# Part I – The Schedule

# Section H

# Special Contract Requirements

H.1DOE-H-2013 CONSECUTIVE NUMBERING (OCT 2014) ..... **7**

H.2 DOE-H-2002 NO THIRD PARTY BENEFICIARIES (OCT 2014) ..... **7**

H.3DEFINITIONS ..... **7**

H.4WORKFORCE TRANSITION AND EMPLOYEE HIRING PREFERENCES INCLUDING THROUGH PERIOD OF PERFORMANCE ..... **7**

H.5DOE-H-2001 EMPLOYEE COMPENSATION: PAY AND BENEFITS (OCT 2017) (REVISED) ..... **9**

H.6SPECIAL PROVISIONS APPLICABLE TO WORKFORCE TRANSITION AND EMPLOYEE COMPENSATION: PAY AND BENEFITS ..... **20**

H.7WORKFORCE TRANSITION AND BENEFITS TRANSITION: PLANS AND TIMEFRAMES ..... **20**

H.8DOE-H-2004 POST CONTRACT RESPONSIBILITIES FOR PENSION AND OTHER BENEFIT PLANS (OCT 2014) ..... **24**

H.9DOE-H-2028 LABOR RELATIONS (OCT 2014) (REVISED) ..... **25**

H.10 WORKFORCE RESTRUCTURING (REVISED) (FEBRUARY 2019) ..... **28**

H.11 LABOR STANDARDS ..... **30**

H.12 DOE-H-2003 WORKER'S COMPENSATION INSURANCE (OCT 2014) ..... **31**

H.13 DOE-H-2073 RISK MANAGEMENT AND INSURANCE PROGRAMS (DEC 2014) (REVISED) ..... **31**

H.14 OVERTIME CONTROL REPORTING ..... **33**

H.15 DOE-H-2022 CONTRACTOR BUSINESS SYSTEMS (OCT 2014) ..... **34**

H.16 DOE-H-2023 COST ESTIMATING SYSTEM REQUIREMENTS (OCT 2014) (REVISED) ..... **37**

H.17 DOE-H-2024 EARNED VALUE MANAGEMENT SYSTEM (MAR 2019) (REVISED) **40**

H.18 DOE-H-2025 ACCOUNTING SYSTEM ADMINISTRATION (OCT 2014) (REVISED) **44**

H.19 DOE-H-2026 CONTRACTOR PURCHASING SYSTEM ADMINISTRATION (OCT 2014) (REVISED) ..... **46**

H.20 DOE-H-2027 CONTRACTOR PROPERTY MANAGEMENT SYSTEM ADMINISTRATION (OCT 2014) (REVISED) ..... **50**

H.21 DOE-H-2014 CONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATION OR ALLEGED VIOLATIONS, FINES, AND PENALTIES (OCT 2014) (REVISED) ..... **51**

H.22 DOE-H-2016 PERFORMANCE GUARANTEE AGREEMENT (OCT 2014) ..... **52**

H.23 DOE-H-2017 RESPONSIBLE CORPORATE OFFICIAL AND CORPORATE BOARD OF DIRECTORS (OCT 2014) ..... **52**

H.24 DOE-H-2018 PRIVACY ACT SYSTEMS OF RECORDS (OCT 2014) (REVISED) ..... **53**

H.25 DOE-H-2019 DISPOSITION OF INTELLECTUAL PROPERTY – FAILURE TO COMPLETE CONTRACT PERFORMANCE (JUL 2018) ..... **55**

H.26 DOE-H-2021 WORK STOPPAGE AND SHUTDOWN AUTHORIZATION (OCT 2014) (REVISED) ..... **56**

H.27 DOE-H-2033 ALTERNATIVE DISPUTE RESOLUTION (OCT 2014) ..... **57**

H.28 DOE-H-2034 CONTRACTOR INTERFACE WITH OTHER CONTRACTORS AND/OR GOVERNMENT EMPLOYEES (OCT 2014) (REVISED) ..... **58**

H.29 DOE-H-2035 ORGANIZATIONAL CONFLICT OF INTEREST MANAGEMENT PLAN (OCT 2014) (REVISED) ..... **58**

H.30 DOE-H-2043 ASSIGNMENT AND TRANSFER OF PRIME CONTRACTS AND SUBCONTRACTS (OCT 2014) (REVISED) ..... **59**

H.31 DOE-H-2045 CONTRACTOR COMMUNITY COMMITMENT (OCT 2014) (REVISED) ..... **60**

H.32 DOE-H-2046 DIVERSITY PROGRAM (OCT 2014) ..... **61**

H.33 DOE-H-2048 PUBLIC AFFAIRS – CONTRACTOR RELEASES OF INFORMATION (OCT 2014) ..... **62**

H.34 INFORMATION ..... **62**

H.35 DOE-H-2052 REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF THE OFFEROR (OCT 2014) (REVISED) ..... **64**

H.36 DOE-H-2053 WORKER SAFETY AND HEALTH PROGRAM IN ACCORDANCE WITH 10 CFR 851 (OCT 2014) ..... **64**

H.37 DOE-H-2058 DESIGNATION AND CONSENT OF TEAMING SUBCONTRACTS – ALTERNATE I (OCT 2014) (REVISED) ..... **65**

H.38 DOE-H-2059 PRESERVATION OF ANTIQUITIES, WILDLIFE, AND LAND AREAS (OCT 2014) ..... **65**

H.39 DOE-H-2061 CHANGE ORDER ACCOUNTING (OCT 2014) ..... **66**

H.40 DOE-H-2063 CONFIDENTIALITY OF INFORMATION (OCT 2014) (REVISED) ..... **66**

H.41 DOE-H-2064 USE OF INFORMATION TECHNOLOGY EQUIPMENT, SOFTWARE, AND THIRD PARTY SERVICES - ALTERNATE I (OCT 2014) ..... **67**

H.42 DOE-H-2068 CONFERENCE MANAGEMENT (OCT 2014) ..... **68**

H.43 DOE-H-2069 PAYMENTS FOR DOMESTIC EXTENDED PERSONNEL ASSIGNMENTS (OCT 2014) (REVISED) ..... **70**

H.44 DOE-H-2070 KEY PERSONNEL – ALTERNATE I (OCT 2014) (REVISED) ..... **71**

H.45 DOE-H-2071 DEPARTMENT OF ENERGY DIRECTIVES (OCT 2014) ..... **73**

H.46 DOE-H-2072 USE OF GOVERNMENT VEHICLES BY CONTRACTOR EMPLOYEES (OCT 2014) ..... **73**

H.47 DOE-H-2075 PROHIBITION ON FUNDING FOR CERTAIN NONDISCLOSURE AGREEMENTS (OCT 2014) ..... **74**

H.48 DOE-H-2076 LOBBYING RESTRICTIONS (NOV 2018) ..... **75**

H.49 DOE-H-2078 MULTIFACTOR AUTHENTICATION FOR INFORMATION SYSTEMS ..... **75**

H.50 DOE-H-2080 AGREEMENT REGARDING WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (APR 2018) ..... **75**

H.51 TASK ORDERING PROCEDURE ..... **76**

H.52 SUBCONTRACTED WORK ..... **79**

H.53 PARENT ORGANIZATION SUPPORT ..... **79**

H.54 SUBCONTRACTOR TIMEKEEPING RECORDS SIGNATURE REQUIREMENT ..... **80**

H.55 ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM ACT (EEOICPA) ..... **80**

H.56 ALLOCATION OF RESPONSIBILITIES FOR ENVIRONMENTAL COMPLIANCE ..... **81**

H.57 PARTNERING ..... **85**

H.58 LAWS, REGULATIONS, AND DOE DIRECTIVES ..... **85**

H.59 NATIONAL NUCLEAR SECURITY ADMINISTRATION/ENVIRONMENTAL MANAGEMENT STRATEGIC SOURCING PARTNERSHIP ..... **85**

H.60 MENTOR-PROTÉGÉ PROGRAM ..... **86**

H.61 LEGAL MANAGEMENT ..... **86**

H.62 EMERGENCY RESPONSE ..... **87**

H.63 DEPARTMENT OF ENERGY NATIONAL TRAINING CENTER ..... **87**

H.64 MANAGEMENT OF ACCOUNTABLE PROPERTY ..... **87**

H.65 REAL PROPERTY ASSET MANAGEMENT ..... **87**

H.66 ORGANIZATIONAL CONFLICT OF INTEREST – AFFILIATE (S) ..... **88**

## H.1 DOE-H-2013 CONSECUTIVE NUMBERING (OCT 2014)

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

## CONTRACTOR HUMAN RESOURCE MANAGEMENT (CHRM) CLAUSES

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

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

## H.3 DEFINITIONS

For purposes of H Clauses entitled, Workforce Transition and Employee Hiring Preferences Including through Period of Performance, DOE-H-2001, Employee Compensation: Pay and Benefits (Oct 2014), and Special Provisions Applicable to Workforce Transition and Employee Compensation: Pay and Benefits, the following definitions are applicable (unless otherwise specified):

(a) "AMWTP" means Advanced Mixed Waste Treatment Project.
(b) "Contract Award Date" means the date the Contract is signed by the Contracting Officer (CO), noted in Block 28 of the Standard Form 33, Solicitation, Offer and Award.
(c) "Contract Transition Period" means the 90-day transition as defined in Section C.2 of this Contract.
(d) "Fluor Idaho" means Fluor Idaho, LLC under contract DE-EM0004083.
(e) "STI" means Spectra Tech, Inc. under contract DE-EM0003976.
(f) "ICP" means Idaho Cleanup Project.
(g) "Incumbent Contractor(s)" means Fluor Idaho and STI.
(h) "Incumbent Employees" means employees who are employees of either Fluor Idaho or STI.
(i) "Non-Incumbent Employees" are employees other than Incumbent Employees.
(j) "Contract Ordering Period" is defined in Section F, F.3 Period of Performance.
(k) "Task Order Period of Performance" is defined in each Task Order.

## H.4 WORKFORCE TRANSITION AND EMPLOYEE HIRING PREFERENCES INCLUDING THROUGH PERIOD OF PERFORMANCE

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

(a) The Contractor shall provide, during the Transition Period and throughout the period of performance, preferences in hiring for vacancies for non-managerial positions (i.e., all those below the first line of supervision) in accordance with hiring

preferences in the paragraphs below, in descending order of priority, and in accordance with applicable law, any applicable collective-bargaining agreement(s), and applicable site seniority list(s) as provided to the Contractor by the CO, as set forth below.

(1) The Contractor shall provide Incumbent Employees the hiring preferences in paragraphs (i) and (ii) in descending order of priority:

(i) A preference in hiring for vacancies in non-managerial positions that are substantially equivalent to the position each respective Incumbent Employee held on the effective date of the contract transition task order.

(ii) A preference in hiring for vacancies in non-managerial positions for Incumbent Employees not hired into a substantially equivalent position in (1), but who meet the qualifications for another position.

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

(b) The Contractor shall provide, throughout the contract ordering period, and subsequent Task Order(s) period of performance extending beyond the contract ordering period, preferences in hiring for vacancies at the INL Site for non-managerial positions (i.e., all those below the first line of supervision), in accordance with the hiring preferences in paragraphs (1) – (4) below, in descending order of priority.

(1) Consistent with any applicable collective bargaining agreement(s) and site seniority lists at the INL Site, the Contractor shall give a preference in hiring to individuals who are former employees of the Incumbent Contractors, and who are entitled to recall rights.

(2) The Contractor shall give a preference in hiring to individuals set forth below in paragraphs (A) and (B), in descending order of priority, who are eligible for the hiring preference contained in the clause in Section I of this Contract entitled "DEAR 952.226-74, Displaced Employee Hiring Preference", consistent with the provisions of any applicable Workforce Restructuring Plan and Departmental guidance on workforce restructuring, as amended from time to time, regarding the preferential hiring of employees:

(A) Former employees of the Incumbent Contractors or any other DOE contractor or subcontractor of a DOE contractor at the INL Site.

(B) Former employees of other DOE contractor(s) or subcontractor(s) at a DOE defense nuclear facility eligible for the hiring preference.

(3) The Contractor shall give a preference in hiring to individuals who (A) were formerly employed at the INL Site, including individuals previously employed by ICP, AMWTP or the Licensed NRC Facilities; and (B) were involuntarily separated (other than for cause) from their employment at the INL Site; and (C) are qualified for the position or who are not qualified for a particular position, but who agree to become qualified on their own and can become qualified by the date set by the Contractor for commencement of active employment under this Contract or an individual task order.

(4) The Contractor shall give a preference in hiring to individuals (A) who have separated from employment at the INL Site for any reason other than for cause; (B) who are not precluded from seeking employment with a DOE or NNSA contractor by the terms of employee waivers or releases of claims they executed, absent repayment of severance consistent with the terms of those agreements; and (C) who are qualified for a particular position.

## H.5 DOE-H-2001 EMPLOYEE COMPENSATION: PAY AND BENEFITS (OCT 2017) (REVISED)

(a) Contractor Employee Compensation Plan

The Contractor shall submit, for CO approval, by close of the Transition Task Order Period, a Contractor Employee Compensation Plan demonstrating how the Contractor will comply with the compensation requirements of this Contract. The Contractor Employee Compensation Plan shall describe the Contractor's policies regarding compensation, pensions and other benefits, and how these policies will support, at reasonable cost, the effective recruitment and retention of a highly-skilled, motivated, and experienced workforce. A description of the Contractor Employee Compensation Program should include the following components:

(1) Philosophy and strategy for all pay delivery programs;
(2) System for establishing a job worth hierarchy;
(3) Method for relating internal job worth hierarchy to external market;
(4) System that links individual and/or group performance to compensation decisions;
(5) Method for planning and monitoring the expenditure of funds;
(6) Method for ensuring compliance with applicable laws and regulations;
(7) System for communicating the programs to employees;
(8) System for internal controls and self-assessment; and
(9) System to ensure that reimbursement of compensation, including stipends, for employees who are on joint appointments with a parent or other organization shall be on a pro-rated basis.

(b) Total Compensation System

The Contractor shall develop, implement and maintain formal policies, practices and procedures to be used in the administration of its compensation system consistent with Federal Acquisition Regulation (FAR) 31.205-6 and Department of Energy Acquisition Regulation (DEAR) 970.3102-05-6, *Compensation for Personal Services*. DOE-approved standards (e.g., set forth in an advance understanding or appendix), if any, shall be applied to the Total Compensation System. The Contractor's Total Compensation System shall be fully documented, consistently applied, and acceptable to the CO. Costs incurred in implementing the Total Compensation System shall be consistent with the Contractor's documented Contractor Employee Compensation Plan, as approved by the CO.

(c) Requirements for Subcontractors with Incumbent Contractor Eligible Employees

DOE and the Contractor shall agree to the subcontractors that will be subject to the requirements to provide pension and other benefits for Pension Plan Eligible Employees, as defined in paragraph (f) of H Clause entitled, *Definitions*.

(1) The Contractor shall submit to DOE no later than thirty days prior to the close of the Transition Task Order Period of Performance, and with each subsequent task order proposal submittal, a list of subcontractors that will flow down the requirement for continuation of benefits to Eligible Employees.

(2) The Contractor may thereafter propose changes to those subcontractors subject to paragraph (1) above. Such proposed changes shall not be effective or implemented without prior written approval by the CO. Approval of a proposed change is at the unilateral discretion of the CO.

(3) The Contractor shall flow down, to all subcontractors that are subject to the pension plan in paragraphs (1) and (2) of this section, the requirements of paragraphs (g) and (h) of this clause; and paragraphs (a) and (b) of H Clause entitled, Post-Contract Responsibilities for Pension and Other Benefit Plans.

(4) Subject to other subcontract review and approval requirements in this Contract, this clause does not limit the Contractor's ability to utilize subcontractors as necessary to perform Contract requirements.

(d) Reports and Information

The Contractor shall provide the CO with the following reports and information with respect to pay and benefits provided under this Contract:

(1) Annual Contractor Salary-Wage Increase Expenditure Report to include, at a minimum, breakouts for merit, promotion, variable pay, special adjustments, and structure movements for each pay structure showing actual against approved amounts and planned distribution of funds for the following year.

(2) A list of the top five most highly-compensated executives, as defined in FAR 31.205-6(p)(4)(ii) and their total cash compensation, at the time of the contract award and at the time of any subsequent change to their total cash compensation. This should be the same information provided to the System for Award Management (SAM) in accordance with FAR 52.204-10 *Reporting Executive Compensation and First-Tier Subcontract Awards***.**

(3) An Annual Report of Compensation and Benefits. Report to be submitted no later than March 1 of each year in iBenefits or its successor.

(e) Employee Compensation Programs

The Contractor shall establish compensation programs for Incumbent Employees and Non-Incumbent Employees, as set forth in paragraphs (1) and (2) below and consistent with any applicable law, provided, however, that employees scheduled to work fewer than 20 hours per week receive only those benefits required by law. Employees are eligible for benefits, subject to the terms, conditions, and limitations of each benefit program.

(1) <u>Incumbent Employees</u> are as defined in (h) of H Clause entitled, *Definitions*.

(i) Pay. The Contractor shall provide equivalent base pay, as compared to the base pay provided and reimbursed by the Government, to Incumbent Employees for at least the first year of the term of the IDIQ Contract Ordering Period.

(ii) Pension and Other Benefits. The Contractor shall provide a total package of benefits to Incumbent Employees comparable to that provided by the Incumbent Contractors. Comparability of the total benefit package shall be determined by the Contracting Officer at his/her sole discretion. Incumbent Employees shall remain in their existing DB and/or DC pension plans (or comparable successor plans if continuation of the existing plans is not practicable) pursuant to pension plan eligibility requirements and applicable law.

(2) Non-Incumbent Employees are as defined in (i) of H Clause entitled, *Definitions*. All Non-Incumbent Employees shall receive a total pay and benefits package that provides for market-based retirement and medical benefit plans that are competitive with the industry from which the Contractor recruits its employees.

(3) Cash Compensation.

