# SECTION H

## SPECIAL CONTRACT REQUIREMENTS

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Amendment 003 Conformed

# SECTION H

## SPECIAL CONTRACT REQUIREMENTS

*The specific Section H clauses of the ID/IQ Basic Contract applicable to this Task Order are listed below:*

### H.1 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.

### H.2 RESERVED

### H.3 DOE-H-1001 OMBUDSMAN ALT I

(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 at the CO and DCO level, interested parties may contact the Contracting Activity ombudsman:

Office of Environmental Management (EM) Task Order Ombudsman
US Department of Energy
1000 Independence Ave., S.W.
Washington, DC 20585

Concerns, issues, disagreements, and recommendations which cannot be resolved by the Contracting Activity ombudsman may be referred to the DOE ombudsman:

DOE Ombudsman
US Department of Energy
1000 Independence Ave., S.W.
Washington, DC 20585

Please 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 CO or DCO or as specified elsewhere in this document. If this is a task or delivery order contract, the ombudsman shall review complaints from contractors and ensure they are afforded a 'fair opportunity to be considered', consistent with Section 303J(b) of the

Amendment 000 Conformed

Federal Property and Administrative Services Act of 1949, as amended and the procedures of the contract.

**H.4 RESERVED (See Clause H.107)**

**H.5 DOE-H-1004 NO THIRD PARTY BENEFICIARIES**

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

**H.6 DOE-H-1005 WORKER'S COMPENSATION INSURANCE**

(a) The Contractor shall maintain workers' compensation insurance coverage pursuant to the requirements of FAR 28.307-2, FAR 28.308 and DEAR 970.2803-1. The insurance program must be approved by the CO and cover all eligible employees of the Contractor and comply with applicable Federal and State workers' compensation and occupational disease statutes.

(b) The Contractor shall submit to the CO an annual evaluation and analysis of workers' compensation program and cost. The Contractor's self-evaluation shall include but not be limited to:

- Claims management and periodic audits and reports; and,
- The reasonableness of self-insurance reserves and methods and assumptions used to establish the reserves, if applicable.

(c) The Contractor, if it is a state and/or an educational institution covered under a corporate insurance/self-insurance arrangement, shall provide the CO with full disclosure of the insurance program and components and a fair and equitable allocation of the corporate cost to the DOE contract.

(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 RESERVED (See H.106)**

**H.8 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.

Amendment 003 Confirmed

(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, 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.9 DOE-H-1032 RELEASE OF INFORMATION (REVISED)

Any proposed public release of information including publications, exhibits, or audiovisual productions pertaining to the effort/items called for in this contract shall be submitted at least ten (10) days prior to the planned issue date for approval. Proposed releases are to be submitted to Public Affairs Office, Department of Energy, Portsmouth/Paducah Project Office, 1017 Majestic Drive, Lexington, KY 40513, with a copy provided to the DCO and DCOR.

## H.10 EMCBC-H-1001 CONSERVATION OF ENERGY AND FUEL

The Contractor shall instruct Contractor employees in energy conservation practices. The Contractor shall operate under conditions that preclude the waste of energy.

The Contractor shall use lights only in areas where and at the time when work is actually being performed except in those areas where lighting is essential for purpose of safety and security. The Contractor shall integrate renewable energy technologies into its activities to the maximum extent practicable.

The Contractor shall maximize efforts to increase the fuel efficiency in its vehicles, and to maximize the use of alternative fuels in vehicles, including the use of bio-based diesel fuels and additives in construction vehicles.

Amendment 0035 Conformed

## H.11 EMCBC-H-1002 ADDITION AND ALTERATIONS TO IMPLEMENT EXECUTIVE ORDER 13423, STRENGTHENING FEDERAL ENVIRONMENTAL, ENERGY, AND TRANSPORTATION MANAGEMENT AND ITS IMPLEMENTING INSTRUCTIONS (REVISED)

This contract involves Contractor operation of Government-owned facilities and/or vehicles and the provisions of Executive Order 13423 are applicable to the Contractor to the same extent they would be applicable if the Government were operating the facilities or vehicles. Information on the requirements of the Executive Order and its Implementing Instructions may be found at http://ofee.gov/eo/eo13423_main.asp. The Department of Energy implements Executive Order 13423 through DOE Order 436.1, Departmental Sustainability. The Contractor is expected to integrate the sustainable practices identified in Executive Order 13423, and embedded in the DOE Orders, in all work conducted under this contract.

## H.12 EMCBC-H-1003 CONFIDENTIALITY OF INFORMATION

(a) To the extent that the work under this contract/Task Order 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 agree not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by the CO or DCO 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 his 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 who did not require the Contractor to hold it in confidence.

(b) The Contractor shall obtain the written agreement, in a form satisfactory to the CO or DCO, of each employee permitted access, whereby the employee agrees that he 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.

(c) The Contractor agrees, if requested by the Government, to sign an agreement identical, in all material respects, to the provisions of this clause, with each company supplying information to the Contractor under this contract, and to supply a copy of such agreement to the CO or DCO. From time to time upon request of the CO or DCO, 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.

Amendment 0030 Conformed

(d) 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.

(e) This clause shall flow down to all subcontracts.

## H.13 EMCBC-H-1004 MODIFICATION AUTHORITY

Notwithstanding any of the other provisions of this contract/Task Order, the CO or DCO shall be the only individual authorized to:

(a) accept nonconforming work,

(b) waive any requirement of this contract, or

(c) modify any term or condition of this contract.

## H.14 RESERVED

## H.15 RESERVED

## H.19 EMCBC-H-1010 RESPONSIBLE CORPORATE OFFICIAL

(a) The Contractor shall designate a Program Manager who will be the Contractor's authorized supervisor for technical and administrative performance of all work performed under each individual Task Order. The Program Manager shall provide the single point of contact between the Contractor and the DCOR under each individual Task Order.

(b) The Program Manager shall receive and execute, on behalf of the Contractor, such technical directions as the DCOR may issue within the terms and conditions of each individual Task Order.

## H.20 RESERVED

## H.21 EMCBC-H-1012 SECURITY

(a) Responsibility: It is the Contractor's duty to safeguard all classified information, special nuclear material, any information designated as sensitive and not subject to disclosure that may be provided either for Task Order proposal preparation or performance, and other DOE property. The Contractor shall, in accordance with DOE security regulations and requirements, be responsible for safeguarding and protecting against sabotage, espionage, loss and theft, classified information, sensitive information, and special nuclear material in the Contractor's possession in connection with the performance of work under this contract. Special nuclear material will not be retained after the completion or termination of the contract.

(b) Definition of Special Nuclear Material (SNM). SNM means: (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been

Amendment 003Conformed

determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

(c) Subcontracts and purchase orders. Except as otherwise authorized in writing by the DCO, the Contractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this contract.

## H.22 EMCBC-H-1013 SECURITY CLEARANCES AND BADGES (REVISED)

(a) The Contractor is required to conduct pre-employment investigative screening of prospective employees in order to ensure trustworthiness and reliability. The Contractor shall provide certification to the CO that an investigative screening has been completed prior to employment. The certification shall include verification of identity, previous employment and education, and the results of credit and law enforcement checks.

(b) Personnel assigned by the Contractor to work at the DOE site may be required to obtain a security clearance. The levels of clearance are as follows:

Clearance level
Q – sensitive
Q – non-sensitive
L – confidential/secret

Under this contract, only appropriate Contractor personnel are required to have an “L” clearance level. Limited key management and certain other personnel are required to have a “Q” clearance level. The Contractor shall seek opportunities to reduce the levels of clearance required for personnel and ensure that any Contractor personnel that have a clearance have a legitimate, demonstrable need for access to the category and level of classified information or matter, or category of Special Nuclear Material, for the performance of their official duties.

(c) This requirement may be waived by the CO for personnel not involved with classified information while clearances are being processed, or for personnel associated with the program for short periods of time, such as consultants.

(d) The Contractor shall retrieve and dispose of badges for employees: 1) who are no longer working on the contract; 2) who no longer require access; 3) when their badge expires; or 4) when the contract expires or is terminated.

## H.23 EMCBC-H-1014 REQUIRED INSURANCE AND BONDS

(a) Contractor’s Liability Insurance. The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below by which may arise out of or result from the Contractor's operations under each individual Task Order and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

Amendment 003Conformed

(1) Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
(2) Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
(3) Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
(4) Claims for damages insured by usual personal injury liability coverage;
(5) Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
(6) Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
(7) Claims for bodily injury or property damage arising out of completed operations; and,
(8) Claims involving contractual liability insurance applicable to the Contractor's obligations.

(b) The insurance required by this clause shall be written for not less than limits of liability specified in each individual Task Order or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of work until date of final payment and termination of any coverage required to be maintained after final payment.

(c) Certificates of insurance acceptable to the DCO shall be filed with the DCO prior to commencement of work. These certificates and the insurance policies required by this paragraph shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the DCO. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

(d) Performance Bond and Payment Bond

(1) The Contractor shall acquire and provide to the DCO proof of a performance bond or payment bond of obligations to subcontractors, satisfactory to the DCO.

(2) Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under each individual Task Order, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made

(e) The Contractor agrees to insert the substance of this clause in all subcontracts placed under each individual Task Order.

## H.24 EMCBC-H-1015 DISPUTES (REVISED)

In addition to any other clauses contained herein related to the Disputes clause of this contract, any dispute between the Contractor and the Ordering Office [PPPO] shall be handled between the CO identified in the basic contract and the Contractor.

Amendment 003 Conformed

## H.25 EMCBC-H-1016 AWARD FEE (REVISED) (Applicable to cost-reimbursable CLINS only)

Beginning on the effective date of the Task Order, the Government shall evaluate the Contractor's performance on a periodic basis as specified in the Task Order for a determination of the award fee earned by the Contractor.

The Contractor may earn a minimum and maximum award fee as specified in the Task Order. The award fee shall not exceed the fee ceiling established in B. 2 EMCBC-B-1002 Fee Ceiling. The DOE Fee Determination Official (FDO) shall determine the earned portion of the maximum award fee allocable to each performance period for possible award.

The DCO will issue a unilateral Task Order modification when the award fee, if any, has been determined by the FDO. The modification shall set forth the amount of fee earned for the performance period evaluated. Upon receipt of the Task Order modification, the Contractor may submit a public voucher for payment of the total award fee earned for the period evaluated.

## H.26 EMCBC-H-1017 AWARD FEE PLAN (Applicable to cost-reimbursable CLINs only)

The Contractor's award fee plan upon which the determination of award fee shall be based (including the criteria to be considered under each area evaluated and the percentage of award fee, if any, available for each area), will be unilaterally established by the Government. A copy of the plan will be provided to the Contractor 30 calendar days prior to the start of the first evaluation period.

The award fee plan will set forth the criteria upon which the Contractor will be evaluated for performance relating to the requirements in the Task Order.

The award fee plan may be revised unilaterally by the Government at any time during the period of performance. Notification of such changes shall be provided to the Contractor 30 calendar days prior to the start of the evaluation period to which the change will apply.

## H.27 EMCBC-H-1018 Payment of Base Fee and Award Fee (Applies to Cost-Plus-Award-Fee Task Orders only)

Base Fee - The base fee, if any, shall be paid for work performed under the Task Order as determined by the DCO, subject to the following withholding provisions. After payment of eighty-five percent (85%) of the base fee, the Government shall withhold further payment of base fee pending establishment of a reserve of fifteen (15%) of the total base fee or $100,000, whichever is less. This withholding shall be payable upon submission and acceptance of appropriate closing documents, after final audit of the Task Order has been completed and all audit exceptions have been resolved.

Award Fee - The amount of award fee to be paid, if any, shall be paid promptly upon receipt of an invoice submitted as a result of the Task Order modification setting forth the amount of award fee earned from the Fee Determination Official (FDO).

Amendment 0013 Conformed

## H.28 EMCBC-H-1019 DEPARTMENT OF LABOR WAGE DETERMINATIONS (REVISED)

In the performance of this contract the Contractor shall comply with the requirements of the U.S. Department of Labor Wage Determination(s) located in Section J.

## H.29 EMCBC-H-1020 PRESERVATION OF ANTIQUITIES, WILDLIFE AND LAND AREAS

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 CO or DCO the existence of any antiquities so discovered.

The Contractor shall also preserve all vegetation (including wetlands) except where such vegetation must be removed for survey or construction purposes. Any removal of vegetation shall be in accordance with the terms of applicable habitat mitigation plans and permits. Furthermore, all wildlife must be protected consistent with programs approved by the CO or DCO.

Except as required by or specifically provided for in other provisions of this contract and/or each individual Task Order, 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.30 EMCBC-H-1021 CONTRACTOR INTERFACE WITH OTHER CONTRACTORS AND/OR GOVERNMENT EMPLOYEES

The Government may award contracts for on-site work or services to additional Contractors. The Contractor shall cooperate fully with all other on site DOE Contractors, and with Government employees, and carefully fit its own work to such other work as may be directed by the DCO or a duly authorized representative. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other Contractor or by a Government employee.

