

**PART I – THE SCHEDULE**  
**SECTION H – SPECIAL CONTRACT REQUIREMENTS**

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

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

**H.4 DEFINITIONS**

For purposes of Clauses H.5 through H.10 the following definitions are applicable (unless otherwise specified):

- (A) "Grandfathered Employees" means those employees who meet the definition of "Grandfathered Employees" set out in the East Tennessee Technology Park Pension Plan for Grandfathered Employees (ETTP MEPP).

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- (B) “Non-Grandfathered Employees” means those employees who do not meet the definition of “Grandfathered Employees” set out in the ETTP MEPP.
- (C) “SST” means Swift & Staley Mechanical Contractors, Inc. (SST) and its first and second tier subcontractors under DOE Contract DE-AC30-10CC40021.
- (D) “SST Incumbent Employees” means employees who, as of the date of award (1) hold regular appointments or who are regular employees on the rolls of SST and Grandfathered Employees on the rolls of SST’s first and second tier subcontractors; and (2) are employed at the Paducah Gaseous Diffusion Plant Site under DOE Contract DE-AC30-10CC40021.
- (E) “UCOR” means URS CH2M Oak Ridge, LLC under Contract DE-SC0004645.
- (F) “USEC” means the United States Enrichment Corporation.
- (G) “USEC Employees” means those individuals who are regular employees of USEC at the Paducah Gaseous Diffusion Plant Site, and on the rolls of USEC as of the date of award.

## **H.5 HIRING PREFERENCES**

The Contractor shall comply with the hiring preferences set forth below.

- (A) The right of first refusal for employment in Section I, FAR 52.222-17 (MAY 2014) Nondisplacement of Qualified Workers, is applicable to the service employees employed under the SST Contract Number DE-AC30-10CC40021 (hereinafter SST DOE Contract), for the same or similar services, which are to be performed by the Contractor and its subcontractors. The Contractor shall comply with the right of first refusal for employment for service employees and all of the requirements set forth in FAR 52.222-17 Nondisplacement of Qualified Workers for the applicable work and positions before applying any of the hiring preferences in paragraph (B) below. If a service employee employed under the SST 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 transition period and throughout the period of performance, preferences in hiring for vacancies at the Paducah Gaseous Diffusion Plant for non-managerial positions (i.e., all those below the first line of supervision) in non-construction activities of the PWS under this Contract, in accordance with the hiring preferences in paragraphs (1) – (5) below (subject to paragraph (A) above, any applicable collective-bargaining agreement(s), applicable law, and applicable site seniority lists), as set forth below.
  - (1) The Contractor shall provide SST Incumbent Employees and USEC 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:

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

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

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

## **H.6 PAY AND BENEFIT PLANS**

The Contractor shall establish pay and benefit programs for employees in accordance with the Service Contract Act (including Section 4(c)) and other applicable law, the terms and conditions of this Contract, 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.

### **(A) Definitions**

- (1) **Commingled Plans.** Cover employees from the Contractor's private operations and its DOE contract work.
- (2) **Current Liability.** The sum of all plan liabilities to employees and their beneficiaries. Current liability includes only benefits accrued to the date of valuation. This liability is commonly expressed as a present value.
- (3) **Defined Benefit Pension Plan.** Provides a specific benefit at retirement that is determined pursuant to the formula in the pension plan document.
- (4) **Defined Contribution Pension Plan.** Provides benefits to each participant based on the amount held in the participant's account. Funds in the account may be comprised of employer contributions, employee contributions, investment returns on behalf of that plan participant and/or other amounts credited to the participant's account.
- (5) **Designated Contract.** A contract (other than a prime cost reimbursement contract for management and operation of a DOE facility) for which the Head of the Departmental Contracting Activity determines that advance pension understandings are necessary or where there is a continuing Departmental obligation to the pension plan.
- (6) **Pension Fund.** The portfolio of investments and cash provided by employer and employee contributions and investment returns. A pension fund exists to defray pension plan benefit outlays and (at the option of the plan sponsor) the administrative expenses of the plan.
- (7) **Separate Accounting.** Account records established and maintained within a commingled plan for assets and liabilities attributable to DOE contract service. NOTE: The assets so represented are not for the exclusive benefit of any one group of plan participants.

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- (8) **Separate Plan.** Must satisfy IRC Sec. 414(1) definition of a single plan, designate assets for the exclusive benefit of employees under DOE contract, exist under a separate plan document (having its own Department of Labor plan number) that is distinct from corporate plan documents and identify the contractor as the plan sponsor.
- (9) **Spun-off Plan.** A new plan which satisfies IRC Reg. 1.414 (l)-1 requirements for a single plan and which is created by separating assets and liabilities from a larger original plan. The funding level of each individual participant's benefits shall be no less than before the event, when calculated on a "plan termination basis."

**(B) Pension, Post-Retirement Benefits (PRB), Severance and Other Benefit Programs**

**(1) Background of Pension and Benefit Plans**

- (a) The East Tennessee Technology Park Pension Plan for Grandfathered Employees (ETTP MEPP) is a multi-employer pension plan which covers eligible employees (both bargaining and non-bargaining unit (exempt and nonexempt)) of certain U.S. Department of Energy (DOE) prime contractors and their subcontractors. UCOR is the current lead sponsor of the ETTP MEPP. The ETTP MEPP is managed and administered by the Benefits Investment Committee which is composed of representatives from each of the sponsoring employers.
- (b) The East Tennessee Technology Park Multiple Employer Welfare Arrangement, (ETTP MEWA) contains provisions for medical and insurance benefits for eligible employees of certain DOE contractors and subcontractors and their beneficiaries. UCOR is the current lead sponsor of the ETTP MEWA. The ETTP MEWA is managed and administered by the Benefits Investment Committee which is composed of representatives from each of the sponsoring employers.

**(2) Special Provisions Applicable to Employee Benefits.**

- (a) **Benefit Plans.** The Contractor shall provide pension and other benefit plans to Grandfathered Employees and all other employees hired by the Contractor and shall provide service credit for leave as set forth below:
  - (1) **Grandfathered Employees.** Grandfathered Employees shall be provided pension and other benefits consistent with applicable law, any applicable collective bargaining agreement(s), and the provisions of the ETTP MEPP, and the ETTP MEWA, or comparable PRB plans. To the extent that the tax-qualified status of those plans is not jeopardized (see (D)(1) below), 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. However, if the participation of a particular classification of employees (e.g., highly compensated employees) could jeopardize the tax qualifications of the ETTP MEPP, the contractor shall take appropriate action as necessary to ensure the ETTP MEPP remains qualified under the IRC, consistent with the processes and procedures set



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forth herein. Consistent with the terms of the plan(s), any transition of the employees from SST to the Contractor shall not constitute a break in service under the ETTP MEPP and ETTP MEWA.

- (2) Non-Grandfathered Employees. Non-Grandfathered Employees shall receive a benefits package that provides for market-based retirement and medical benefit plans that are competitive with the industry from which the Contractor recruits its employees and in accordance with this Contract, any applicable collective bargaining agreement(s), and applicable law, including Section 4(c) of the Service Contract Act.
  - (3) Severance pay.
    - (i) The Contractor shall credit (1) SST Incumbent Employees who meet the eligibility requirements of the East Tennessee Technology Park Severance Plan for Grandfathered Employees (ETTP Severance Plan), and (2) who are hired by the Contractor under this Contract, with their current length of service except for any period of prior service for which severance pay has been previously paid through a DOE cost-reimbursement contract.
    - (ii) Severance Pay is not payable to an employee under this Contract if the employee:
      - (aa) Voluntarily separates, resigns or retires from employment,
      - (bb) Is offered employment with a successor/replacement contractor,
      - (cc) Is offered employment with a parent or affiliated company, or
      - (dd) Is discharged for cause.
  - (4) Service Credit for benefits other than severance.
    - (i) For Leave. The Contractor shall carry over credit for service under the SST DOE Contract 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.
    - (ii) 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).
- (3) 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

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Employees participating in the ETTP Plan(s). The agreements and costs contained therein shall be subject to the approval of the Contracting Officer.