(i) The Contractor shall submit the following to the CO for a determination of cost allowability for reimbursement under the Contract:

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

(B) Variable pay programs/incentives. If not already authorized in the contract, a justification shall be provided with proposed costs and impacts to budget, if any.

(C) In the absence of Departmental policy to the contrary (e.g., Secretarial pay freeze) a Contractor that meets the criteria, as set forth below, is not required to submit a Compensation Increase Plan (CIP) request to the CO for an advance determination of cost allowability for a Merit Increase fund or Promotion/Adjustment fund.

I. The Merit Increase fund does not exceed the mean percent increase included in the annual Departmental guidance providing the WorldatWork Salary Budget Survey's salary increase projected for the CIP year. The Promotion/Adjustment fund does not exceed the increase identified in the annual Departmental guidance.

II. The budget used for both Merit Increase funds and Promotion/Adjustment funds shall be based on the payroll for the end of the previous CIP year.

III. Salary structure adjustments do not exceed the mean WorldatWork structure adjustments projected for the CIP year and communicated through the annual Department CIP guidance.

IV. Please note: No later than the first day of the CIP cycle, Contractors must provide notification to the CO of planned increases and position to market data by mutually agreed-upon employment categories. No

presumption of allowability will exist for employee job classes that exceed market position.

(D) If a Contractor does not meet the criteria included in (C) above, a CIP must be submitted to the CO for an advance determination of cost allowability. The CIP should include the following components and data:

I. Comparison of average pay to market average pay;
II. Information regarding surveys used for comparison;
III. Aging factors used for escalating survey data and supporting information;
IV. Projection of escalation in the market and supporting information;
V. Information to support proposed structure adjustments, if any;
VI. Analysis to support special adjustments;
VII. Funding requests for each pay structure to include breakouts of merit, promotions, variable pay, special adjustments, and structure movement.
   (a) The proposed plan totals shall be expressed as a percentage of the payroll for the end of the previous CIP year.
   (b) All pay actions granted under the compensation increase plan are fully charged when they occur regardless of time of year in which the action transpires and whether the employee terminates before year end.
   (c) Specific payroll groups (e.g., exempt, nonexempt) for which CIP amounts are intended shall be defined by mutual agreement between the contractor and the CO.
   (d) The CO may adjust the CIP amount after approval based on major changes in factors that significantly affect the plan amount (for example, in the event of a major reduction in force or significant ramp-up).
VIII. A discussion of the impact of budget and business constraints on the CIP amount;
IX. Comparison of pay to relevant factors other than market average pay.

(E) After receiving DOE CIP approval or if criteria in (e)(3)(i)(C) are met, contractors may make minor shifts of up to 10 percent of approved CIP funds by employment category (e.g., Scientist/Engineer, Admin, Exempt, Non-Exempt) without obtaining DOE approval.

(F) Individual compensation actions for the top contractor official (e.g., laboratory director/plant manager or equivalent) and key personnel not included in the CIP. For those key personnel included in the CIP, DOE will approve salaries upon contract award and when key personnel are replaced during the contract ordering period and subsequent Task Order(s) period of performance extending beyond the contract ordering period. DOE will have access to all individual salary reimbursements. This access is provided for transparency; DOE will not approve individual salary actions (except as previously indicated).

I. The CO's approval of individual compensation actions will be required only for the top contractor official (e.g., laboratory director/plant manager

or equivalent) and key personnel as indicated in (e)(3)(i)(F) above. The base salary reimbursement level for the top contractor official establishes the maximum allowable base salary reimbursement under the Contract. Unusual circumstances may require a deviation for an individual on a case-by-case basis. Any such deviations must be approved by the CO.

II. Except as set forth in a workforce restructuring plan approved by DOE, Severance Pay is not payable to an employee under this Contract if the employee:
   a. Voluntarily separates, resigns or retires from employment;
   b. Is offered employment with a successor/replacement contractor;
   c. Is offered employment with a parent or affiliated company;
   d. Is discharged for cause; or
   e. Is a Key Person identified in Section H.44 *DOE-H-2070 Key Personnel – Alternate I (Oct 2014) (Revised).*

III. Service Credit for purposes of determining severance pay does not include any period of prior service for which severance pay has been previously paid through a DOE cost-reimbursement contract or Task Order.

(f) Employees Benefits
   (1) Incumbent Employees shall remain in their existing pension and/or retirement investment plans (or comparable successor plans if continuation of the existing plans is not practicable), pursuant to plan eligibility requirements and applicable law.
   (2) Non Incumbent 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 Contract requirements.

(g) Pension and Other Benefit Programs
   (1) No presumption of allowability will exist when the Contractor implements a new benefit plan or makes changes to existing benefit plans that increase costs or are contrary to Departmental policy or written instruction or until the CO makes a determination of cost allowability for reimbursement for new or changed benefit plans. Changes shall be in accordance with and pursuant to the terms and conditions of the contract. Advance notification, rather than approval, is required for changes that do not increase costs and are not contrary to Departmental policy or written instruction. To the extent that the Contractor has not submitted a new benefit plan or changes to existing benefit plans for approval on the basis that it does not increase costs and such new plan or change to existing plan does in fact increase costs, any increase in costs may be considered unreasonable and will likely be determined unallowable.
   (2) Cost reimbursement for employee pension and other benefit programs sponsored by the Contractor will be based on the CO's approval of Contractor actions pursuant to an approved "Employee Benefits Value Study" and an "Employee Benefits Cost Survey Comparison" as described below.

(3) Unless otherwise stated, or as directed by the CO, the Contractor shall submit the studies required in paragraphs (i) and (ii) below. The studies shall be used by the Contractor in calculating the cost of benefits under existing benefit plans.
An Employee Benefits Value (BenVal) 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 CO for approval prior to the adoption of any change that increases the costs to a pension or other benefit plan:

(i) A BenVal, every two years for each benefit tier (e.g., group of employees receiving a benefit package based on date of hire), which is an actuarial study of the relative value (RV) of the benefits programs offered by the Contractor to employees measured against the RV of benefit programs offered by the CO approved comparator companies. To the extent that the value studies do not address post-retirement benefits other than pensions, the Contractor shall provide a separate cost and plan design data comparison for those benefits using external benchmarks derived from nationally recognized and CO-approved survey sources.

(ii) An Employee Benefits Cost Study Comparison annually for each benefit tier that analyzes the Contractor's employee benefits cost for employees as a percent of payroll and compares it with the cost as a percent of payroll, including geographic factor adjustments, reported by the U.S. Department of Labor's Bureau of Labor Statistics or other Contracting Officer approved broad based national survey.

(A) When the net benefit value exceeds the comparator group by more than five percent, the Contractor shall submit a corrective action plan to the CO for approval, unless waived in writing by the CO.

(B) When the benefit costs as a percent of payroll exceeds the comparator group by more than five percent, and if required by CO, the Contractor shall submit an analysis of the specific plan costs that result in or contribute to the percent of payroll exceeding the costs of the comparator group and submit a corrective action plan if directed by the CO.

(C) Within two years, or longer period as agreed to between the Contractor and the CO, of the CO acceptance of the Contractor's corrective action plan, the Contractor shall align employee benefit programs with the benefit value and the cost as a percent of payroll in accordance with its corrective action plan.

(D) The Contractor may not terminate any benefit plan during the term of the Contract without the prior approval of the CO in writing.

(E) Cost reimbursement for post-retirement benefits other than pensions (PRB) 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 (5) years under a DOE cost reimbursement contract(s) immediately prior to retirement. Unless required by Federal or state law, advance funding of PRBs is not allowable.

(F) Each contractor sponsoring a defined benefit pension plan and/or postretirement benefit plan will participate in the annual plan management process which includes written responses to a questionnaire regarding plan management, providing forecasted estimates of future reimbursements in connection with the plan(s) and participating in a conference call to discuss the contractor submission (see (i)(6) below for Pension Management Plan requirements).

(G) Each contractor will respond to data calls issued through iBenefits, or its successor system.

(h) 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 end of contract transition.

(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 CO, Commingled Plans shall be converted to Separate Plans after the date of new contract award or the extension of a contract.

(i) Basic Requirements

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

(1) The Contractor shall become a sponsor of the existing pension and other benefit plans (or if continuation of the existing plans is not practicable, comparable successor plans), including other PRB plans, as applicable, with responsibility for management and administration of the plans. The Contractor shall be responsible for maintaining the qualified status of those plans consistent with the requirements of Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code (IRC). The Contractor shall carry over the length of service credit and leave balances accrued as of the date of the Contractor's assumption of Contract performance.

(2) Welfare Benefits Plan (WBP). The Contractor's defined benefit and defined contribution pension plans shall be subjected to a limited-scope audit annually that satisfies the requirements of ERISA section 103, except that every third year the Contractor must conduct a full-scope audit of defined benefit plan(s) satisfying ERISA section 103. Alternatively, the Contractor may conduct a full-scope audit satisfying ERISA section 103 annually. In all cases, the Contractor must submit the audit results to the CO. In years in which a limited scope audit is conducted, the Contractor must provide the CO with a copy of the qualified trustee or custodian's certification regarding the investment information that provides the basis for the plan sponsor to satisfy reporting requirements under ERISA section 104.

While there is no requirement to submit a full scope audit for defined contribution plans, contractors are responsible for maintaining adequate controls for ensuring that defined contribution plan assets are correctly recorded and allocated to plan participants.

(3) For existing Commingled Plans, the Contractor shall maintain and provide annual Separate Accounting of DOE liabilities and assets for a Separate Plan.

(4) For existing Commingled Plans, the Contractor shall be liable for any shortfall in the plan assets caused by funding or events unrelated to DOE contracts.

(5) The Contractor shall comply with the requirements of ERISA if applicable to the pension plan and any other applicable laws.

(6) The Pension Management Plan (PMP) shall include a discussion of the Contractor's plans for management and administration of all pension plans consistent with the terms of this Contract. The PMP shall be submitted in the iBenefits system, or its successor system no later than January 31 of each applicable year. A full description of the necessary reporting will be provided in the annual management plan data request. Within 60 days after the date of the submission, appropriate Contractor representatives shall participate in a conference call to discuss the Contractor's PMP submission and any other current plan issues.

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

(1) Contractors that sponsor single employer or multiple employer defined benefit pension plans will be reimbursed for the annual required minimum contributions under the ERISA, as amended by the Pension Protection Act (PPA) of 2006 and any other subsequent amendments. Reimbursement above the annual minimum required contribution will require prior approval of the CO. Minimum required contribution amounts will take into consideration all pre-funding balances and funding standard carryover balances. Early in the fiscal year but no later than the end of November, the Contractor requesting above the minimum, may submit/update a business case for funding above the minimum if preliminary approval is needed prior to the Pension Management Plan process. The business case shall include a projection of the annual minimum required contribution and the proposed contribution above the minimum. The submission of the business case will provide the opportunity for the Department to provide preliminary approval, within 30 days after contractor submission, pending receipt of final estimates, generally after January 1st of the calendar year. Final approval of funding will be communicated by the Head of Contracting Activity (HCA) when discount rates are finalized and it is known whether there are any budget issues with the proposed contribution amount.

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

funding standard carryover balances. Early in the fiscal year but no later than the end of November, the Contractor requesting above the minimum may submit/update a business case for funding above the minimum if preliminary approval is needed prior to the Pension Management Plan process. The business case shall include a projection of the annual minimum required contribution and the proposed contribution above the minimum. The submission of the business case will provide the opportunity for the Department to provide preliminary approval, within 30 days after contractor submission, pending receipt of final estimates, generally after January 1st of the calendar year. Final approval of funding will be communicated by the HCA when discount rates are finalized and it is known whether there are any budget issues with the proposed contribution amount.

(k) Reporting Requirements

The following reports shall be submitted to DOE as soon as possible after the last day of the plan year by the contractor responsible for each designated pension plan funded by DOE, but no later than the dates specified below:

(1) Actuarial Valuation Reports. The annual actuarial valuation report for each DOE-reimbursed pension plan and when a pension plan is commingled, the Contractor shall submit separate reports for DOE's portion and the plan total by the due date for filing IRS Form 5500.

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

(3) Forms 5300. Copies of all forms in the 5300 series submitted to the IRS that document the establishment, amendment, termination, spin-off, or merger of a plan submitted to the IRS.

(l) Changes to Pension Plans

At least 60 days prior to the adoption of any changes to a pension plan, the Contractor shall submit the information required below, to the CO. The CO must approve plan changes that increase costs as part of a determination as to whether the costs are deemed allowable pursuant to FAR 31.205-6, as supplemented by DEAR 970.3102-05-6.

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

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

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

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

(iv) The Summary Plan Description; and

(v) Any such additional information as requested by the CO.

(2) Contractors shall submit new benefit plans and changes to plan design or funding methodology with justification to the CO for approval, as applicable (see (k)(1) above). The justification must:
   (i) Demonstrate the effect of the plan changes on the contract net benefit value or percent of payroll benefit costs;
   (ii) Provide the dollar estimate of savings or costs; and
   (iii) Provide the basis of determining the estimated savings or cost.

(m) 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 spin-off or plan termination on the same day as the Contractor notifies the IRS of the spin-off; or
(6) 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.

(n) Terminating Plans

(1) DOE Contractors shall not terminate any pension plan (Commingled or site specific) without requesting Departmental approval at least 60 days prior to the scheduled date of plan termination.
(2) To the extent possible, the Contractor shall satisfy plan liabilities to plan participants by the purchase of annuities through competitive bidding on the open annuity market or lump sum payouts. The Contractor shall apply the assumptions and procedures of the Pension Benefit Guaranty Corporation.
(3) Funds to be paid or transferred to any party as a result of settlements relating to pension plan termination or reassignment shall accrue interest from the effective date of termination or reassignment until the date of payment or transfer.
(4) If ERISA or IRC rules prevent a full transfer of excess DOE reimbursed assets from the terminated plan, the Contractor shall pay any deficiency directly to DOE according to a schedule of payments to be negotiated by the parties.
(5) On or before the same day as the Contractor notifies the IRS of the spinoff or plan termination, all plan assets assigned to a spun-off or terminating plan shall be placed in a low-risk liability matching portfolio until the successor trustee, or an insurance company, is able to assume stewardship of those assets.

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

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

(o) Special Programs

Contractors must advise DOE and receive prior approval for each early-out program, window benefit, disability program, plan-loan feature, employee contribution refund, asset reversion, or incidental benefit.

(p) Definitions

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

(2) Current Liability. The sum of all plan liabilities to employees and their beneficiaries. Current liability includes only benefits accrued to the date of valuation. This liability is commonly expressed as a present value.

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

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

(5) Designated Contract. For purposes of this clause, a contract (other than a prime cost reimbursement contract for management and operation of a DOE facility) for which the Head of the Departmental Contracting Activity determines that advance pension understandings are necessary or where there is a continuing Departmental obligation to the pension plan.

(6) Pension Fund. The portfolio of investments and cash provided by employer and employee contributions and investment returns. A pension fund exists to defray pension plan benefit outlays and (at the option of the plan sponsor) the administrative expenses of the plan.

(7) Separate Accounting. Account records established and maintained within a Commingled plan for assets and liabilities attributable to DOE contract service. NOTE: The assets so represented are not for the exclusive benefit of any one group of plan participants.

(8) Separate Plan. Must satisfy IRC Sec. 414(l) definition of a single plan, designate assets for the exclusive benefit of employees under DOE contract, exist under a separate plan document (having its own Department of Labor plan number) that is distinct from corporate plan documents and identify the Contractor as the plan sponsor.

(9) Spun-off Plan. A new plan which satisfies IRC Reg. 1.414 (l)-1 requirements for a single plan and which is created by separating assets and liabilities from a larger original

plan. The funding level of each individual participant's benefits shall be no less than before the event, when calculated on a "plan termination basis."

## H.6 SPECIAL PROVISIONS APPLICABLE TO WORKFORCE TRANSITION AND EMPLOYEE COMPENSATION: PAY AND BENEFITS

(a) Service Credit. The Contractor shall provide pension and other benefit plans to Incumbent Employees and all other employees hired by the Contractor and service credit for leave as set forth below:

(1) Service Credit for Leave. For Incumbent Employees hired by the Contractor as set forth in the Section H Clause entitled, *Definitions*, the Contractor shall carry over the length of service credit for purposes of determining rates of accruing leave for these employees as required by and consistent with applicable law.

(2) Service Credit for Fringe Benefits Other Than Leave. Service credit for all individuals hired by the Contractor shall be applied consistent with any applicable law, and the terms of the applicable benefit plan(s). Service credit for purposes of severance pay is subject to H Clause entitled, *DOE-H-2001 Employee Compensation: Pay and Benefits (Oct 2014)*.

(b) Allowable Salary for Key Personnel, if required: Within 20 days after the effective date of the Transition Task Order, or as identified by the CO, the Contractor shall submit EM proposed allowable base salaries to the CO for each key personnel position listed in the Contract for a determination of cost allowability for reimbursement under the Contract. To support a reasonableness determination, the Contractor shall also provide compensation market survey data to support/justify the requested salary and any other information as requested by the CO.

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

(A) <u>Workforce Transition Plan</u>. The Contractor shall submit a Workforce Transition Plan (WF Transition Plan) for CO approval, describing in detail the Contractor's plans and procedures as to how the Contractor will comply with the hiring preferences set forth in Clause H.4, Workforce Transition and Employee Hiring Preferences Including through Period of Performance, and Section I, DEAR 952.226-74, Displaced Employee Hiring Preference. The WF Transition Plan shall also detail the Contractor's plan for incorporating, if applicable, multiple unions with separate bargaining agreements. Notwithstanding timeframes identified elsewhere in the Contract, the Contractor shall perform the following activities in the specified timeframes:

(1) Within 10 days after the effective date of the Transition Task Order, the Contractor shall:

(a) Provide the CO with a list of Contractor personnel who will be responsible for transitioning the employees of the Incumbent Contractor and for development of the transition agreements, including specifically the personnel responsible for ensuring that the Contractor complies with the National Labor Relations Act and Clause H.9, *Labor Relations*, and contact information for the above personnel;

(b) Submit to the CO a description of any and all transition agreements that it intends to enter into with an Incumbent Contractor to ensure compliance with Clause H.4, Workforce Transition and Employee Hiring Preferences Including through Period of Performance, during the Task Order Transition Period;

(c) Establish and submit to the CO a draft communication plan detailing the communication the Contractor and its subcontractors will engage in with their prospective Incumbent Employees, and any labor organizations representing those employees, regarding implementation of the requirements set forth in Clauses H.4 entitled, Workforce Transition and Employee Hiring Preferences Including through Period of Performance, and H.5, Employee Compensation: Pay and Benefits.