## H.31 EMCBC-H-1022 CONTRACTOR PRESS RELEASES (REVISED)

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

Amendment 003 Conformed

## H.32 RESERVED

## H.33 EMCBC-H-1024 REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF THE OFFEROR (REVISED)

The Representations, Certifications, and Other Statements of the Contractor, dated (when proposal was originally submitted), made in response to Solicitation No. DE-SOL-0000638 (IDIQ Basic Contract) are hereby incorporated into this contract by reference as well as the Representations, Certifications, and Other Statements of the Contractor, dated (when proposal was originally submitted), made in response to Solicitation No. DE-SOL-0004563.

## H.34 EMCBC-H-1025 DISPOSITION OF INTELLECTUAL PROPERTY

As a supplement to paragraph (e) of 48 CFR 970.5227-1 RIGHTS IN DATA - FACILITIES (DEC 2000), the following provisions shall apply, in the event of Contractor default or termination, in order to enable DOE to assure continuity and completion of the particular remediation, decontamination or decommissioning activity or task.

Regarding technical data and other intellectual property, DOE may have access to, make copies of, and use all technical data, including limited rights data and restricted computer software and data and software obtained from subcontractors, necessary to continue the remediation, decontamination or decommissioning of the facility. Limited rights data and restricted computer software will be protected in accordance with the Rights in Data - Facilities clause. Contractor shall assure that its subcontractors and licensors make similar rights available to DOE and its Contractors.

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 or acquired by the Contractor, and any other intellectual property which are owned or controlled by the Contractor, at any time through completion of this Contract and which are incorporated or embodied in the design or construction or the facility being remediated or decontaminated, (1) to practice or to have practiced by or on behalf of 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.

## H.35 RESERVED

*In addition, the following special provisions apply to this Task Order. The provisions either replace those in the Basic IDIQ or are added.*

## H.101 DEFINITIONS

For purposes of Clause H.102, Workforce Transition and Benefits Transition: Plans and

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Timeframes; H.103, Workforce Transition and Employee Hiring Preferences; Clause H.104 , Employee Compensation: Pay and Benefits; Clause H.105, Special Provisions Applicable to Workforce Transition and Employee Compensation: Pay and Benefits; Clause H.106, Post-Task Order Responsibilities for Pension and Other Benefit Plans; and Clause H.107, Labor Relations, the following definitions are applicable (unless otherwise specified):

(A) "Grandfathered Employees" means those whom the East Tennessee Technology Park Pension Plan for Grandfathered Employees (ETTP MEPP) defines as "Grandfathered Employees".

(B) "USEC" means the United States Enrichment Corporation.

(C) "USEC" Employees" means those individuals who are regular employees of USEC at the Paducah Gaseous Diffusion Plant Site, and on the rolls of USEC during the period of performance.

(D) "Non-Grandfathered Employees" means employees who are not defined as Grandfathered Employees under the ETTP MEPP in accordance with the terms of the ETTP MEPP and applicable law.

(E) "LATA-KY" means LATA Environmental Services of Kentucky, LLC (LATA KY) and its first and second tier subcontractors under DOE Contract DE-AC30-10CC40020.

(F) "LATA-KY Employees" means employees (1) who hold regular appointments or who are regular employees on the rolls of LATA-KY and Grandfathered Employees on the rolls of LATA-KY's first and second tier subcontractors; and (2) who are employed at the Paducah Gaseous Diffusion Plant Site under DOE Contract DE-AC30-10CC40020.

(G) "UCOR" means URS CH2M Oak Ridge, LLC under Contract DE-SC0004645. UCOR is the current lead sponsor of the ETTP MEPP.

## H.102 WORKFORCE TRANSITION AND BENEFITS TRANSITION: PLANS AND TIMEFRAMES

(A) Workforce Transition Plan. In addition to the Task Order Implementation Plan required by Section C.1.1, PWS, of this Task Order, 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.103, Workforce Transition and Employee Hiring Preferences, and this Paragraph (A). Notwithstanding timeframes identified elsewhere in the Task Order, the Contractor shall perform the following activities in the specified timeframes:

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

(a) Submit to the Contracting Officer a description of any and all transition agreements that it intends to enter into with USEC and LATA-KY to ensure compliance with Clause H.103;

(b) Establish and submit to the Contracting Officer a written communication plan that details the communication that the Contractor and its subcontractors will

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engage in with USEC and LATA-KY regarding implementation of the hiring preference requirements set forth in Clause H.103;

(c) Provide estimated costs and detailed breakouts of the costs to accomplish workforce transition activities within the timeframes specified; and

(d) Obtain information from USEC and LATA-KY identifying their employees that have initially been identified as being at risk of being involuntarily separated. Provide and define a process as part of the transition agreements required in paragraph (A)(1)(a) above for obtaining updated and continuous information throughout the Workforce Transition Period regarding the identification of employees by USEC and LATA-KY that have been identified as being at risk of being involuntarily separated.

(2) Within 15 days after Notice to Proceed, the Contractor shall:

(a) Submit to the Contracting Officer copies of the draft 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.103; and

(b) Establish a written communication plan with USEC and LATA-KY Employees regarding the implementation of the hiring preferences in Clause H.103 and provide a copy to the Contracting Officer.

(3) Within 30 days after Notice to Proceed, the Contractor shall provide to the Contracting Officer copies of the final Workforce Transition Plan and the draft transition agreements it proposes to enter into consistent with requirements of Clause H.103 and Paragraphs (A)(1) and (2) above.

(4) Within 60 days after Notice to Proceed, the Contractor shall provide to the Contracting Officer copies of the final transition agreements described in paragraph (A)(3) 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.103, 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 Task Order Implementation Period and pursuant to Section C.1.1 of the PWS, such reports shall be provided to the Contracting Officer on a weekly basis.

(b) During the remainder of the period of performance, such reports shall be provided to the Contracting Officer on a biweekly basis.

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(6) Within 60 days after Notice to Proceed, the Contractor shall provide a written description of the process that it will utilize in obtaining information throughout the period of performance from USEC and LATA-KY regarding their respective employees that have been identified by their employer as being at risk of being involuntarily separated in order for the Contractor to ensure compliance with Clause H.103. The Contractor shall provide copies of all and any written agreements into which it has entered with USEC and LATA-KY for transitioning their respective employees pursuant to Clause H.103.

(B) Benefits Transition. The Contractor shall submit a written draft Benefits Transition Plan within 20 days after Notice to Proceed describing in detail the Contractor's plans and procedures as to how the Contractor will comply with Clause H.104, Employee Compensation: Pay and Benefits, Clause H.105, Special Provisions Applicable to Workforce Transition and 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 Notice to Proceed. All transitions into the ETTP MEPP, the ETTP MEWA and other existing benefit plans, as well as establishment of any new plans, shall be completed within 90 days after Notice to Proceed, if the Contractor has hired or will hire Grandfathered Employees. Otherwise, the Contractor shall transition in a timely manner into the above plans at such time, as it hires a Grandfathered Employee.

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

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

(i) Provide the Contracting Officer with a list of Contractor personnel who will be responsible for transitioning into the ETTP MEPP, the ETTP MEWA, 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 ETTP MEPP and the ETTP MEWA and contact information for the above personnel;

(ii) Request USEC and LATA-KY and UCOR to provide information and documents necessary for the Contractor to adhere to the requirements set forth in this Task Order pertaining to sponsorship of the ETTP MEPP, the ETTP MEWA, 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 Task Order Implementation 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 Notice to Proceed, the Contractor shall provide to the Contracting Officer a list of the information and documents that the Contractor has requested from UCOR, USEC and LATA-KY pertaining to the transition

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into the ETTP MEPP, the ETTP MEWA, 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 UCOR, USEC or LATA-KY. Regardless of such notification, the Contractor remains responsible under this Task Order for ensuring compliance with the terms of this Task Order, including the timeframes set forth in this clause and the requirements in Clause H.103, Workforce Transition and Employee Hiring Preferences, Clause H.104, Employee Compensation: Pay and Benefits, and Clause H.105, Special Provisions Applicable to Workforce Transition and Employee Compensation: Pay and Benefits.

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

(i) Submit a detailed description of its plans and processes, including timeframes and specific projected dates for accomplishment of each activity necessary to ensure compliance with the requirements set forth in Clauses H.104 (E) and H.105(B), including requirements pertaining to the transition of employee benefit plans; and

(ii) Meet via televideo, teleconference, and/or in person with relevant personnel who administer the benefit plans for the UCOR, USEC, and LATA-KY, if and when necessary. The meeting shall include the Contractor's benefit plan administrators and personnel, head of human resources, ERISA counsel, actuaries, and any and all other personnel deemed necessary by the Contractor. During such meeting, the Contractor shall discuss all matters necessary to ensure the Contractor adheres to its sponsorship obligations under Clauses H.104(E)(2) and H.105, Special Provisions Applicable to Workforce Transition and Employee Compensation: Pay and Benefits, including execution of transition agreements with UCOR, USEC, and LATA-KY as applicable. The minutes of the meeting as well as a written description of any substantive issues identified at the meeting shall be submitted to the Contracting Officer within two days after the meeting.

(d) Within 30 days after Notice to Proceed and as part of the written Benefits Transition Plan described in H.102(C), the Contractor shall provide a written description of how the existing pension and other benefit plans provided to employees pursuant to Clause H.104, Employee Compensation: Pay and Benefits, and Clause H.105, Special Provisions Applicable to Workforce Transition and Employee Compensation: Pay and Benefits, will be amended or restated during the 90 day Task Order Implementation Period. If an asset transfer(s) and/or the creation of a new benefit plan(s) are necessary in order for the Contractor to adhere to the benefits sponsorship requirements set forth in this Task Order, the Contractor shall provide a description of the necessary transactions, including but not limited to how the Contractor proposes to comply with the Task Order and applicable law governing such transactions.

(e) Within 45 days after Notice to Proceed, the Contractor shall:

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(i) Submit to the Contracting Officer a draft Contractor Employee Compensation Plan demonstrating how the Contractor will comply with the requirements of this Task Order 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 UCOR, including but not limited to, amendments effectuating the change in sponsorship/participating employer in the ETTP MEPP. 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 UCOR. 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 UCOR, USEC and LATA-KY to ensure the Contractor's compliance with the pay and benefits requirements set forth in Clauses H.104, Employee Compensation: Pay and Benefits, and H.105 Special Provisions Applicable to Workforce Transition and Employee Compensation: Pay and Benefits. Copies of these executed transition agreements shall be provided.

(f) No later than 60 days after Notice to Proceed 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 Task Order Implementation Period and throughout the remaining period of performance of the Task Order, 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 Task Order, and

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(b) Any and all other documents pertaining to implementation of and compliance with implementation of the compensation and benefit programs identified in Clause H.104, Employee Compensation: Pay and Benefits, and Clause H.105, Special Provisions Applicable to Workforce Transition and Employee Compensation: Pay and Benefits.

## H.103 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.206, FAR 52.222-17

(A) The right of first refusal for employment in Section I, FAR 52.222-17 (JAN 2013) Nondisplacement of Qualified Workers, is applicable to the service employees employed under the LATA-KY Contract DE-AC30-10CC40020 (hereinafter LATA-KY 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.

(1) The services to which the right of first refusal is applicable under FAR 52.222-17 are set forth in Sections C.1.6 and C.1.7. The Contracting Officer will provide written notification to the Contractor of additional sections of the PWS that constitute the same or similar services, and for which the LATA-KY DOE Contract is considered to be a predecessor contract. The obligation to offer employment under Paragraph (A) above shall continue for 90 days after issuance of the Task Order and also, 90 days after the Contractor's first date for performance of the same or similar services.

(2) If a service employee employed under the LATA-KY DOE Contract declines a bona fide express offer of employment under Paragraph (A) above, the Contractor need not provide the right of first refusal or the preference in hiring specified in paragraphs (B)(1)(a) and (b) below to such employee, but shall provide all other preferences in hiring in Paragraph (B) below, as applicable.

(B) The Contractor shall provide, during the Task Order Implementation Period and throughout the period of performance, preferences in hiring for vacancies at the Paducah Gaseous Diffusion Plant for non-managerial positions (i.e., all those below the first line of supervision) in non-construction activities of the PWS under this Task Order, in accordance with the hiring preferences in paragraphs (1) – (5) below (subject to paragraph (A) above, any applicable collective-bargaining agreement(s), applicable law, and site seniority), as set forth below.

(1) The Contractor shall provide USEC and LATA-KY Employees employed at the Paducah Gaseous Diffusion Plant Site who have been identified by their employer as

being at risk of being involuntarily separated, the preferences in paragraphs (a) – (c) in descending order of priority:

(a) A right of first refusal for vacancies in non-managerial positions that are substantially equivalent to the positions the above employees held at the time such were identified as being at risk of being involuntarily separated.

