the contractor shall comply with the quality assurance requirements in accordance with DOE/RW-0333P, Revision 10.

#### **H.34 GOVERNMENT-OWNED PROPERTY AND EQUIPMENT RESPONSIBILITIES FOR CONTRACT TRANSITION PERIOD**

Upon the effective date of this contract, the Contractor shall accept transfer of and accountability for Government-owned property and equipment, including special nuclear material, from the following contracts:

- Advanced Mixed Waste Treatment Project Contract # DE- EM-0001467, Idaho Treatment Group L.L.C. (ITG DOE Contract)
- Idaho Clean-Up Project (ICP) Contract # DOE-AC07-05ID14516, CH2M/WG Idaho L.L.C. (CWI DOE Contract)

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

- (a) The Contractor must perform a joint wall-to-wall physical inventory with the incumbent contractor(s) of all accountable high-risk and sensitive property during the transition period and accept full accountability for the high-risk and sensitive property at the end of transition. This requirement includes government property in the possession or control of subcontractors.
- (b) The Contractor must accept, at the end of transition, transfer of accountability for the remaining government-owned real and personal property and equipment, including special nuclear material, not covered under paragraph (a), based on existing inventory records, on an "as-is, where-is" basis, or perform a wall-to-wall inventory within the transition period of the Contract. Any discrepancies from the existing inventory records shall be reported to the CO. As the formal inventories are completed, the Contractor shall assume responsibility and liability for subsequent losses and damages in accordance with FAR 52.245-1. If the physical inventory is not accomplished within the allotted time frame, the previous contractor's records will become the inventory baseline.

#### **H.35 TRANSITION TO FOLLOW-ON CONTRACT (POST 2020)**

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 in accordance with PWS Section C.8.23.01, Phase Out and Close Out Activities. It is therefore understood and further agreed in recognition of the above:

- (a) That 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 a 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 ensure maximum protection of employee service credits and fringe benefits.
- (b) This clause shall apply to subcontracts as approved by the CO.

### **H.36 ALLOCATION OF RESPONSIBILITIES FOR CONTRACTOR ENVIRONMENTAL COMPLIANCE ACTIVITIES**

This clause allocates the responsibilities of DOE and the contractor, referred to collectively as 'the Parties,' for implementing the environmental requirements at facilities within the scope of the Contract. In this clause, the term 'environmental requirements' means requirements imposed by applicable Federal, state and local environmental laws and regulations, including, without limitation, statutes, executive orders, ordinances, regulations, court orders, consent decrees, administrative orders or compliance agreements, consent orders, permits, and licenses. The Contractor shall follow the Environmental Regulatory Structure and Interface Protocol for the ICP Core Contractor (see paragraph (f) below) throughout the environmental review and performance of activities and actions

- (a) Purpose and Scope.

The central purpose of this section is to implement the intent of the Parties that liability and responsibility for civil fines or penalties arising from or related to violations of environmental requirements be borne by the Party that caused the violation. This clause resolves liability for fines and penalties though the cognizant regulatory authority may assess such fine or penalty upon either Party or both Parties without regard to the allocation of responsibility or liability under this Contract. This allocation of liability for such fine or penalty is effective regardless of which Party signs permit applications, manifests, reports or other required documents, is a permittee, or is the named subject of an enforcement action or assessment of a fine or penalty.

- (b) Enforcement Actions and Liability for Fines and Penalties.

Regardless of which party to this contract is the named subject (contractor or DOE) of an enforcement action for noncompliance with the environmental, safety, health, or quality requirements by the cognizant regulatory authority; liability for payment of any fine or penalty as a result of contractor actions or

inactions is the responsibility of the contractor, and the contractor will either pay the fine or penalty or reimburse DOE (if DOE pays the fine or penalty). Cost of fines and penalties resulting from violations of, or failure of the contractor to comply with Federal, State, local, or foreign laws and regulations, are unallowable except under the conditions specified at FAR 31.205-15.