- (4) Pension and Other Benefit Programs
- (a) No presumption of allowability will exist when the Contractor implements a new benefit plan or makes changes to existing benefit plans for which DOE reimburses costs until the Contracting Officer makes a determination of cost allowability for reimbursement for new or changed benefit plans.
  - (b) Cost reimbursement for pension and other benefit (except severance) plans for which DOE reimburses costs 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.
  - (c) Unless otherwise stated, or as directed by the Contracting Officer, the Contractor shall submit the studies required in paragraphs (1) and (2) below. The studies shall be used by the Contractor in calculating the cost of benefits under existing benefit plans for which DOE reimburses costs. An Employee Benefits Value (Ben-Val) Study method using no less than 15 comparator organizations and an Employee Benefits Cost Survey comparison method shall be used in this evaluation to establish an appropriate comparison method. In addition, the Contractor shall submit updated studies to the Contracting Officer for approval prior to the adoption of any change to a pension or other benefit plan.
    - (1) The Ben-Val, every two years for each benefit tier (e.g., group of employees receiving a benefit package based on date of hire), is an actuarial study of the relative value (RV) of the benefits programs for which DOE reimburses costs offered by the Contractor to employees measured against the RV of benefit programs offered by comparator companies approved by the Contracting Officer. To the extent that the value studies do not address post-retirement benefits other than pensions, the Contractor shall provide a separate cost and plan design data comparison for the post-retirement benefits other than pensions using external benchmarks derived from nationally recognized and Contracting Officer approved survey sources; and
    - (2) An Employee Benefits Cost Study Comparison, annually for each benefit tier, that analyzes the Contractor's employee benefits cost on a per capita basis per full time equivalent employee and as a percent of payroll and compares it with the cost reported by the U.S. Department of Labor's Bureau of Labor Statistics or other Contracting Officer approved broad based national survey.
  - (3) Corrective Action Plans.
    - (i) When the net benefit value exceeds the comparator group by more than five percent, the Contractor shall submit a corrective action plan to the Contracting Officer for approval, unless waived by the Contracting Officer.

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- (ii) When the average total benefit per capita cost or total benefit cost as a percent of payroll exceeds the comparator group by more than five percent, the Contractor shall submit an analysis of the specific plan costs that are above the per capita cost range or total benefit cost as a percent of payroll and a corrective action plan to achieve conformance with a Contracting Officer directed per capita cost range or total benefit cost as a percent of payroll, unless waived by the Contracting Officer.
    - (iii) Within two years of Contracting Officer approval of the Contractor's corrective action plan, the Contractor shall align employee benefit programs with the benefit value and per capita cost range or percent of payroll as approved by the Contracting Officer.
  - (d) To the extent that the Contractor sponsors benefit plans for which the Department reimburses costs under this Contract, the Contractor may not terminate any benefit plan for which DOE reimburses costs during the term of the Contract without the prior approval of the Contracting Officer in writing.
  - (e) Cost reimbursement for post-retirement benefits other than pensions (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), 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.
  - (f) If the Contractor sponsors a pension and/or postretirement benefit plan for which DOE reimburses costs, the Contractor will participate in the annual plan management process which includes written responses to a questionnaire regarding plan management, providing forecasted estimates of future reimbursements in connection with the plan and participating in a conference call to discuss the contractor submission.
  - (g) The contractor will respond to quarterly data calls issued through iBenefits, or its successor system, for benefits for which DOE reimburses costs.
- (C) Establishment and Maintenance of Pension Plans for which DOE Reimburses Costs
- (1) Employees working for the Contractor shall only accrue credit for service under this Contract after the date of Contract award.
  - (2) Except for Commingled Plans in existence as of the effective date of the contract, any pension plan maintained by the Contractor for which DOE reimburses costs shall be maintained as a separate pension plan distinct from any other pension plan that provides credit for service not performed under a DOE cost-reimbursement contract. When deemed appropriate by the Contracting Officer,

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Commingled Plans shall be converted to separate plans at the time of new contract award or the extension of a contract.

(D) Basic Requirements

- (1) The Contractor shall become a sponsor of the existing ETTP MEPP if and when it hires employees who are eligible to participate in those plans, and the ETTP MEWA, or comparable PRB plans, with responsibility for management and administration of the plans and consistent with applicable law. If the Contractor determines that there are no practicable means of doing the above in a manner that would maintain its segment of those plans on a tax-qualified basis, the Contractor must demonstrate to the satisfaction of the Contracting Officer that there are no practicable means of doing so and that those employees who would otherwise have been eligible to participate in the ETTP MEPP or ETTP MEWA should be provided a package of benefits substantially equivalent to the ETTP MEPP or ETTP MEWA, as applicable in the circumstances. 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 Contract for which DOE reimburses costs and for the plans themselves consistent with the plan documents and consistent with the requirements of the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code (IRC). 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 in the foreseeable future, 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.
  - (a) Meeting Testing 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 in the foreseeable future. Every twelve 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.
  - (b) Failure to Meet Testing Requirements. In the case of employer segments for which the approved threshold factors described in Paragraph(a) above and other factors as approved or requested by the Contracting Officer indicate that

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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.

- (2) Any defined benefit (DB) pension plan sponsored by the Contractor shall be maintained consistent with the requirements of the IRC and ERISA in order for the costs to be allowable.
- (3) DOE approval is required prior to implementing any change to a pension plan for which costs are being reimbursed under this Contract. Changes to any pension plan shall be in accordance with and pursuant to the terms and conditions of this Contract.
- (4) Audits. Each contractor pension plan for which DOE reimburses costs shall be subjected to a limited-scope audit annually that satisfies the requirements of ERISA section 103, except that every third year the contractor must conduct a full-scope audit satisfying ERISA section 103. Alternatively, the Contractor may conduct a full-scope audit satisfying ERISA section 103 annually. In all cases, the Contractor must submit the audit results to the Contracting Officer. In years in which a limited scope audit is conducted, the contractor must provide the Contracting Officer with a copy of the qualified trustee or custodian's certification regarding the investment information that provides the basis for the plan sponsor to satisfy reporting requirements under ERISA section 104.
- (5) For existing Commingled Plans, the Contractor (i) shall maintain and provide annual Separate Accounting of DOE liabilities and assets as for a Separate Plan and (ii) shall be liable for any shortfall in the plan assets caused by funding or events unrelated to DOE contracts.
- (6) Benefit Management Plans. Each contractor sponsoring a pension and/or postretirement benefit plan for which DOE reimburses costs will participate in the annual plan management process which includes written responses to a questionnaire regarding plan management, providing forecasted estimates of future reimbursements in connection with the plan and participating in a conference call to discuss the contractor submission.
  - A. A Pension Management Plan shall include the following:
    - (a) A Pension Management Plan (PMP) discussing the Contractor's plans for management and administration of pension plans for which DOE reimburses costs consistent with the terms of this contract. The PMP shall

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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 the 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:
- (1) The Contractor's best projection of the contributions which it will be legally obligated to make to the pension plan(s), beginning with the required contributions for the coming fiscal year, based on the latest actuarial valuation, and continuing for the following four years. This estimate will be based upon compliance with all applicable legal requirements relating to the determination of contributions and upon the assumptions set out in the plan document(s).
  - (2) 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:
    - (i) The type of benefit restriction that will take place,
    - (ii) 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
    - (iii) The amount of money that would need to be contributed to the pension plan to avoid legally required benefit restrictions.
  - (3) A detailed discussion of how the Contractor intends to manage the pension plan(s) for which DOE reimburses costs 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:
    - (i) Strategy for achieving and maintaining fully-funded status of the plan(s).
    - (ii) Investment policy statement for the plan, with any recent updates.

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- (iii) Results of recent asset liability studies (required to be performed every 3 years or after a significant event) including rationale for maintaining current asset allocation strategy.
  - (iv) Comparison of budget projections submitted to the Department to actual contributions.
  - (v) Any recent reports, findings, or recommendations provided by plan's investment consultant.
  - (vi) Actuarial experience studies to set the plan's actuarial assumptions (required to be performed every 3-5 years).
- (4) An assessment to evaluate the effectiveness of the Contractor's pension plan(s) investment management/results. The assessment shall include at a minimum: a review and analysis of pension plan investment objectives; the strategies employed to achieve those objectives; the methods used to monitor execution of those strategies and the achievement of the investment objectives; and a comparative analysis of the objectives and performance of other comparable pension plans. The Contractor shall also identify its plans, if any, for revising any aspect of its pension plan management based on the results of the review.
- B. The PRB Management Plan for the PRB Plan(s) in which the Contractor participates and for which the Department reimburses costs under this Contract shall include:
- (a) The Contractor's best projection of the benefit payments from the PRB Plans, a summary of the key actuarial assumptions used in developing the estimates, and a detailed description of the plans included in the projections.
  - (b) The impact that any recent plan amendments have had on the expected benefit payments.
  - (c) Any possible future amendments to the PRB Plan(s) which the Contractor wishes to make.
  - (d) An outline of opportunities that are being used or considered related to strategy, design, and cost containment.
- (E) Reimbursement of the Contractor Costs for Benefit Plans. The following will be subject to be reimbursed separately on a cost reimbursement basis and are not part of the fixed price. All other costs should be part of the fixed price and will not be reimbursed separately on a cost reimbursement basis.
- (1) Employer contributions to the ETTP MEPP. The Contractor as a sponsor of the ETTP MEPP will be reimbursed for pension contributions in the amounts necessary to ensure that the plan is funded to meet the annual minimum requirement under ERISA, as amended by the Pension Protection Act (PPA) of 2006. This includes the contributions of any subcontractor that is a participating

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employer/sponsor in the ETTP MEPP. However, reimbursement for pension contributions above the annual minimum contribution required under ERISA, as amended by the PPA, will require prior approval of the Contracting Officer and will be considered on a case by case basis. Reimbursement amounts will take into consideration all pre-funding balances and funding standard carryover balances.