(b) A preference in hiring in for vacancies in non-managerial positions for the above employees who meet the qualifications for the position.

(c) A preference in hiring for vacancies in non-managerial positions for the above employees who may not meet the qualifications for the position, but who agree to become qualified and can become qualified by the commencement of active employment under this Task Order with the training provided pursuant to Clause H.105(A).

(2) The Contractor shall give a preference in hiring to individuals (1) who are former employees of USEC or former employees of LATA-KY and 2) who are entitled to recall rights consistent with any applicable site seniority and any applicable collective bargaining agreement(s) at the Paducah Gaseous Diffusion Plant Site.

(3) The Contractor shall give a preference in hiring to individuals set forth below in paragraphs (a) -- (c), in descending order of priority, who are eligible for the hiring preference contained in the clause in Section I of this Task Order entitled “DEAR 952.226-74, Displaced Employee Hiring Preference” (including USEC employees who are eligible for the preference pursuant to 42 U.S.C. §2297h-8(a)(5)) consistent with the provisions of any applicable Work Force Restructuring Plan, as amended from time to time, regarding the preferential hiring of employees:

(a) Grandfathered Employees who are former employees of LATA-KY or who are former USEC employees at the Paducah Gaseous Diffusion Plant Site;

(b) Former employees of USEC or of LATA-KY, or any other DOE contractor or subcontractor of a DOE contractor at the Paducah Gaseous Diffusion Plant Site; and

(c) Former employees of any other DOE contractor or subcontractor at a DOE defense nuclear facility.

(4) The Contractor shall give a preference in hiring to individuals (1) who were formerly employed at the Paducah Gaseous Diffusion Plant Site by USEC or LATA-KY; and (2) who were involuntarily separated (other than for cause) from their employment at the Paducah Gaseous Diffusion Plant Site; and (3) who are qualified for the position or who may not meet the qualifications for a particular position, but who agree to become qualified and can become qualified by the commencement of active employment under this Task Order.

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(5) The Contractor shall give a preference in hiring to individuals (1) who have separated from employment at the Paducah Gaseous Diffusion Plant Site (2) who are not barred from seeking employment at the Paducah Gaseous Diffusion Plant Site by the terms of employee waivers or releases of claims they executed; 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 Task Order.

## H.104 EMPLOYEE COMPENSATION: PAY AND BENEFITS

(A) Contractor Employee Compensation Plan

The Contractor shall submit a Contractor Employee Compensation Plan demonstrating how the Contractor will comply with the requirements of this Task Order within 90 days after Notice to Proceed (NTP). 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.

(B) Total Compensation System

The Contractor shall develop, implement and maintain formal policies, practices and procedures to be used in the administration of its compensation system including a compensation system Self-Assessment Plan 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 meet the tests of allowability established by and in accordance with FAR 31.205-6 and DEAR 970.3102-05-6, 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 approved by the Contracting Officer.

(C) Appraisals of Contractor Performance

DOE will conduct periodic appraisals of Contractor performance with respect to Total Compensation System implementation. Such appraisals will be conducted through either DOE validation of the Contractor's performance self-assessment of its Total Compensation System or third party expert review.

(D) Reports and Information

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

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(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 after the NTP, and at the time of any subsequent change to their total cash compensation.

(3) An Annual Report of Contractor Expenditures for Employee Supplemental Compensation through iBenefits no later than March 1 of each year.

(4) A performance self-assessment of the Total Compensation System implementation and results to include an evaluation of total benefits using the Employee Benefits Value Study and the Employee Benefits Cost Survey Comparison Analysis described in Paragraphs (F)(3)(a) and (b) below.

(E) Pay and Benefits Programs

The Contractor shall establish pay and benefit programs for employees in accordance with applicable law, the terms and conditions of this Task Order, including Clause H.104 Employee Compensation: Pay and Benefits, and H.105 Special Provisions Applicable to Workforce Transition and Employee Compensation: Pay and Benefits, applicable collective bargaining agreement(s), and the following requirements as set forth below; provided, however, that employees scheduled to work fewer than 20 hours per week receive only those benefits required by law. Employees are eligible for benefits, subject to the terms, conditions, and limitations of each benefit program.

(1) Pay. Employees hired by the Contractor shall receive pay which is competitive with the industry from which the Contractor recruits its employees, and in accordance with the terms and conditions of this Task Order, including any applicable collective bargaining agreement(s), and applicable law, including Section 4(c) of the Service Contract Act, as applicable.

(2) Pension and Other Benefits. The Contractor shall provide a total package of benefits to Grandfathered Employees and all other employees who are hired by the Contractor in accordance with the terms and conditions of this Task Order, any applicable collective bargaining agreement(s), and applicable law.

(3) Cash Compensation

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

(i) Any additional compensation system self-assessment data requested by the Contracting Officer that may be needed to validate and approve the Total Compensation System.

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

(iii) An Annual Compensation Increase Plan (CIP)

(iv) Individual compensation actions for the top contractor official (e.g., program manager or equivalent and key personnel not included in the CIP). For those key personnel included in the CIP, DOE will approve salaries upon initial Task Order award and when key personnel are replaced during the life of the Task Order. 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).

(v) Any proposed establishment of an incentive compensation plan (variable pay plan/pay-at-risk).

(b) The Contracting Officer's approval of individual compensation actions will be required only for the top contractor official (e.g., program manager or equivalent) and key personnel as indicated in (E)(3)(a)(iv) above. The base salary reimbursement level for the top contractor official establishes the maximum allowable salary reimbursement under the Task Order. Unusual circumstances may require a deviation for an individual on a case-by-case basis. Any such deviations must be approved by the Contracting Officer.

(c) Severance Pay is not reimbursable under this Task Order for an employee who:

(i) Voluntarily separates, resigns or retires from employment,

(ii) Is offered comparable employment with a successor/replacement contractor,

(iii) Is offered comparable employment with a parent or affiliated company, or

(iv) Is discharged for cause.

(d) Service credit for purposes of determining severance pay does not include (1) any period of prior service for which severance pay has been previously paid through a DOE cost-reimbursement contract or (2) any period of employment for USEC except for employment under the Cold Standby/Shutdown Contract, DE-AC0501OR22877 at Portsmouth. See H.105(B)(4).

(F) <u>Pension and Other Benefit Programs</u>

(1) No presumption of allowability will exist when the Contractor implements a new benefit plan or makes changes to existing benefit plans until the Contracting Officer makes a determination of cost allowability for reimbursement for new or changed benefit plans.

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(2) Cost reimbursement for 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 as part of its performance self-assessment described in Paragraph (D)(4) above and in calculating the cost of benefits under existing benefit plans. 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) An Employee Benefits Value Study (Ben-Val), every two years each for Grandfathered Employees, if any, and all other employees benefits, which is an actuarial study of the relative value (RV) of the benefits programs offered by the Contractor to Grandfathered Employees and all other employees measured against the RV of benefit programs offered by comparator companies approved by the Contracting Officer. To the extent that the value studies do not address post-retirement benefits other than pensions, the Contractor shall provide a separate cost and plan design data comparison for the post-retirement benefits other than pensions using external benchmarks derived from nationally recognized and Contracting Officer approved survey sources; and

(b) An Employee Benefits Cost Study Comparison, annually each for Grandfathered Employees and all other employees, that analyzes the Contractor's employee benefits cost for Grandfathered Employees and all other 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. Chamber of Commerce Annual Employee Benefits Cost Survey 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.

(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, when and if required by the Contracting Officer, 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.

(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 as approved by the Contracting Officer.

(7) The Contractor shall submit the Report of Contractor Expenditures for Supplementary Compensation for the previous calendar year no later than March 1

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of the current calendar year.

(8) The Contractor may not terminate any benefit plan during the term of the Task Order without the prior approval of the Contracting Officer in writing.

(9) Cost reimbursement for Post-Retirement Benefits (PRBs) is contingent on DOE approved service eligibility requirements for PRBs that shall be based on a minimum period of continuous employment service not less than five years under a DOE cost-reimbursement contract(s), including Task Order(s), immediately prior to retirement. Notwithstanding the previous sentence, the costs of PRBs will be reimbursed for individuals meeting the eligibility requirements of any applicable employee benefit plan approved for these purposes by DOE. Unless required by Federal or state law, advance funding of PRBs is not allowable.

(G) Establishment and Maintenance of Pension Plans for which DOE Reimburses Costs

(1) For cost allocability and reimbursement purposes, any defined benefit (DB) or defined contribution (DC) pension plans established and/or implemented by the Contractor shall be maintained consistent with the requirements of the Internal Revenue Code (IRC) and Employee Retirement Income Security Act (ERISA).

(2) Contractor policies, practices, and procedures used in the administration of pension plans shall be consistent with applicable law and regulations.

(3) Employees working for the Contractor shall only accrue credit for service under this Task Order after the date of Task Order award.

(4) 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 which provides credit for service not performed under a DOE cost-reimbursement Task Order or Contract.

(H) Basic Requirements

The Contractor shall adhere to the requirements set forth below in the establishment and administration of pension plans that are reimbursed by DOE pursuant to cost reimbursement contracts for management and operation of DOE facilities and pursuant to other cost reimbursement facilities contracts. Pension Plans include Defined Benefit and Defined Contribution plans. [These requirements apply to this Task Order.]

(1) The Contractor shall become a sponsor of the existing ETTP pension and other benefit plans (or comparable successor plans), including other post-retirement benefit (PRB) plans, as applicable, if and when it hires employees that are eligible to participate in the ETTP Plan and retired plan participants, with responsibility for management and administration of the plans. The Contractor shall be responsible for maintaining the qualified status of those plans.

(2) Except for Commingled plans in existence as of the effective date of this Contract, each pension plan covering contractor employees at designated DOE and contractor facilities shall be a separate pension plan as defined below.

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(3) DOE approval is required prior to implementing any change to a pension plan, which is being reimbursed under this cost-reimbursement Task Order. Changes shall be in accordance with and pursuant to the terms and conditions of the Task Order.

(4) DOE approval is required for each newly adopted pension plan or for any changes to Taft-Hartley pension plans.

(5) Each Contractor pension plan shall be submitted to an annual, full-scope audit by an outside independent organization and the resulting report, submitted to DOE, must provide the accounting details specified in ERISA Sections 103 and 104.

(6) The Contractor shall comply with the requirements of ERISA and any other applicable laws to the fullest extent practical, even if a specific pension plan is exempt from ERISA.

(7) Proposed pension plan changes will be evaluated by DOE, with approval/disapproval based on the merits of each proposed change, including but not limited to evaluation of the following:

(a) Total compensation.

(b) Pension benefit surveys published by the Bureau of Labor Statistics or other Contracting Officer approved broad based national survey.

(c) Retirement studies published by consulting firms, educational institutions, or policy groups.

(d) Software models developed by qualified actuaries.

(8) The Human Resources 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

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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 rational 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

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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.

(9) 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.

(I) Reimbursement of the Contractor for Contributions to Defined Benefit Pension Plans

(1) Contractors that sponsor single employer or multiple employer defined benefit pension plans will be reimbursed for the annual required minimum contributions under 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 defined benefit 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.

(J) Reporting Requirements

The following reports shall be submitted to DOE as soon as possible after the last day of the plan year by the Contractor, if it is 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 filling 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.

(K) Changes to Pension Plans

At least sixty (60) days prior to the adoption of any changes to benefits, plan design, or funding methods for a pension plan, the Contractor shall submit the information required

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below, as applicable, to the Contracting Officer for approval or disapproval and a determination as to whether the costs to be incurred are consistent with the Contractor's documented Human Resources Management Plan and are deemed allowable pursuant to FAR 31.205-6, as supplemented by DEAR 970.3102-05-6.

(1) For proposed changes to pension plans and pension plan funding, the Contractor shall provide the following to the Contracting Officer:

(A) a copy of the current plan document (as conformed to show all prior plan amendments), with the proposed new amendment indicated in redline/strikeout;

(B) an analysis of the impact of any proposed changes on actuarial accrued liabilities and costs;

(C) except in circumstances where the Contracting Officer indicates that it is unnecessary, a legal explanation of the proposed changes from the counsel used by the plan for purposes of compliance with all legal requirements applicable to private sector defined benefit pension plans;

(D) the Summary Plan Description; and,

(E) any such additional information as requested by the Contracting Officer.

(2) The Contractor shall obtain the advance written approval of the Contracting Officer for any non-statutory pension plan changes that may increase costs or liabilities, and any proposed special programs (including, but not limited to, plan-loan features, employee contribution refunds, or ancillary benefits) and shall provide DOE with an analysis of the impact of such special programs and other changes on the actuarial accrued liabilities of the pension plan, and on relative benefit value, if applicable.

(3) The Contractor 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.

(L) <u>Terminating Operations</u>

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

(1) No further benefits for service shall accrue.

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(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 dispose of such liabilities through a competitive purchase of annuities. Insurance companies bidding for such business shall satisfy Department of Labor requirements.