(d) Submit to the Contracting Officer a description of the process for regularly obtaining updated information from the Incumbent Contractor regarding the Incumbent Employees throughout the Transition Period.

(2) Within 15 days after the effective date of the Transition Task Order, the Contractor shall:

(a) Submit to the CO copies of the draft WF Transition Plan for the Contractor and its first and second tier subcontractors, including processes and procedures regarding how the Contractor will implement and ensure compliance with the hiring preferences set forth in Clause H.4, Workforce Transition and Employee Hiring Preferences Including through Period of Performance, and with the requirements of Clause H.9, Labor Relations, as applicable.

(b) Establish and provide a copy to the CO of its final written communication plan regarding:

(i) Implementation of the hiring preferences in Clause H.4, Workforce Transition and Employee Hiring Preferences Including through Period of Performance; and

(ii) The communication process among DOE, site tenants, and, if applicable, labor organizations representing Incumbent Employees.

(3) Within 30 days after effective date of the Transition Task Order, the Contractor shall provide to the CO a copy of the final WF Transition described in paragraph (A) above.

(4) Within 60 days after effective date of the Transition Task Order, the Contractor shall provide to the CO copies of the final transition agreements described in paragraph (A)(1)(b) above.

(5) The Contractor shall submit reports to the CO regarding the Contractor's and its subcontractors' implementation of the hiring preferences required by Clause H.4, Workforce Transition and Employee Hiring Preferences Including through Period of Performance, in accordance with the timeframes set forth below. These reports shall include the following information: employee, hire date or anticipated hire dates, and, where applicable, the Incumbent Contractor or subcontractor that employed the employee and the Contractor or subcontractor that hired the employee.

(a) During the Transition Period, such reports shall be provided to the CO on a weekly basis; or

(b) On a less frequent basis, if requested by the CO.

(6) The Contractor shall implement the transition activities as set forth in the approved transition plan and such other transition activities as may be authorized or directed by the CO.

(B) Benefits Transition Plan. The Contractor shall submit a draft Benefits Transition Plan for Contracting Officer approval, within 20 days after effective date of the Transition Task Order describing in detail the Contractor's plans and procedures as to how the Contractor will comply with Clause H.5, *Employee Compensation: Pay and Benefits*, and this Paragraph (B). The Contractor shall provide a final Benefits Transition Plan to the Contracting Officer within 30 days after effective date of the Transition Task Order. All transitions of the existing pension(s) plans and other existing benefit plans, as well as establishment of any new plans, shall be completed by the end of the Contract Transition Period.

(1) The Contractor shall perform the following activities involving benefit transition within the timeframes specified below.

(A) Within 10 days after effective date of the Transition Task Order, the Contractor shall:

(i) Provide the CO with a list of Contractor personnel who will be responsible for the transition of existing benefit plans, and, if needed, development of new benefit plans, including specifically the personnel responsible for ensuring that the Contractor develops and implements a defined benefit pension plan and the defined contribution pension plans and contact information for the above personnel;

(ii) Request the Incumbent Contractors to provide information and documents necessary for the Contractor to adhere to the requirements set forth in this Contract pertaining to sponsoring existing benefits plans and the establishment of any new benefits plans, including, if needed, the transfer of assets from existing defined pension plan and other benefit plans on or before the end of the Transition Period;

(iii) Provide estimated costs and detailed breakouts of the costs to accomplish workforce and benefits transition activities within the timeframes specified, including the costs for enrolled actuaries and counsel.

(B) Within 15 days after effective date of the Transition Task Order, the Contractor shall provide to the CO a list of the information and documents that the Contractor has requested from the Incumbent Contractors pertaining to the existing benefit plans. The Contractor shall notify the CO on a timely basis of any issues or problems that it encounters in obtaining information or documents requested from Incumbent Contractors. Regardless of such notification, the Contractor remains responsible under this Contract for ensuring compliance with the terms of this Contract, including the timeframes set forth in this clause and the requirements in Clauses H.5 and H.6.

(C) Within 20 days of effective date of the Transition Task Order, the Contractor shall:

(i) Submit the draft Benefits Transition Plan;

(ii) Submit a detailed description of its plans and processes, including timeframes and specific projected dates for accomplishment of each activity necessary to ensure compliance with the requirements set forth in Clauses H.5 and H.6, including requirements pertaining to the transition of existing benefit plans (or plan segments) and, if needed, the establishment of employee benefit plans;

(iii) Identify relevant Contractor personnel or other personnel who will administer or assist in administering the benefit plans for the ICP segment of the INL Employee Retirement Plan, including 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.

(iv) Meet via televideo, teleconference, and/or in person with relevant personnel who administer the benefit plans for the Contractor, 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 obligations under Clauses H.5 and H.6, including execution of transition agreements with the Incumbent Contractor 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 CO within two days after the meeting.

(D) Within 30 days after effective date of the Transition Task Order, and as part of the Benefits Transition Plan, the Contractor shall provide a written description of how the existing pension and other benefit plans provided to employees pursuant to Clauses H.5 will be amended or restated on or before the last day of the Contract Transition Period. If the creation of a new benefit plan(s) is necessary in order for the Contractor to adhere to the benefits sponsorship requirements set forth in this Contract, the Contractor shall provide a description of the necessary transactions, including but not limited to how the Contractor proposes to comply with the Contract and applicable law governing such transactions.

(E) Within 30 days after effective date of the Transition Task Order, the Contractor shall:

(i) Submit to the Contracting Officer drafts of all amendments to or restatements of the pension and other benefit plans presently sponsored by the Incumbent Contractor(s), including but not limited to amendments effectuating the change in sponsorship/participating employer in the Incumbent Contractor's segment of the Employee Retirement Plan. If applicable, the Contractor shall also submit all draft restated benefit plans and draft Summary Plan Descriptions (SPDs) for pension and other benefit plans sponsored by the Incumbent Contractor(s). Any and all such amendments shall comply with applicable law governing such transactions and changes in sponsorship of the plans.

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

(iii) Provide draft copies of the transition agreements, which the Contractor will enter into with the Incumbent Contractor(s), to ensure the Contractor's compliance with the pay and benefits requirements set forth in Clause H.5, *Employee Compensation: Pay and Benefits*.

(F) No later than 45 days after the effective date of the Transition Task Order and prior to the adoption of the documents identified in Paragraphs (b)(1)(E)(ii) and (iii) above, the Contractor shall submit to the Contracting Officer the proposed final versions of these documents for approval.

(G) No later than the end of the Contract Transition Period, the Contractor shall submit copies of the executed transition agreements as required in subparagraphs (a)(1)(A), (a)(4), and (b)(1)(E)(iii) to the Contracting Officer.

(H) The Contractor shall respond to any comments provided by the Contracting Officer under any of the above paragraphs within two days of receipt of the comments.

(2) After the Contract Transition Period and throughout the contract ordering period and subsequent Task Order(s) period of performance extending beyond the contract ordering period, the Contractor shall provide the following information promptly to the Contracting Officer upon the request of the Contracting Officer:

(A) Documents relating to benefit plans offered to Contractor's employees, including but not limited to SPDs, all Plan documents, applicable amendments, employee handbooks that summarize benefits provided to employees, and other documents that describe benefits provided to employees of the Contractor who perform work on this Contract, and

(B) Any and all other documents pertaining to implementation of and compliance with implementation of the compensation and benefit programs identified in Clause H.5.

(C) Additionally, the Contractor shall provide timely data responses to Departmental annual and ad hoc pension and Post Retirement Benefit (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 DOE-H-2004 POST CONTRACT RESPONSIBILITIES FOR PENSION AND OTHER BENEFIT PLANS (OCT 2014)

(a) If DOE has awarded a new contract under which a new contractor becomes a sponsor and assumes responsibility for management and administration of the pension or other benefit plans identified in (h)(1) of H Clause entitled, DOE-H-2001 *Employee Compensation: Pay and Benefits(Oct 2014)*, 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 CO. If a Commingled plan is involved, the Contractor shall:

(1) Spin off the DOE portion of any Commingled Plan used to cover employees working at the DOE facilities into a separate plan. The new plan will normally provide benefits

similar to those provided by the commingled plan and shall carry with it the DOE assets on an accrual basis market value, including DOE assets that have accrued in excess of DOE liabilities.

(2) Bargain in good faith with DOE or the successor contractor to determine the assumptions and methods for establishing the liabilities involved in a spinoff. DOE and the contractor(s) shall establish an effective date of spinoff. On or before the same day as the contractor notifies the IRS of the spinoff or plan termination, all plan assets assigned to a spun-off or terminating plan shall be placed in a low-risk liability matching portfolio until the successor trustee, or an insurance company, is able to assume stewardship of those assets.

(b) If this Contract or any applicable Task Order expires or terminates, and DOE has not awarded a new 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 CO determines that the scope of work under the Contract or any applicable Task Order has been completed (any one such event may be deemed by the CO 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 or applicable Task Order, the following actions shall occur regarding the Contractor's obligations regarding the Plans at the time of Contract/Task Order Completion:

(1) Subject to subparagraph (2) below, and notwithstanding any legal obligations independent of the Contract the Contractor may have regarding responsibilities for sponsorship, management, and administration of the Plans, the Contractor shall remain the sponsor of the Plans, in accordance with applicable legal requirements.

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

## H.9 DOE-H-2028 LABOR RELATIONS (OCT 2014) (REVISED)

(a) The Contractor shall respect the right of employees to be free from discrimination in the workplace, including, but not limited to, discrimination within the meaning of the Age Discrimination in Employment Act of 1967, as amended, and to organize, form, join, or assist labor organizations; bargain collectively through their chosen labor representatives; 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 laws.

(b) Consistent with applicable labor laws and regulations, for work currently performed by members of the United Steelworkers Local 652 (USW), the Operating Engineers Local 370 (OEs) and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Local 983 (Teamsters) on the effective date of this Contract, the Contractor agrees to initially consult with these unions regarding the initial terms and conditions of employment and to recognize these unions as the collective bargaining representative(s) for employees performing work that has historically and traditionally been performed by members of these unions and is covered in the scope of this contract, and to bargain in good faith to a collective bargaining agreement that gives due consideration to applicable terms and conditions of the existing collective bargaining agreement(s) for work at the Idaho Cleanup Project..

(c) The Contractor shall submit its economic bargaining parameters for which DOE reimburses costs to, and obtain the approval of, the CO regarding allowability of the costs, and compliance with the terms and conditions of the Contract, including those for pension and medical benefit costs, prior to the Contractor entering into the collective bargaining process. During the collective bargaining negotiations, the Contractor shall notify, and obtain the approval of, the CO before submitting or agreeing to any collective bargaining proposal that increases or may increase allowable costs above those previously approved in the economic bargaining parameters, or that could involve changes in any pension or other benefit plans, and such other items of special interest to DOE as are identified by the CO. The approval of the economic bargaining parameters by the CO under this paragraph does not waive any other terms and conditions of the Contract.

(d) 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, DEAR Subpart 970.2201-1, and all applicable Federal and state labor relations laws.

(e) The Contractor shall use its best efforts to ensure that collective bargaining agreements negotiated under this Contract or specific Task Order contain provisions designed to assure no disruption in services during the performance of the Contract or specific Task Order. All such agreements entered into during the Contract Ordering Period/Task Order period of performance should, to the extent that the parties to those collective bargaining agreements agree, provide that grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout or other disruption in services. For this purpose, each collective bargaining agreement should provide an effective grievance procedure with arbitration as its final step, unless the parties agree upon some other method of assuring no disruption in services. The Contractor shall include the substance of this subparagraph (e) in any subcontracts.

(f) In addition to FAR 52.222-1, Notice to the Government of Labor Disputes, and other requirements in the contract, the Contractor shall immediately notify the CO or designee of all labor relations issues and matters of interest, including, but not limited to, organizing initiatives, unfair labor practice charges or complaints, work stoppages, picketing, labor arbitrations, National Labor Relations Board charges, legal or judicial proceedings, and settlement agreements and will furnish such additional information as may be required from time to time by the CO.

(g) The Contractor shall immediately notify the CO or designee of any planned or actual strike or work stoppage involving its employees or employees of a subcontractor.

(h) The Contractor shall provide the CO or designee a copy of all arbitration decisions issued by an arbitrator within one week of receipt of the decision.

(i) The Contractor shall provide the CO or designee with a "Report of Settlement" after ratification of a collective bargaining agreement by accessing and inputting the information into the Labor Relations module of DOE's iBenefits reporting system, or its successor system, during the next open quarter. Such information shall include negotiated wages, pension, medical and other benefits costs, and a copy of the collective bargaining agreement and any subsequent modifications

(j) The Contractor shall provide to the CO or designee a semi-annual report on grievances for which further judicial or administrative proceedings are anticipated, and all final step grievances. The Contractor shall immediately provide information on all arbitration requests. The reports are due June 30 and December 31, of each year, and should include the following information:

(1) List of all final step grievances filed during the previous six-month period and grievances for which further judicial or administrative proceedings are anticipated, together with the dates filed;

(2) A brief description of issues regarding each grievance;

(3) If settled, the date of settlement, and terms of the settlement. If a denial is made at the final step and the period for requesting arbitration passes, report the matter as closed;

(4) If not settled during the six-month reporting period, carry the item over to the subsequent six-month reporting periods until settlement, request for arbitration, closure, or other proceeding occurs.

(k) INL Site Construction Jurisdiction Procedural Agreement (SJPA) and the INL Site Stabilization Agreement (SSA).

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

## H.10 WORKFORCE RESTRUCTURING (REVISED) (FEBRUARY 2019)

(a) The Contractor shall regularly analyze workforce requirements and will develop appropriate workforce restructuring strategies to ensure continued availability of the critical workforce knowledge, skills, and abilities necessary for performance under this Contract.

(b) When the Contractor determines that a change in the workforce is necessary, the Contractor shall accomplish the workforce restructuring in a manner consistent with the DOE-Idaho General Workforce Restructuring Plan in effect. The General Plan lays out how contractor workforce restructuring will be conducted at the site in a manner that is consistent with DOE policy.

The Contractor is only required to provide advance notification per item (4) below to the CO of Self-Select Voluntary Separation Programs (SSVSP) if consistent with the following parameters:

1) in accordance with approved laboratory and Contractor policies and contract requirements;
2) no enhanced benefits (severance or pension);
3) no backfilling or re-employment of employees for a one-year period after severance is paid;
4) business case submitted five (5) business days in advance of notification date that includes maximum number of voluntary separations, maximum dollars, positions/skills impacted; reasons separations are needed, including how conducting a SSVSP will better position the contractor to conduct the mission work; copies of the self-select application and any employee waivers or releases of claims, and a communication plan; and
5) voluntary separations offered to employees in a non-discriminatory and legally compliant manner. There is no backfilling where a separating employee is replaced by an internal candidate so long as:
   (A) The separating employee is leaving voluntarily;
   (B) The internal replacement is a regular, permanent employee on the Contractor's payroll, not a temporary hire, staff augmentee, or someone serving under a post-doctoral program, or other short term program;
   (C) The replacement results in a net reduction in headcount and costs of regular employees; and
   (D) The replacement is accomplished in an otherwise legally compliant manner, including no unlawful intent to discriminate based upon age.

(c) The Contractor shall ensure it does not hire or rehire individuals who volunteered for termination during a Self-Select Voluntary Separation Program, at any DOE or NNSA site, during the one-year period following the separation. If an employee is hired or rehired prior to the one-year period, the employee may be required to pay back, to the contractor who provided the severance payment, all or a pro-rata amount of the severance received under the Voluntary Separation Program.

(d) The Contractor must prepare and submit to the Contracting Officer a specific workforce restructuring plan (Specific Plan), as described below in paragraph (e), if the Contractor intends to reduce its workforce by 100 or more employees through an involuntary separation action within a rolling 12-month period.

(e) The Contractor's Specific Plan shall lay out how the Contractor will conduct its workforce restructuring action at the site. The Contractor's Specific Plan for reducing 100 or more employees through an involuntary separation action shall be submitted to the Contracting Officer for approval at least 60 days in advance of the first communication planned to be given to the employees and public. Any other Specific Plans for which fewer than 100 employees will be involuntarily separated in a rolling 12-month period must be submitted five (5) days in advance of the first communication planned to be given to the employees and public. The templates for contractor Involuntary Separation Plan, as well as the General Release and Waiver Forms, are available online at: http://www.energy.gov/gc/services/technology-transfer-and-procurement/office-assistantgeneral-counsel-labor-and-pension.

(f) Pay-in-lieu of notice beyond two work-weeks requires written advance Contracting Officer approval. The Contractor shall submit the request to the Contracting Officer as part of the Workforce Restructuring package submitted for approval in (e) above, and include the number of days of pay-in-lieu of notice requested, above two work-weeks, a detailed business justification, and the associated costs.

(g) The Contractor is encouraged to consider the use of employee waivers and releases. DOE has developed a model waiver and release of claims. The forms are available on line at the website set forth in (e) above. Any deviation from the models must be approved by the Contracting Officer.

(h) The Contractor must perform an adverse impact analysis (also known as a diversity analysis) as part of its determination to undertake involuntary separation action(s). A copy of the diversity analysis for involuntary separation action(s) affecting 100 or more contractor employees within a rolling 12-month period shall be submitted to the Contracting Officer and DOE or National Nuclear Security Administration (NNSA) site counsel, as applicable, prior to notification of employees selected for involuntary separation.