- (2) The costs of the employee's participation in the ETTP MEWA (or pay-as-you-go costs of benefits under substantially equivalent PRB plans) for Grandfathered Employees.
  - (3) The costs of the Contractor's severance benefits for those SST Incumbent Employees that were hired and that met the eligibility requirements of the ETTP Severance Plan and to the extent the Contractor's severance benefits are substantially equivalent to the ETTP Severance Plan in which SST participated.
- (F) Reporting Requirements for Designated Contracts. The following reports shall be submitted to DOE as soon as possible after the last day of the plan year by the Contractor responsible for each designated pension plan (plans for which costs were reimbursed) funded by DOE but no later than the dates specified below:
- (1) Actuarial Valuation Reports. The annual actuarial valuation report for each DOE-reimbursed pension plan and when a pension plan is commingled, the Contractor shall submit separate reports for DOE's portion and the plan total by the due date for filing IRS Form 5500.
  - (2) Forms 5500. Copies of IRS Forms 5500 with Schedules for each DOE-funded pension plan, no later than that submitted to the IRS.
  - (3) Forms 5300. Copies of all forms in the 5300 series submitted to the IRS that document the establishment, amendment, termination, spin-off, or merger of a plan submitted to the IRS.

(G) Changes to Pension Plans

At least sixty (60) days prior to the adoption of any changes to a pension plan for which DOE reimburses costs, the Contractor shall submit the information required below, as applicable, to the Contracting Officer for approval or disapproval and a determination as to whether the costs are deemed allowable pursuant to FAR 31.205-6, as supplemented by DEAR 970.3102-05-6.

- (1) For proposed changes to pension plans and pension plan funding, the Contractor shall provide the following to the Contracting Officer:
  - (a) a copy of the current plan document (as conformed to show all prior plan amendments), with the proposed new amendment indicated in redline/strikeout;
  - (b) an analysis of the impact of any proposed changes on actuarial accrued liabilities and costs;
  - (c) except in circumstances where the Contracting Officer indicates that it is unnecessary, a legal explanation of the proposed changes from the counsel



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- 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 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.
- (H) Withdrawal from the ETTP MEPP. The Contractor shall not withdraw from the ETTP MEPP or the ETTP MEWA without the prior, written approval of the Contracting Officer. If the Contractor withdraws without the consent of the Contracting Officer, all costs (including withdrawal liability under ERISA) 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.
- (I) Changes to the ETTP MEPP. In addition to any other provisions of this Contract, any changes or amendments to the ETTP MEPP must be approved in writing in advance by the Contracting Officer and shall be in accordance with applicable law, including compliance with any applicable collective bargaining agreement(s).
- (J) 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 Contract apply to these plans as renamed.
- (K) Terminating Plans for which DOE Reimburses Costs
- (1) The Contractor shall not terminate any pension plan (Commingled or site specific) without requesting Departmental approval at least 60 days prior to the scheduled date of plan termination.
  - (2) To the extent possible, the Contractor shall satisfy plan liabilities to plan participants by the purchase of annuities through competitive bidding on the open annuity market or lump sum payouts. The Contractor shall apply the assumptions and procedures of the Pension Benefit Guaranty Corporation.
  - (3) Funds to be paid or transferred to any party as a result of settlements relating to pension plan termination or reassignment shall accrue interest from the effective date of termination or reassignment until the date of payment or transfer.

- (4) If ERISA or IRC rules prevent a full transfer of excess DOE reimbursed assets from the terminated plan, the Contractor shall pay any deficiency directly to DOE according to a schedule of payments to be negotiated by the parties.
- (5) On or before the same day as the Contractor notifies the IRS of the spinoff or plan termination, all plan assets assigned to a spun-off or terminating plan shall be placed in a low-risk liability matching portfolio until the successor trustee, or an insurance company, is able to assume stewardship of those assets
- (6) DOE liability to a Commingled pension plan shall not exceed that portion which corresponds to DOE contract service. The DOE shall have no other liability to the plan, to the plan sponsor, or to the plan participants.
- (7) After all liabilities of the plan are satisfied, the Contractor shall return to DOE an amount equaling the asset reversion from the plan termination and any earnings which accrue on that amount because of a delay in the payment to DOE. Such amount and such earnings shall be subject to DOE audit. To affect the purposes of this paragraph, DOE and the Contractor may stipulate to a schedule of payments.

(L) Terminating Operations

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

- (1) No further benefits for service shall accrue.
- (2) The Contractor shall provide a determination statement in its settlement proposal, defining and identifying all liabilities and assets attributable to the DOE contract.
- (3) The Contractor shall base its pension liabilities attributable to DOE contract work on the market value of annuities or lump sum payments or dispose of such liabilities through a competitive purchase of annuities or lump sum payouts.
- (4) Assets shall be determined using the “accrual-basis market value” on the date of termination of operations.
- (5) DOE and the Contractor(s) shall establish an effective date for spinoff or plan termination. On the same day as the contractor notifies the IRS of the spinoff or plan termination, all plan assets assigned to a spun-off or terminating plan shall be placed in a low-risk liability matching portfolio until the successor trustee, or an insurance company, is able to assume stewardship of those assets.

(M) Special Programs

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

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

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

- (1) Within ten days after Notice to Proceed, the Contractor shall:
  - (a) Submit to the Contracting Officer a description of any and all workforce transition agreements that it intends to enter into with USEC and SST to ensure compliance with Clause H.5 during the first 60 days after Notice to Proceed and during the remaining period of performance under the Contract;
  - (b) Establish and submit to the Contracting Officer a draft written communication plan that details the communication that the Contractor and its subcontractors will engage in with USEC and SST and their employees or former employees, regarding implementation of the requirements set forth in Clause H.5; and
  - (c) Obtain information from USEC and SST, identifying the employees who have initially been identified as being at risk of being involuntarily separated. Provide and define a process as part of transition agreements required in paragraph (1)(a) above for obtaining updated and continuous information through the Transition Period regarding the identification of employees by USEC and SST that have been identified as being at risk of being involuntarily separated.
  
- (2) Within 15 days after Notice to Proceed, the Contractor shall:
  - (a) Submit to the Contracting Officer copies of the draft Workforce Transition Plan for the Contractor and its first and second tier subcontractors, describing the processes and procedures regarding how the Contractor will implement and ensure compliance with the hiring preferences set forth in Clause H.5 during the Contract Transition Period and the remaining period of performance under the Contract.
  - (b) Establish a final written communication plan with USEC and SST employees regarding the implementation of the hiring preferences in Clause H.5 and provide a copy to the Contracting Officer. The communication plan shall also include a communication process among the Contractor, incumbent contractor, DOE, site tenants, and incumbent union(s) representatives. Communication with union representatives shall be limited to sharing relevant workforce transition information.
  
- (3) Within 30 days after Notice to Proceed, the Contractor shall provide to the Contracting Officer copies of the final Workforce Transition Plan and draft workforce transition agreements it proposes to enter into with USEC and SST consistent with the requirements of Clause H.5 above.
  
- (4) Within 45 days after Notice to Proceed, the Contractor shall provide to the Contracting Officer:
  - (a) copies of the final workforce transition agreements with USEC and SST consistent with the requirements of Clause H.5 above;

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- (b) a written description of the process that it will utilize in obtaining information after the Transition Period and throughout the period of performance from USEC and SST 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.5; and
  - (c) copies of all and any written agreements in which it has entered with USEC and SST for transitioning their respective employees pursuant to Clause H.5.
  
- (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.5, 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 60 day Contract Transition Period such reports shall be provided to the Contracting Officer on a weekly basis; or
  - (b) More frequently if requested by the Contracting Officer.
  
- (6) The Contractor shall implement the transition activities contained in the approved transition plan and such other transition activities as may be authorized or directed by DOE through the Contracting Officer.
  
- (B) Benefits Transition Planning. The Contractor shall submit a written draft Benefits Transition Plan for the approval of the Contracting Officer, as set forth herein.
  - (1) The Benefit Transition Plan will include:
    - (a) A detailed description of the Contractor's plans and procedures showing how the Contractor will comply with Clause H.6, and this Paragraph (B).
    - (b) A detailed description of the Contractor's policies regarding pensions and other benefits for which the Department reimburses costs under this Contract, and how these policies will support at reasonable cost the effective recruitment and retention of a highly skilled, motivated, and experienced workforce.
    - (c) A written description of how the existing pension and other benefit plans provided to employees pursuant to Clause H.6, will be amended or restated on or before the last day of the 60 day Transition Period. If an asset transfer(s) and/or the creation of a new benefit plan(s) are necessary in order for the Contractor to adhere to the benefits sponsorship requirements set forth in this Contract, the Contractor shall provide a description of the necessary transactions, including but not limited to how the Contractor proposes to comply with the Contract and applicable law governing such transactions.