(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 DOE assets assigned to a spun-off or terminating plan shall be placed in a fixed-income portfolio until the successor trustee, or an insurance company, is able to assume stewardship of those assets. The portfolio shall be rated no lower than Standard & Poor's “AA.”

(M) Terminating Plans

(1) The Contractor shall not terminate any pension plan (Commingled or site specific) without notifying the Department at least 60 days prior to the scheduled date of plan termination.

(2) To the extent possible, the Contractor shall satisfy plan liabilities to plan participants by the purchase of annuities through competitive bidding on the open annuity market. Insurance companies bidding for this business shall satisfy Department of Labor standards. Otherwise, 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 the same day as the Contractor notifies the IRS of the plan termination, all DOE assets will be placed in a high-yield, fixed-income portfolio until full disposition of the terminating plan’s liabilities. The portfolio shall be rated no lower than Standard & Poor's “AA.”

(6) DOE liability for costs to a commingled pension plan shall not exceed that portion which corresponds to DOE Task Order or contract service. The DOE shall have no other liability to the plan, to the plan sponsor, or to the plan participants.

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(7) After all liabilities of the plan are satisfied, the Contractor shall return to DOE an amount equaling the asset reversion from the plan termination and any earnings which accrue on that amount because of a delay in the payment to DOE. Such amount and such earnings shall be subject to DOE audit. To effect the purposes of this paragraph, DOE and the Contractor may stipulate to a schedule of payments.

(N) Special Programs

The Contractor must advise DOE (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.

(O) Definitions

(1) Commingled Plans. Cover employees from the Contractor's private operations and its DOE contract work.

(2) Defined Benefit Pension Plan. Provides a specific benefit at retirement that is determined pursuant to the formula in the pension plan document.

(3) Defined Contribution Pension Plan. Provides benefits to each participant based on the amount held in the participant's account. Funds in the account may be comprised of employer contributions, employee contributions, investment returns on behalf of that plan participant and/or other amounts credited to the participant's account.

(4) Designated Contract. 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.

(5) 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.

(6) 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.

(7) 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."

Amendment 003 Conformed

## H.105 SPECIAL PROVISIONS APPLICABLE TO WORKFORCE TRANSITION AND EMPLOYEE COMPENSATION: PAY AND BENEFITS

(A) Training. The Contractor will establish a training program specifically for the purpose of training individuals pursuant to Clauses H.103(B)(1)(c) and H.103(B)(4) and (5). The one-time training program will be provided to individual employees and will not exceed six months in duration and $5,000 in cost (subject to availability of funding) per person, in addition to wages and benefits.

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

(1) Grandfathered Employees. Grandfathered Employees shall be provided pension and other benefits in accordance with applicable law, any applicable collective bargaining agreement(s), and the provisions of the ETTP MEPP, the ETTP Multiple Employer Welfare Arrangement (MEWA) and other existing benefit plans for Grandfathered Employees. Within 90 days after NTP, the Contractor, if it has employees eligible to participate in the ETTP MEPP, shall become a sponsor/participating employer of the ETTP MEPP, the ETTP MEWA, and other existing benefit plans (or comparable successor plans if continuation of the existing plans is not practicable) including post-retirement benefit (PRB) plans, as applicable, for Grandfathered Employees and retired plan participants, with responsibility for management and administration of these plans. If “Grandfathered Employees” are hired subsequent to the initial 90 days, the Contractor shall become a sponsor/participating employer in the ETTP MEPP, in a timely manner. The Contractor shall also have responsibility for maintaining the qualified status of the plans. No employee who qualifies as a Grandfathered Employee under the ETTP MEPP shall lose the right to participate in the ETTP MEPP as a result of this transition.

(2) Non-Grandfathered Employees. Non-Grandfathered Employees shall receive a benefits package that provides for market-based retirement and medical benefit plans that are competitive with the industry from which the Contractor recruits its employees and in accordance with this Task Order, any applicable collective bargaining agreement(s), and applicable law, including Section 4(c) of the Service Contract Act.

(3) Service Credit For Leave. For LATA-KY and USEC Employees hired by the Contractor pursuant to either Clauses H.103(A) and (B)(1)(a), (b), and (c); the Contractor shall carry over the length of service credit from the previous employer for purposes of determining rates of accruing leave for these employees as required by and consistent with any applicable collective bargaining agreement(s) and applicable law

(4) Service Credit for Fringe Benefits Other Than Leave. Service credit for all individuals hired by the Contractor shall be applied consistent with any applicable collective bargaining agreement(s), applicable law, and the terms of the applicable benefit plan(s). Service credit for purposes of severance pay is subject to Clause H.104(E)(3)(d).

Amendment 0003 Confirmed

Consistent with the above, the Contractor shall credit all LATA-KY and USEC Employees hired by the Contractor under this Contract with their current length of service toward fringe benefits, which also includes retirement benefits and severance pay (except as specified below and in H.104(E)(3)(d). Consistent with the terms of the plan(s), any transition of the employees from LATA-KY and USEC to the Contractor shall not constitute a break in service under the plan(s).

For purposes of calculating severance pay, the Contractor shall not provide credit for service to USEC for USEC Employees hired by the Contractor under this Task Order except for service accrued for work performed under DOE Contract DE-AC0501OR22877 at Portsmouth.

(C) Administrative Agreements with Lead Sponsor. The lead sponsor (UCOR) or a lead sponsor successor of the ETTP MEPP, ETTP MEWA and other benefit plans in which UCOR or a lead sponsor successor are participating employers/sponsors, shall have responsibility for management and administration of these plans, consistent with plan documents and any other administrative documents. UCOR or a successor lead sponsor shall provide management and administrative services for the Contractor for the ETTP MEPP, ETTP MEWA, and other benefit plans in which the Contractor and UCOR or a successor lead sponsor are participating employers/sponsors. The Contractor shall enter into administrative agreements with the lead sponsor, UCOR, or a successor lead sponsor, for the management and administration of these plans when the Contractor has Grandfathered Employees participating in the ETTP Plan(s). The agreements and costs contained therein shall be subject to the approval of the Contracting Officer.

(D) Annual Actuarial Evaluations. Notwithstanding the above, the Contractor has responsibility for administering and maintaining the qualified status of its segments of all pension and other benefit plans that it sponsors under this Task Order and for the plans themselves consistent with the plan documents. The Contractor shall submit to the Contracting Officer annual actuarial evaluations for all applicable benefit plans as well as certify that the benefit plans are in full compliance with IRC and ERISA requirements. Such certification shall demonstrate that the benefit plans are qualified under the IRC. This evaluation shall include but not be limited to written reports relating to how the benefit plans pass IRC discrimination, participation and coverage testing requirements. Each detailed annual written actuarial evaluation shall identify any conditions that may adversely affect the qualification status of the plans within eighteen months or less of the date of the evaluation, including but not limited to discrimination, participation and coverage testing requirements for the contractor and any of its subcontractors that are participating employers in the plans.

(1) Meeting Test Requirements. The Contractor shall closely monitor each of its individual subcontractor employer segments participating in the ETTP MEPP. With the approval of the Contracting Officer, the Contractor shall establish threshold factors that – based upon the experience of the ETTP MEPP regarding the testing requirements – indicate when the Contractor and/or its individual subcontractor employer segments may not meet testing requirements within the next two plan years. Every six months the Contractor shall identify any employer plan segments for the Contractor and its individual subcontractor employee segments that may not meet testing requirements for the current plan year and the following plan year.

(2) Failure to Meet Test Requirements. In the case of employer segments for which the approved threshold factors described in Paragraph (D)(1) above and other factors as

Amendment 0035 Confirmed

approved or requested by the Contracting Officer indicate that the employer segments may not meet testing requirements, the Contractor, in conjunction with the lead sponsor, shall provide the Contracting Officer with a corrective action plan for addressing the potential or actual failure to meet testing requirements and quarterly updates on the segment's status for testing purposes. After the corrective action plan has been submitted and approved by the Contracting Officer, the Contractor shall provide quarterly updates on the segment's status for testing purposes.

(E) Withdrawal from the ETTP MEPP. In addition to the requirement in Clause H.104(M)(1), the Contractor shall not withdraw from the ETTP MEPP or the ETTP MEWA without the consent of the Contracting Officer. If the Contractor withdraws without the consent of the Contracting Officer, all costs associated with such withdrawal may be determined to be unallowable and the Government retains the right to assert a claim against the Contractor for any costs of the Department associated with such withdrawal.

(F) Changes to the ETTP MEPP. In addition to any other provisions of this Task Order, including but not limited to Clauses H.104(K), any changes or amendments to the ETTP MEPP are subject to Contracting Officer prior approval and shall be in accordance with applicable law, including compliance with any applicable collective bargaining agreement(s).

(G) Equivalent Benefits to the ETTP MEWA. Subject to the approval of the Contracting Officer and to the extent consistent with any applicable collective bargaining agreement(s) and applicable law, the Contractor may provide equivalent benefits to those benefits provided under the ETTP MEWA to Grandfathered Employees.

(H) Change in Name. The name(s) of the ETTP MEPP, the ETTP MEWA, and other benefit plans may change as a result of the change in lead sponsorship of these plans. Any references to the ETTP MEPP, the ETTP MEWA, and other benefit plans contained in this Task Order apply to these plans as renamed.

## H.106 POST-TASK ORDER RESPONSIBILITIES FOR PENSION AND OTHER BENEFIT PLANS

(A) If this Task Order expires, terminates, and/or is terminated partially or completely and DOE has awarded a task order or a contract under which a new contractor becomes a sponsor /participating employer and assumes responsibility for management and administration of the ETTP MEPP, the ETTP MEWA, or any other benefit plans (collectively, the "Plans"), covering active or retired Grandfathered Employees and Non-Grandfathered Employees with respect to employees at the Paducah Gaseous Diffusion Plant Site, the Contractor shall cooperate with and transfer to the new contractor the responsibility for sponsorship, and management and administration of such Plans consistent with direction from the Contracting Officer.

(B) If this Task Order expires, terminates and/or is terminated partially or completely and DOE has not awarded a task order or contract to a new contractor under which a new contractor becomes a sponsor and/or primary sponsor and/or assumes partial or primary responsibility for management and administration of the Plans, or if the Contracting Officer determines that the scope of work under the Task Order has been completed (any one such event may be deemed by the Contracting Officer to be "Task Order Completion" for

Amendment 003 Conformed

purposes of this clause), whichever is earlier, and notwithstanding any other obligations and requirements concerning expiration or termination under any other clause of the Task Order, the following actions shall occur regarding the Contractor's obligations regarding the Plans at the time of Task Order Completion:

(1) Subject to Paragraph (B)(2) below, and notwithstanding any legal obligations independent of the Task Order, the Contractor may have regarding responsibilities for sponsorship, management, and administration of the Plans, the Contractor shall remain a sponsor/ participating employer of the Plans, in accordance with applicable legal requirements.

(2) The Contractor and DOE shall exercise their best efforts to reach agreement on the Contractor's responsibilities for sponsorship, management and administration of the Plans prior to or at the time of "Task Order Completion." However, if the parties have not reached agreement on the Contractor's responsibilities for sponsorship, management and administration of the Plans prior to or at the time of "Task Order Completion," unless and until such agreement is reached, the Contractor shall comply with written direction from the Contracting Officer regarding the Contractor's responsibilities for continued provision of pension and welfare benefits under the Plans, including but not limited to continued sponsorship of the Plans, in accordance with applicable legal requirements. To the extent that the Contractor incurs costs in implementing direction from the Contracting Officer, the Contractor's costs will be reimbursed pursuant to applicable Task Order provisions.

(C) In the event a transfer of assets in the ETTP MEPP is determined to be necessary, the Contractor shall cooperate fully in the transfer of any assets in a manner consistent with any fiduciary duty, applicable law and subject to the approval and direction of the Contracting Officer.

## H.107 DOE-H-1003 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.

Amendment 0030 Confirmed

(c) The Contractor will seek to maintain harmonious bargaining relationships that reflect a judicious expenditure of public funds, equitable resolution of disputes and effective and efficient bargaining relationships consistent with the requirements of FAR, Subpart 22.1 and DEAR, Subpart 970.2201 and all applicable Federal and State Labor Relations laws.

(d) The Contractor will notify the Contracting Officer or designee in a timely fashion of all labor relations issues and matters of local interest including organizing initiatives, unfair labor practice, work stoppages, picketing, labor arbitrations, and settlement agreements and will furnish such additional information as may be required from time to time by the Contracting Officer.

## H.108 WORKFORCE RESTRUCTURING

Notwithstanding any other provision in this Task Order, when the Contractor determines that a reduction of force is necessary, the Contractor shall notify the Contracting Officer in writing in accordance with DOE Order 350.1 and other related guidance. 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.103, Workforce Transition and Employee Hiring Preferences.