(i) The Contracting Officer will review and approve any Specific Plan or diversity analysis submitted for review affecting the reduction of 100 or more employees through an involuntary separation action within 10 business days after submission of a complete package by the Contractor unless the Contractor is notified of issues necessitating an extension of time. Should DOE request additional information from the Contractor regarding any Specific Plan or diversity analysis, the Contractor will respond to such request within three (3) business days.

(j) The Contractor is responsible and accountable for conducting and defending all voluntary and involuntary separation actions in compliance with applicable laws, regulations, and the contract terms and conditions.

(k) Questions of cost allowability related to: a) any SSVSPs for which the Contractor provides only notification, or b) any involuntary separation program(s) conducted without Contracting Officer approval will be resolved consistently with applicable laws and regulations and with the terms and conditions of this contract, including, but not limited to, Department of Energy Acquisition Regulation (DEAR) at 48 C.F.R. 952.23171(f).

## H.11 LABOR STANDARDS

(a) The CO will determine the appropriate labor standards that apply to specific work activities in accordance with the Wage Rate Requirements (Construction) statute (formerly known as the Davis-Bacon Act), the Service Contract Labor Standards (SCLS) statute (formerly known as the Service Contract Act of 1965 [SCA]), or other applicable Federal labor standards law. Prior to the start of any proposed work activities, the Contractor shall request a labor standards determination from the CO for specific work activities by submitting proposed work packages that describe the specific activities to be performed for particular work and other information as necessary for DOE to make a determination regarding the appropriate labor standard(s) for the work or aspects of the work. Once a determination is made and provided to the Contractor, the Contractor shall comply with the determination and shall ensure that appropriate labor standards clauses and requirements are flowed down to and incorporated into any applicable subcontracts.

(b) The Contractor shall comply, and shall be responsible for compliance by any subcontractor, with the Wage Rate Requirements (Construction), SCLS, or other applicable labor standards law. The Contractor shall conduct such payroll and job-site reviews for construction work, including interviews with employees, with such frequency as may be necessary to assure compliance by its subcontractors and as requested or directed by the DOE. When performing work subject to the Wage Rate Requirements (Construction), the Contractor shall maintain payroll records for a period of three years, from completion of the applicableTask Order, for laborers and mechanics performing the work. In accordance with FAR 52.222-41(g) and FAR 52.222-6(b)(4), the Contractor and its subcontractors shall post in a prominent job-site location, the wage determination and, as applicable, Department of Labor Publications WHD 1321, *Employee Rights under the Davis-Bacon Act*, and/or WHD 1313, *Employee Rights on Government Contracts*.

(c) For subcontracts determined to be subject to the SCLS, the Contractor will prepare Standard Form 98 (e98), *Notice of Intention to Make a Service Contract and Response Notice*. This form is available on the Department of Labor website at: http://www.dol.gov/whd/govcontracts/sca/sf98/index.asp. The form shall be submitted to the CO.

(d) In addition to any other requirements in the Contract, the Contractor shall as soon as possible notify the CO of all labor standards issues, including all complaints regarding incorrect payment of prevailing wages and/or fringe benefits, received from contractor or subcontractor employees; significant labor standards violations, as defined in 29 CFR 5.7; disputes concerning labor standards pursuant to 29 CFR Parts 4, 6, and 8 and as defined in FAR 52.222-41(t); disputed labor standards determinations; Department of Labor investigations; or legal or judicial proceedings related to the labor standards under this Contract/Task Order or a subcontract. The Contractor shall furnish such additional information as may be required from time to time by the CO.

(e) The Contractor shall prepare and submit to the CO the Office of Management and Budget (OMB) Control Number: 1910-5165, *Semi-Annual Davis-Bacon Enforcement Report*, by April 21 and October 21 of each year. Form submittal will be administered through the DOE iBenefits system or its successor system.

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

(a) Contractors, other than those whose workers' compensation coverage is provided through a state funded arrangement or a corporate benefits program, shall submit to the Contracting Officer for approval all new compensation policies and all initial proposals for self-insurance (contractors shall provide copies to the Contracting Officer of all renewal policies for workers compensation).

(b) Workers compensation loss income benefit payments when supplemented by other programs (such as salary continuation, short-term disability) are to be administered so that total benefit payments from all sources shall not exceed 100 percent of the employee's net pay.

(c) Contractors approve all workers compensation settlement claims up to the threshold established by the Contracting Officer for DOE approval and submit all settlement claims above the threshold to DOE for approval.

(d) The Contractor shall obtain approval from the 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.13 DOE-H-2073 RISK MANAGEMENT AND INSURANCE PROGRAMS (DEC 2014) (REVISED)

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

(a) Basic Requirements

(1) Maintain commercial insurance or a self-insured program, (i.e., any insurance policy or coverage that protects the Contractor from the risk of legal liability for adverse actions associated with its operation, including malpractice, injury, or negligence) as required by the terms of the Contract. Types of insurance include automobile, general liability, and other third-party liability insurance. Other forms of coverage for which the Contractor seeks reimbursement must be justified as necessary in the operation of the Department facility and/or the performance of the Contract, and approved by the DOE in advance of acquiring such insurance.

(2) Contractors shall not purchase insurance to cover public liability for nuclear incidents without DOE authorization (see DEAR 950.70 entitled, *Nuclear Indemnification of DOE Contractors*).

(3) Demonstrate that insurance programs and costs comply with the cost limitations and exclusions at FAR 28.307 entitled, *Insurance Under Cost Reimbursement Contracts*, FAR 31.205-19 entitled, *Insurance and Indemnification*, and DEAR 952.231-71 entitled, *Insurance - Litigation and Claims*.

(4) Demonstrate that the insurance program is being conducted in the Government's best interest and at a reasonable cost.

(5) The Contractor shall submit copies of all insurance policies or insurance arrangements to the CO no later than 30 days after the purchase date.

(6) When purchasing commercial insurance, the Contractor shall use a competitive process to ensure costs are reasonable.

(7) Ensure self-insurance programs include the following elements:

(i) Compliance with criteria set forth in FAR 28.308 entitled, *Self-Insurance*. Approval of self-insurance is predicated upon submission of verifiable proof that the self-insurance charge does not exceed the cost of purchased insurance. This includes hybrid plans (i.e., commercially purchased insurance with self-insured retention [SIR], such as large deductible, matching deductible, retrospective rating cash flow plans, and other plans where insurance reserves are under the control of the insured). The SIR components of such plans are self-insurance, and are subject to the approval and submission requirements of FAR 28.308, as applicable.

(ii) Demonstration of full compliance with applicable state and federal regulations and related professional administration necessary for participation in alternative insurance programs.

(iii) Safeguards to ensure third party claims and claims settlements are processed in accordance with approved procedures.

(iv) Accounting of self-insurance charges.

(v) Accrual of self-insurance reserve. The CO's approval is required and predicated upon the following:

(A) The claims reserve shall be held in a special fund or interest bearing account.

(B) Submission of a formal written statement to the CO stating that use of the reserve is exclusively for the payment of insurance claims and losses, and that DOE shall receive its equitable share of any excess funds or reserve.

(C) Annual accounting and justification as to the reasonableness of the claims reserve submitted for CO review.

(D) Claim reserves, not payable within the year the loss occurred, are discounted to present value based on the prevailing Treasury rate.

(8) Should the Contractor utilize a Letter of Credit or other financial instrument to guarantee self-insurance retention, any cost for interest paid by the Contractor relating to the instruments will be unallowable and omitted from charges to the DOE Contract.

(9) Comply with the CO's written direction for ensuring the continuation of insurance coverage and settlement of incurred and/or open claims and payments of premiums owed or owing to the insurer for prior DOE contractors.

(b) Plan Experience Reporting. The Contractor shall:

(1) Provide the CO with annual experience reports for each type of insurance (e.g., automobile and general liability), listing the following for each category:

(i) The amount paid for each claim.

(ii) The amount reserved for each claim.

(iii) The direct expenses related to each claim.

(iv) A summary for the plan year showing total number of claims.

(v) A total amount for claims paid.

(vi) A total amount reserved for claims.
(vii) The total amount of direct expenses.

(2) Provide the CO with an annual report of insurance costs and/or self-insurance charges. When applicable, separately identify total policy expenses (e.g., commissions, premiums, and costs for claims servicing) and major claims during the year, including those expected to become major claims (e.g., those claims valued at $100,000 or greater).
(3) Provide additional claim financial experience data, as may be requested, on a case-by-case basis.

(c) Terminating Operations. The Contractor shall:
(1) Ensure protection of the Government's interest through proper recording of cancellation credits due to policy terminations and/or experience rating.
(2) Identify and provide continuing insurance policy administration and management requirements to a successor, other DOE contractor, or as specified by the CO.
(3) Reach agreement with DOE on the handling and settlement of self-insurance claims incurred but not reported at the time of contract termination; otherwise, the Contractor shall retain this liability.

(d) Successor Contractor or Insurance Policy Cancellation. The Contractor shall:
(1) Obtain the written approval of the CO for any change in program direction; and
(2) Ensure insurance coverage replacement is maintained as required and/or approved by the CO.

## H.14 OVERTIME CONTROL REPORTING

The Contractor shall submit a Summary Overtime Justification Report of the overtime hours worked to the CO six (6) months after Task Order execution start and annually thereafter, no later than November 30 of each year. Summary Overtime Justification Reports shall be reported, at a minimum, by Common Occupational Classification System sub-codes, differentiate between premium and non-premium overtime, and provide sufficient detail to demonstrate all three (3) of the following:

(1) Compliance with provisions set forth in FAR 52.222-2;
(2) All other alternatives to overtime were evaluated prior to working overtime and found inadequate or not feasible; and
(3) Overtime hours worked were in the best interest of the Government.

Summary Overtime Justification Reports will be used to assist the CO in determining reasonableness and cost allowability. Overtime premium authorized per FAR 52.222-2 will not be considered a CO determination of overtime reasonableness or cost allowability.

## BUSINESS SYSTEM CLAUSES

## H.15 DOE-H-2022 CONTRACTOR BUSINESS SYSTEMS (OCT 2014)

(a) Definitions. As used in this clause:

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

Contractor business systems means:

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

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

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

(c) Significant deficiencies.

(1) The Contractor shall respond, in writing, within 30 days to an initial determination that there are one or more significant deficiencies in one or more of the Contractor's business systems.
(2) The CO will evaluate the Contractor's response and notify the Contractor, in writing, of the final determination as to whether the Contractor's business system contains significant deficiencies. If the CO determines that the Contractor's business system contains significant deficiencies, the final determination will include a notice to withhold payments.

(d) Withholding payments.

(1) If the CO issues the final determination with a notice to withhold payments for significant deficiencies in a Contractor business system required under this contract, the CO will direct the Contractor, in writing, to withhold five (5) percent from its invoices until the CO has determined that the Contractor has corrected all significant deficiencies as directed by the CO's final determination. The Contractor shall, within 45 days of receipt of the notice, either:

(i) Correct the deficiencies; or
(ii) Submit an acceptable corrective action plan showing milestones and actions to eliminate the deficiencies. The plan shall contain:
(A) Root cause(s) identification of the problem(s);
(B) The proposed corrective action(s) to address the root cause(s);
(C) A schedule for implementation; and
(D) The name of the person responsible for the implementation.

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

(3) Payment withhold percentage limits.
(i) The total percentage of payments withheld on amounts due on this Contract shall not exceed:
(A) Five (5) percent for one or more significant deficiencies in any single contractor business system; and
(B) Ten (10) percent for significant deficiencies in multiple contractor business systems.
(ii) If this Contract contains pre-existing withholds, and the application of any subsequent payment withholds will cause withholding under this clause to exceed the payment withhold percentage limits in paragraph (d)(3)(i) of this clause, the CO will reduce the payment withhold percentage in the final determination to an amount that will not exceed the payment withhold percentage limits.

(4) For the purpose of this clause, payment means invoicing for any of the following payments authorized under this contract:
(i) Interim payments under:
(A) Cost-reimbursement contracts;
(B) Incentive type contracts;
(C) Time-and-materials contracts; or
(D) Labor-hour contracts.
(ii) Progress payments to include fixed-price contracts.

(5) Performance-based payments to include fixed-price contracts. Payment withholding shall not apply to payments on fixed-price line items where performance is complete and the items were accepted by the Government.

(6) The withholding of any amount or subsequent payment to the Contractor shall not be construed as a waiver of any rights or remedies the Government has under this Contract.

(7) Notwithstanding the provisions of any clause in this Contract providing for interim, partial, or other payment withholding on any basis, the CO may withhold payment in accordance with the provisions of this clause.
(8) The payment withholding authorized in this clause is not subject to the interest-penalty provisions of the Prompt Payment Act.

(e) Correction of deficiencies.
(1) The Contractor shall notify the CO, in writing, when the Contractor has corrected the business system's deficiencies.
(2) Once the Contractor has notified the CO that all deficiencies have been corrected, the CO will take one of the following actions:
(i) If the CO determines that the Contractor has corrected all significant deficiencies as directed by the CO's final determination, the CO will direct the Contractor, in writing, to discontinue the payment withholding from invoices under this Contract associated with the CO's final determination, and authorize the Contractor to bill for any monies previously withheld that are not also being withheld due to other significant deficiencies. Any payment withholding under this Contract due to other significant deficiencies, will remain in effect until the CO determines that those significant deficiencies are corrected.
(ii) If the CO determines that the Contractor still has significant deficiencies, the Contractor shall continue withholding amounts from its invoices in accordance with paragraph (d) of this clause, and not invoice for any monies previously withheld.
(iii) If the CO determines, based on the evidence submitted by the Contractor, that there is a reasonable expectation that the corrective actions have been implemented and are expected to correct the significant deficiencies, the CO will discontinue withholding payments, and release any payments previously withheld directly related to the significant deficiencies identified in the Contractor notification, and direct the Contractor, in writing, to discontinue the payment withholding from invoices associated with the CO's final determination, and authorize the Contractor to bill for any monies previously withheld.
(iv) If, within 90 days of receipt of the Contractor notification that the Contractor has corrected the significant deficiencies, the CO has not made a determination in accordance with paragraphs (e)(2)(i), (ii), or (iii) of this clause, the CO will direct the Contractor, in writing, to reduce the payment withholding from invoices directly related to the significant deficiencies identified in the Contractor notification by a specified percentage that is at least 50 percent, but not authorize the Contractor to bill for any monies previously withheld until the CO makes a determination in accordance with paragraphs (e)(2)(i), (ii), or (iii) of this clause.

At any time after the CO directs the Contractor to reduce or discontinue the payment withholding from invoices under this Contract, if the CO determines that the Contractor has failed to correct the significant deficiencies identified in the Contractor's notification, the CO will reinstate or increase withholding and direct the Contractor, in writing, to reinstate or increase the percentage withheld on invoices to the percentage initially withheld, until the CO determines that the Contractor has corrected all significant deficiencies as directed by the CO final determination.

## H.16 DOE-H-2023 COST ESTIMATING SYSTEM REQUIREMENTS (OCT 2014) (REVISED)

(a) Definitions.

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

(1) Is maintained, reliable, and consistently applied;

(2) Produces verifiable, supportable, documented, and timely cost estimates that are an acceptable basis for negotiation of fair and reasonable prices;

(3) Is consistent with and integrated with the Contractor's related management systems; and

(4) Is subject to applicable financial control systems.

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

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

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

(b) General. The Contractor shall establish, maintain, and comply with an acceptable estimating system.

(c) Applicability. Paragraphs (d) and (e) of this clause apply if the Contractor is a large business to include a Contractor teaming arrangement, as defined at 48 CFR 9.601(1), performing a Contract in support of a Capital Asset Project (other than a management and operating contract as described at 48 CFR 917.6), as prescribed in DOE Order (DOE O) 413.3B or current version; or a non-capital asset project and either:
(1) The total prime contract value exceeds $50 million, including options; or
(2) The Contractor was notified, in writing, by the CO that paragraphs (d) and (e) of this clause apply.

(d) System requirements.
(1) The Contractor shall disclose its estimating system to the CO, in writing. If the Contractor wishes the Government to protect the information as privileged or

confidential, the Contractor must mark the documents with the appropriate legends before submission. If the Contractor plans to adopt the existing system from the previous contractor, the Contractor is responsible for the system and shall comply with the system requirements required in this clause.

(2) An estimating system disclosure is acceptable when the Contractor has provided the CO with documentation no later than 60 days after the effective date of the Transition Task Order that:
   (i) Accurately describes those policies, procedures, and practices that the Contractor currently uses in preparing cost proposals; and
   (ii) Provides sufficient detail for the Government to reasonably make an informed judgment regarding the acceptability of the Contractor's estimating practices.

(3) The Contractor shall:
   (i) Comply with its disclosed estimating system; and
   (ii) Disclose significant changes to the cost estimating system to the CO on a timely basis.

(4) The Contractor's estimating system shall provide for the use of appropriate source data, utilize sound estimating techniques and good judgment, maintain a consistent approach, and adhere to established policies and procedures. An acceptable estimating system shall accomplish the following functions:
   (i) Establish clear responsibility for preparation, review, and approval of cost estimates and budgets.
   (ii) Provide a written description of the organization and duties of the personnel responsible for preparing, reviewing, and approving cost estimates and budgets.
   (iii) Ensure that relevant personnel have sufficient training, experience, and guidance to perform estimating and budgeting tasks in accordance with the Contractor's established procedures.
   (iv) Identify and document the sources of data and the estimating methods and rationale used in developing cost estimates and budgets.
   (v) Provide for adequate supervision throughout the estimating and budgeting process.
   (vi) Provide for consistent application of estimating and budgeting techniques.
   (vii) Provide for detection and timely correction of errors.
   (viii) Protect against cost duplication and omissions.
   (ix) Provide for the use of historical experience, including historical vendor pricing information, where appropriate.
   (x) Require use of appropriate analytical methods.
   (xi) Integrate information available from other management systems.
   (xii) Require management review, including verification of compliance with the company's estimating and budgeting policies, procedures, and practices.