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- (2) The Contractor shall perform the following activities involving benefit transition within the timeframes specified below.
- (a) Within ten days after Notice to Proceed, the Contractor shall:
- (1) Provide the Contracting Officer with a list of Contractor personnel who will be responsible for transitioning of the existing pension plan and other existing benefit plans and/or development of new benefit plans, including specifically the personnel responsible for ensuring that the Contractor becomes a participating employer of the ETTP MEPP, and/or ETTP MEWA or comparable PRB plans, and contact information for the above personnel; and
  - (2) Request USEC, UCOR and SST to provide information and documents necessary for the Contractor to adhere to the requirements set forth in this Contract pertaining to sponsorship of the MEPP 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 60-day Transition Period.
- (b) Within 15 days after Notice to Proceed, the Contractor shall provide to the Contracting Officer:
- (1) The draft Benefits Transition Plan; and
  - (2) A list of the information and documents that the Contractor has requested from USEC, UCOR and SST pertaining to the transition of the MEPP, 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 USEC, UCOR and SST. Regardless of such notification, the Contractor remains responsible under this Contract for ensuring compliance with the terms of this Contract, including the timeframes set forth in this clause and the requirements in Clause H.6.
- (c) Within 20 days of Notice to Proceed, the Contractor shall:
- (1) Submit a detailed description of its plans and processes, including timeframes and specific projected dates for accomplishment of each activity necessary to ensure compliance with the requirements set forth in Clause H.6 including requirements pertaining to the transition of employee benefit plans; and
  - (2) Meet via televideo, teleconference, and/or in person with relevant personnel who administer the benefit plans for UCOR, USEC and SST, 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

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obligations under Clause H.6, including execution of transition agreements with USEC, UCOR and SST, and other applicable entities. The minutes of the meeting as well as a written description of any substantive issues identified at the meeting shall be submitted to the Contracting Officer within two days after the meeting.

- (d) Within 30 days after Notice to Proceed, the Contractor shall:
  - (1) Provide a final written Benefits Transition Plan to the Contracting Officer
  - (2) Provide to the Contracting Officer draft or proposed final versions of the following documents as set forth below –
    - (i) drafts of all amendments to or restatements of the pension and other benefit plans presently sponsored by UCOR as to which the Contractor will become a participating employer, including but not limited to amendments effectuating the change in sponsorship/participating employer in the 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.
    - (ii) drafts of any new benefit plan(s) as well as draft SPDs that the Contractor proposes to sponsor.
    - (iii) drafts of the transition agreements which the Contractor will enter into with UCOR and SST, to ensure the Contractor's compliance with the pay and benefits requirements set forth in Clause H.6.
- (e) No later than 45 days after Notice to Proceed and prior to the adoption or execution of those documents, the Contractor shall submit to the Contracting Officer for approval the proposed final versions of the documents provided in draft to the Contracting Officer within 30 days after Notice to Proceed and described in Paragraphs (d) above.
- (f) Within 60 days after Notice to Proceed, the Contractor shall complete any transitions into the ETTP MEPP, the ETTP MEWA, or comparable PRB plans and other existing pension(s) plans and other existing benefit plans, as well as establishment of any new plans.
- (g) The Contractor shall respond to any comments provided by the Contracting Officer under any of the above paragraphs within two days of receipt of the comments.
- (h) After the Transition Period and throughout the remaining period of performance of the Contract, the Contractor shall provide the following information promptly to the Contracting Officer upon the request of the Contracting Officer:

- (1) Documents relating to benefit plans offered to Contractor Employees, including but not limited to SPDs, all Plan documents, applicable amendments, employee handbooks that summarize benefits provided to employees and other documents that describe benefits provided to employees of the Contractor who perform work on this Contract, and
- (2) Any and all other documents pertaining to implementation of and compliance with implementation of the compensation and benefit programs identified in Clause H.6.
- (3) Additionally, the contractor shall provide timely data responses to Departmental annual and ad hoc pension and PRB data requests. Such data responses shall be provided within the timeframe established by the contracting officer for each response and if no timeframe is specified, the contractor shall provide the data response within one calendar day.

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

- (A) If this Contract expires and/or terminates and DOE has awarded a contract under which a new contractor becomes a sponsor and assumes responsibility for management and administration of the pension or other benefit plans covering active or retired employees with respect to service at the Paducah Gaseous Diffusion Site (collectively, the “Plans”) for which DOE reimburses costs, the Contractor shall cooperate and transfer to the new contractor its responsibility for sponsorship, management and administration of the plans consistent with direction from the Contracting Officer. If a Commingled plan is involved, the contractor shall:
- (1) Spinoff the DOE portion of any Commingled Plan used to cover employees working at the DOE facility into a separate plan. The new plan will normally provide benefits similar to those provided by the commingled plan and shall carry with it the DOE assets on an accrual basis market value, including DOE assets that have accrued in excess of DOE liabilities.
  - (2) Bargain in good faith with DOE or the successor contractor to determine the assumptions and methods for establishing the liabilities involved in a spinoff. DOE and the contractor(s) shall establish an effective date of spinoff. On or before the same day as the contractor notifies the IRS of the spinoff or plan termination, all plan assets assigned to a spun-off or terminating plan shall be placed in a low-risk liability matching portfolio until the successor trustee, or an insurance company, is able to assume stewardship of those assets.
- (B) If this Contract expires or terminates and DOE has not awarded a contract to a new contractor under which the new contractor becomes a sponsor and assumes responsibility for management and administration of the Plans, or if the Contracting Officer determines that the scope of work under the Contract has been completed (any one such event may be deemed by the Contracting Officer to be “Contract

Completion” for purposes of this clause), whichever is earlier, and notwithstanding any other obligations and requirements concerning expiration or termination under any other clause of this Contract, the following actions shall occur regarding the Contractor’s obligations regarding the plans for which DOE reimburses costs, at the time of Contract Completion:

- (1) Subject to subparagraph (2) below, and notwithstanding any legal obligations independent of the Contract the Contractor may have regarding responsibilities for sponsorship, management, and administration of the Plans, the Contractor shall remain the sponsor of the plans for which DOE reimburses costs, in accordance with applicable legal requirements.
  - (2) The parties shall exercise their best efforts to reach agreement on the Contractor’s Responsibilities for sponsorship, management and administration of the plans for which DOE reimburses costs, prior to or at the time of Contract Completion. However, if the parties have not reached agreement on the Contractor’s responsibilities for sponsorship, management and administration of the Plans prior to or at the time of Contract Completion, unless and until such agreement is reached, the Contractor shall comply with written direction from the Contracting Officer regarding the Contractor’s responsibilities for continued provision of pension and welfare benefits under the plans for which DOE reimburses costs,, including but not limited to continued sponsorship of the Plans, in accordance with applicable legal requirements. To the extent that the Contractor incurs costs in implementing direction from the Contracting Officer, the Contractor’s costs will be reimbursed pursuant to applicable Contract provisions.
- (C) In the event a transfer of assets in the ETPP 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.9 LABOR RELATIONS**

- (A) The Contractor shall respect the right of employees to organize and to form, join, or assist labor organizations, to bargain collectively through their chosen labor representatives, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of these activities. Consistent with applicable labor laws and regulations, 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 for cost reimbursement purposes in the areas of pension, PRB and severance payments 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 in the above listed areas 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.
- (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.
- (E) Provide the Contracting Officer with a “Report of Settlement” after ratification of a collective bargaining agreement by accessing the Labor Relations Module in iBenefits, or its successor system, during the next open quarter. Data will include information only for negotiated pension, PRB, and severance costs.

#### **H.10 WORKFORCE RESTRUCTURING**

Notwithstanding any other provision in this Contract, when the Contractor determines that a reduction of force is necessary, the Contractor shall notify the Contracting Officer in writing. The Contractor shall provide information as directed by the Contracting Officer related to workforce restructuring activities and to enable compliance with Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 and any other DOE guidance pertaining to workforce restructuring, as may be amended from time to time. The Contractor shall supply workforce restructuring related information and reports as needed by DOE. The Contractor shall extend displaced employee hiring preference in accordance with the Section I Clause entitled, DEAR 952.226-74, Displaced Employee Hiring Preference and Clause H.5, Hiring Preferences.

#### **H.11 DOE-H-1011 DEPARTMENT OF LABOR WAGE DETERMINATIONS**

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 and FAR 52.222-42 Statement of Equivalent Rates for Federal Hires, when applicable.