## H.109 INTEGRATED CONTRACTOR 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 Task Order exclusive of fee as stated in Section B of the Task Order 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-9 “Integrated Contractor Work Control Systems and Reporting Requirements Clause,” paragraphs A.1 and A.2. The Contractor shall submit a Project Controls System Description (PCSD) during the Task Order Implementation Period that documents the project controls system specified by this Task Order.

This clause is in addition to the requirements of DOE Order 413.3B, *Program and Project Management for the Acquisition of Capital Assets,* which are applicable to the Contractor. The CPB should include the requirements/information in DOE 413.3B, when applicable to the specific work and to the Contractor.”

Amendment 003 Conformed

## B. Baseline Development and Performance Reporting

The Contract Performance Baseline (CPB) represents the cost, schedule, and scope as it relates to the total estimated cost of the Task Order exclusive of fee as stated in Section B of the Task Order for the work scope and performance period being authorized. The CPB includes all work identified in this Task Order (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-9, "Integrated Contractor Work Control Systems and Reporting Requirements Clause," and this Task Order).

The CPB documents must be in sufficient[1] detail 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 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 CPB will be reviewed by DOE and 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 Task Order Implementation Period, generally 90 days after award or receipt of Notice to Proceed from the CO the Contractor shall develop and submit for approval by the CO:

   i. An Initial CPB[2] for the Task Order performance period that matches the Contractor's cost proposal.
   ii. An Interim CPB[3] that provides work planning, measurement and management details as listed below to cover approximately the first 15 months[4] of performance starting from the award date or 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. Work Breakdown Structure (WBS) and WBS dictionary;

[1] Sufficient: The basis for cost and schedule allocations is documented at a level of WBS structure where work activities, their costs and schedule, are planned and controlled by the Contractor.
[2] Initial CPB is simply the baseline plan at Task Order award. It should be the scope, cost and schedule as submitted with the contractor's proposal with any revisions resulting from negotiations leading to Task Order award
[3] Interim CPB is generally required within 90 days from Notice to Proceed and will cover the first approximately 15 months of the Task Order. The Interim CPB must match the scope and cost for this period in the Task Order. When the Task Order 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.
[4] The interim period will vary based on Task Order award date by plus or minus 6 months, to align the end of interim period with the fiscal year. For a contract or task order award made on January 1, the interim period will be 21 months and for every month after that the interim period will be reduced by a month.

Amendment 003Confirmed

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.

b. The Interim CPB must reflect the requirements of the Task Order Performance Work Statement (PWS) for approximately the first 15 months.
c. If Task Order changes are negotiated within the Task Order Implementation Period, the Contractor shall incorporate these approved changes into the Interim CPB. Subsequent changes negotiated after the Task Order Implementation Period will be incorporated in the Interim CPB through contract and baseline change approvals.
d. The Contractor shall immediately begin performance reporting against the Interim CPB as submitted to the Contracting Officer and before receiving approval of the Interim CPB. If the Contractor is required to have a certified EVMS, the Interim CPB must have the necessary data elements to support EVMS certification requirements.

NOTE: If the Contractor's Initial CPB has the details described above for Interim CPB, the Contractor may request waiver for a separate submission.

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

During the first six months after the Task Order Implementation Period, in addition to performing and reporting progress against the Interim CPB, the Contractor shall develop and submit for DOE approval detailed plans (See section J, Attachment J-9, "Integrated Contractor Work Control Systems and Reporting Requirements Clause," 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 Task Order Implementation Period, the Contractor shall submit for approval by the CO, the full CPB[5] for the full scope of the Task Order that is made up of CPB segments for each capital asset project and for each operating activity, and the required data to support EVMS reviews when EVMS is required. CPB segments shall be developed in accordance with applicable policy and guidance documents noted in Section J, Attachment J-9, "Integrated Contractor Work Control Systems and Reporting Requirements Clause," paragraphs A.1, A.2 and B.1.

[5]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 Task Order exclusive of fee as stated in Section B of the Task Order. Contract Budget Base (CBB) is the cost element of the CPB and equals the Contract Price (CP) minus Fee (CBB=CP-Fee).

Amendment 003 Confirmed

b. The Contractor shall provide monthly status of the CPB document preparation progress to the CO.
c. The full CPB submittal shall include both hard copies and electronic files.

3. **CPB and Contract Alignment**

It is critically important to DOE that the CPB remain aligned with the Task Order, including any changes, throughout the Task Order 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, all fee payments will be withheld if at any time during contract performance the CPB is not aligned with the Task Order.

4. **Reviews**

a. After completion of the Task Order Implementation 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 Task Order. 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. Due to the requirement for a certified EVMS, the Contractor shall begin earned value reporting no later than the end of the Task Order Implementation Period. The Contractor shall initiate discussions with the CO to schedule an EVMS certification review immediately after award or a Notice to Proceed is issued and when three months of earned value data is available (and no later than three months after the Task Order Implementation 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 Task Order. 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 Performance Report to the CO with copy to the Office of Project Assessment at 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

Amendment 0001 Conformed

projects, contracts or operating activities, see the table in Section J, Attachment J-9, "Integrated Contractor Work Control Systems and Reporting Requirements" paragraph C, Performance Reporting.

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 Task Order 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.

C. **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 Task Order terms and conditions.
2. The CPB must remain aligned with the Task Order. This means that the sum total of all CPB segments must equal total estimated cost of the Task Order exclusive of fee as stated in Section B of the Task Order
3. If a change to the Task Order scope is required and is in accordance with the Changes clause, the Contractor shall submit the CPB change proposal concurrently with a request for Task Order change proposal to the CO within 60 days. If the CO issues a unilateral Task Order modification, the Contractor shall submit a revised CPB in accordance with direction accompanying the Task Order modification.

Any changes to the CPB resulting from internal replanning or use of Management Reserve shall also be provided to the CO for information and/or approval as applicable. All change control actions will follow the Task Order and the approved project change control procedures as approved by the CO as part of the full CPB documentation.

## H.110 INTEGRATED SAFETY MANAGEMENT SYSTEM (ISMS) AND ENVIRONMENTAL SAFETY AND HEALTH (ES&H) PROGRAM

The Contractor shall prepare a Worker Safety and Health Program (WSHP) as required by 10 CFR 851. The WSHP shall be fully implemented prior to the start of any work, including office work, at the Paducah GDP site.

<u>ISMS</u>

The Contractor shall maintain a Safety Management System (SMS) to implement DOE Integrated Safety Management System (ISMS) requirements to integrate safety into all activities including environmental compliance (See DOE P 450.4A "Integrated Safety Management Policy" and DEAR 970.5223-1, " Integration of Environment, Safety, and Health into Work Planning and Execution."). In accordance with ISMS, the Contractor shall:

Define the work to be performed

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Identify hazards associated with the work

Control the hazards

Perform work within the controls, and

Routinely improve its SMS through continuous evaluation.

The Contractor shall prepare an ISMS description to implement the Contractor's ISMS within 90 days after Notice to Proceed. The ISMS Plan shall identify how the Contractor will maintain compliant and safe operations by integrating safety and health into all activities including environmental compliance.

Health and Safety Plan

The Contractor shall prepare an Activity Specific Health and Safety Plan (ASHASP) and Job Hazards Analysis as needed as part of the overall project safety program. Copies of these documents will be provided to DOE for information.

The Contractor shall provide the necessary personnel protective equipment (PPE), safety briefings and escorts when needed for all visitors (both Government and non-Government) to Contractor controlled work areas. The Contractor shall be responsible for the subsequent decontamination and disposal of such PPE.
The Contractor shall provide medical screening of the DOE field office personnel if required to enter the work areas and meet the requirements of the Worker Safety and Health Program (10 CFR 851), or Occupational Radiological Protection (10 CFR 835).

## H.111 QUALITY ASSURANCE (QA) FOR WORK AFFECTING NUCLEAR SAFETY

As referenced in Clause E.1, the Contractor shall implement a DOE-approved Quality Assurance Program (QAP) in accordance with the EM Quality Assurance Program, EM-QA-001/R1 and DOE O 414.1D, 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).
EM requires that EM-QA-001 (EM-QAP) adopts the American Society of Mechanical Engineers (ASME) NQA-1, 2008 with addendum to 2009, for Deactivation and Decommissioning (D&D) be implemented as part of the Contractor's QAP 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 (graded approach). NQA-1 Parts III and IV are to be used as guidance for the Contractor's QAP and implementing procedures.

## H.112 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

Amendment 003 Conformed

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 available fee for changes to Key Personnel, and identification of all Key Personnel for this Task Order.

B. Key Personnel Team Requirements

The Contracting Officer 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 Task Order.

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 being placed in the position, Available Fee described in Section B, may be permanently reduced by $250,000 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 being placed in the position, Available Fee described in Section B, may be permanently reduced by $125,000 for each and every occurrence of a change.

(3) The Contractor may request in writing that the Contracting Officer consider waiving all or part of a reduction in Available Fee. Such written request shall include the factual basis for the request. The Contracting Officer shall have the unilateral discretion to make the determination to waive all or part of the reduction in Available Fee.

E. Key Personnel for this Task Order

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

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| NAME | TITLE |
|---|---|
| *To be filled out at time of award* | Program Manager |
| | |
| | |

## H.113 CYBER SECURITY PROGRAM

In accordance with DOE O 205.1B DEPARTMENT OF ENERGY CYBER SECURITY MANAGEMENT PROGRAM, regardless of the performer of the work, the Contractor is responsible for compliance with the provisions and requirements, flowing down applicable Contractor Requirements Document (CRD) requirements to subcontractors at any tier, and to ensure compliance with DOE O 205.1B.

## H.114 CONTRACTOR ASSURANCE SYSTEM

The Contractor must prepare a contract assurance system program description to show compliance with DOE Order 226.1 Implementation of DOE Oversight Policy and submit it to the DCOR for approval.

## H.115 RESERVED

## H.116 DOE-H-1065 PRIVACY ACT SYSTEMS OF RECORDS (July 2011)

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 (APR 1984)*.

| System | Title |
|---|---|
| DOE-05 | Personnel Records of Former Contractor Employees |
| DOE-10 | EEOICPA Files |
| DOE-13 | Payroll & Leave Records |
| DOE-14 | Report of Compensation |
| DOE-15 | Intelligence Related Access Authorization |
| DOE-23 | Property Accountability System |
| DOE-28 | General Training Records |
| DOE-31 | Firearms Qualifications Records |
| DOE-33 | Personnel Medical Records |
| DOE-35 | Personnel Radiation Exposure Records |
| DOE-38 | Occupational and Industrial Accident Records |
| DOE-43 | Personnel Security Clearance Files |

Amendment 0002 Conformed

DOE-53 Access Authorization for ADP Equipment
DOE-88 Epidemiologic and Other Health Studies, Surveys, and Surveillances

If the list in the table above 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, Contractors must review the list annually and notify the Contracting Officer, in writing, that the list is accurate and up to date. If any of these systems will be subcontracted to a third party contractor, the Privacy Act and subsequent systems of records are required to be flowed down to the contractor, as well as records turnover language.

The list in the table above 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 agreement of the parties. The mutually agreed upon revisions shall have the same effect as if actually listed above for the purpose of satisfying the listing requirement contained in paragraph (a)(1) of the contract clause entitled, FAR 52.224-2, *Privacy Act (APR 1984)*. 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.

## H.117 ACCESS TO AND OWNERSHIP OF RECORDS (July 2005)

(A) Government-owned records. Except as provided in paragraph (B) of this clause, all records acquired or generated by the Contractor in its performance of this contract shall be the property of the Government and shall be delivered to the Government or otherwise disposed of by the Contractor either as the Contracting Officer may from time to time direct during the progress of the work or, in any event, as the Contracting Officer shall direct upon completion or termination of the contract.

(B) Contractor-owned records. The following records are considered the property of the Contractor and are not within the scope of paragraph (A) of this clause.

(1) Employment-related records (such as worker's compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns; records generated during the course of responding to allegations of research misconduct; records generated during other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/health-related records and similar files), and non-employee patient medical/health-related records, except for those records described by the contract as being maintained in Privacy Act systems of records;

Amendment 003 Conformed

(2) Confidential Contractor financial information, and correspondence between the Contractor and other segments of the Contractor located away from the DOE facility (i.e., the Contractor's corporate headquarters);

(3) Records relating to any procurement action by the Contractor, except for records that under 48 CFR 970.5232-3, Accounts, Records, and Inspection, are described as the property of the Government; and

(4) Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges.

(C) Contract completion or termination. In the event of completion or termination of this contract, copies of any of the Contractor-owned records identified in paragraph (b) of this clause, upon the request of the Government, shall be delivered to DOE or its designees, including successor Contractors. Upon delivery, title to such records shall vest in DOE or its designees, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act), as appropriate.