(xiii) Provide for internal review of, and accountability for, the acceptability of the estimating system, including the budgetary data supporting indirect cost estimates and comparisons of projected results to actual results, and an analysis of any differences.

(xiv) Provide procedures to update cost estimates and notify the CO in a timely manner.

(xv) Provide procedures that ensure subcontract prices are reasonable based on a documented review and analysis provided with the prime proposal, when practicable.

(xvi) Provide estimating and budgeting practices that consistently generate sound proposals that are compliant with the provisions of the solicitation and are adequate to serve as a basis to reach a fair and reasonable price.

(xvii) Have an adequate system description, including policies, procedures, and estimating and budgeting practices, that comply with the Federal Acquisition Regulation (48 CFR chapter 1) and DEAR (48 CFR chapter 9).

(e) Significant deficiencies.

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

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

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

(i) Remaining significant deficiencies;

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

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

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

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

## H.17 DOE-H-2024 EARNED VALUE MANAGEMENT SYSTEM (MAR 2019) (REVISED)

Definitions. As used in this clause:

"Acceptable Earned Value Management System" means an EVMS that complies with system criteria set forth in paragraph (a) this clause.

"Contract Funds Status Report" (CFSR) includes data to support forecasting, planning and decision making. DOE's CFSR Data Item Description (DID) is to be used for the CFSR.

"Earned Value Management System" (EVMS) means an integrated set of policies, procedures and practices to objectively track performance on a project or program.

"Integrated Master Plan" (IMP) means an event-based plan consisting of a hierarchy of program events, each supported by specific accomplishments, and each accomplishment associated with specific criteria to be satisfied for its completion.

"Integrated Master Schedule" (IMS) means a networked, multi-layered list of tasks required to complete the work captured in a related IMP. The IMS should include all IMP events and accomplishments and support each accomplishment closure criteria. The IMS should contain a critical path and be resource-loaded with labor, material and equipment costs to include unit prices and quantities.

"Integrated Performance Management Report" (IPMR) includes data submitted monthly by the contractor from its EVMS. DOE's IPMR DID is to be used for the IPMR.

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

"Over Target Schedule" (OTS) means the condition in which a baseline schedule is time-phased beyond the contract completion date.

"Significant deficiency" means a shortcoming in the system that materially affects the ability of DOE officials to rely upon information produced by the EVMS for management purposes.

"Work Breakdown Structure" means a product-oriented hierarchy of tasks to be performed by the project team in support of project objectives.

(a) System criteria. In performing this contract, the Contractor shall establish, maintain, and use--

(1) Integrated performance management system. Central to this system shall be an EVMS that that complies with the Electronic Industries Alliance Standard 748 (EIA-748, current version at time of award), including a System Description. The EVMS shall be linked to and supported by the contractor's various management systems, including work definition, planning and scheduling, work authorization and budgeting, performance measurement and analysis, change management, materials and subcontract management, cost estimating, accounting, and risk management.

(2) Management procedures. The contractor shall have procedures that enable timely, reliable, and verifiable information.

(i) Pursuant to the IPMR and IMS data items under this contract, the contractor shall maintain an IPMR and IMS that logically networks all project activities, reflecting the National Defense Industrial Association (NDIA) Planning & Scheduling Excellence Guide and the GAO Schedule Assessment Guide.

(ii) As required by the CFSR data item under this contract, the contractor shall develop and submit a CFSR, and must reconcile the CFSR with the IPMR on a quarterly basis.

(iii) All reporting must correspond to the applicable WBS elements, and shall be submitted timely and accurately and be current as of the close of the previous month's accounting period. (Note: The contractor should not establish a separate or unique internal performance management system solely for the purposes of the contract.)

(iv) IPMR and CFSR data shall be submitted by the Contractor by uploading the data into Project Assessment and Reporting System (PARS) in accordance with the "Contractor Project Performance Upload Requirements" document maintained by the DOE Office of Project Management.

(b) EVMS certification.

(1) For contracts supporting projects valued at $100M or more, the contractor's EVMS must be formally certified by the cognizant Federal agency as compliant with the EIA-748 guidelines (current version at the time of award). Pursuant to DOE Order 413.3B, the DOE Office of Project Management is DOE's EVMS certifying authority. If, at the time of award, the contractor's EVMS has not been determined to be in compliance with the EIA-748 guidelines, the contractor shall apply its current system to the contract and shall take necessary actions to meet the milestones in its EVMS plan.

(2) For contracts supporting projects valued at less than $100M but greater than $50M, the contractor's EVMS must be compliant with EIA-748; however, external certification is not required. The use of the contractor's EVMS for this contract does not imply a Government determination of EIA-748 compliance for application to future contracts.

(c) Changes to the EVMS. The Contractor shall submit notification of all proposed changes to the EVMS procedures and the impact of those changes to the Contracting Officer. If the contractor has one or more contracts in support of DOE capital asset projects that are valued at $100M or more, unless a waiver is granted by DOE, any EVMS changes proposed by the contractor require approval of DOE prior to implementation. DOE will advise the contractor

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

(d) Integrated baseline reviews. The Contractor shall deliver a task baseline with each Task Order proposal. The task baseline shall represent the cost, schedule, and entire scope over the period of performance of the associated task. DOE will conduct an Integrated Baseline Review (IBR) for Task Orders not later than 60 calendar days after the award of the Task Order. DOE and the contractor will use the IBR process described in the NDIA IBR Guide (or current version). During IBRs, the project baseline will be jointly scrutinized by the Government and the contractor to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.

(e) Access to records. The Contractor shall provide access to all pertinent records and data requested by the Contracting Officer or duly authorized representative to permit surveillance to ensure that the EVMS continues to comply with the criteria referenced in paragraph (a) of this clause.

(f) Restructuring actions. In the event that the contractor concludes the performance baseline no longer represents a realistic plan, the contractor may determine that an over-target schedule or over-target baseline restructuring action is necessary. The contractor shall obtain approval of the Contracting Officer prior to implementing such restructuring actions. The request should also include detailed implementation procedures as well as a timeframe in accordance with the System Description. DOE will acknowledge receipt of the request in a timely manner (generally within 30 calendar days).

(g) Significant deficiencies.
  (1) The Contracting Officer will provide a determination to the contractor, in writing, on any significant EVMS deficiencies. The determination will describe the deficiency in sufficient detail to allow the contractor to understand the deficiency.
  (2) The contractor shall respond within 30 working days to a written determination from the Contracting Officer that identifies significant deficiencies in the contractor's EVMS. If the contractor disagrees with the determination, the contractor shall state, in writing, its rationale for disagreeing. In the event the contractor does not respond in writing to the determination within the response time, this shall indicate that the Contractor agrees with the determination.
  (3) The Contracting Officer will evaluate the contractor's response or lack of response and notify the contractor, in writing, of the Contracting Officer's final determination concerning—-
    (i) Remaining significant deficiencies;
    (ii) The adequacy of any proposed or completed corrective action;
    (iii) System noncompliance, when the contractor's existing EVMS fails to comply with the EVMS guidelines in EIA-748; and

(iv) System disapproval, if corrections to the contractor's EVMS are not successfully completed within the timeframe set forth by the Contracting Officer. When the Contracting Officer determines that the existing EVMS contains one or more significant deficiencies, the Contracting Officer will use discretion to disapprove the EVMS based on input received from the DOE Office of Project Management.

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

(h) Withholding payments. In the event that the contractor's EVMS is disapproved in accordance with subparagraph (g)(3)(iv), the Contracting Officer will withhold payments until which time the contractor has resolved all EVMS deficiencies.

(i) Flowdown requirements. With the exception of paragraphs (g) and (h) of this clause, for contracts supporting projects requiring EVMS, the contractor shall flow down appropriate EVMS requirements to its subcontractors.

(1) The EVMS certification requirement applies to subcontractors meeting the criteria in paragraph (b) of this clause. In this event, the cognizant Federal agency, working through the prime contractor, will assess whether the subcontractor's system satisfies the EVMS guidelines contained in EIA-748.

(2) The prime contractor is responsible for reviewing and assuring the validity of all subcontractor reports. Cost and schedule reporting requirements are not to be confused with EVMS certification, as described in paragraph (i)(1) above.

(3) For subcontracts valued at $100 million or more, the following subcontractors shall comply with the requirements of this clause, excluding those in paragraphs (g) and (h):

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

(4) For subcontracts valued at less than $100 million, the following subcontractors shall comply with the requirements of this clause, excluding those in paragraphs (g) and (h):

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

(j) Extending a previous contractor's certified EVMS. If a contractor plans to adopt the existing system from the previous contractor or DOE site, the contractor is responsible for the system and shall comply with the system requirements required in this clause. The existing system shall utilize the same DOE-approved processes and procedures as the previous system. The contractor shall—

(1) Identify the corporate entity that owns the certified EVMS and provide the certification documentation;

(2) Obtain prior approval from the Contracting Officer, who will be advised by the Office of Project Management, for proposed EVMS and surveillance changes;
(3) Be responsible for full compliance with paragraph (a) of this clause; and
(4) Be responsible for correcting any significant deficiencies previously identified to the previous contractor by the Contracting Officer in accordance with paragraph (g) of this clause. Within 45 days after receiving a copy of the previous contractor's final determination, the contractor shall either correct any significant deficiencies or submit an acceptable corrective action plan. The Contracting Officer, working jointly with the Office of Project Management, will provide a written final determination—to potentially include an implementation review—before extending the certification.

## H.18 DOE-H-2025 ACCOUNTING SYSTEM ADMINISTRATION (OCT 2014) (REVISED)

(a) Definitions. As used in this clause:

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

(i) Applicable laws and regulations are complied with;

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

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

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

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

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

(b) General.

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

(c) System criteria.

The Contractor's accounting system shall provide for:

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

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

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

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

(5) Accumulation of costs under general ledger control;

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

(7) Approval and documentation of adjusting entries;

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

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

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

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

(12) Exclusion from costs charged to Government contracts of amounts which are not allowable in terms of 48 CFR31 entitled, *Contract Cost Principles and Procedures*, and other contract provisions;

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

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

(15) Cost accounting information, as required:

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

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

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

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

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

(d) Significant deficiencies.

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

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

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

(i) Remaining significant deficiencies;

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

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

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

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

## H.19 DOE-H-2026 CONTRACTOR PURCHASING SYSTEM ADMINISTRATION (OCT 2014) (REVISED)

(a) Definitions. As used in this clause:

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

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

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

(b) General.

The Contractor shall establish and maintain an acceptable purchasing system. If the Contractor plans to adopt the existing system from the previous Contractor, the Contractor is responsible for the system and shall comply with the system criteria required in this clause. The Contractor shall provide in writing to the CO documentation that its purchasing system meets the system criteria in paragraph (c) of this clause no later than 60 days after the effective date of the Transition Task Order. Failure to maintain an acceptable purchasing system, as defined in this clause, may result in disapproval of the system by the CO and/or withholding of payments.

(c) System criteria.

The Contractor's purchasing system shall:

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

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

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

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

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

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

(7) Use competitive sourcing to the maximum extent practicable, and ensure debarred or suspended contractors are properly excluded from contract award;

(8) Evaluate price, quality, delivery, technical capabilities, and financial capabilities of competing vendors to ensure fair and reasonable prices in accordance with 48 CFR 15.404-1;

(9) Require management level justification and adequate cost or price analysis, as applicable, for any sole or single source award;

(10) Perform timely and adequate cost or price analysis and technical evaluation for each subcontractor and supplier proposal or quote to ensure fair and reasonable subcontract prices in accordance with 48 CFR 15.404-3;

(11) Document negotiations in accordance with 48 CFR 15.406-3;

(12) Seek, take, and document economically feasible purchase discounts, including cash discounts, trade discounts, quantity discounts, rebates, freight allowances, and company-wide volume discounts;

(13) Ensure proper type of contract selection in accordance with 48 CFR 16 and prohibit issuance of cost-plus-a-percentage-of-cost subcontracts;

(14) Maintain subcontract surveillance to ensure timely delivery of an acceptable product and procedures to notify the Government of potential subcontract problems that may impact delivery, quantity, or price;

(15) Document and justify reasons for subcontract changes that affect cost or price;

(16) Notify the Government of the award of all subcontracts that contain the 48 CFR Chapter 1 and 48 CFR Chapter 9 flow down clauses that allow for Government audit of those subcontracts, and ensure the performance of audits of those subcontracts;

(17) Enforce adequate policies on conflict of interest, gifts, and gratuities, including the requirements of the 41 USC chapter 87, Kickbacks;

(18) Perform internal audits or management reviews, training, and maintain policies and procedures for the purchasing department to ensure the integrity of the purchasing system;

(19) Establish and maintain policies and procedures to ensure purchase orders and subcontracts contain mandatory and applicable flow down clauses, as required by 48 CFR chapter 1, including terms and conditions required by the prime contract and any clauses required to carry out the requirements of the prime contract;

(20) Provide for an organizational and administrative structure that ensures effective and efficient procurement of required quality materials and parts at the best value from responsible and reliable sources;

(21) Establish and maintain selection processes to ensure the most responsive and responsible sources for furnishing required quality parts and materials and to promote competitive sourcing among dependable suppliers so that purchases are reasonably priced and from sources that meet contractor quality requirements;

(22) Establish and maintain procedures to ensure performance of adequate price or cost analysis on purchasing actions;

(23) Establish and maintain procedures to ensure that proper types of subcontracts are selected, and that there are controls over subcontracting, including oversight and surveillance of subcontracted effort;

(24) Establish and perform Annual Subcontract Audit plans with audits consistent with IIA and/or Generally Accepted Government Auditing Standards (GAGAS) audit standards; and

(25) Establish and maintain procedures to timely notify the CO, in writing, if:

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

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

(d) Significant deficiencies.

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

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

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

(i) Remaining significant deficiencies;

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

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

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

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

## H.20 DOE-H-2027 CONTRACTOR PROPERTY MANAGEMENT SYSTEM ADMINISTRATION (OCT 2014) (REVISED)

(a) Definitions. As used in this clause:

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

(2) "Property management system" means the Contractor's system or systems for managing and controlling Government property.

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

(b) General.

The Contractor shall establish and maintain an acceptable property management system. If the Contractor plans to adopt the existing system from the previous contractor, the Contractor is responsible for the system and shall comply with the system criteria required in this clause. The Contractor shall provide in writing to the CO documentation that its property management system meets the system criteria in paragraph (c) of this clause no later than 60 days after the effective date of the ICP Essential Mission Task Order. Failure to maintain an acceptable property management system, as defined in this clause, may result in disapproval of the system by the CO and/or withholding of payments.

(c) System criteria.

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

(d) Significant deficiencies.

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

(2) The Contractor shall respond within 30 days to a written initial determination from the CO that identifies significant deficiencies in the Contractor's property management system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing. In the event the Contractor does not

respond in writing to the initial determination within the response time, this lack of response shall indicate that the Contractor agrees with the initial determination.

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

(i) Remaining significant deficiencies;

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

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

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

(f) Withholding payments. If the CO makes a final determination to disapprove the Contractor's property management system, and the Contract includes the Section H clause entitled, *Contractor Business Systems*, the CO will withhold payments in accordance with that clause.

## DOE CORPORATE CLAUSES OTHER THAN CHRM OR BUSINESS SYSTEMS

### H.21 DOE-H-2014 CONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATION OR ALLEGED VIOLATIONS, FINES, AND PENALTIES (OCT 2014) (REVISED)

(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) Liability and responsibility for fines or penalties and associated costs arising from or related to violations of environmental 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 safety, health or quality requirements shall be borne by the party that caused the violation(s). This clause resolves liability for fines and penalties though the cognizant regulatory authority may assess such fines or penalties upon either party or both parties without regard to the allocation of responsibility or liability under this contract. The allocation of liability for such fine or penalty is effective regardless of which party signs permit application, manifest, reports or other required documents, is assessed a fine or penalty, is a permittee, or is named subject of an enforcement action.

(c) After providing DOE advance written notice, the Contractor shall conduct negotiations with regulators regarding NOVs/NOAVs and fine and penalties. DOE may participate in all negotiations with regulatory agencies regarding permits, fines, penalties, and any other proposed notice, notice, administrative order, and any similar type of notice as described in paragraphs (a) and (b) above. However, the Contractor shall not make any commitments or offers to regulators that would bind the Government, including monetary obligations, without first obtaining written approval from the CO. Failure to obtain advance written approval may result in otherwise allowable costs being declared unallowable and/or the Contractor being liable for any excess costs to the Government associated with or resulting from such offers/commitments.

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

## H.22 DOE-H-2016 PERFORMANCE GUARANTEE AGREEMENT (OCT 2014)

The Contractor's parent organization(s) or all member organizations if the Contractor is a joint venture, limited liability company, or other similar entity, shall guarantee performance of the contract as evidenced by the Performance Guarantee Agreement incorporated in the Contract in Section J, Attachment J-8. 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 CO.

## H.23 DOE-H-2017 RESPONSIBLE CORPORATE OFFICIAL AND CORPORATE BOARD OF DIRECTORS (OCT 2014)

The Contractor has provided a guarantee of performance from its parent company(s) in the form set forth in Section J, Attachment J-8 entitled, *Performance Guarantee Agreement*. The individual signing the *Performance Guarantee Agreement* for the parent company(s) should be the Responsible Corporate Official. The Responsible Corporate Official is the person who has sole corporate (parent company(s)) authority and accountability for Contractor performance. DOE may contact, as necessary, the single Responsible Corporate Official identified below regarding Contract performance issues.

Responsible Corporate Official: [Offeror Fill-In]

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 CO in writing of the change.