#### **H.12 TASK ORDERING PROCEDURE**

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- (a) Only the Contracting Officer may issue task orders to the Contractor, providing specific authorization or direction to perform work within the scope of the contract and as specified in the schedule. The Contractor may incur costs in performance of task orders and task order modifications issued in accordance with this clause. The Contracting Officer may issue firm-fixed-price and/or cost reimbursement task orders. This clause is applicable to the IDIQ Contract Line Item Numbers (CLINs) only.
- (b) For work to be ordered that is priced as a Section J, Attachment J-10 Exhibit Line Item Number (ELIN) under the IDIQ CLINs, a proposal from the Contractor may not be necessary. The ELIN fixed unit rates/prices are applicable to the pricing of firm-fixed-price task orders. A Task Order may be issued by the Contracting Officer based on the ELIN fixed unit rates. If a Task Order is issued based on the ELIN fixed unit rates, Sections (c) and (d) of this clause may not apply.
- (c) For work not priced under a Section J, Attachment J-10, ELIN, the Contracting Officer shall provide the Contractor with a Request for Task Proposal (RTP). The RTP will include the following data elements:
  - (1) A functional description of the work or performance work statement identifying the objectives or results desired from the contemplated task order.
  - (2) A formal request for the Contractor to provide a technical proposal, period of performance, appropriate cost and price information, and any other information required to determine the reasonableness of the Contractor's proposal.
  - (3) Performance standards to be used as criteria for determining whether the work requirements have been met.
- (d) Within 10 business days after receipt of the RTP from the Contracting Officer, the Contractor shall submit a task order proposal in accordance with the RTP and FAR Part 15. Estimating guides, such as Engineered Performance Standards (EPS) or industry standards published by R. S. Means Company, may be used by the Contractor as a basis to propose the labor categories, estimated number of labor hours required, or the material requirements and prices to the extent practicable for work to be self-performed by the Contractor. Estimating guides do not cover every task that may need to be accomplished. For these tasks, work content comparison (comparing a task that is not specifically defined in Means to a very similar task that is defined in Means) may be performed by the Contractor prior to a determination that Means does not apply to a job.
- (e) After review and any necessary discussions, the Contracting Officer may issue a task order to the Contractor containing, at a minimum, the following:
  - (1) Date of the order.
  - (2) Contract number, order number, and ELIN (if appropriate).

- (3) Functional description of the work identifying the objectives or results desired from the task order, including special instructions or other information necessary for performance of the task.
  - (4) Performance standards, and where appropriate, quality assurance standards.
  - (5) Maximum dollar amount authorized. This includes allocation of award fee among award fee periods, if applicable.
  - (6) Any other resources (travel, materials, equipment, facilities, etc.) authorized, if a cost reimbursement task order.
  - (7) Delivery/performance schedule, including start and end dates.
  - (8) Accounting and appropriation data.
- (f) The Contractor shall provide acknowledgment of receipt to the Contracting Officer within five calendar days after receipt of the task order.
- (g) If time constraints do not permit issuance of a fully defined task order in accordance with the procedures described in paragraphs (a) through (d), a task order which includes a ceiling price may be issued. This may be applicable in the case of urgent or emergency work, for example.
- (h) The Contracting Officer may modify tasks in the same manner in which they were issued.
- (i) In the event of a conflict between the requirements of the task order and the Contractor's approved task order proposal, the task order shall prevail.

### **H.13 DOE-H-1021 CONSERVATION OF UTILITIES**

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

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.

### **H.14 DOE-H-1022 PROTECTION OF TRAFFIC**

(a) Traffic Interference

The Contractor shall conduct his operations so as to interfere as little as possible with the use of existing roads at or near locations where the work is being performed. When it is necessary to excavate a trench across an existing road, store materials thereon, or perform other work which would obstruct traffic, notification of the start of such work or storage of materials, and details of the proposed methods of providing the required facilities for safe and continuous use of roads shall be submitted to the Contracting Officer for approval at least 48 hours in advance thereof;

and the Contractor shall, at his own expense, make such approved temporary provisions as are required to maintain at least one lane of traffic by bridging the excavation, providing ramps over surface obstructions, or providing a suitable temporary by-pass around the construction.

(b) Barricades, By-Passes, and Warning Signs

The Contractor will be required as a part of this Contract to provide and erect, before construction begins, and maintain during the progress of construction, substantial barricades bridging over trenches, ramps, sidewalks, guard rails, and warning signs; furnish, place, and maintain adequate lights and warning signals; and provide flagmen and watchmen. Additional safeguards shall be provided as directed by the Contracting Officer where and as may be necessary to further protect pedestrian and vehicular traffic. All such barricades and/or temporary bridging or other temporary construction shall be removed by the Contractor upon completion of the work necessitating the erection thereof.

**H.15 DOE-H-1023 PRESERVATION OF ANTIQUITIES, WILDLIFE AND LAND AREAS**

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

**H.16 DOE-H-1024 ALTERNATIVE DISPUTE RESOLUTION**

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

- 'standing neutral.' The standing neutral will be available to help resolve disputes as they arise. Such standing neutral can be an individual, a board comprised of three independent experts, or a company with specific expertise in the Contract area. If a standing neutral cannot be agreed upon, the DOE Office of Dispute Resolution will make a selection. Specific joint ADR processes shall be developed.
- (b) The parties agree the following provision may be invoked for significant disputes upon mutual agreement of the DOE and the Contractor:
- (1) DOE and the Contractor shall use their best efforts to informally resolve any dispute, claim, question, or disagreement by consulting and negotiating with each other in good faith, recognizing their mutual interests, and attempting to reach a just and equitable solution satisfactory to both parties. If any agreement cannot be reached through informal negotiations within 30 days after the start of negotiations, 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.17 DOE-H-1025 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 Contracting Officer or a duly authorized representative. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other Contractor or by a Government employee.

#### **H.18 DOE-H-1032 RELEASE OF INFORMATION**

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.19 DOE-H-1033 PERMITS AND LICENSES**

Within sixty (60) days of the Notice to Proceed (NTP), the Contractor shall submit to the DOE Contracting Officer's Representative a list of Environment, Safety and Health approvals that, in the Contractor's opinion, shall be required to complete the work under this award. This list shall include the topic of the approval being sought, the approving authority, and the expected submit/approval schedule. The Contracting Officer's Representative shall be notified as specific items are added or removed from the list and processed through their approval cycles.

The Contractor agrees to include this clause in their first-tier subcontracts and agrees to enforce the terms of this clause.

#### **H.20 DOE-H-1040 LOBBYING RESTRICTION (ENERGY AND WATER DEVELOPMENT AND RELATED AGENCIES APPROPRIATIONS ACT, 2014)**

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

#### **H.21 DOE-H-1046 SUSTAINABLE ACQUISITION UNDER JANITORIAL SERVICES 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. It is anticipated that the Contractor will use Affirmative Procurement Program materials for this service Contract. This will include paper products containing recovered material as designated by the Environmental Protection Agency. Additional information on this program may be found at <http://www.usda.gov/biopreferred>. This also includes use of biobased cleaning supplies designated by the United States Department of Agriculture (USDA) under the BioPreferred Products Program. Additional information about this program may be found at <http://www.biopreferred.gov/>. While no formal reporting is required by the Contractor, the Department is required to provide an annual report on such matters and may request information regarding estimates of the quantities of such materials used under the Contract.

**H.22 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/>
- 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.23 DOE-H-1055 COMPLIANCE WITH INTERNET PROTOCOL VERSION 6 (Ipv6)  
IN ACQUIRING INFORMATION TECHNOLOGY (JULY 2011)**

This Contract involves the acquisition of Information Technology (IT) that uses Internet Protocol (IP) technology. The Contractor agrees that (1) all deliverables that involve IT that uses IP (products, services, software, etc.) comply with IPv6 standards and interoperate with both IPv6 and IPv4 systems and products; and (2) it has IPv6 technical support for fielded product management, development and implementation available. If the Contractor plans to offer a deliverable that involves IT that is not initially compliant,

the Contractor shall (1) obtain the Contracting Officer's approval before starting work on the deliverable; and (2) have IPv6 technical support for fielded product management, development and implementation available.

Should the Contractor find that the Performance Work Statement of this Contract does not conform to IPv6 standards, it must notify the Contracting Officer of such nonconformance and act in accordance with the instructions of the Contracting Officer.

**H.24 DOE-H-1056 CONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATION OR ALLEGED VIOLATIONS, FINES, AND PENALTIES (JULY 2011)**

- (a) The Contractor shall accept, in its own name, notices of violation(s) or alleged violations (NOVs/NOAVs) issued by federal or state regulators to the Contractor resulting from the Contractor's performance of work under this Contract, without regard to liability. The allowability of the costs associated with fines and penalties shall be subject to other provisions of this Contract.
- (b) After providing DOE advance written notice, the Contractor shall conduct negotiations with regulators regarding NOVs/NOAVs and fine and penalties. However, the Contractor shall not make any commitments or offers to regulators that would bind the Government, including monetary obligations, without first obtaining written approval from the Contracting Officer. Failure to obtain advance written approval may result in otherwise allowable costs being declared unallowable and/or the Contractor being liable for any excess costs to the Government associated with or resulting from such offers/commitments.
- (c) The Contractor shall notify DOE promptly when it receives service from the regulators of NOVs/NOAVs and fines and penalties.