(D) Inspection, copying, and audit of records. All records acquired or generated by the Contractor under this contract in the possession of the Contractor, including those described at paragraph (b) of this clause, shall be subject to inspection, copying, and audit by the Government or its designees at all reasonable times, and the Contractor shall afford the Government or its designees reasonable facilities for such inspection, copying, and audit; provided, however, that upon request by the Contracting Officer, the Contractor shall deliver such records to a location specified by the Contracting Officer for inspection, copying, and audit. The Government or its designees shall use such records in accordance with applicable federal laws (including the Privacy Act), as appropriate.

(E) Applicability. Paragraphs (b), (c), and (d) of this clause apply to all records without regard to the date or origination of such records.

(F) Records retention standards. Special records retention standards, described at DOE Order 200.1, Information Management Program (version in effect on effective date of contract), are applicable for the classes of records described therein, whether or not the records are owned by the Government or the Contractor. In addition, the Contractor shall retain individual radiation exposure records generated in the performance of work under this contract until DOE authorizes disposal. The Government may waive application of these record retention schedules, if, upon termination or completion of the contract, the Government exercises its right under paragraph (c) of this clause to obtain copies and delivery of records described in paragraphs (a) and (b) of this clause.

(G) Subcontracts. The Contractor shall include the requirements of this clause in all subcontracts that are of a cost-reimbursement type if any of the following factors is present:

(1) The value of the subcontract is greater than $2 million (unless specifically waived by the Contracting Officer);

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

Amendment 0 is Conformed

(3) The subcontract includes 48 CFR 970.5223-1, Integration of Environment, Safety, and Health into Work Planning and Execution, or similar clause.

## H.118 LOBBYING RESTRICTION (CONSOLIDATED APPROPRIATIONS ACT, 2013)

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 regulation.

## H.119 WORK STOPPAGE AND SHUTDOWN AUTHORIZATION (JULY 2011)

Imminent Health and Safety Hazard is a given condition or situation which, if not immediately corrected, could result in a serious injury or death, including exposure to radiation and toxic/hazardous chemicals. Imminent Danger in relation to the facility safety envelope is a condition, situation, or proposed activity which, if not terminated, could cause, prevent mitigation of, or seriously increase the risk of (1) nuclear criticality, (2) radiation exposure, (3) fire/explosion, and/or (4) toxic hazardous chemical exposure.

Work Stoppage. In the event of an Imminent Health and Safety Hazard, identified by facility line management or operators or facility health and safety personnel overseeing facility operations, or other individuals, the individual or group identifying the imminent hazard situation shall immediately take actions to eliminate or mitigate the hazard (i.e., by directing the operator/implementer of the activity or process causing the imminent hazard to stop work, or by initiating emergency response actions or other actions) to protect the health and safety of the workers and the public, and to protect U.S. Department of Energy (DOE) facilities and the environment. In the event an imminent health and safety hazard is identified, the individual or group identifying the hazard should coordinate with an appropriate Contractor official, who will direct the shutdown or other actions, as required. Such mitigating action should subsequently be coordinated with the DOE and Contractor management. The suspension or stop-work order should be promptly confirmed in writing by the Contracting Officer.

Shutdown. In the event of an imminent danger in relation to the facility safety envelope or a non-Imminent Health and Safety Hazard identified by facility line managers, facility operators, health and safety personnel overseeing facility operations, or other individuals, the individual or group identifying the potential health and safety hazard may recommend facility shutdown in addition to any immediate actions needed to mitigate the situation. However, the recommendation must be coordinated with Contractor management, and the DOE Site Manager. Any written direction to suspend operations shall be issued by the Contracting Officer, pursuant to the Clause entitled, “FAR 52.242-15, Stop-Work Order.”

Facility Representatives. DOE personnel designated as Facility Representatives provide the technical/safety oversight of operations. The Facility Representative has the authority to "Stop Work," which applies to the shutdown of an entire plant, activity, or job. This Stop Work authority

Amendment 003 Confirmed

will be used for an operation of a facility which is performing work the Facility Representative believes:

Poses an imminent danger to health and safety of workers or the public if allowed to continue; Could adversely affect the safe operation of, or could cause serious damage to the facility if allowed to continue; or

Could result in the release of radiological or chemical hazards to the environment in excess of regulatory limits.

This clause flows down to all subcontractors at all tiers. Therefore, the Contractor shall insert a clause, modified appropriately to substitute "Contractor Representatives" for "the Contracting Officer" in all subcontracts.

## H.120 DOE-H-1069 TRANSITION TO FOLLOW-ON CONTRACT (JULY 2011)

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

(A) At the expiration of the contract term or any earlier termination thereof, the Contractor shall cooperate with a successor Contractor or the Government by allowing its employees to interview for possible employment. For those employees who accept employment with the successor Contractor, such employees shall be released in coordinated manner with the successor Contractor. The Contractor shall cooperate with the successor Contractor and Government with regard to the termination or transfer arrangements for such employees to assure maximum protection of employee service credits and fringe benefits.

(B) Within fifteen (15) days after contract award, the Contractor and the outgoing Contractor shall jointly prepare a mutual detailed plan for the phase-out and phase-in of operations. This plan shall specify a training and orientation program to cover each phase of the scope of work covered by the contract. A proposed date by which the Contractor will assume responsibility from the outgoing Contractor for such work shall be established. The outgoing Contractor will maintain full responsibility for such work until assumption thereof by the Contractor. Execution of the proposed plan or any part thereof shall be accomplished in accordance with the Contracting Officer's direction and approval.

(C) This clause shall apply to subcontracts as approved by the Contracting Officer.

## H.121 MAJOR OR CRITICAL SUBCONTRACTS - DESIGNATION AND CONSENT

The following subcontractors have been determined to be major or critical subcontractors for this Task Order:

[To be inserted post-award if different from the Basic IDIQ Contract.]

Amendment 003 Conformed

## H.122 ACCESS TO DOE-OWNED OR LEASED FACTILITIES

(A) The performance of this contract requires that employees of the Contractor have physical access to DOE-owned or leased facilities; however, this clause does not control requirements for an employee's obtaining a security clearance. The Contractor understands and agrees that DOE has a prescribed process with which the Contractor and its employees must comply in order to receive a security badge that allows such physical access. The Contractor further understands that it must propose employees whose background offers the best prospect of obtaining a security badge approval for access, considering the following criteria, which are not all inclusive and may vary depending on access requirements:

(1) Is or is suspected of being, a terrorist;
(2) Is the subject of an outstanding warrant;
(3) Has deliberately omitted, concealed, or falsified relevant and material facts from any Questionnaire for National Security Positions (SF-86), Questionnaire for Non-Sensitive Positions (SF-85), or similar form;
(4) Has presented false or forged identity source documents;
(5) Has been barred from Federal employment;
(6) Is currently awaiting a hearing or trial or has been convicted of a crime punishable by imprisonment of six (6) months or longer; or
(7) Is awaiting or serving a form of pre-prosecution probation, suspension or deferred sentencing, probation or parole in conjunction with an arrest or criminal charges against the individual for a crime that is punishable by imprisonment of six (6) months or longer.

(B) The Contractor shall assure:

(1) In initiating the process for gaining physical access, (i) compliance with procedures established by DOE in providing its employee(s) with any forms directed by DOE, (ii) that the employee properly completes any forms, and (iii) that the employee(s) submits the forms to the person designated by the Contracting Officer.

(2) In completing the process for gaining physical access, that its employee (i) cooperates with DOE officials responsible for granting access to DOE–owned or leased facilities and (ii) provides additional information, requested by those DOE officials.

(C) The Contractor understands and agrees that DOE may unilaterally deny a security badge to an employee and that the denial remains effective for that employee unless DOE subsequently determines that access may be granted. Upon notice from DOE that an employee's application for a security badge is or will be denied, the Contractor shall promptly identify and submit the forms referred to in subparagraph (b)(1) of this clause for the substitute employee. The denial of a security badge to individual employees by DOE shall not be cause for extension of the period of performance of this Contract or any Contractor claim against DOE.

(D) The Contractor shall return to the Contracting Officer or designee the badge(s) or other credential(s) provided by DOE pursuant to this clause, granting physical access to DOE - owned or leased facilities by the Contractor's employee(s), upon (1) the termination of this Contract; (2) the expiration of this Contract; (3) the termination of employment on this Contract by an individual employee; or (4) demand by DOE for return of the badge.

Amendment 0035 Conformed

(E) The Contractor shall include this clause, including this paragraph (e), in any subcontract, awarded in the performance of this Contract, in which an employee(s) of the subcontractor will require physical access to DOE – owned or leased facilities.

## H.123 PARTNERING

In order to most effectively accomplish this Task Order, 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. The U.S. Army Corps of Engineers has championed partnering and their guidelines will be utilized in organizing partnering meetings and establishing a partnering agreement.

## H.124 WITHDRAWAL OF WORK

(A) The Government may, at its option and during the performance of this Task Order, unilaterally have any of the work contemplated by Section C, Performance Work Statement, of this Task Order performed by either another Contractor or to have the work performed by 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 interests 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.

## H.125 AUTHORIZATION FOR CAPITAL EXPENDITURES

The Contractor shall obtain approval from the Contracting Officer for any capital expenditure required for Surveillance and Maintenance (S&M) when the amount exceeds $250,000. For

Amendment 003 Confirmed

capital expenditures for S&M under $250,000, the Contractor shall notify the Contracting Officer and Federal Project Director 60 days prior to the start of activities.

## H.126 DOE-H-1070 CONTRACTOR COMMUNITY COMMITMENT (REVISED)

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

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

(a) Regional Educational Outreach Programs

The objectives of these programs include teacher enhancement, student support, curriculum enhancement, educational technology, public understanding, and providing the services of 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.

Amendment 003Conformed

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.127 URANIUM TRANSFER

1. General – The DOE may transfer to the Contractor uranium in exchange for the Contractor's performance of the PWS. Any transfer will be conducted in accordance with applicable laws and regulations, including but not limited to Section 3112 of the USEC Privatization Act. DOE may transfer a quantity of uranium to the Contractor in exchange for an equivalent fair market value of services. The Contractor agrees to perform the services to the point at which total amount of services owed from the transfer does not exceed the value, established as discussed below, of the transferred uranium. To the extent practicable, DOE anticipates providing the Contractor an estimate of the amount of uranium to be transferred two quarters in advance of such transfers. Failure by DOE to provide such estimates in advance does not relieve the Contractor from performance under the Task Order.

2. Title Transfer – The Contractor shall take title to the uranium transferred by DOE in compliance with all applicable laws and regulations. Prior to first title transfer, a detailed Uranium Transfer Plan that includes a description of compliance with applicable laws and regulations shall be submitted to DOE. The Uranium Transfer Plan is an integrated checklist of the conditions that have to be met for DOE to transfer the material to the Contractor, not a plan for the Contractor's sale, transfer or disposition of the uranium; any subsequent sale, transfer or disposition of the uranium transferred by DOE to the Contractor will not be subject to DOE approval and will not be done on DOE's behalf or to benefit DOE. Modifications to the Task Order will be executed within 5 calendar days after agreement between DOE and the Contractor, to memorialize the value of the services to be provided by the Contractor. The title to the uranium is expected to be transferred to the Contractor within 5 calendar days after each such modification is executed by the Contracting Officer.

3. Value of the Transferred Uranium /Value of Services and Record Keeping

    a. DOE will receive fair market value for the transferred uranium in the form of services under this Task Order; the fair market value of the uranium will be used to derive the amount of transferred uranium. The value of the transferred uranium will be determined on a date certain immediately preceding the modification to the Task Order and the transfer of title to the uranium. The value of the transferred uranium will be based on a number of factors and relevant market indices (e.g., NUKEM, Trade Tech, and Ux Consulting), agreed to between DOE and the

Amendment 0003 Conformed

Contractor, and not subject to change or adjustment following modification of the Task Order and title transfer from DOE to the Contractor.

b. Within 30 days after the close of each month, the Contractor shall provide DOE a detailed reconciliation status report identifying the current value remaining from the transfer(s) of the transferred uranium that is available for credit against costs for work performed under the Task Order.

c. Following the transfer of title to the uranium to the Contractor, unless written CO direction is otherwise, the Contractor shall credit the value of the transferred material against any invoice for work performed under the Task Order that is submitted thirty or more days after the Contractor takes title to the uranium.

d. Should the Contractor elect to sell, transfer or otherwise disposition the transferred uranium, any such sale, transfer, or disposition shall be conducted in accordance with all applicable laws and regulations. Any such sale, transfer, or disposition shall not be subject to DOE approval and shall not be on DOE's behalf or represented to be on DOE's behalf.

4. Possession – The Contractor will designate, within 60 calendar days after the modification to the Task Order is executed, the entity who will take physical possession of the uranium. The Contractor's designee will take physical possession within 90 calendar days after the modification is executed. The Contractor or its designee taking possession of the uranium must be undertaken in compliance with all applicable laws and regulations. In the event the Contractor's designee does not take delivery of the material within that timeframe, DOE will assess a $500 per day charge for storage which will be charged back to the Contractor or its designee until such time the transferred uranium is not within DOE possession. After the uranium title transfer, any expenses incurred by the Contractor or its designee to take delivery of the uranium from the Paducah Gaseous Diffusion Plant and any subsequent costs related to the use, storage, sale or disposition of the transferred uranium shall be borne by the Contractor and shall not be allowable costs under this Task Order and will not be reimbursed or otherwise allowed for by the Government.