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

Corporate Board of Directors: [Offeror Fill-In]

Name: _____

Position: _____

Company/Organization:

_____

Address: _____

Phone: _____

Facsimile: _____

Email: _____

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

## H.24 DOE-H-2018 PRIVACY ACT SYSTEMS OF RECORDS (OCT 2014) (REVISED)

The Contractor shall adopt or recommend the amendment of the following systems of records on individuals to accomplish an agency function pursuant to the Section I clause FAR 52.224-2 entitled, *Privacy Act*.

| DOE Privacy Act System No. | DOE Privacy Act System Description |
|---|---|
| DOE-1 | Grievance Records |
| DOE-3 | Employee Concerns Program Records |
| DOE-5 | Personnel Records of Former Contractor Employees (Includes All Former Workers) |

| DOE Privacy Act System No. | DOE Privacy Act System Description |
|---|---|
| DOE-10 | Energy Employees Occupational Illness Compensation Program Act Files |
| DOE-11 | Emergency Operations Notification Call List |
| DOE-13 | Payroll and Leave Records |
| DOE-14 | Report of Compensation |
| DOE-15 | Intelligence-Related Access Authorization |
| DOE-18 | Financial Accounting System |
| DOE-23 | Property Accountability System |
| DOE-26 | Official Travel Records |
| DOE-28 | General Training Records |
| DOE-31 | Firearms Qualification Records |
| DOE-33 | Personnel Medical Records (Present and Former DOE Employees and Contractor Employees) |
| DOE-34 | Employee Assistance Program (EAP) Records |
| DOE-35 | Personnel Radiation Exposure Records |
| DOE-38 | Occupational and Industrial Accident Records |
| DOE-41 | Legal Files (Claims, Litigation, Criminal Violations, Patents and Others) |
| DOE-43 | Personnel Security Clearance Files |
| DOE-48 | Security Education and/or Infraction Reports |
| DOE-51 | Employee and Visitor Access Control Records |
| DOE-52 | Access Control Records of International Visits, Assignments, and Employment at DOE Facilities and Contractor Sites |
| DOE-53 | Access Authorization for ADP Equipment |
| DOE-55 | Freedom of Information and Privacy Act (FOIA/PA) Requests for Records |
| DOE-63 | Personal Identity Verification (PIV) Files |
| DOE-88 | Epidemiologic and Other Health Studies, Surveys, and Surveillances |

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 CO as soon as the discrepancy is discovered. The Contractor shall monitor the identified systems and notify the CO 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 CO, in writing, that the list is accurate and up to date.

The above list shall be revised by mutual agreement between the Contractor and the CO, in consultation with the local Privacy Act Officer 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 entitled, *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.

FAR 52.224-1 entitled, *Privacy Act Notification*, and FAR 52.224-2 entitled, *Privacy Act*, 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 clause identifying system of record DOE-33, *Personnel Medical Records*, along with language on records turnover when employees terminate. Subcontracts must also contain scope requirements necessary to ensure DOE and contractor compliance with applicable records management and Privacy Act requirements.

## H.25 DOE-H-2019 DISPOSITION OF INTELLECTUAL PROPERTY – FAILURE TO COMPLETE CONTRACT PERFORMANCE (JUL 2018)

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

(a) The Government may take possession of and use all technical data, including limited rights data, restricted computer software, and data and software obtained from subcontractors, licensors, and licensees, necessary to complete the work in conformance with this contract, including the right to use the data in any Government solicitations for the 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 of the completion of the work under this contract. Limited rights data and restricted computer software will be protected in accordance with the provisions of the Section I clause DEAR 970.5227-1 *Rights in*

*Data- Facilities*. The Contractor shall ensure that its subcontractors and licensors make similar rights available to the Government and its contractors.

(b) The Contractor agrees to and does hereby grant to the Government an irrevocable, non-exclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice by the Contractor, and any other intellectual property, including technical data, which are owned or controlled by the Contractor, at any time through completion of this contract and which are incorporated or embodied in the construction of the facilities or which are utilized in the operation or remediation of the facilities or which cover articles, materials or products manufactured at a facility: (1) to practice or to have practiced by or for the Government at the facility; and (2) to transfer such license with the transfer of that facility. The acceptance or exercise by the Government of the aforesaid rights and license shall not prevent the Government at 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.26 DOE-H-2021 WORK STOPPAGE AND SHUTDOWN AUTHORIZATION (OCT 2014) (REVISED)

(a) Imminent Health and Safety Hazard is a given condition or situation which, if not immediately corrected, could result in 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, an activity that could adversely affect the safe operation of, or could cause serious damage to the facility if allowed to continue, or an action that could result in the release of radiological or chemical hazards to the environment in excess of regulatory limits, 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 (e.g., directing the operator/implementer of the activity or process causing the imminent hazard to stop work, initiating emergency response actions or other actions) to protect the health and safety of the workers and the public, and to protect 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(s) should subsequently be coordinated with the DOE and Contractor management. The suspension or stop-work order should be promptly confirmed in writing by the CO.

(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, the ICP Manager, and the DOE Site Manager. Any written direction to suspend operations shall be issued by the CO.

(d) 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 CO" in all subcontracts.

## H.27 DOE-H-2033 ALTERNATIVE DISPUTE RESOLUTION (OCT 2014)

(a) DOE and the Contractor both recognize that methods for fair and efficient resolution of contractual issues in controversy by mutual agreement are essential to the successful and timely completion of contract requirements. Accordingly, DOE and the Contractor shall use their best efforts to informally resolve any contractual issue in controversy by mutual agreement. Issues of controversy may include a dispute, claim, question, or other disagreement. The parties agree to negotiate with each other in good faith, recognizing their mutual interests, and attempt to reach a just and equitable solution satisfactory to both parties.

(b) If a mutual agreement cannot be reached through negotiations within a reasonable period of time, the parties may use a process of alternate dispute resolution (ADR) in accordance with the clause at FAR 52.233-1 entitled, *Disputes*. The ADR process may involve mediation, facilitation, fact-finding, group conflict management, and conflict coaching by a neutral party. The neutral party may be an individual, a board comprised of independent experts, or a company with specific expertise in conflict resolution or expertise in the specific area of controversy. The neutral party will not render a binding decision but will assist the parties in reaching a mutually satisfactory agreement. Any opinions of the neutral party shall not be admissible as evidence in any subsequent litigation proceedings.

(c) Either party may request that the ADR process be used. The Contractor shall make a written request to the CO, and the CO shall make a written request to the appropriate official of the Contractor. A voluntary election by both parties is required to participate in the ADR process. The parties must agree on the procedures and terms of the process, and officials of both parties who have the authority to resolve the issue must participate in the agreed-upon process.

(d) ADR procedures may be used at any time that the CO has the authority to resolve the issue in controversy. If a claim has been submitted by the Contractor, ADR procedures may be applied to all or a portion of the claim. If ADR procedures are used subsequent to issuance of a CO's final decision under the clause at FAR 52.233-1 entitled, *Disputes*, their use does

not alter any of the time limitations or procedural requirements for filing an appeal of the CO's final decision and does not constitute reconsideration of the final decision.

(e) If the CO rejects the Contractor's request for ADR proceedings, the CO shall provide the Contractor with a written explanation of the specific reasons the ADR process is not appropriate for the resolution of the dispute. If the Contractor rejects the CO's request to use ADR procedures, the Contractor shall provide the CO with the reasons for rejecting the request.

## H.28 DOE-H-2034 CONTRACTOR INTERFACE WITH OTHER CONTRACTORS AND/OR GOVERNMENT EMPLOYEES (OCT 2014) (REVISED)

The Government may award contracts to other contractors for work to be performed at a DOE-owned or DOE-controlled site or facility. The Contractor shall cooperate fully with all other DOE prime contractors and Government employees. Other DOE contractors include but are not limited to: the INL contractor, the Fort St. Vrain Physical Security Services contractor, and other entities. Cooperation includes, but is not limited to, the following types of activities: working together to resolve interface and work performance issues; establishing working groups; participating in meetings; providing access to applicable technical and contract information and data such as schedule and milestone data; discussing technical matters related to the Idaho and Colorado sites; providing access to Contractor facilities or areas; and allowing observation of technical activities by appropriate personnel.

The Contractor shall coordinate its own work with such other work as may be directed by the CO or a duly authorized representative. The Contractor is not authorized to direct any other DOE prime contractor or other entities, except as specified elsewhere in this contract or directed by the CO.

The Contractor shall not commit any act which will interfere with the performance of work by any other contractor or by a Government employee and seek CO direction if there is an unresolved conflict.

## H.29 DOE-H-2035 ORGANIZATIONAL CONFLICT OF INTEREST MANAGEMENT PLAN (OCT 2014) (REVISED)

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

(a) The procedures for identifying and evaluating past, present, and anticipated contracts of the Contractor, its related entities and other performing entities under the Contract.

(b) The procedures the Contractor will utilize to avoid, neutralize, or mitigate potential or actual conflicts of interest.

(c) The procedures for reporting actual or potential conflicts of interest to the CO. The resolution of potential or actual conflicts of interest that exist or may arise during contract performance shall be documented as part of the Plan.

(d) The procedures the Contractor will utilize to oversee, implement, and update the Plan, to include assigning responsibility for management, oversight and compliance to an individual in the Contractor's organization with full authority to implement the Plan.

(e) The procedures for ensuring all required representations, certifications and factual analyses are submitted to the CO for approval in a timely manner.

(f) The procedures for protecting agency information that could lead to an unfair competitive advantage if disclosed including collecting disclosure agreements covering all individuals, subcontractors, and other entities with access to agency-sensitive information and physical safeguarding of such information.

(g) An OCI training and awareness program that includes periodic, recurring training and a process to evidence employee participation.

(h) The enforceable, employee disciplinary actions to be used by the Contractor for violation of OCI requirements.

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

(a) Assignment and Transfer of other DOE Prime Contracts. During the period of performance (POP) of this contract ordering period, and subsequent Task Order(s) period of performance extending beyond the contract ordering period, it may become necessary for the DOE to transfer and assign existing or future DOE prime contracts in whole or in part supporting site work to this Contract. The Contractor shall accept the transfers and assignments of contracts. Transfer and assignment of prime contracts to the Contractor, if any, will be for administration purposes, and once transferred, will become subcontracts to the Contractor. Any recommendations and/or suggestions on individual transfers shall be submitted in writing to the CO prior to the transfer or assignment.

(b) Assignment and Transfer of this Prime Contract. During the POP of this Contract it may become necessary for the DOE to transfer and assign in whole or in part this Contract to another DOE contractor. The Contractor shall accept the transfers and assignment. Transfer and assignment, if any, will be for administration purposes, and once transferred, will become a subcontract to the assignee. Any recommendations and/or suggestions on individual transfers shall be submitted in writing to the CO prior to the transfer or assignment.

(c) Transfer and Assignment of Subcontracts. The Contractor agrees to transfer and assign or accept transfer and assignment of existing subcontracts including lower-tier subcontracts as determined necessary by DOE for continuity of operations. The transfer and assignment may be to or from another contractor or to or from DOE as a prime contractor. Transfer or assignment of subcontracts to or from the Contractor, if any, will be for administration purposes, and once transferred, will become subcontracts to the Contractor. The Contractor shall use its best efforts to negotiate changes to the assigned subcontracts incorporating mandatory flow-down provisions at no cost. If the subcontractor refuses to accept the changes or requests price adjustments, the Contractor will notify the CO in writing. This Clause is required as a flow-down clause in all subcontracts.

The following subcontracts are determined necessary for transfer to the successor contractor:

| Subcontract | Title | Subcontractor Name | Subcontract Number |
|---|---|---|---|
| [TBD] | | | |

## H.31 DOE-H-2045 CONTRACTOR COMMUNITY COMMITMENT (OCT 2014) (REVISED)

(a) The Contractor shall submit to DOE an annual plan for community commitment activities and report on program progress semi-annually.

(b) The Contractor's annual plan for community commitment activities will identify those meaningful actions and activities that it intends to implement within the surrounding counties and local municipalities. The Contractor may engage in any community actions or activities it determines meets the objectives of DOE's community commitment policy. It is the policy of the DOE to be a constructive partner in the geographic region in which DOE conducts its business. The basic elements of this policy include: (1) Recognizing the diverse interests of the region and its stakeholders, (2) engaging regional stakeholders in issues and concerns of mutual interest, and (3) recognizing that giving back to the community is a worthwhile business practice. Accordingly, the Contractor agrees that its business operations and performance under the Contract will be consistent with the intent of the policy and elements set forth above. Actions and activities in the areas listed below are representative of the areas in which the Contractor may choose to perform. However, the list is not all-inclusive and is not intended to preclude the Contractor from initiating and performing other constructive community activities nor involvement in charitable endeavors it deems worthwhile.

(1) Regional educational outreach programs. The objectives of these programs include teacher enhancement, student support, curriculum enhancement, educational technology, public understanding, and providing the services of contractor employees to schools, colleges, and universities. Regional educational outreach programs could involve providing contractor employees the opportunity to improve their employment

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

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

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

(3) Community support. The Contractor may directly sponsor specific local community activities or sponsor individual employees to work with a specific local community activity. The Contractor may provide support and assistance to community service organizations. The Contractor may support strategic partnerships with professional and scientific organizations to enhance recruitment into all levels of its organization.

(c) The Contractor may use fee dollars to pay for its community commitment actions, as it deems appropriate. All costs to be incurred by the Contractor for community commitment actions and activities are unallowable and non-reimbursable under the contract.

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

## H.32 DOE-H-2046 DIVERSITY PROGRAM (OCT 2014)

(a) The Contractor shall develop and implement a diversity program consistent with and in support of the DOE's diversity program. A diversity plan covering the full period of performance shall be submitted to the CO for approval within 60 calendar days after the the effective date of the ICP Essential Mission Task Order. Once the diversity plan is approved by the CO, the Contractor shall implement the diversity plan within 30 calendar days of its approval by the CO.

(b) The diversity plan shall address, at a minimum, the Contractor's approach to ensure an effective diversity program (including addressing applicable affirmative action and equal employment opportunity regulations) to include:

(1) A statement of the Contractor's policies and practices; and

(2) Planned initiatives and activities that demonstrate a commitment to a diversity program, including recruitment strategies for hiring a diverse workforce. The diversity program shall also address, at a minimum, the Contractor's approach for promoting diversity through (1) the Contractor's workforce; (2) educational outreach, including a mentor/protégé program; (3) stakeholder involvement and outreach; (4) subcontracting; and (5) economic development.

(c) An annual diversity report shall be submitted pursuant to Section J, Attachment J-2 entitled, *Contract Deliverables*. This report shall provide a list of accomplishments achieved, both internally and externally during the current reporting period, and projected initiatives during the next reporting period. The report shall also list any proposed changes to the diversity plan which shall be subject to the CO's approval.

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

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

## H.34 INFORMATION

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.

(a) Release of Information. The Contractor shall provide timely, accurate, and complete responses to information requested by DOE to comply with Freedom of Information Act and Privacy Act requirements. The Contractor shall develop, plan and coordinate proactive approaches to dissemination of timely information regarding DOE unclassified activities. This will be accomplished through coordination with DOE. Proactive communications or public affairs programs will include or make use of a variety of tools including open houses, newsletters, press releases and/or conferences, audio/visual presentations, speeches, forums, and tours. The Contractor shall implement this responsibility through coordination with DOE in such a manner that the public, whether it is the media, citizen's groups, private citizens or local, state or Federal Government officials, has a clear understanding of DOE activities at the INL.

(b) 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.*

(c) Confidentiality of Information. To the extent that the work under this contract requires that the Contractor be given access to confidential or proprietary business, technical, or financial information belonging to the Government or other companies, the Contractor shall, after receipt thereof, treat such information as confidential and 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:

(1) Information which, at the time of receipt by the Contractor, is in the public domain;

(2) Information which is published after receipt thereof by the Contractor or otherwise becomes part of the public domain through no fault of the Contractor;

(3) Information which the Contractor can demonstrate was in its possession at the time of receipt thereof and was not acquired directly or indirectly from the Government or other companies;

(4) Information which the Contractor can demonstrate was received by it from a third party that did not require the Contractor to hold it in confidence.

(d) The Contractor shall obtain the written agreement, in a form satisfactory to the Contracting Officer, of each employee permitted access to such information, whereby the employee agrees that he/she will not discuss, divulge or disclose any such information or data to any person or entity except those persons within the Contractor's organization directly concerned with the performance of the contract.

(e) The Contractor agrees, if requested by the Government, to sign an agreement identical in all material respects to the provisions of this subparagraph (f), with each company supplying information to the Contractor under this contract, and to supply a copy of such agreement to the Contracting Officer. Upon request from the Contracting Officer, the Contractor shall supply the Government with reports itemizing information received as confidential or proprietary and setting forth the company or companies from which the Contractor received such information.

(f) The Contractor agrees that upon request by DOE, it will execute a DOE-approved agreement with any party whose facilities or proprietary data it is given access 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.

(g) The Government reserves the right to require the Contractor to include this Clause or a modified version of this Clause in any subcontract as directed in writing by the Contracting Officer.

## H.35 DOE-H-2052 REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF THE OFFEROR (OCT 2014) (REVISED)

The Contractor's Representations, Certifications, and Other Statements, dated [Offeror Fill-In] made in response to Solicitation No. [Offeror Fill-In] are hereby incorporated into the contract.

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

(a) The Contractor shall comply with all applicable safety and health requirements set forth in 10 CFR 851, *Worker Safety and Health Program*, and any applicable DOE Directives incorporated into the Contract. The Contractor shall develop, implement, and maintain a written Worker Safety and Health Program (WSHP) which shall describe the Contractor's method for complying with and implementing the applicable requirements of 10 CFR 851. The WSHP shall be submitted to and approved by DOE. The approved WSHP must be implemented prior to the start of work. In performance of the work, the Contractor shall provide a safe and healthful workplace and must comply with its approved WSHP and all applicable federal and state environment, health, and safety regulations.

(b) The Contractor shall take all reasonable precautions to protect the environment, health, and safety of its employees, DOE personnel, and members of the public. When more than one contractor works in a shared workplace, the Contractor shall coordinate with the other contractors to ensure roles, responsibilities, and worker safety and health provisions are clearly delineated. The Contractor shall participate in all emergency response drills and exercises related to the Contractor's work and interface with other DOE contractors.