**H.25 DOE-H-1057 ASSIGNMENT AND ADMINISTRATION OF CONTRACTS AND SUBCONTRACTS (JULY 2011)**

- (a) Assignment of DOE Prime Contracts. During the period of performance of this Contract, it may become necessary for the U.S. Department of Energy (DOE) to transfer and assign existing or future DOE prime contracts supporting site work to this Contract. The Contractor shall accept the transfers and assignments of contracts. Any recommendations and/or suggestions regarding individual transfers directed by DOE shall be submitted in writing to the Contracting Officer prior to the transfer or assignment.
- (b) Administration of Subcontracts. The administration of all subcontracts entered into and/or managed by the Contractor, including responsibility for payment hereunder, shall remain with the Contractor. The Government reserves the right at any time to require that the Contractor submit any or all other contractual arrangements, including but not limited to purchase orders or classes of purchase orders, for approval, and



provide information concerning methods, practices, and procedures used or proposed to be used in subcontracting and purchasing. Subcontracts and purchase orders shall be made in the name of the Contractor, shall not bind nor purport to bind the Government, shall not relieve the Contractor of any obligation under this Contract (including, among other things, the obligation to properly supervise and coordinate the work of subcontractors), and shall be in such form and contain such provisions as are required by this Contract or as the Contracting Officer may prescribe. Any consent by the Contracting Officer to the placement of subcontracts shall not be construed to create subcontractor privity of contract with the Government.

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

## **H.26 DOE-H-1061 KEY PERSONNEL**

- (a) **Introduction**

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

- (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

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assignment to the Contract; or (iii) assigning a current Key Person for work outside the Contract.

(d) Contract Price Reductions for Changes to Key Personnel.

- (1) Notwithstanding approval by the Contracting Officer, any time the Project Manager (the initial Project Manager or any substitution approved by the Contracting Officer) is changed for any reason within two (2) years of being placed in the position, DOE may modify the Contract by reducing the contract price by \$50,000 for each and every occurrence of a change.
- (2) Notwithstanding approval by the Contracting Officer, any time a Key Person other than the Project Manager (any initial Key Person or any substitution approved by the Contracting Officer) is changed for any reason within two (2) years of being placed in the position, DOE may modify the contract by reducing the Contract price by \$25,000 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 price. 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 price.

(e) Requirements for Changes to Key Personnel

- (1) The Contractor shall notify the Contracting Officer and request approval in writing at least 60 days in advance of any changes to Key Personnel.
  - (2) Key Personnel substitutions shall have substantially equivalent abilities, experience, and qualifications as the Key Person being replaced.
  - (3) The Contractor shall not make a change in Key Personnel without prior written approval of the Contracting Officer.
  - (4) No Key Person position shall remain vacant for a period more than 30 days following Contracting Officer approval of a change in Key Personnel.
  - (5) Approval of changes to Key Personnel is at the unilateral discretion of the Contracting Officer.
- (f) The Key Personnel for this Contract are identified below. The list of personnel may, with the consent of the contracting parties, be amended from time to time during the course of the Contract to add or delete personnel.

<u>Position</u>	<u>Name</u>
Project Manager	_____
Security Manager	_____

\_\_\_\_\_  
\_\_\_\_\_

**H.27 DOE-H-1063 PERFORMANCE GUARANTEE AGREEMENT (JULY 2011)**

The Contractor’s parent organization(s) or all member organizations if the Contractor is a joint venture, limited liability company, or other similar entity, shall guarantee performance of the Contract as evidenced by the Performance Guarantee Agreement incorporated in the Contract in Section J, Attachment J-14.

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

**H.28 DOE-H-1064 RESPONSIBLE CORPORATE OFFICIAL AND CORPORATE BOARD OF DIRECTORS**

The Contractor has provided a guarantee of performance from its parent company(s) in the form set forth in Section J, Attachment J-14 entitled, “Executed Performance Guarantee Agreement.” The individual signing the “Performance Guarantee Agreement” for the parent company(s) should be the Responsible Corporate Official.

The Responsible Corporate Official is the person who has sole corporate (parent company(s)) authority and accountability for Contractor performance. DOE may contact, as necessary, the single Responsible Corporate Official identified below regarding Contract performance issues.

Responsible Corporate Official:

- Name:
- Position:
- Company/Organization:
- Address:
- Phone:
- Facsimile:
- Email:

Should the Responsible Corporate Official or their contact information change during the period of the Contract, the Contractor shall promptly notify the Contracting Officer in writing of the change.

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

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

Corporate Board of Directors:

- Name:
- Position:
- Company/Organization:
- Address:
- Phone:
- Facsimile:
- Email:

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

**H.29 PRIVACY ACT SYSTEMS OF RECORD**

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

<b>DOE Privacy Act System Number</b>	<b>DOE Privacy Act System Description</b>
DOE-5	Personnel Records of Former Contractor Employees (includes all former workers)
DOE-10	Energy Employees Occupational Illness Compensation Program Act Files
DOE-13	Payroll and Leave Records
DOE-14	Report of Compensation
DOE-15	Intelligence-Related Access Authorization
DOE-28	General Training Records
DOE-31	Firearms Qualifications Records
DOE-33	Personnel Medical Records (present and former DOE employees and Contractor employees)
DOE-35	Personnel Radiation Exposure Records
DOE-38	Occupational and Industrial Accident Records
DOE-43	Personnel Security Clearance Files
DOE-45	Weapons Data Access Control System

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DOE-48	Security Education and/or Infraction Reports
DOE-51	Employee and Visitor Access Control Records
DOE-52	Access Control Records of International Visits, Assignments, and Employment at DOE Facilities and Contractor Sites
DOE-77	Physical Fitness Test Records (for armed, uniformed guards)
DOE-81	Counterintelligence Administrative and Analytical Records and Reports
DOE-84	Counterintelligence Investigative Records
DOE-88	Epidemiologic and Other Health Studies, Surveys, and Surveillances

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

**H.30 DOE-H-1066 DISPOSITION OF INTELLECTUAL PROPERTY – FAILURE TO COMPLETE CONTRACT (JULY 2011)**

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

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

**H.31 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.32 DOE H-1068 WORK STOPPAGE AND SHUTDOWN AUTHORIZATION (JULY 2011)**

- (a) Imminent Health and Safety Hazard is a given condition or situation which, if not immediately corrected, could result in a serious injury or death, including exposure to radiation and toxic/hazardous chemicals. Imminent Danger in relation to the facility safety envelope is a condition, situation, or proposed activity which, if not terminated, could cause, prevent mitigation of, or seriously increase the risk of (1) nuclear criticality, (2) radiation exposure, (3) fire/explosion, and/or (4) toxic hazardous chemical exposure.
  
- (b) Work Stoppage. In the event of an Imminent Health and Safety Hazard, identified by facility line management or operators or facility health and safety personnel overseeing facility operations, or other individuals, the individual or group identifying the imminent hazard situation shall immediately take actions to eliminate or mitigate the hazard (i.e., by directing the operator/implementer of the activity or process causing the imminent hazard to stop work, or by initiating emergency response actions or other actions) to protect the health and safety of the workers and the public, and to protect U.S. Department of Energy (DOE) facilities and the environment. In the event an imminent health and safety hazard is identified, the individual or group identifying the hazard should coordinate with an appropriate Contractor official, who will direct the shutdown or other actions, as required. Such mitigating action should subsequently be coordinated with the DOE and Contractor management. The suspension or stop-work order should be promptly confirmed in writing by the Contracting Officer.
  
- (c) Shutdown. In the event of an imminent danger in relation to the facility safety envelope or a non-Imminent Health and Safety Hazard identified by facility line managers, facility operators, health and safety personnel overseeing facility operations, or other individuals, the individual or group identifying the potential health and safety hazard may recommend facility shutdown in addition to any immediate actions needed to mitigate the situation. However, the recommendation must be coordinated with Contractor management, and the DOE Site Manager. Any written direction to suspend operations shall be issued by the Contracting Officer, pursuant to the Clause entitled, "FAR 52.242-15, Stop-Work Order."
  
- (d) Facility Representatives. DOE personnel designated as Facility Representatives provide the technical/safety oversight of operations. The Facility Representative has the authority to "stop work," which applies to the shutdown of an entire plant, activity, or job. This stop-work authority will be used for an operation of a facility which is performing work the Facility Representative believes:
  - (1) Poses an imminent danger to health and safety of workers or the public if allowed to continue;

- (2) Could adversely affect the safe operation of, or could cause serious damage to the facility if allowed to continue; or
  - (3) Could result in the release of radiological or chemical hazards to the environment in excess of regulatory limits.
- (e) This clause flows down to all subcontractors at all tiers. Therefore, the Contractor shall insert a clause, modified appropriately to substitute "Contractor Representatives" for "the Contracting Officer" in all subcontracts.