5. Export Restriction Notice – The use, disposition, export and re-export of the material are subject to all applicable U.S. laws and regulations, including but not limited to the Atomic Energy Act of 1954, as amended; the Arms Export Control Act (22 U.S.C. 2751 et seq.); the Export Administration Act of 1979 (50 U.S.C. Append 2401 et seq.); Assistance to Foreign Atomic Energy Activities (10 CFR part 810); Export and Import of Nuclear Equipment and Material (10 CFR part 110); International Traffic in Arms Regulation (22 CFR parts 120 et seq.); Export Administration Regulations (15 CFR part 730 et seq.); Foreign Assets Control Regulations (31 CFR parts 500 et seq.); and the Espionage Act (18 U.S.C. 793 et seq.) which among other things, prohibit.

a. The making of false statements and concealment of any material information regarding the use or disposition, export or reexport of the property; and

b. Any use or disposition, export or reexport of the property which is not authorized in accordance with the provisions of this agreement.

Attachment 0 Confirmed

## H.128 SALES AND/OR RECYCLE OF PRODUCTS OR MATERIAL

(a) Definitions:

(1) "Product" means any saleable or recyclable material resulting from work under this Task Order including but not limited to uranium, nickel, copper, etc.

(2) "Contractor's development and implementation costs," as used in this clause, means those costs incurred by the Contractor in developing, testing, preparing, and submitting the proposal, as well as those costs incurred by the Contractor to make the contractual changes, if any, required for approval by the Contracting Officer.

(3) "Contractor's proposal," as used in this clause, means the proposal the Contractor prepares and submits for approval by the Contracting Officer in accordance with this clause.

(4) "Government costs," as used in this clause, means those agency costs that result directly from developing and implementing the Contractor's proposal, such as any net increases in the costs of testing, operations, maintenance, safety reviews, oversight, and logistics support. The term does not include the normal administrative costs of processing the Contractor's proposal or any increase in this Task Order's cost or price resulting from negative task order savings (see below).

(5) "Net proceeds" means total acquisition savings under this Task Order including the product proceeds received, if any, less the allowable costs associated with the sale that would not otherwise have been incurred during the performance of this Task Order except to generate the product proceeds.

(6) "Product proceeds" means the gross revenue obtained by the Contractor from the sale of product or recyclable material under this Task Order.

(b) Sales:

(7) The Contractor shall be responsible for the sale of any product as directed by the CO. The Contractor shall, upon such terms and conditions as the CO may approve, sell such property at a price (including "no-cost" sales) agreed upon by the CO and the Contractor as the fair value thereof.

(8) The Contractor shall provide assistance to DOE, as directed and authorized specifically by the CO, to support or conduct sales of product consistent with the DOE Policy.

(9) The Contractor will take no action to market or sell any products until specifically directed by the CO. The Contractor shall not prepare and the DOE will not review any proposal for the sale of product until allowed by CO direction.

(10) If allowed by law and only as directed by the CO, sale proceeds may be applied to this Task Order.

Any Contractor proposal must be consistent with applicable laws/regulations and DOE Policy.

Amendment 003 Conformed

(c) When directed by the CO, the Contractor's proposal should include, at a minimum, the following:

(1) Description of the products.

(2) Description of the projected quantities to be sold.

(3) Identification of the benefits and disadvantages to DOE of the proposed sale including, but not limited to, financial, technical, environmental, safety, and health.

(4) Identification and description of any impact or change to the current or projected conduct of operations.

(5) Detailed cost impact to current or projected operations including cost reduction and/or cost increases to the current or projected method of operations and any costs to be incurred in order to conduct sales.

(6) Projected sales proceeds.

(7) Estimated net acquisition savings.

(8) Estimated negative contract savings, if any.

(9) Description of how the Contractor's accounting system will track the costs and sales proceeds associated with the proposed sale.

(10) Identification of increased or decreased funding by fiscal year needed to implement the Contractor's proposal, including funds for operations and capital improvements.

(11) Description and estimate of Government costs.

(12) Any projected impact to the environment and safety or health of project employees, site workers, and general public.

(13) Identification of any changes to the contract requirements, terms or conditions necessary to implement the Contractor's proposal.

(14) Identification of the regulatory approach that will be undertaken to implement the Contractors' proposal including but not limited to obtaining any required permits, licenses, or other regulatory agreement.

(15) If market price fluctuation affects the Contractor's proposal, a statement of the time by which the Contractor's proposal must be approved in order to achieve the maximum sales proceeds, noting any effect on the Task Order completion time or delivery schedule.

(16) Identification of incurred and estimated Contractor's development implementation costs.

Amendment 003Conformed

(17) Identification of the projected customers and their intended use(s) of proposed sales products to include any controls that will be put in place to ensure that the product will only be used as intended.

(d) Government Action:

The decision to approve, revise, or reject in whole or in part the Contractor's proposal is a unilateral decision made solely at the discretion of the CO. The Government will not be liable for any delay in approving or rejecting the Contractor's proposal in whole or in part.

(e) Contractor's Development and Implementation Costs

(1) The Contractor will account for all the development and implementation costs under this clause separately from all other Task Order costs. The Contractor's development and implementation costs will be unallowable costs unless the CO specifically approves them in advance or as part of the approval in paragraph (d) above.

(2) Approved development and implementation costs shall be reported separately from net proceeds unless specifically authorized by the CO.

(f) Data Rights: If a Contractor's proposal is approved, the Contractor hereby grants the Government unlimited rights in the Contractor's proposal and supporting data, except that, with respect to data qualified and submitted as limited rights technical data, the Government shall have the rights specified in the task order modification implementing the Contractor's proposal and shall appropriately mark the data. (The terms "unlimited rights" and "limited rights" are defined in Part 27 of the Federal Acquisition Regulation.)

(g) Accounting System:

(1) The Contractor's accounting system shall account for segregation of all costs associated with this clause. When submitting a proposal under this clause, the Contractor grants the Contracting Officer or an authorized representative the right to examine Contractor records including books, documents, and other types of factual information including cost and pricing data that will permit a complete evaluation of the proposal.

(2) If the cost of maintaining detailed accounting records is not warranted by the savings to be realized, the Contracting Officer and the Contractor may agree on alternative means by which savings can be measured.

(h) The Government reserves the right to use or otherwise dispose of any or all products, including disposition to third parties, outside of this Task Order.

(i) In the event property covered by FAR 52.245-1 Government Property (APR 2012) is included in Contractor's proposal, the Contractor shall indicate how its proposal satisfies both this Clause and the Government Property clause. Any questions regarding applicability will be resolved by the CO.

Amendment 0012 Conformed

## H.129 DOE-H-1048 SUSTAINABLE ACQUISITION UNDER DOE SERVICE CONTRACTS MAY 2011

Pursuant to Executive Orders 13423, Strengthening Federal Environmental, Energy and Transportation Management, and 13514, Federal Leadership in Environmental, Energy, and Economic Performance, the Department of Energy is committed to managing its facilities in a manner that will promote the natural environment and protect the health and well-being of its Federal employees and Contractor service providers. As a service provider at a DOE facility you are urged to assist us in our efforts. Sustainable acquisition or environmentally preferable contracting has several interacting initiatives. Among the initiatives are the following:

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

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

In the course of providing services at the DOE site, if your services necessitate the acquisition of any of these types of products, it is expected that you will acquire the sustainable, environmentally preferable models unless the product is not available competitively within a reasonable time, at a reasonable price, is not life cycle cost efficient in the case of energy consuming products, or does not meet reasonable performance standards. While there is no formal reporting, DOE prepares a sustainable acquisition annual report and you may be asked to share information for our report.

## H.130 DOE-H-1049 SUSTAINABLE ACQUISITION UNDER DOE CONSTRUCTION CONTRACTS (MAY 2011)

Pursuant to Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, and 13514, Federal Leadership in Environmental, Energy, and Economic Performance, the Department of Energy is committed to managing its facilities in an environmentally preferable manner that will promote the natural environment and protect the health and well-being of its Federal employees and Contractor service providers. In the performance of work under this contract, the Contractor shall exert its best efforts to provide its services in a manner that will promote the natural environment and protect the health and well-being of Federal and contract employees at the facility. Sustainable acquisition or environmentally preferable contracting has several interacting initiatives. Among the initiatives are the following:

- Recycled Content Products are described at http://epa.gov/cpg
- Biobased Products are described at http://www.biopreferred.gov/

Amendment 0013 Conformed

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

To the extent that the services provided by the Contractor require provision of any of the above types of products, the Contractor is expected to provide the sustainable, environmentally preferable type of product unless that type of product is not available competitively within a reasonable time, at a reasonable price, is not life cycle cost efficient in the case of energy consuming products, or does not meet reasonable performance standards. The clauses at FAR 52.223-2, Affirmative Procurement of Biobased Products under Service and Construction Contracts, 52.223-15, Energy Efficiency in Energy Consuming Products, and 52.223-17 Affirmative Procurement of EPA-Designated Items in Service and Construction Contracts, in Section I of this contract require the use of products that have biobased content, are energy efficient, or have recycled content.

In case of an apparent inconsistency between this provision and any specification elsewhere in the contract, consult the contracting officer for resolution.

## H.131 SUBCONTRACTED WORK

Unless otherwise approved in advance by the Contracting Officer, work to subcontractors outside of the Contracting Team Arrangement and approved major/critical subcontractors shall be procured through competitive procurements after Task Order award, with an emphasis on fixed-price subcontracts. The Contractor's subcontracted work shall be in compliance with the Contractor's approved Small Business Subcontracting Plan.

## H.132 DOE-H-1058 SMALL BUSINESS SUBCONTRACTING PLAN (JULY 2011)

The Small Business Subcontracting Plan, submitted by the Contractor consistent with the provisions of the clause entitled, "FAR 52.219-9 Small Business Subcontracting Plan", in Section I, and approved by the Contracting Officer on (**To be completed at the time of Task Order**), is incorporated in and made a material part of this contract as Section J, Attachment J-16.

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 Task Order.

## H.133 RESERVED

Amendment 003 Confirmed

## H.134 EMERGENCY CLAUSE

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

(b) The Contractor shall include this Clause in all subcontracts at any tier for work performed at the Paducah site.

## H.135 EMPLOYEE TRAINING

Contractor's Responsibility: The Contractor shall provide fully qualified and trained personnel from its own resources to support Paducah GDP requirements. DOE may provide training assistance or participate in training at its discretion at no cost to the Contractor. All training must be approved by the COR.
Mandatory Training: The Contractor shall ensure that all employees attend safety and security training once within 30 days of beginning performance on this Task Order and at least once annually thereafter. Contractor shall ensure that every employee is instructed to safely and competently perform the work. The Contractor is encouraged to closely collaborate with other Paducah Prime Contractors to combine/recognize similar training and qualifications.

## H.136 LEGAL MANAGEMENT

(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 Task Order award, the Contractor shall provide a Legal Management Plan (defined as a document describing the contractor's practices for managing legal costs and legal matters for which it procures the services of retained legal counsel) compliant with Code of Federal Regulations Title 10 Subpart 719, Contractor Legal Management Requirements. The Contractor shall provide an annual legal budget to Department Counsel along with the Legal Management Plan. Within 30 days of the conclusion of the period covered by each annual legal budget, the Contractor shall provide a report to Department Counsel comparing its budgeted and actual legal costs.

(b) As required by the CO, 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.

Amendment 003 Conformed

## H.137 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.

(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 Requirements and DEAR 952.204-70, Classification/Declassification.

## H.138 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. The Contractor shall obtain CO approval of the financial management and business systems or subsystems in accordance with the Accounting System Administration clause, Earned Value Management System Clause, Cost Estimating System clause, and Contractor Purchasing System clause.

(b) The Contractor shall submit a plan for CO approval of any substantive change to the financial management and business systems or subsystems in accordance with Accounting System Administration clause, Earned Value Management System clause, Cost Estimating clause and the Contractor Purchasing System clause. 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.

(c) The Contractor, for each request for equitable adjustment, shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of work allocable to the change until the request for equitable adjustment(s) is resolved. Each request for equitable adjustment shall calculate fee based only on incremental cost of the equitable adjustment.

(d) The Contractor cost performance reports shall include all costs incurred for Task Order performance by CLIN through the end of each calendar month. If necessary, this shall require the Contractor to estimate and record cost accruals for those costs

Amendment 003 Conformed

that are not recorded in their system by calendar month end closing for estimated Task Order performance by CLIN up to the calendar month end date. The Contractor shall also provide a monthly reconciliation by CLIN of project performance reported cost amounts to the Task Order invoiced value during the month. This invoice reconciliation report shall be submitted with the monthly cost performance report submission.