- (c) Signature of Permit Applications and other Regulatory Documents.
- (1) The contractor shall obtain any licenses, permits, other approvals or authorizations for conducting activities on the INL. The contractor shall comply with all permits, licenses, certifications, authorizations and approvals from federal, state, and local regulatory agencies that are necessary for operations 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) shall be the sole applicant for any such permits required for its activities. The contractor shall take all appropriate actions to obtain transfer of existing permits required for its activities, 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) shall also sign as operator or similar designation reflecting its responsibility under the permit unless DOE waives this requirement in writing.
  - (2) The contractor shall submit to DOE for DOE's review and comment all permit applications, reports or other documents required to be submitted to cognizant regulatory authorities. The Contractor shall notify DOE of its intent to submit draft documents not less than 30 days in advance of submittal for DOE review and comment. This action will allow DOE to determine appropriate time frames for submittal as well as DOE review and comment. Such draft documents shall be provided to DOE within a time frame, identified by DOE, sufficient to allow DOE substantive review and comment and DOE will perform such substantive review and comment within the identified time frame. When providing DOE with documents that are to be signed or co-signed by DOE, the contractor shall 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. If such a certification is otherwise required of the Contractor, it shall be provided to DOE with the document and no additional certification statement is necessary.

- (3) 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) shall be the signatory for reports, hazardous waste manifests, and other similar documents required under environmental permits or applicable environmental laws and regulations.
- (d) The contractor shall maintain clear lines of authority and accountability regarding compliance with environmental requirements. At a minimum, the contractor shall have a single point of accountability at the site-area level (e.g., INTEC, RWMC, TAN, ATRX, PBF) for all activities at those facilities. The contractor may further delegate responsibility for individual buildings, permitted facilities, or similar discrete units provided there is adherence to the principle of single point of accountability.
- (e) Termination, Expiration, Permit Transfer.

In the event of expiration or termination of this contract, DOE may require the Contractor to take all necessary steps to transfer some or all environmental permits held by the Contractor on an allowable cost basis. DOE or another contractor designated by DOE will assume responsibility for such permits, with the approval of the regulating agency. The Contractor shall remain liable for all unresolved costs, claims, demands, fines and penalties, including reasonable legal costs, arising prior to the date such permits are transferred to another party.

- (f) Within sixty (60) days after Notice to Proceed, the Contractor shall submit to the Contracting Officer for approval any proposed modifications to the current Environmental Regulatory Structure and Interface Protocol for the ICP Core Contractor incorporated as Exhibit C-6 to Section C. The protocol shall be structured to ensure that DOE and the Contractor have adequate knowledge of regulatory negotiations, discussions and agreements to protect their respective interests. Upon approval by the Contracting Officer, the Contractor shall adhere to the terms and condition of the protocol.

### **H.37 PRESERVATION OF ANTIQUITIES, WILDLIFE, AND LAND AREAS**

(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 conservation and mitigation plans,

agreements, and permits. Furthermore, all wildlife must be protected consistent with programs approved by the Contacting 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.38 DOE-H-1067 PRICE-ANDERSON AMENDMENTS ACT NONCOMPLIANCE (JULY 2011)**

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.39 IMPLEMENTING THE PRICE-ANDERSON AMENDMENTS ACT OF 2005**

#### **NUCLEAR HAZARDS INDEMNITY AGREEMENT**

- (a) Authority. This clause is incorporated into this Contract pursuant to the authority contained in subsection 170d. of the Atomic Energy Act of 1954, as amended (hereinafter called the Act.)
- (b) Definitions. The definitions set out in the Act shall apply to this clause.
- (c) Financial protection. Except as hereafter permitted or required in writing by DOE, the Contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability, as described in paragraph (d)(2) below. DOE may, however, at any time require in writing that the Contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the Contractor by DOE.
- (d)
  - (1) Indemnification. To the extent that the Contractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE, DOE will indemnify the Contractor and other persons indemnified against (i) claims for public liability as described in subparagraph (d)(2) of this clause; and (ii) such legal costs of the Contractor and other persons indemnified as are approved by DOE, provided that DOE's liability, including such legal costs, shall not exceed the amount set forth in section 170d. of the Act, as that amount may be increased in accordance with section

170t., in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or \$500 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this Contract.

(2) The public liability referred to in subparagraph (d)(1) of this clause is public liability as defined in the Act which (i) arises out of or in connection with the activities under this contract, including transportation; and (ii) arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.