### **H.33 DOE-H-1069 TRANSITION TO FOLLOW-ON CONTRACT (JULY 2009)**

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

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

### **H.34 DOE-H-1079 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 proposal costs to be unallowable.
- (e) If the Contractor fails to comply fully with the requirements of this clause, the Government may reflect the Contractor's failure in its—
  - (1) Determination of otherwise earned fee under the Contract; and/or
  - (2) Past performance evaluation of the Contractor's performance.

### **H.35 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.36 ALLOCATION OF RESPONSIBILITY AND LIABILITY FOR CONTRACTOR AND U.S. DEPARTMENT OF ENERGY (DOE) ENVIRONMENTAL COMPLIANCE ACTIVITIES**

- (a) In this Clause:

- (1) "Environmental " requirements means requirements imposed by applicable Federal, state, and local environmental laws and regulations, including, without limitation, statutes, ordinances, regulations, court orders, consent decrees, administrative orders, or compliance agreements, consent orders, permits, and licenses; and
  - (2) "Party" means either the Contractor or DOE.
- (b) Responsibility and liability for fines or penalties arising from or related to violations of environmental requirements shall be borne by the party causing the violation regardless of which party:
- (1) The cognizant regulatory authority fines or penalizes;
  - (2) Signs permit applications (including situations where DOE signs defective or non-conforming permit applications or other environmental submittals prepared by or under the direction of the Contractor), manifests, reports, or other required documents;
  - (3) Is a permittee; or
  - (4) Is the named subject of an enforcement action or assessment of a fine or penalty.
- (c) Consequently, if the Contractor causes a violation:
- (1) All fines and penalties arising from or related to violations of environmental requirements are unallowable costs. If DOE pays a fine or penalty for a violation that the Contractor caused, the amount of the fine or penalty shall be due from the Contractor, and DOE may immediately offset that amount against payments to which the Contractor is otherwise entitled for allowable costs and fee, or any other funds otherwise owed by the Government to the Contractor; and
  - (2) Costs of challenging or defending actions brought against the Contractor for violations of environmental requirements are to be borne by the Contractor.

### **H.37 PERMITS, APPLICATIONS, LICENSES, AND OTHER REGULATORY DOCUMENTS**

- (a) Consistent with the FAR clause 52.236-7 "Permits and Responsibilities," in Section I, the Contractor must obtain any licenses, permits, other approvals or authorizations for conducting all activities under the Contract. The Contractor shall be responsible for becoming a party to all regulatory compliance agreements/orders associated with scope under this Contract including those previously executed. The Contractor is responsible for complying with all permits, licenses, certifications, authorizations and

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

**H.38 EMERGENCY CLAUSE**

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

Manager or designee may direct the activities of the Contractor and subcontractors throughout the duration of the emergency.

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

### **H.39 GOVERNMENT-FURNISHED SERVICES AND ITEMS (GFSI)**

- (a) DOE will provide Government-Furnished Property (GFP) and Government-Furnished Services and Items (GFSI) listed in Section J, Attachment J-3 and J-5, respectively. If DOE cannot provide the GFP and/or GFSI as identified in Section J, Attachments J-3 and J-5, the Contractor may be entitled to pursue remedies in the manner and subject to the limitations set out in subparagraphs (d) and (i) of Section I, FAR 52.245-1, Government Property, Alternate I.
- (b) The GFP is identified in Section J, Attachment J-3. The Contractor shall evaluate the adequacy of GFP and GFSI and notify DOE when GFP and GFSI equipment or services do not meet Contract or DOE Order requirements.
- (c) The Contractor shall provide the Contracting Officer a projection of when GFSI, identified in Section J, Attachment J-5, are needed within thirty (30) calendar days after the NTP and quarterly thereafter. Amendments to the projection, if any, shall be provided to the Contracting Officer 45 calendar days in advance of the GFSI need date. The DOE will review each Contractor submittal of GFSI needs and, within fifteen (15) calendar days, shall notify the Contractor whether it will provide the requested GFSI.

### **H.40 GREEN PURCHASING UNDER DOE SERVICE CONTRACTS**

Pursuant to Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, 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. 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 employees, contract service providers and visitors using the facility. Green purchasing or environmentally preferable contracting includes the initiatives described below:

- Alternative Fuels and Vehicles are described at <http://afdc.energy.gov/afdc/>
- Biobased Products are described at <http://www.biopreferred.gov/>
- Energy efficient products are described at <http://energystar.gov/products> for Energy Star products and at <http://www.eere.energy.gov/femp/procurement> for FEMP designated products
- Environmentally Preferable Computers are described at <http://www.epeat.net>

- Non-Ozone Depleting Products are described at <http://www.epa.gov/Ozone/snap.index.html>
- Recycled Products are described at <http://epa.gov/cpg>
- Water efficient products are described at <http://epa.gov/watersense/>

To the extent that the services provided by the Contractor require the provision of any of the above types of products, the environmentally preferable type of product is to be furnished 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 require the use of products that have biobased content, are energy efficient, or have recycled content.

#### **H.41 DOE CONTRACT ADMINISTRATION AND OVERSIGHT**

This Contract presents significant work scope, and makes it imperative that DOE has a focused approach for providing oversight of Contractor work. DOE oversight activities will focus primarily on ensuring safe completion of infrastructure requirements. The DOE oversight will be conducted in a tailored and proactive manner with minimal interference with Contract performance. The Contractor shall respond to DOE oversight and to concerns, findings, and observations as identified by the Contracting Officer or Contracting Officer's Representative during the conduct of these oversight activities.

The Contractor shall expect routine surveillance and observation of work performed to the task requirements by DOE personnel and shall correct violations of laws, regulations, permits, Worker Safety & Health Program, upon discovery, within one working day. The Contractor shall correct all other deficiencies within five working days.

Suggestions for the improvement of contractually mandated work shall be enacted upon mutual agreement between the Contractor and the Contracting Officer or Contracting Officer's Representative. The Contractor shall provide logistical support to facilitate conducting oversight activities on an as-needed basis, at the discretion of the Contracting Officer's Representative.

The Contractor shall respond to DOE oversight and to concerns, findings and observations as identified by the Contracting Officer or Contracting Officer's Representative during the conduct of these oversight activities. The five fundamental areas of oversight that may be conducted during the course of the execution of this Contract are as follows:

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- (a) **Project Management Oversight:** This includes daily field inspections and the weekly and monthly assessment of project status, which will be used to determine and validate project performance and invoices submitted by the Contractor.
- (b) **Contract Management Oversight:** Administration and monitoring of the prime Contract will be performed by the Contracting Officer's Representative or their designee. All information and documentation relinquished by the Contractor will be retained by the Contracting Officer's Representative for the Contract file. Administration and monitoring of the prime Contract will be in accordance with the Contract terms and conditions which include, but are not limited to, the oversight required under FAR Subchapter G – Contract Management (FAR Parts 42-51) and its supplements, as applicable.
- (c) **Integrated Safety Management/Operations Oversight:** The Contractor shall provide documentation and participate in meetings to allow DOE to monitor the Contractor's compliance with DOE P 450.4A, "Integrated Safety Management Policy."
- (d) **Daily Oversight:** DOE may utilize Facility Representatives, Project Managers, and Subject Matter Experts in addition to the Contracting Officer's Representative, to conduct daily oversight for the duration of this Contract. The purpose of this oversight will be to assess compliance with the terms and conditions of the Contract. In addition to this oversight, the Contractor shall support:
  - (1) Senior Management Walkthroughs, conducted in areas or locations where work is ongoing;
  - (2) Periodic Walkthroughs by regulators, DOE-HQ personnel, and/or other stakeholders
  - (3) Employee concerns elevated to DOE for evaluation; and
  - (4) Unannounced inspections and visits by regulatory personnel
- (e) **Assessments and Reviews:** DOE or other regulatory agencies may conduct assessments of the Contractor's performance. DOE may also conduct in-depth programmatic reviews of Contractor activities. The subject areas of such reviews may include, but are not limited to safety and health, quality assurance, project management, financial systems, and environmental compliance. Advance notice of these performance assessments and reviews will be given to the Contractor fourteen (14) calendar days in advance of the assessment or review when possible.

#### **H.42 MODIFICATION AUTHORITY**

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

- (a) Accept nonconforming work,
- (b) Waive any requirement of this Contract, or

(c) Modify any term or condition of this Contract.

#### **H.43 EMPLOYEE CONCERNS PROGRAM**

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

#### **H.44 INCORPORATION OF REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFEROR**

The representations, certifications, and other statements of Offeror, completed by the Contractor, dated **TBD**, are hereby incorporated by reference and made a part of this Contract.