(c) The Contractor shall take all necessary and reasonable steps to minimize the impact of its work on DOE functions and employees, and immediately report all job-related injuries and/or illnesses which occur in any DOE facility to the Contracting Officer Representative (COR). Upon request, the Contractor shall provide to the COR a copy of occupational safety and health self-assessments and/or inspections of work sites for job hazards for work performed at DOE facilities.

(d) The CO may notify the Contractor, in writing, of any noncompliance with the terms of this clause and the corrective action(s) to be taken. After receipt of such notice, the Contractor shall immediately take such corrective action(s).

(e) In the event that the Contractor fails to comply with the terms and conditions of this clause, the CO may, without prejudice to any other legal or contractual rights, issue a stop-work order halting all or any part of the work. Thereafter, the CO may, at his or her discretion, cancel the stop-work order so that the performance of work may be resumed. The Contractor shall not be entitled to an equitable adjustment of the contract amount or extension of the performance schedule due to any stop-work order issued under this clause.

(f) The Contractor shall flow down the requirements of this clause to all subcontracts at any tier.

(g) In the event of a conflict between the requirements of this clause and 10 CFR 851, the requirements of 10 CFR 851 shall take precedence.

## H.37 DOE-H-2058 DESIGNATION AND CONSENT OF TEAMING SUBCONTRACTS – ALTERNATE I (OCT 2014) (REVISED)

(a) The following subcontractors have been determined to be Teaming Subcontractors:

[Offeror Fill-In]

(b) In the event that the Contractor plans either to award or use a new teaming subcontract or replace an existing, approved teaming subcontract identified in paragraph (a) above, the Contractor shall provide advance notification to, and obtain consent from, the Contracting Officer, notwithstanding the consent requirements under any approved purchasing system or any other terms or conditions of the contract. Consent to these subcontracts is retained by the Contracting Officer and will not be delegated.

(c) In the event that the Contractor proposes to use a new, or replace, one or more of the approved Teaming Subcontractors identified in paragraph (a) above in performance of an individual Task Order, the Contractor shall provide advance notification to and obtain consent from the cognizant Contracting Officer notwithstanding any other terms and conditions of the contract. Consent of these subcontracts is retained by the cognizant Contracting Officer for the Task Order and will not be delegated. The requirements of this paragraph (c) apply when the Contractor proposes the use of a new Teaming Subcontractor either prior to or subsequent to the award of the individual Task Order. The Contractor shall provide rationale and a detailed explanation including the equivalency or similarity of the experience and qualifications to the above listed Teaming Subcontractor and any other information requested by the cognizant Contracting Officer. Consent may be provided on a one time basis only and should not be construed as authorizing the use of the new Teaming Subcontractor on future Task Orders.

## H.38 DOE-H-2059 PRESERVATION OF ANTIQUITIES, WILDLIFE, AND LAND AREAS (OCT 2014)

(a) Federal Law provides for the protection of antiquities located on land owned or controlled by the Government. Antiquities include Indian graves or campsites, relics and artifacts. The Contractor shall control the movements of its personnel and its subcontractor's personnel at the job site to ensure that any existing antiquities discovered thereon will not be disturbed or destroyed by such personnel. It shall be the duty of the Contractor to report to the Contracting Officer the existence of any antiquities so discovered.

(b) The Contractor shall also preserve all vegetation (including wetlands) except where such vegetation must be removed for survey or construction purposes. Any removal of vegetation shall be in accordance with the terms of applicable habitat mitigation plans and permits.

Furthermore, all wildlife must be protected consistent with programs approved by the Contracting Officer.

(c) Except as required by or specifically provided for in other provisions of this contract, the Contractor shall not perform any excavations, earth borrow, preparation of borrow areas, or otherwise disturb the surface soils within the job site without the prior approval of DOE or its designee.

## H.39 DOE-H-2061 CHANGE ORDER ACCOUNTING (OCT 2014)

The Contractor shall maintain change order accounting whenever the estimated cost of a change or series of related changes exceeds $100,000. The Contractor, for each change or series of related changes, shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of work, both changed and not changed, allocable to the change. The Contractor shall maintain such accounts until the parties agree to an equitable adjustment for the changes ordered by the CO or the matter is conclusively disposed of in accordance with the Disputes clause.

## H.40 DOE-H-2063 CONFIDENTIALITY OF INFORMATION (OCT 2014) (REVISED)

(a) Performance of work under this Contract may result in the Contractor having access to Controlled Unclassified Information (CUI), including Official Use Only (OUO) information, via written or electronic documents, or by virtue of having access to DOE's electronic or other systems. Such CUI includes personally identifiable information (such as social security account numbers) or proprietary business, technical, or financial information belonging to the Government or other companies or organizations. The Contractor shall treat this information as confidential and agrees not to use this information for its own purposes, or to disclose the information to third parties, unless specifically authorized to do so in writing by the CO.

(b) The restrictions set out in paragraph (a) above, however, do not apply to:

(1) Information which, at the time of receipt by the Contractor, is in the public domain;

(2) Information which, subsequent to receipt by the Contractor, becomes part of the public domain through no fault or action of the Contractor;

(3) Information which the Contractor can demonstrate was previously in its possession and was not acquired directly or indirectly as a result of access obtained by performing work under this contract;

(4) Information which the Contractor can demonstrate was received from a third party who did not require the Contractor to hold it in confidence; or

(5) Information which is subject to release under applicable law.

(c) The Contractor shall obtain a written agreement from each of its employees who are granted access to, or furnished with, confidential information, whereby the employee agrees that he or she will not discuss, divulge, or disclose any such information to any

person or entity except those persons within the Contractor's organization directly concerned with the performance of the contract. The agreement shall be in a form satisfactory to the CO.

(d) Upon request of the CO, the Contractor agrees to execute an agreement with any party which provides CUI to the Contractor pursuant to this contract, or whose facilities the Contractor is given access to that restrict use and disclosure of CUI obtained by the Contractor. A copy of the agreement, which shall include all material aspects of this clause, shall be provided to the CO for approval.

(e) Upon request of the CO, the Contractor shall supply the Government with reports itemizing the confidential or proprietary information it receives under this contract and identify the source (company, companies or other organizations) of the information.

(f) The Contractor agrees to flow down this clause to all subcontracts issued under this contract.

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

(a) Acquisition of Information Technology. The Government may provide information technology equipment, existing computer software (as described in 48 CFR 27.405), and third party services for the Contractor's use in the performance of the contract; and the Contracting Officer may provide guidance to the Contractor regarding usage of such equipment, software, and third party services. The Contractor is not authorized to acquire (lease or purchase) information technology equipment, existing computer software, or third party services at the Government's direct expense without prior written approval of the Contracting Officer. Should the Contractor propose to acquire information technology equipment, existing computer software, or third party services, the Contractor shall provide to the Contracting Officer justification for the need, including a complete description of the equipment, software or third party service to be acquired, and a lease versus purchase analysis if appropriate.

(b) The Contractor shall immediately provide written notice to the Contracting Officer's Representative when an employee of the Contractor no longer requires access to the Government information technology systems.

(c) The Contractor shall not violate any software licensing agreement or cause the Government to violate any licensing agreement.

(d) The Contractor agrees that its employees will not use, copy, disclose, modify, or reverse engineer existing computer software provided to it by the Government except as permitted by the license agreement or any other terms and conditions under which the software is made available to the Contractor.

(e) If at any time during the performance of this contract the Contractor has reason to believe that its utilization of Government furnished existing computer software may involve or result in a violation of the software licensing agreement, the Contractor shall promptly

notify the Contracting Officer, in writing, of the pertinent facts and circumstances. Pending direction from the Contracting Officer, the Contractor shall continue performance of the work required under this contract without utilizing the software.

(f) The Contractor agrees to include the requirements of this clause in all subcontracts at any tier.

(g) The Contractor shall comply with the requirements of those DOE directives, or parts thereof, identified below in implementing the requirements of this clause. The Contracting Officer, may, at any time, unilaterally amend this clause in order to add, modify or delete specific requirements.

## H.42 DOE-H-2068 CONFERENCE MANAGEMENT (OCT 2014)

The Contractor agrees that:

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

(b) For the purposes of this clause, "conference" is defined in Attachment 2 to the Deputy Secretary's memorandum of August 17, 2015, entitled *Updated Guidance on Conference-Related Activities and Spending*.

(c) Contractor-sponsored conferences include those events that meet the conference definition and either or both of the following:

(1) The Contractor provides funding to plan, promote, or implement an event, except in instances where a contractor:

(i) Covers participation costs in a conference for specified individuals (e.g., students, retirees, speakers, etc.) in a total amount not to exceed $10,000 (by individual contractor for a specific conference); or

(ii) Purchases goods or services from the conference planners (e.g., attendee registration fees, renting booth space).

(2) The Contractor authorizes use of its official seal, or other seals/logos/ trademarks to promote a conference. Exceptions include non-M&O contractors who use their seal to promote a conference that is unrelated to their DOE contract(s) (e.g., if a DOE IT contractor were to host a general conference on cyber security).

(d) Attending a conference, giving a speech or serving as an honorary chairperson does not connote sponsorship.

(e) The Contractor will provide information on conferences they plan to sponsor with expected costs exceeding $100,000 in the Department's Conference Management Tool, including:

(1) Conference title, description, and date;

(2) Location and venue;

(3) Description of any unusual expenses (e.g., promotional items);

(4) Description of contracting procedures used (e.g., competition for space/support);

(5) Costs for space, food/beverages, audio visual, travel / per diem, registration costs, recovered costs (e.g., through exhibit fees); and

(6) Number of attendees.

(f) The Contractor will not expend funds on the proposed contractor-sponsored conferences with expenditures estimated to exceed $100,000 until notified of approval by the CO.

(g) For DOE-sponsored conferences, the contractor will not expend funds on the proposed conference until notified by the CO.

(1) DOE-sponsored conferences include events that meet the definition of a conference and where the Department provides funding to plan, promote, or implement the conference and/or authorizes use of the official DOE seal, or other seals/logos/trademarks to promote a conference. Exceptions include instances where DOE:

(i) Covers participation costs in a conference for specified individuals (e.g. students, retirees, speakers, etc.) in a total amount not to exceed $10,000 (by individual contractor for a specific conference); or

(ii) Purchases goods or services from the conference planners (e.g., attendee registration fees; renting booth space) or provides funding to the conference planners through Federal grants.

(2) Attending a conference, giving a speech, or serving as an honorary chairperson does not connote sponsorship.

(3) The Contractor will provide cost and attendance information on their participation in all DOE-sponsored conference in the DOE Conference Management Tool.

(h) For non-Contractor sponsored conferences, the Contractor shall develop and implement a process to ensure costs related to conferences are allowable, allocable, reasonable, and further the mission of DOE/NNSA. This process must at a minimum:

(1) Track all conference expenses; and

(2) Require the Laboratory Director (or equivalent) or Chief Operating Officer approve a single conference with net costs to the contractor of $100,000 or greater.

(i) Contractors are not required to enter information on non-sponsored conferences in DOE's Conference Management Tool.

(j) Once funds have been expended on a non-sponsored conference, contractors may not authorize the use of their trademarks/logos for the conference, provide the conference planners with more than $10,000 for specified individuals to participate in the conference, or provide any other sponsorship funding for the conference. If a contractor does so, its expenditures for the conference may be deemed unallowable.

## H.43 DOE-H-2069 PAYMENTS FOR DOMESTIC EXTENDED PERSONNEL ASSIGNMENTS (OCT 2014) (REVISED)

(a) Definition. For purposes of this clause, "domestic extended personnel assignments" are defined as any assignment of contractor personnel to a domestic location different than (and more than 50 miles from) their permanent duty station for a period expected to exceed 30 consecutive calendar days.

(b) For domestic extended personnel assignments, the Contractor shall be reimbursed the lesser of temporary relocation costs (Temporary Change of Station allowances as described in the Federal Travel Regulation at §302-3.400 - §302-3.429) or a reduced per diem (Extended Travel Duty) in accordance with the allowable cost provisions of the contract and the following:

(1) When a reduced per diem method (Extended Travel Duty) is utilized, the allowances are as follows:

(i) Lodging. For the first 60 days and last 30 days of the assignment, the Government will reimburse costs associated with lodging at the lesser of actual cost or 100% of the Federal per diem rate at the assignment location. The intervening days' lodging will be reimbursed at the lesser of actual cost or 55% of Federal per diem.

(ii) Meals and Incidental Expenses. For the first 30 days and last 30 days of the assignment, the Government will reimburse costs associated with meals and incidental expenses (M&IE) at a rate not to exceed 100% of the Federal per diem rate at the assignment location. The intervening days M&IE will be reimbursed at a reduced rate, not to exceed 55% of Federal per diem.

(iii) Receipts are required to substantiate all lodging expenses and any other authorized expense greater than $75.

(2) The Government will not reimburse any costs associated with per diem (except for en route travel) unless the contractor employee maintains a residence at the permanent duty station.

(3) The Government will not reimburse costs associated with salary premiums, per diem, lodging, or other subsidies for contractor employees on domestic extended personnel assignments after three (3) years (except for the reimbursements described above during the last 30 days of the assignment).

(4) If an assignment has breaks within a three-year period, the calculation of the total length of the assignment will be as follows: If the break between assignments is less than 12

months, the Government will consider the assignment continuous for purposes of the three-year clock. For instance, if a contractor employee completes a two-year assignment at location A and returns to his/her permanent duty station for 12 months, a subsequent new two-year assignment back to location A will restart the three-year clock. The assignments will be considered two separate two-year assignments. On the other hand, if in the previous example the employee's return to his/her permanent duty station was for six months, the Government would consider the second assignment to be a continuation of the first for purposes of the three-year rule.

(5) The Government will not reimburse costs associated with salary premiums that exceed 10% of base salary.

(6) The Contractor shall include the substance of this clause in all subcontracts in which travel will be reimbursed at cost.

## H.44 DOE-H-2070 KEY PERSONNEL – ALTERNATE I (OCT 2014) (REVISED)

(a) Pursuant to the clause DEAR 952.215-70 entitled, *Key Personnel*, the required key personnel for this Contract are identified below (Table H-1):

**Table H-1. Key Personnel.**

| Name | Position |
|---|---|
| [Offeror Fill-In] | Program Manager |
| [Offeror Fill-In] | ESH&Q Manager |
| [Offeror Fill-In] | Business Manager |
| [Offeror Fill-In] (as applicable) | [Offeror Fill-In] (as applicable) |
| [Offeror Fill-In] (as applicable) | [Offeror Fill-In] (as applicable) |

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

(1) Key personnel team requirements. The CO and designated COR(s) shall have direct access to the key personnel assigned to the contract. All key personnel shall be assigned full-time to their respective positions and their permanent duty station is located on the INL Site or within the local area. The Contractor shall notify the CO and request approval in writing at least 60 days in advance of any changes to key personnel.

(2) No key person position shall remain vacant for a period more than 30 days following CO approval of a change in key personnel, or the Contractor will be subject to reduction of fee according to (c)(1) or (c)(2) below respective to the key position vacated

(3) Approval of changes to key personnel is at the unilateral discretion of the CO.

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

(1) Key personnel are considered "managerial personnel" under the clause DEAR 952.231-71 entitled, *Insurance – Litigation and Claims*.

(2) For the purposes of this Clause, "Changes to Key Personnel" is defined as: (i) any change to the position assignment of a current key person under the Contract, except for a person who acts for short periods of time, in the place of a key person during his or her absence, the total time of which shall not exceed 30 working days during any given year (ii) utilizing the services of a new substitute key person for assignment to the Contract beyond 30 working days; or (iii) assigning a current key person for work outside the Contract.

(3) For the purposes of this Clause, "Beyond the Contractor's Control," is defined as an event for which the Contractor lacked legal authority or ability to prevent "Changes to Key Personnel."

(c) Contract fee reductions for changes to Key Personnel.

Any key person change according to the definition for "Changes to Key Personnel" above shall be subject to reduction of fee according to (c)(1) or (c)(2) below, respective to the key position vacated.

(1) Notwithstanding the approval by the CO, any time the Program Manager is removed, replaced, or diverted within three years of being placed in the position, the earned fee under the Contract may be permanently reduced by **$1,000,000** for each and every such occurrence. A change to a key person "Beyond the Contractor's Control" shall not result in a permanent reduction of fee under this subsection.

(2) Notwithstanding the approval by the CO, any time a key person other than Program Manager is removed, replaced, or diverted within three years of being placed in the position, the earned fee may be permanently reduced by up to **$500,000** for each and every such occurrence. A change to a key person, other than the Program Manager, "Beyond the Contractor's Control" shall not result in a permanent reduction of fee under this subsection.

(3) The Contractor may request in writing that the CO consider waiving all or part of a reduction in earned fee. Such written request shall include the Contractor's basis for the removal, replacement, or diversion of any key personnel. The CO shall have the unilateral discretion to make the determination to waive all or part of the reduction in earned fee.

## H.45 DOE-H-2071 DEPARTMENT OF ENERGY DIRECTIVES (OCT 2014)

(a) In performing work under this contract, the Contractor shall comply with the requirements of those Department of Energy (DOE) directives or parts thereof listed in Section J, Attachment J-3.

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

(c) Notwithstanding the process described in paragraph (b), the Contracting Officer may direct the Contractor to immediately begin compliance with the requirements of any directive.

(d) The Contractor and the Contracting Officer shall identify and, if appropriate, agree to any changes to other contract terms and conditions, including cost and schedule, associated with the revision pursuant to the changes clauses in Section I of this contract.

(e) Regardless of the performer of the work, the Contractor is responsible for compliance with the requirements of this clause. The Contractor shall include this clause in all subcontracts to the extent necessary to ensure the Contractor's compliance with these requirements.

## H.46 DOE-H-2072 USE OF GOVERNMENT VEHICLES BY CONTRACTOR EMPLOYEES (OCT 2014)

(a) The Government will provide Government-owned and/or Government-leased motor vehicles for the Contractor's use in performance of this contract in accordance with the clause FAR 52.245-1 entitled, *Government Property* and FAR 52.251-2 entitled, *Interagency Fleet Management System Vehicles and Related Services*.