(e)

(1) Waiver of Defenses. In the event of a nuclear incident, as defined in the Act, arising out of nuclear waste activities, as defined in the Act, the Contractor, on behalf of itself and other persons indemnified, agrees to waive any issue or defense as to charitable or governmental immunity.

(2) In the event of an extraordinary nuclear occurrence which:

- i. Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or
- ii. Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or
- iii. Arises out of or results from the possession, operation, or use by the Contractor or a subcontractor of a device utilizing special nuclear material or by-product material, during the course of the Contract activity; or
- iv. Arises out of, results from, or occurs in the course of nuclear waste activities, the Contractor, on behalf of itself and other persons indemnified, agrees to waive:

(A) Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault of persons indemnified, including, but not limited to:

1. Negligence;
2. Contributory negligence;
3. Assumption of risk; or

4. Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God;

(B) Any issue or defense as to charitable or governmental immunity; and

(C) Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or change and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.

- v. The term extraordinary nuclear occurrence means an event which DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in 10 CFR part 840.
- vi. For the purposes of that determination, "offsite" as that term is used in 10 CFR part 840 means away from "the contract location" which phrase means any DOE facility, installation, or site at which contractual activity under this Contract is being carried on, and any contractor-owned or controlled facility, installation, or site at which the contractor is engaged in the performance of contractual activity under this Contract.

(3) The waivers set forth above:

- i. Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action;
- ii. Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;
- iii. Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;
- iv. Shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a

- nuclear incident intentionally and wrongfully caused by the claimant;
- v. Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;
  - vi. Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;
  - vii. Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection; and
  - viii. Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (A) the limit of liability provisions under subsection 170e. of the Act, and (B) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.
- (f) Notification and litigation of claims. The Contractor shall give immediate written notice to DOE through its Contracting Officer of any known action or claim filed or made against the Contractor or other person indemnified for public liability as defined in paragraph (d)(2). Except as otherwise directed by DOE, the Contractor shall furnish promptly to DOE, copies of all pertinent papers received by the contractor or filed with respect to such actions or claims. DOE shall have the right to, and may collaborate with, the Contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right to (1) require the prior approval of DOE for the payment of any claim that DOE may be required to indemnify hereunder; and (2) appear through the Attorney General on behalf of the Contractor or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the Contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.
- (g) Continuity of DOE obligations. The obligations of DOE under this clause shall not be affected by any failure on the part of the Contractor to fulfill its obligation under this Contract and shall be unaffected by the death, disability, or termination of existence of the Contractor, or by the completion, termination or expiration of this Contract.

- (h) Effect of other clauses. The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this Contract, including the clause entitled Contract Disputes, provided, however, that this clause shall be subject to the clauses entitled Covenant Against Contingent Fees, and Accounts, records, and inspection, and any provisions that are later added to this Contract as required by applicable Federal law, including statutes, executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.
- (i) Civil penalties. The Contractor and its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to civil penalties, pursuant to section 234A of the Act, for violations of applicable DOE nuclear-safety related rules, regulations, or orders. If the Contractor is a not-for-profit contractor, as defined by section 234Ad.(2), the total amount of civil penalties paid shall not exceed the total amount of fees paid within any 1-year period (as determined by the Secretary) under this Contract.
- (j) Criminal penalties. Any individual director, officer, or employee of the Contractor or of its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to criminal penalties, pursuant to section 223(c) of the Act, for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.
- (k) Inclusion in subcontracts. The Contractor shall insert this clause in any subcontract which may involve the risk of public liability, as that term is defined in the Act and further described in paragraph (d)(2) above. However, this clause shall not be included in subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC agreements of indemnification under section 170c. or k. of the Act for the activities under the subcontract.

#### **H.40 ENVIRONMENTAL JUSTICE**

The Contractor will embrace the principles of Environmental Justice by complying with all applicable environmental regulations and by focusing on non-discrimination in its programs that affect human health and the environment.

#### **H.41 COOPERATION WITH OTHER SITE CONTRACTORS**

- (a) In the performance of this Contract, the Contractor agrees to cooperate in a timely manner with other DOE prime contractors, including but not limited to: the INL contractor, the NRC Contractor, the Calcine Disposition and Spent Fuel Repacking A&E Contractor, the Construction/D&D Contractor, and other entities. Cooperation includes, but is not limited to,

the following types of activities: working together to resolve interface and work performance issues; establishing working groups; participating in meetings; providing access to applicable technical and contract information and data such as schedule and milestone data; discussing technical matters related to the Idaho site; providing access to Contractor facilities or areas; and allowing observation of technical activities by appropriate personnel.