#### **H.45 NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS -- SENSE OF CONGRESS**

It is the Sense of the Congress that, to the greatest extent practicable, all equipment and material purchased with funds made available under this award should be American-made.

#### **H.46 PAPERLESS DIRECTIVE PROCESSING SYSTEM**

- (a) The Contractor, in addition to complying with applicable laws, rules, and other regulations, shall comply with those DOE orders and other directives applicable to Contractors, with the applicable departmental policies, plans, programs, and management directives, and with all changes to assigned work as agreed to by the Contractor and the Contracting Officer or designee.
- (b) DOE has developed a list of applicable DOE Directives, and is appended to the Contract as Section J, Attachment J-2. The Contractor shall comply with the directives identified in such list. The Contractor shall make no claim, including a claim for equitable adjustment under the Changes clauses of this Contract, for additional costs, fee or extension of time of performance relating to compliance with the directives in such list.
- (c) The List of Applicable DOE Directives to the Contract will be revised and issued, by the DOE Contracting Officer, as a Contract modification, as necessary. The Contracting Officer may direct the Contractor to comply with additional DOE Directives and local directives and revisions thereto, as follows:

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- 1) Pursuant to and in accordance with the Changes clause of the Contract with respect to changes in directives within the general scope of this Contract.
  - 2) Pursuant to any Environment, Safety, and Health provisions of this Contract, and in accordance with the Changes clause of this Contract with respect to changes in directives involving safety, environment, health, and quality.
- (d) At least once a month, the Contractor will extract directives from the DOE Paperless Directive System utilizing the Internet as notification of their availability by DOE electronic prompting. Copies of DOE directives may be obtained without charge from the Contracting Officer or by citing the number of this Contract in a written request sent to the following address:
- U.S. DOE  
Distribution Section  
1000 Independence Ave S.W.  
Washington, DC 20585  
James V. Forrestal Building
- (e) The Contracting Officer and his/her representative(s) expressly authorized in writing to do so are the only Government officials authorized to provide explanations as to the applicability of directives. The Contracting Officer is the only Government Official authorized to resolve possible conflicting requirements involving directives.
- (f) Upon receipt of a new or revised directive, the Contractor shall review it for consistency with the other terms of this Contract and for impacts on funding, manpower and other provisions of the Contract. If the Contractor considers the directive to be consistent with the other terms of this Contract and it can be implemented within existing funds, manpower, and other provisions of the Contract and the implementation will not have a negative impact on the cost, schedule, or other obligations of the Contractor, the Contractor shall establish an implementation schedule, and so advise the Contracting Officer within 30 calendar days of receipt. In the event the Contractor considers the directive to be inconsistent with the other terms of this Contract or the requirements of the directive cannot be implemented within existing funding, manpower, and other provisions of the Contract, the Contractor shall so advise the Contracting Officer within 30 calendar days of receipt. Such notice shall include the basis for the claimed inconsistency and the projected cost of implementation in excess of current funding, manpower, and other provisions of the Contract. After evaluation of the Contractor's position, the Contracting Officer shall issue direction to the Contractor, pursuant to the applicable Changes clause in this Contract, concerning appropriate implementation of the directive.
- (g) The Contractor will, at least quarterly, notify DOE of those directives obtained from the DOE Paperless Directive System as described in (d) above. The Contractor cognizant personnel will review these directives and recommend for concurrence



disposition of the directives to DOE-PPPO.

- (h) Upon agreement between the Contractor and DOE, the directive will be implemented as outlined in a Contractor Management Summary or Implementation Plan, whichever is appropriate, and the directive added to Attachment J-2, Paducah List of Applicable DOE Directives (List B), of the Contract and issued by the Contracting Officer. The same process will be utilized for deletion of directives.
- (i) The Contractor shall incorporate the substance of this clause with respect to applicable directives, excluding any reference to the Changes clause, in subcontracts for performance of work at the site and as directed by the Contracting Officer.

#### **H.47 PERSONNEL SECURITY CLEARANCES**

- (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 Contracting Officer 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 will 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, Contractor personnel shall be required to have an “L” clearance level at a minimum. Key management and certain other personnel will be required to have a “Q” clearance level. The Contractor shall seek opportunities to reduce the levels of clearance required for personnel based upon the site conditions.

- (c) This requirement may be waived by the Contracting Officer 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.48 ACCESS TO DOE-OWNED OR LEASED FACILITIES**

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- (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 security badges that allow such physical access. The Contractor further understands that it must propose employees whose backgrounds offer the best prospect of obtaining approval for access, considering the following potentially disqualifying 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, suspended 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, including use of any forms directed by DOE; (ii) that employees properly complete said forms; and (iii) that the employees submit the forms to the person designated by the Contracting Officer.
  - (2) In completing the process for gaining physical access, that its employees (i) cooperate with DOE officials responsible for granting access to DOE-owned or leased facilities; and (ii) provide any additional information as DOE may request.
- (c) The Contractor understands and agrees that DOE may unilaterally deny a security badge to an employee and that the denial remains effective until such time as DOE 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 a substitute employee and initiate the process for gaining access for the substitute. DOE's denial of a security badge to individual employees 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.
- (e) The Contractor shall include this clause, including this paragraph (e), in any subcontract, awarded in the performance of this Contract, in which one or more subcontractor employees will require physical access to DOE-owned or leased facilities.

#### **H.49 CONFIDENTIALITY OF INFORMATION**

- (a) To the extent that the work under this Contract requires that the Contractor be given access to confidential or proprietary business, 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 Contracting Officer in writing. The foregoing obligations, however, shall not apply to:
  - Information which, at the time of receipt by the Contractor, is in the public domain;
  - Information which is published after receipt thereof by the Contractor or otherwise becomes part of the public domain through no fault of the Contractor;
  - 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; and
  - Information which the Contractor can demonstrate was received by it from a third party that did not require the Contractor to hold it in confidence.
- (b) The Contractor shall obtain the written agreement, in a form satisfactory to the Contracting Officer, of each employee permitted access, whereby the employee agrees that he will not discuss, divulge or disclose any such information 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 Contracting Officer.

- (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.50 CONTRACT PARTICIPATION BY FOREIGN NATIONALS**

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

#### **H.51 MAJOR SUBCONTRACTORS**

The following subcontractor(s) have been determined to be major subcontractors for this Contract:

[To be inserted post-award.]

#### **H.52 PARTNERING**

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

Participation in the partnership will be totally voluntary by the parties. Any cost associated with effectuating this partnership will be agreed to by both parties during Contract performance. 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.53 QUALITY ASSURANCE SYSTEM**

The Contractor shall establish and maintain an effective Quality Assurance Program (QAP) approved by DOE in compliance with 10 CFR 830 Subpart A and DOE Order 414.1D and in accordance with the EM Quality Assurance Program, EM-QA-001 Rev 1, 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 has adopted the American Society of Mechanical Engineers (ASME) NQA-1, 2008, with addenda through 2009, Quality Assurance Requirements for Nuclear Facility Applications, as a consensus standard and requires the implementation of NQA-1 requirements into the Contractors Quality Implementation Plan (QIP) based on the activities being performed.

Development of a new QAP or modification of the existing version of a QAP from a prior contractor, does not alter a contractor's legal obligation to comply with 10 CFR 830, other regulations affecting quality assurance (QA) and DOE Order 414.1D.

The Contractor's QAP shall describe the overall implementation of the EM QA requirements and shall be applied to all work performed by the Contractor (e.g., research, design/engineering, construction, operation, budget, mission, safety, and health).

The Contractor shall, at a minimum, annually review and update as appropriate, their QAP. The review and any changes shall be submitted to DOE for approval. Changes that reduce the level of commitments affecting nuclear safety shall be approved before implementation by the Contractor.

All software acquisition, development, operation and maintenance included in the IMS shall be compliant with requirements identified in EM-QA-001 Rev 1, Attachment G. Safety software shall be acquired, developed and implemented using ASME NQA-1-2008 with addenda through 2009, Part I and Subpart 2.7. Non-safety, quality-related software for nuclear facility or EM mission critical applications shall be managed and controlled in accordance with the requirements of DOE 0 414.1D, Attachment 2, Sections 2 & 3 as well as Attachment 4 for Nuclear Facilities.

The Contractor shall develop and implement a comprehensive Issues Management System for the identification, assignment of significance category, and processing of

nuclear safety-related issues identified within the Contractor's organization. The significance assigned to the issues shall be the basis for all actions taken by the Contractor in correcting the issue from initial causal analysis, reviews for reporting to DOE, through completion of Effectiveness Reviews if required based on the seriousness of the issue.

**H.54 DOE-H-1059 MATERIAL SAFETY DATA SHEET AVAILABILITY (JULY 2011)**

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