(e) In accordance with Section B clause entitled *Task Order Cost and Fee*, this Task Order includes award fee CLINs and Firm Fixed Priced CLINs. The CO reserves the right to unilaterally reallocate costs among the individual CLINs if the CO determines the Contractor is not allocating costs to the proper CLIN.

## H.139 INTERNAL AUDIT

The Contractor agrees to conduct internal audits and examinations, satisfactory to DOE, of records, operations, expenses, and transactions with respect to costs claimed to be allowable under this contract. All audit reports, including supporting documentation, shall be submitted or made available to the Contracting Officer or his/her designee.

## H.140 DEPARTMENT OF LABOR WAGE DETERMINATIONS

When the Service Contract Act is applicable to the performance of this contract, the Contractor shall comply with the requirements of U.S. Department of Labor Wage Determination included in Section J of the Contract. Revised wage determinations from the Department of Labor shall be incorporated into this contract. The Contractor and/or subcontractor shall comply with the revised wage determination for Service Contract Act covered employees.
When the Davis-Bacon Act is applicable to the performance of this contract, the Contractor shall comply with the requirements of Davis-Bacon Wage Determination Number included in Section J of the Contract. Revised wage determinations from the Department of Labor shall be incorporated into this contract. The Contractor and/or subcontractor shall comply with the revised wage determination for Davis-Bacon Act covered employees.

## H.141 OVERTIME CONTROL PLAN

Notwithstanding any other provision in this contract, if the aggregate overtime premium pay as a percent (%) of base salary exceeds 2 % for non-represented employees or 10% for represented employees, the Contractor shall submit to the Contracting Officer separate annual Overtime Control Plans in accordance with the Section I Clause entitled, FAR 52.222-2, Payment for Overtime Premiums.

## H.142 INSURANCE – LIABILITY

The following kinds and minimum amounts of insurance are required during the performance of this contract:

(a) Worker's Compensation and Employer's Liability Insurance:

Amendment 013 Conformed

(1) The amount required by the State of Kentucky under applicable Worker's Compensation and occupational disease statutes

(2) Employer's liability insurance in the amount of $500,000.

(b) General Liability Insurance. Bodily liability coverage written on the comprehensive form of policy of at least $1,000,000 per occurrence.

(c) Automobile Liability Insurance. Coverage shall be listed on the comprehensive form of the policy. It shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performing the 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.

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

## H.143 TRAVEL

The Contractor is expected to have personnel physically located at the PPPO office in Paducah, KY to perform the requirements of the Task Order. DOE will limit reimbursement of Contractor employee's relocation cost from the date of assignment to the project consistent with Federal Travel Regulations, U.S. Department of Energy Travel Manual DOE M 552.1-1A, Acquisition Letter 2013-01 and any DOE supplementary policies. Reduced Per Diem method in lieu of relocation, in accordance with AL 2013-01, may be approved in advance by the Contracting Officer, which states that, "for the first 60 days and last 30 days of the assignment, the DOE will reimburse costs associated with lodging at the lesser of actual cost or 100% of the Federal per diem rate at the assignment location. The intervening days will be reimbursed at the lesser cost of actual cost or 55% of Federal per diem. For the first 30 days and last 30 days of the assignment, DOE will reimburse costs associated with meals and incidental expenses (M&IE) at the lesser of actual cost or 100% of Federal per diem rate at the assignment location. Otherwise, DOE will reimburse these costs at the lesser of actual costs or 55% of Federal per diem at the assignment. DOE will not reimburse costs associated with salary premiums, per diem, or lodging/other subsidies for Contractor employees on extended personnel assignments after three (3) years from the date of assignment to the project. Contractor personnel will be required to periodically travel between PPPO sites in Paducah, KY, Lexington, KY and Portsmouth, OH.

## H.144 SALE OF PROPERTY

If the Contractor acquires property under this contract that is later determined to be excess/surplus property and the Contractor receives approval from the CO to sell such property and retain the proceeds, the proceeds from the sale shall be handled as a credit to the Contractor's contract costs. The Contractor shall issue a credit on its voucher that is submitted

Amendment 002 Conformed

to the U.S. Department of Energy for reimbursement of cost documenting the sale of such property.

### H.145 DOE-H-1031 CONTRACTOR PRESS RELEASES

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

## H.146 DOE-H-1036 DEFENSE NUCLEAR FACILITIES SAFETY BOARD

The Contractor shall conduct activities in accordance with those DOE commitments to the Defense Nuclear Facilities Safety Board (DNFSB) which are contained in implementation plans and other DOE correspondence to the DNFSB. The Contractor shall support preparation of DOE responses to DNFSB issues and recommendations which affect or can affect Contract work. Based on the Contracting Officer's direction, the Contractor shall fully cooperate with the DNFSB and provide access to such work areas, personnel, and information as necessary. The Contractor shall maintain a document process consistent with the DOE manual on interface with the DNFSB. The Contractor shall be accountable for ensuring that subcontractors adhere to these requirements.

### H.147 RESERVED

### H.148 RESERVED

### H.149 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.150 RESERVED

### H.151 GOVERNMENT-OWNED PROPERTY AND EQUIPMENT RESPONSIBILITIES FOR IMPLEMENTATION, FACILITY TRANSFER, OR TRANSITION PERIODS

Real and personal property currently accountable to the incumbent contractor for contract performance or DOE-owned real or personal property leased to USEC will be provided to the Contractor. During the contract implementation, facility transfer, or transition period, an inventory record of such property in the DOE Facilities Information Management System (FIMS) and incumbent contractor or USEC's personal property inventory will be provided to the Contractor. Specifically, the following property acceptance requirements will be implemented:

Amendment 003 Conformed

(A) The Contractor must perform a joint wall-to-wall physical inventory with the incumbent contractor(s) or USEC of all accountable high-risk and sensitive property during the implementation, facility transfer, or transition period and accept full accountability for the high-risk and sensitive property at the end of transition.

(B) The Contractor must accept, at the end of implementation, facility transfer, or transition, transfer of accountability for the remaining government-owned real and personal property not covered under paragraph (1), based on existing inventory records, on an as-is, where-is basis, or perform a wall-to-wall inventory within the appropriate 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. If the physical inventory is not accomplished within the allotted time frame, the previous contractor's or USEC records will become the inventory baseline.

## H.152 INDIRECT RATE CEILING

NOTE: As per Section L.20(j)(ix) instructions, clause may be incorporated into the Task Order that addresses an indirect rate cap or elimination. If no clause is incorporated, this clause number will be “reserved”.

## H.153 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.154 Energy Employees Occupational Illness Compensation Program Act (EEOICPA)

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

The contractor shall:

- Verify employment and provide records that contain pertinent information for compensation under the EEOICPA. The contractor shall provide this support for

Amendment 003Conformed

itself and any named subcontractors' employees.

- Provide reports as directed by DOE, such as reports on costs associated with the EEOICPA.
- Provide an EEOICPA point-of-contact. This employee shall attend meetings, as requested by the DOE.
- Locate, retrieve, and provide a minimum of two copies of any personnel records and other program records as requested.
- Perform records research needed to complete U.S. Department of Labor claims or to locate records needed to complete the claims.
- Perform and coordinate records declassification activities required for the processing of claim forms.
- Keep Federal Compensation Program Act (FCPA) information current on EEOICPA claim activities.
- Ensure that up-to-date cost information is input into the FCPA electronic reporting system by the 10th of each month.
- Ensure that all EEOICPA claims received are completed and returned to DOE within 45 calendar days of the date they are entered into the FCPA electronic reporting system. The FCPA electronic reporting system will be provided to the Contractor.

Amendment 003Conformed

## H.155 EARNED VALUE MANAGEMENT SYSTEM

(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 Defense's Data Item Description (DID) Integrated Program Management Report (IPMR), DI-MGMT-81861, (current version at time of award) which contains data for measuring cost and schedule performance for this DOE contract. The report's structure has seven formats that contain the content and relationships required for electronic submissions. DOE does not use section 2.8 Applicability of DI-MGMT-81861 for electronic data submissions, in lieu of this section, the Contractor shall use Project Assessment and Reporting System (PARS II). Data shall be submitted by the Contractor electronically by uploading the data into the 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.

Amendment 003 Conformed

(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) Contract award;

(ii) The exercise of significant contract options; and

Amendment 003Conformed

(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 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;

(iii) System noncompliance, when the Contractor's existing EVMS fails to comply with the earned value management system guidelines in the ANSI/EIA-748; and

(iv) System disapproval, if initial EVMS validation is not successfully completed within the timeframe approved by the Contracting Officer, or if the Contracting Officer

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determines that the Contractor's earned value management system contains one or more significant deficiencies in high-risk guidelines in ANSI/EIA-748 standards (guidelines 1, 3, 6, 7, 8, 9, 10, 12, 16, 21, 23, 26, 27, 28, 30, or 32). When the Contracting Officer determines that the existing earned value management system contains one or more significant deficiencies in one or more of the remaining 16 guidelines in ANSI/EIA-748 standards, the contracting officer will use discretion to disapprove the system based on input received from the DOE Office of Acquisition and Project Management or the DOE Program Office, herein referred to as the functional specialists.

(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 to disapprove the Contractor's EVMS, 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.]*

(l) *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;

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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.156 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.

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(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.*

Amendment 003 Conformed

(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:

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(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.157 ACCOUNTING SYSTEM ADMINISTRATION

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

Amendment 0003 Unformed

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

(i) Applicable laws and regulations are complied with;

(ii) The accounting system and cost data are reliable;

(iii) Risk of misallocations and mischarges are minimized; and

(iv) Contract allocations and charges are consistent with billing procedures.

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

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

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

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

(1) A sound internal control environment, accounting framework, and organizational structure;

(2) Proper segregation of direct costs from indirect costs;

(3) Identification and accumulation of direct costs by contract;

(4) A logical and consistent method for the accumulation and allocation of indirect costs to intermediate and final cost objectives;

(5) Accumulation of costs under general ledger control;

(6) Reconciliation of subsidiary cost ledgers and cost objectives to general ledger;

(7) Approval and documentation of adjusting entries;

(8) Management reviews or internal audits of the system to ensure compliance with the Contractor's established policies, procedures, and accounting practices;

Amendment Unconformed

(9) A timekeeping system that identifies employees' labor by intermediate or final cost objectives;

(10) A labor distribution system that charges direct and indirect labor to the appropriate cost objectives;

(11) Interim (at least monthly) determination of costs charged to a contract through routine posting of books of account;

(12) Exclusion from costs charged to Government contracts of amounts which are not allowable in terms of 48 CFR part 31, Contract Cost Principles and Procedures, and other contract provisions;

(13) Identification of costs by contract line item and by units (as if each unit or line item were a separate contract), if required by the contract;

(14) Segregation of preproduction costs from production costs, as applicable;

(15) Cost accounting information, as required—

(i) By contract clauses concerning limitation of cost (48 CFR 52.232-20), limitation of funds (48 CFR 52.232-22), or allowable cost and payment (48 CFR 52.216-7); and

(ii) To readily calculate indirect cost rates from the books of accounts;

(16) Billings that can be reconciled to the cost accounts for both current and cumulative amounts claimed and comply with contract terms;

(17) Adequate, reliable data for use in pricing follow-on acquisitions; and

(18) Accounting practices in accordance with standards promulgated by the Cost Accounting Standards Board, if applicable, otherwise, Generally Accepted Accounting Principles.

(d) *Significant deficiencies.*

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

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

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

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(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.158 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. 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.

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(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.159 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.

Amendment 0013 Conformed

## H.160 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 contract award. Failure to maintain an acceptable purchasing system, as defined in this clause, may result in disapproval of the system by the Contracting Officer and/or withholding of payments.

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

(1) Have an adequate system description including policies, procedures, and purchasing practices that comply with the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) and the Department of Energy Acquisition Regulation (48 CFR Chapter 9);

(2) Ensure that all applicable purchase orders and subcontracts contain all flowdown clauses, including terms and conditions and any other clauses needed to carry out the requirements of the prime contract;

(3) Maintain an organization plan that establishes clear lines of authority and responsibility;

(4) Ensure all purchase orders are based on authorized requisitions and include a complete and accurate history of purchase transactions to support vendor selected, price paid, and document the subcontract/purchase order files which are subject to Government review;

(5) Establish and maintain adequate documentation to provide a complete and accurate history of purchase transactions to support vendors selected and prices paid;

(6) Apply a consistent make-or-buy policy that is in the best interest of the Government;

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(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;

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(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

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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.161 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;

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(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 contract award that—

(i) Accurately describes those policies, procedures, and practices that the Contractor currently uses in preparing cost proposals; and

(ii) Provides sufficient detail for the Government to reasonably make an informed judgment regarding the acceptability of the Contractor's estimating practices.

(3) The Contractor shall—

(i) Comply with its disclosed estimating system; and

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(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

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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).

(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.

Amendment 003Conformed