- (b) DOE will award other contracts or establish agreements with additional entities whose work affects the Contract. All terms and conditions of this clause apply to the Contractor's relationship with such entities.
- (c) The Contractor is not authorized to direct any other DOE prime contractor or other entities, except as specified elsewhere in this contract or directed by the CO.
- (d) The Contractor shall not commit or permit any act which will interfere with the performance of work by any other DOE contractor or by Government employees without prior approval of the CO. Should the contractor need to interfere with the performance of work by any other DOE contractor or by Government employees, the contractor shall provide written notice to DOE. If DOE determines that the Contractor's activities may interfere with another DOE contractor, the CO shall provide instructions.

#### **H.42 PROTECTION OF GOVERNMENT PROPERTY - MANAGEMENT OF HIGH-RISK PROPERTY AND CLASSIFIED MATERIALS**

The Contractor shall take all reasonable precautions, and such other actions as may be directed by the Contracting Officer, or in the absence of such direction, in accordance with voluntary consensus standards and/or industry leading practices, to safeguard and protect government property in the Contractor's possession or custody. In addition, the Contractor shall ensure that adequate safeguards are in place, and adhered to, for the handling, control and disposition of high-risk property and classified materials throughout the life cycle of the property and materials consistent with the policies, practices and procedures for property management contained in the Federal Property Management Regulations (41 CFR chapter 101), the Department of Energy Property Management Regulations (41 CFR chapter 109), and other applicable regulations.

High-risk property is property, which the loss, destruction, damage to, or the unintended or premature transfer of high-risk property items could pose risks to the public, the environment, national security or nuclear non-proliferation objectives of the United States. High-risk property includes proliferation sensitive, nuclear related dual use, export controlled, and chemically or radioactively contaminated, hazardous, and specially designed or prepared property, including property on the militarily critical technologies list.

High risk personal property is property that, because of its potential impact on public health and safety, the environment, national security interests, or proliferation concerns, must be controlled, and disposed of in other than the routine manner. The categories of high risk property are automatic data processing equipment, especially designed or prepared property, export controlled

information, export controlled property, hazardous property, nuclear weapon components or weapon-like components, proliferation sensitive property, radioactive property, special nuclear material, and unclassified controlled nuclear information.

**H.43 NOTICE OF CIVIL PENALTIES FOR VIOLATION OF SECURITY OF DOE CLASSIFIED OR SENSITIVE INFORMATION OR DATA**

The contractor shall comply with 42 U.S.C. 2282b relating to the safeguarding and security of restricted data. Any person who has entered into a contract or agreement with DOE, or a subcontract or sub-agreement thereto, and who violates (or whose employee violates) any applicable rule, regulation, or order prescribed or otherwise issued by the Secretary pursuant to this chapter relating to the safeguarding or security of Restricted Data or other classified or sensitive information shall be subject to a civil penalty of not to exceed \$100,000 for each such violation.

**H.44 PRIVACY ACT SYSTEMS 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-11	Emergency Operations Notification Call List
DOE-13	Payroll and Leave Records
DOE-14	Report of Compensation
DOE-15	Intelligence Related Access Authorization
DOE-28	General Training Records
DOE-31	Firearms Qualifications 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-53	Access Authorization for ADP Equipment
DOE-77	Physical Fitness Test Records (for armed, uniformed guards)
DOE-81	Counterintelligence Administrative and Analytical Records and Reports
DOE-84	Counterintelligence Investigative 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 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 subcontractor compliance with applicable records management and Privacy Act requirements.

**H.45 DOE-H-1024 ALTERNATIVE DISPUTE RESOLUTION (ADR)**

- (a) The DOE and the Contractor both recognize that methods for fair and efficient resolution of significant disputes are essential to the successful and timely achievement of critical milestones and completion of all Contract requirements. Accordingly, the parties agree

that in the event of a dispute to jointly select a 'standing neutral.' The standing neutral will be available to help resolve disputes as they arise. Such standing neutral can be an individual, a board comprised of three independent experts, or a company with specific expertise in the Contract area. If a standing neutral cannot be agreed upon, the DOE Office of Dispute Resolution will make a selection. Specific joint ADR processes shall be developed.

- (b) The parties agree the following provision may be invoked for significant disputes upon mutual agreement of the DOE and the Contractor:
  - (1) DOE and the Contractor shall use their best efforts to informally resolve any dispute, claim, question, or disagreement by consulting and negotiating with each other in good faith, recognizing their mutual interests, and attempting to reach a just and equitable solution satisfactory to both parties. If any agreement cannot be reached through informal negotiations within 30 days after the start of negotiations, or if the issue is very complex, then within an agreed upon timeframe, then such disagreement shall be referred to the standing neutral, pursuant to the jointly-developed ADR procedures.
  - (2) The standing neutral will not render a decision, but will assist the parties in reaching a mutually satisfactory agreement. In the event the parties are unable after 30 days to reach such an agreement, either party may request, and the standing neutral will render, a non-binding advisory opinion. Such opinion shall not be admissible in evidence in any subsequent proceedings.
- (c) If one party to this Contract requests the use of the process set forth in Paragraphs b(1) and b(2) of this clause and the other party disagrees, the party disagreeing must express its position in writing to the other party. On any such occasion, if the party requesting the above process wishes to file a claim they may proceed in accordance with Section I, FAR 52.233-1 Disputes or FAR 52.233-1 Disputes Alternate I.

#### **H.46 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 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 (as revised by Final Rule issued by DOE on May 3, 2013), Contractor Legal Management Requirements. The Plan shall describe the Contractor's practices for managing and containing 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 the matters they anticipate performing throughout the life of the contract. The Contractor should not retain outside counsel for routine matters and matters

that can be performed by in-house counsel. The Contractor shall provide an annual legal budget to DOE 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 DOE Counsel comparing its budgeted and actual legal costs.

- (b) As required by the Contracting Officer, 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.

#### **H.47 DISPOSITION OF INTELLECTUAL PROPERTY – FAILURE TO COMPLETE CONTRACT PERFORMANCE**

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 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 work contemplated under this contract. Technical data includes, but is not limited to, specifications, designs, drawings, operations manuals, flowcharts, software, databases, work progress reports and any other information necessary for 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. DOE's exercise of its right to have data transferred under this paragraph shall not be dependent on final payment under the agreement by DOE.
- (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 during the course of this contract and which are incorporated or embodied in the construction of the facilities or which are utilized in the operation or remediation of the facilities or which cover articles, materials or products manufactured at a facility: (1) to practice or to have practiced by or for the Government at the facility; and (2) to transfer such license with the transfer of that facility. The acceptance or exercise by the Government of the aforesaid rights and license shall not prevent the Government at any time from contesting the enforceability, validity or scope of, or title to, any rights or patents or other intellectual property herein licensed.
- (c) In addition, the Contractor will take all necessary steps to assign permits, authorizations,

leases, and licenses in any third party intellectual property to the Government, or such other third party as the Government may designate, that are necessary for the completion of the work contemplated under this contract.

#### **H.48 DOE-H-1040 LOBBYING RESTRICTION (ENERGY AND WATER DEVELOPMENT AND RELATED AGENCIES APPROPRIATIONS ACT, 2014)**

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

#### **H.49 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 INL.
- (c) Unclassified Controlled Nuclear Information (UCNI). Documents originated by the Contractor or furnished by the Government to the Contractor, in connection with this contract, may contain Unclassified Controlled Nuclear Information as determined pursuant to Section 148 of the Atomic Energy Act of 1954, as amended. The Contractor shall be responsible for protecting such information from unauthorized dissemination in accordance with DOE regulations and directives and Section I Clauses entitled, *DEAR 952.204-2, Security and DEAR 952.204-70, Classification/Declassification*.
- (d) 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.
- (e) 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.
- (f) 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.
- (g) 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 to 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.
- (h) 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.50 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.51 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.52 REPORT AND APPROVAL REQUIREMENTS FOR CONFERENCE RELATED ACTIVITIES**

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.53 CONTRACTOR COMMUNITY COMMITMENT**

It is the policy of the DOE to be a constructive partner in the geographic region in which DOE conducts its business. Accordingly, the Contractor shall take meaningful actions to implement its community commitment within the surrounding counties and local municipalities.

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 nor involvement in charitable endeavors.

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 Contractor employees to schools, colleges, and universities.

The Regional Educational Outreach Programs could involve providing Contractor employees the 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 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 Contractor and DOE. These alliances may also serve to encourage the formation of regional trade associations which will better enable regional businesses to satisfy the Contractor's 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 Contract 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 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 its organization.

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

#### **H.54 DOE-H-1001 OMBUDSMAN**

- (a) An ombudsman has been appointed to hear and facilitate the resolution of concerns from offerors, potential offerors, and contractors during the pre-award and post-award phases of this acquisition. When requested, the ombudsman will maintain strict confidentiality as to the source of the concern. The existence of the ombudsman is not to diminish the authority of the contracting officer, the Source Evaluation Board, or the selection official. Further, the ombudsman does not participate in the evaluation of proposals, the source selection process, or the adjudication of formal contract disputes. Therefore, before consulting with an ombudsman, interested parties must first address their concerns, issues, disagreements, and/or recommendations to the contracting officer for resolution.
- (b) If resolution cannot be made by the contracting officer, interested parties may contact the installation ombudsman, Ms. Peggy Fuller, US Department of Energy, Office of Environmental Management, 1000 Independence Ave., S.W., Washington, DC 20585, telephone number: (202) 586-7087. Concerns, issues, disagreements, and recommendations which cannot be resolved at the Contracting Activity may be referred to the DOE ombudsman. Do not contact the ombudsman to request copies of the solicitation, verify offer due date, or clarify technical requirements. Such inquiries shall be directed to the contracting officer or as specified elsewhere in this document.

#### **H.55 REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF THE OFFEROR**

The Representations, Certifications, and Other Statements of the contractor, dated [**Contractor to insert Date**], made in response to Solicitation No. DE-SOL-0007097 are hereby incorporated into this contract by reference.

#### **H.56 WITHDRAWAL OF WORK**

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

#### **H.57 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.) Prior to conducting formal oversight of contractor work, the technical competency of designated DOE employees will be examined, approved and documented

as defined in the DOE Oversight Plan.

(d) DOE's oversight activities will focus primarily on a safe, accelerated cleanup of the Idaho National Laboratory (INL) site. 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 Idaho 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 Operational and Safety 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:

- (i) DOE's safety oversight, which includes the capability for examining, assessing and auditing by all levels of the DOE organization;
- (ii) Senior management walk-throughs, conducted in scheduled areas of the plant or locations where significant work is ongoing;
- (iii) Specific tours of buildings just prior to demolition, or release sites that have been deemed as response actions;
- (iv) Periodic walk-throughs by the regulators, Defense Nuclear Facilities Safety Board (DNFSB), or DOE Headquarters personnel; and,
- (v) 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 DOE Idaho Operations Office 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.58 GOVERNMENT FURNISHED SERVICES/ITEMS (GFSI)**

- (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 contract effective date 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 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 Exhibit C-23, Government Furnished Equipment.

**Table H-1: Detailed Description of Government Furnished Services and Items**

GFS&I Scope	Contractor Requirements	DOE Role
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GFS&I Scope	Contractor Requirements	DOE Role
DOE Safeguards and Security (SAS) initial survey during contract transition (Section C.2.1.01)	The Contractor shall be subject to a DOE SAS initial survey conducted in accordance with U.S. DOE Order 470.4B, Admin Change 1, Safeguards and Security Program. (Section C.2.1)	Perform SAS Survey per Section (Section C.2.1)
Transport of TRU waste to WIPP is a government furnished service that is provided by CBFO.	The contractor shall utilize transport containers provided by WIPP. Costs for transportation of TRU waste to WIPP that are associated with: TRUPACT-II, HalfPACT, RH-72B casks, other approved NRC licensed containers, trailers, tractors, drivers, and disposal at WIPP are borne by CBFO. (Sections C.5.1.07; C.5.3.05)	DOE will supply TRUPACT-II, HalfPACT, RH-72B casks, other approved NRC licensed containers, trailers, tractors, and drivers for shipment of TRU waste to WIPP for disposal.
Implementing the Contract requires the Contractor to utilize Government controlled data systems.	Government controlled services, data systems and technical systems are available for contractor access as needed to provide project support services.	DOE will ensure the following services, data systems and technical systems are available to the contractor throughout the period of performance of this contract: a) Computerized Accident/Incident Reporting System (CAIRS) b) Non-Compliance Tracking System (NTS) Database c) Occurrence Reporting and Processing System (ORPS) d) Nuclear Material Management and Safeguards Systems Software e) Project Assessment and Reporting system (PARS-II)
Records (regardless of format) acquired from a predecessor contractor for the performance of work under this contract are being provided as Government-furnished items and shall be maintained and dispositioned in accordance with the requirements within this contract.	The contractor shall maintain, safeguard, and disposition records and information content acquired from a predecessor contractor in accordance with applicable Federal laws, regulations, and DOE directives, as described in Section C.8.21.01.	DOE shall review and inspect the Government records and information content before releasing it to the successor contractor.

**H.59 PROGRAMMATIC RISKS AND UNCERTAINTIES**

- (a) Completion of this project will require DOE and the Contractor to successfully identify, analyze, resolve, mitigate, eliminate or avoid many types of risk. Risks to the worker, the public and the environment are managed through the Integrated Safety Management System (ISMS) and Environmental Safety and Health Program (ES&H) identified in

Section C. Risks to project schedule and cost are classified as programmatic risk and shall be managed through the Programmatic Risk Management process within the Project Management System specified by DOE Order 413.3. The Contractor's initial risk management plan, shall be submitted for DOE review and approval within 90 days after contract effective date and annually thereafter. Because this contract is performance-based, the Contractor may use any means available to eliminate, avoid or mitigate risks, including the use of cost or schedule contingency. Failure on the part of the Contractor to eliminate, avoid or mitigate risks constitutes changes for which the Contractor is accountable. The Contractor agrees that these changes shall not constitute a change to the Target Cost for CLIN 00001 or CLIN 00002 or the estimated cost for CLIN 00003.

- (b) The Contractor shall provide its assessment of the impact these uncertainties may have on project cost and schedule. If, in the Contractor's opinion, the risk to cost and schedule is significant, the Contractor shall describe its approach to eliminate, avoid, or mitigate the risks.
- (c) If the Contractor pursues alternative approaches to existing regulatory agreements or commitments, or to more efficiently achieve risk reduction end states, the Contractor shall specify a confidence level for obtaining regulatory approval and a risk mitigation strategy, in the event regulatory approval is not obtained.
- (d) The Risk Management Plan (RMP) shall be tied to the contractors interim and final contractor baselines as applicable. Management Reserve should be developed and supported by the RMP analysis for the contractor baseline.

#### **H.60 INTERNAL AUDIT**

The Contractor shall conduct an internal audit and examination program in accordance with the DOE Cooperative Audit Strategy as outlined in Department of Energy Acquisition Guide, Chapter 70.4 and Government Auditing Standards (Yellow Book, dated June 2003) for records, operations, expenses, and transactions with respect to costs claimed to be allowable and allocable under this contract. The results of such audit including the working papers shall be submitted or made available to the CO or his/her designee. This clause does not supersede DOE's right to perform self-initiated reviews, evaluations, or audits directed at improving the efficiency of operations and an overall reduction in cost.

#### **H.61 PROHIBITION OF CONTRACTS WITH PERSONS FALSELY LABELING PRODUCTS AS MADE IN AMERICA**

- (a) Pursuant to FAR 9.405(a), awards shall not be made to entities that are included on the List of Parties Excluded from Federal Procurement and Non-procurement Programs. If DOE contractor personnel become aware of a possible violation of the prohibition against falsely mislabeling products as made in America, and the entity is not on the List of Parties Excluded from Federal Procurement and Non-procurement Programs, the matter should be

promptly reported to the CO in writing and the contractor shall supply the CO with the information that supports the contractor's conclusion that there is a possible violation.

- (b) The report of an entity in violation of the prohibition against falsely mislabeling products as American-Made shall be submitted to DOE Office of Contract Management, Office of Procurement and Assistance Management, for potential debarment of the entity pursuant to FAR 9.406-2(a)(4) and 9.406-2(b)(1)(iii).

## **H.62 DOE-H-1051 CONSECUTIVE NUMBERING (MAY 2009)**

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