(b) The Contractor shall ensure that its employees use and operate Government-owned and/or Government-leased motor vehicles in a responsible and safe manner to include the following requirements:

(1) Use vehicles only for official purposes and solely in the performance of the Contract.

(2) Do not use vehicles for transportation between an employee's residence and place of employment, unless authorized by the CO.

(3) Comply with Federal, state and local laws and regulations for the operation of motor vehicles.

(4) Possess a valid state, District of Columbia, or commonwealth's operator license or permit for the type of vehicle to be operated.

(5) Operate vehicles in accordance with the operator's packet furnished with each vehicle.

(6) Use seat belts while operating or riding in a Government vehicle.

(7) Do not use tobacco products while operating or riding in a Government vehicle.

(8) Do not provide transportation to strangers or hitchhikers.

(9) Do not engage in "text messaging" while operating a Government vehicle, which includes those activities defined in the clause FAR 52.223-18 entitled, *Encouraging Contractor Policies to Ban Text Messaging While Driving*.

(10) In the event of an accident, provide information as may be required by state, county or municipal authorities and as directed by the CO.

(c) The Contractor shall:

(1) Establish and enforce suitable penalties against employees who use, or authorize the use of Government vehicles for unofficial purposes or for other than in the performance of the contract; and

(2) Pay any expenses or cost, without Government reimbursement, for using Government vehicles other than in the performance of the contract.

(d) The Contractor shall insert this clause in all subcontracts in which Government-owned and/or Government-leased vehicles are to be provided for use by subcontractor employees.

## H.47 DOE-H-2075 PROHIBITION ON FUNDING FOR CERTAIN NONDISCLOSURE AGREEMENTS (OCT 2014)

The Contractor agrees that:

(a) No cost associated with implementation or enforcement of nondisclosure policies, forms or agreements shall be allowable under this Contract if such policies, forms or agreements do not contain the following provisions: "These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive Orders and statutory provisions are incorporated into this agreement and are controlling."

(b) The limitation above shall not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(c) Notwithstanding the provisions of paragraph (a), a nondisclosure or confidentiality policy form or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure or confidentiality forms shall also make it clear that they do not bar disclosures to Congress, or to an authorized official of an executive agency or the Department of Justice, that are essential to reporting a substantial violation of law.

## H.48 DOE-H-2076 LOBBYING RESTRICTIONS (NOV 2018)

In accordance with 18 U.S.C. § 1913, 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. This restriction is in addition to those prescribed elsewhere in statute and regulation.

## H.49 DOE-H-2078 MULTIFACTOR AUTHENTICATION FOR INFORMATION SYSTEMS

The Contractor shall take all necessary actions to achieve multifactor authentication (MFA) for standard and privileged user accounts of all classified and unclassified networks. In so doing, the Contractor shall comply with the requirements and procedures established in the document "U.S. Department of Energy Multifactor Authentication Implementation Approach" and its appendices as determined by the Contracting Officer.

## H.50 DOE-H-2080 AGREEMENT REGARDING WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (APR 2018)

(a) Program implementation. The Contractor shall, consistent with 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, incorporated herein by reference with full force and effect, develop, implement, and maintain a workplace substance abuse program.

(b) Remedies. In addition to any other remedies available to the Government, the Contractor's failure to comply with the requirements of 10 CFR part 707 or to perform in a manner consistent with its approved program may render the Contractor subject to: the suspension of contract payments, or, where applicable, a reduction in fee; termination for default; and suspension or debarment.

(c) Subcontracts.

(1) The Contractor agrees to notify the Contracting Officer reasonably in advance of, but not later than 30 days prior to, the award of any subcontract the Contractor believes may be subject to the requirements of 10 CFR part 707, unless the Contracting Officer agrees to a different date.

(2) The Contractor shall require all subcontracts subject to the provisions of 10 CFR part 707 to agree to develop and implement a workplace substance abuse program that complies with the requirements of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, as a condition for award of the subcontract. The Contractor shall review and approve each subcontractor's program, and shall periodically monitor each subcontractor's implementation of the program for effectiveness and compliance with 10 CFR part 707.

(3) The Contractor agrees to include, and require the inclusion of, the requirements of this clause in all subcontracts, at any tier, that are subject to the provisions of 10 CFR part 707.

## OTHER CLAUSES

### H.51 TASK ORDERING PROCEDURE

(a) A Task Order may be issued under this Master IDIQ Contract for any work scope covered by Section C, Performance Work Statement. Task Orders may be issued as Fixed-Price (FP) or Cost-Reimbursement (CR) as directed by the Request for Task Order Proposal (RTP).

(b) All Task Orders shall be completed in accordance with the Master IDIQ Contract requirements, in addition to the requirements as stated within the Task Order. In the event of a conflict between the Task Order and the Contractor's Task Order proposal, the Task Order shall prevail.

(c) Prior to issuing a Task Order, the CO will provide the Contractor with a Request for Task Order Proposal (RTP) including, at a minimum, the following:

(1) A Task Order PWS providing the functional description/requirements of the work, deliverables, Government-furnished items (if any), and period of performance, as well as identifying the objectives or results desired from the contemplated Task Order;

(2) Proposed performance standards to be used as criteria for determining whether the work requirements have been met;

(3) The requirements for the Contractor's Task Order proposal (see reference paragraph (f) below); and

(4) A response time for submitting the Task Order proposal.

(d) Task Orders will be issued on forms specified and provided by the Government. Task Orders will be numbered. All Task Order modifications will be issued in writing on a Standard Form 30 and will be numbered sequentially.

(e) If time constraints do not permit issuance of a fully defined Task Order in accordance with the procedures described in this clause, the CO may issue an undefinitized Task Order which includes a Not-To-Exceed ceiling cost/price for which all the terms and conditions will be subsequently negotiated and definitized at a later date. This will only apply in exceptional circumstances, and the Contractor shall support the definitization schedule established by the Government.

(f) The Contractor's Task Order Proposals shall include the following, as applicable to individual Task Orders:

(1) Discussion of the technical approach for performing the work;

(2) Date of commencement of work and any necessary revision to the schedule of performance stipulated by the Government;

(3) A fragnet of the detailed resource-loaded schedule for that Task Order's scope of work. The Contractor shall also provide a copy of the Integrated Master Schedule (IMS) showing the inclusion of the proposed Task Order's scope of work identifying the logic ties and dependencies between already contracted Task Order scopes of work and the new Task Order work scope. This IMS copy forms the basis for the Baseline Change Request (BCR) or Baseline Change Proposal (BCP) upon Task Order award. Both the schedule fragnet and the IMS schedules submitted as part of the Task Order proposal must meet EVMS requirements (including required task order baseline submission representing the cost, schedule, and entire scope over the period of performance of the associated task);

(4) The Contractor shall submit Task Order proposals in accordance with FAR Part 15, Table 15-2 – Instructions for Submitting Cost/Price Proposals When Certified Cost or Pricing Data Are Required. If the value of the Task Order Proposal does not exceed the threshold for certified cost or pricing data, the CO may require information other than cost or pricing data, including information related to prices and cost that would otherwise be defined as cost or pricing data if certified. Information other than cost or pricing data may be submitted in the Contractor's own format, unless the CO decides that use of a specific format is essential and the format has been described in the RTP. Additionally, the Contractor shall utilize the rates included in Attachment J-11, IDIQ Labor Rate Schedule, for applicable labor categories;

(5) WBS Dictionary Sheets required to a WBS level to be determined post award by DOE (the WBS submittal shall include a data column which cross references the WBS elements at the lowest level to the appropriate Contract Line Item Number);

(6) Time-phased cost estimate at the WBS or Control Account level (to be determined by DOE);

(7) Basis of estimate at the WBS level or Control Account level (to be determined by DOE);

(8) Task Order proposals shall comply and be in accordance with FAR Part 31 – Contract Cost Principles and Procedures;

(9) Proposed deviations (if any) from the stated PWS requirements;

(10) Contractor's proposed fee or profit, which must adhere to the criteria within Section B.5 DOE-B-2015 Task Order Fee/Profit Ceiling (Oct 2014) (Revised); and

(11) Any other information required to determine the reasonableness of the Contractor's proposal.

(g) With the exception of the Transition Task Order, the Contractor's Task Order Proposals shall include separate small business subcontracting goals that afford small businesses with the maximum practicable opportunity to participate in Task Order performance consistent with efficient performance. In developing its proposed separate small business subcontracting goals, the Contractor shall establish minimum goals for each small business category for each Task Order to ensure overall cumulative compliance with the following small business subcontracting goals for the Master IDIQ Contract:

| Small Business Category | Small Business Goals |
|---|---|
| Small Businesses (categories below are subsets within this category) | 45% |
| Veteran-Owned Small Business (VOSB) | 3% |
| Service-Disabled Veteran-Owned Small Business (SDVOSB) | 3% |
| Historically Underutilized Business Zone (HUBZone) | 3% |
| Small Disadvantaged Business | 5% |
| Women-Owned Small Business | 5% |
| *The small business subcategories may not necessarily add up to the overall percentage in the Small Business category, since some small businesses may not fall into any of the subcategories, while others may fall into more than one subcategory. | |

Proposed small business subcontracting goals shall be the percent of total subcontracted work specified in each Task Order in compliance with the Contractor's Master Small Business Subcontracting Plan, the requirements of the Section H clause entitled, *Subcontracted Work*, and FAR 52.219-9. With each Task Order Proposal, the Contractor shall submit a revised Section J, Attachment J-9, *Master Small Business Subcontracting Plan*.

(h) The Contractor's Task Order proposal is subject to review and acceptance by the CO or his/her designee. The CO will either accept the terms and conditions of the Contractor's Task Order proposal or negotiate any areas of disagreement with the Contractor. After review and any necessary discussions, the CO may issue a Task Order to the Contractor containing, as a minimum, the following:

(1) Date of the order.

(2) Contract number and Task Order number.

(3) PWS identifying the objectives or results desired from the Task Order, including special instructions or other information necessary for performance of the work.

(4) Performance standards, and where appropriate, quality assurance standards.

(5) The Price of the Task Order (that is, as applicable, the Firm-Fixed-Price, Cost-Plus-Award-Fee, Cost-Plus-Incentive-Fee, etc., as those terms are used in the Federal Acquisition Regulation), and the Maximum dollar amount authorized (total Task Order value).

(6) Any other resources (e.g., travel, material, equipment, facilities) authorized.

(7) Delivery/performance schedule including start and end dates.

(8) Accounting and appropriation data.

(i) The Contractor shall provide acknowledgement to the CO of receipt of the Task Order within two (2) business days after receipt.

(j) The Contractor shall deliver all Task Order specific deliverables as stated in the Task Order.

## H.52 SUBCONTRACTED WORK

The Contractor shall subcontract (in accordance with the definition at FAR Subpart 44.1) at least fifteen (15) percent of the cumulative value of Task Orders (excluding the Transition Task Order) issued under this contract to small businesses. The Contractor's subcontracted work shall be in compliance with the approved Section J, Attachment J-9 entitled, *Master Small Business Subcontracting Plan* and the separate subcontracting goals submitted and approved at the Task Order level. Unless otherwise approved in advance by the CO, work to be performed by subcontractors selected after Contract and Task Order award shall be acquired through competitive procurements, to the extent required, with an emphasis on fixed-price subcontracts to the extent practicable. The use of cost-reimbursement, time-and-materials, and labor-hour subcontracts shall be minimized.

The separate subcontracting goals submitted at the Task Order level shall identify timely, discrete, and meaningful scopes of work that can be awarded to small business concerns. Meaningful work is work that is important to the performance of the technical and management approach defined by the prime contractor. It is characterized by strong technical content (e.g., discrete and distinct technical or programmatic scopes of work) and contributes to the successful achievement of DOE's goals. It should have a performance-based outcome that directly contributes to the overall contract outcome(s). Also, the Contractor shall respond to past performance inquiries for subcontractors upon request from DOE and other Federal agencies.

## H.53 PARENT ORGANIZATION SUPPORT

(a) For onsite work, fee generally provides adequate compensation for parent organization expenses incurred in the general management of this Contract. The general construct of this Contract results in minimal parent organization investment (in terms of its own resources, such as labor, material, overhead, etc.) in the Contract work. DOE provides Government-owned facilities, property, and other needed resources.

Accordingly, allocations of parent organization expenses are unallowable for the prime contractor, teaming subcontractors, and/or teaming partners, unless authorized by the CO in accordance with this Clause.

(b) The Contractor may propose, or DOE may require, parent organization support to:

(1) Monitor safety and performance in the execution of Contract requirements;

(2) Ensure achievement of Contract environmental cleanup and closure commitments;

(3) Sustain excellence of Contract key personnel;

(4) Ensure effective internal processes and controls for disciplined Contract execution;

(5) Assess Contract performance and apply parent organization problem-solving resources on problem areas; and

(6) Provide other parent organization capabilities to facilitate Contract performance.

## H.54 SUBCONTRACTOR TIMEKEEPING RECORDS SIGNATURE REQUIREMENT

The Contractor shall obtain timecards for all hourly subcontract employees, at all tiers, performing on non-fixed-price subcontracts. For purposes of this Clause, non-fixed-price subcontracts are those of a type containing a cost reimbursable or variable component in them, which includes those contract types covered by FAR Subpart 16.3, Cost Reimbursement Contracts, FAR Section 16.405, Cost Reimbursement Incentive Contracts, and FAR Subpart 16.6, Time and Materials, Labor Hour, and Letter Contracts. Note that the requirements of this Clause also pertain to Task Orders, tasks, and/or Contract Line Items Numbers from Indefinite Delivery (see FAR Subpart 16.5, Indefinite Delivery Contracts) and hybrid contracts that are of a type covered by the FAR citations in the prior sentence. The timecards must be obtained by the Contractor prior to the Contractor paying for these subcontract costs and prior to billing DOE for these costs. The timecards must reflect actual hours worked, be signed by the subcontract employee, and be certified by the subcontract employees' supervisor prior to the Contractor obtaining them. Subcontractors at all tiers performing work under non-fixed-price subcontracts shall maintain adequate timekeeping procedures, controls, and processes for billing Government work. The Contractor shall, at least once every three years, conduct a labor audit of non-fixed-price subcontracts. The audit shall be conducted to unmodified Institute of Internal Auditors standards, if conducted internally, or unmodified Generally Accepted Government Auditing Standards (GAGAS), if conducted externally. This Clause shall be flowed down to all non-fixed-price subcontracts at all tiers.

## H.55 ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM ACT (EEOICPA)

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

and Ownership of Records in support of EEOICPA claims and the claim process under the EEOICPA.

The Contractor shall:

(a) Verify employment and provide other records which contain pertinent information for compensation under the EEOICPA. The Contractor shall provide this support for itself and any named subcontractors' employees;

(b) Provide reports as directed by DOE, such as costs associated with EEOICPA;

(c) Provide an EEOICPA point-of-contact; this employee shall attend meetings, as requested by DOE;

(d) Locate, retrieve and provide a copy of any personnel and other program records as requested;

(e) Perform records research needed to complete the Department of Labor (DOL) claims or to locate records needed to complete the claims or other related EEOICPA requests;

(f) Ensure cost information is submitted to the DOE EEOICPA Point of Contact (POC) by the tenth of each month; and

(g) Ensure all EEOICPA Claims received are completed and returned to DOE within 45 calendar days of the date entered in the Federal Compensation Program Act (FCPA) electronic reporting system.

## H.56 ALLOCATION OF RESPONSIBILITIES FOR ENVIRONMENTAL COMPLIANCE

This clause allocates the responsibilities of DOE and the Contractor, referred to collectively as 'the Parties,' for implementing the environmental requirements at facilities within the scope of the contract. In this clause, the term 'environmental requirements' means requirements imposed by applicable Federal, state and local environmental laws and regulations, including, without limitation, statutes, executive orders, ordinances, regulations, court orders, consent decrees, administrative orders or compliance agreements, consent orders, permits, and licenses. The Contractor shall follow the Environmental Regulatory Structure and Interface Protocol for the ICP Contractor throughout the environmental review and performance of activities and actions. The Contractor is required to comply with permits, consent decrees, administrative orders, and settlement agreements between the DOE and federal and state regulatory agencies.

(a) Within 60 days after the Transition Task Order Notice to Proceed, the Contractor shall submit to the Contracting Officer for approval any proposed modifications to the current Environmental Regulatory Structure and Interface Protocol for the ICP Contractor incorporated as Section J, Attachment J-5. The protocol shall be structured to ensure that DOE and the Contractor have adequate knowledge of regulatory negotiations, discussions and agreements to protect their respective interests. Upon approval by the

Contracting Officer, the Contractor shall adhere to the terms and condition of the protocol.

(b) Purpose and Scope.

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

(c) Enforcement Actions and Liability for Fines and Penalties.

Regardless of which party to this contract is the named subject (Contractor or DOE) of an enforcement action for noncompliance with the environmental, safety, health, or quality requirements by the cognizant regulatory authority; liability for payment of any fine or penalty as a result of Contractor actions or inactions is the responsibility of the Contractor, and the Contractor will either pay the fine or penalty or reimburse DOE (if DOE pays the fine or penalty). Cost of fines and penalties resulting from violations of, or failure of the Contractor to comply with Federal, State, local, or foreign laws and regulations, are unallowable except under the conditions specified at FAR 31.205-15.

(d) Environmental Permits. This Clause addresses three permit scenarios, where the Contractor is the sole permittee; where the Contractor and DOE are joint permittees; and where multiple contractors are permittees.

(1) Contractor as Sole Permittee. To the extent permitted by law and subject to other applicable provisions of the contract that impose responsibilities on DOE, and provisions of law that impose responsibilities on DOE or third parties, the Contractor shall be responsible for obtaining in its own name, shall sign, and shall be solely responsible for compliance with all permits, authorizations and approvals from federal, state, and local regulatory agencies which are necessary for the performance of the work required of the Contractor under this Contract.

Under this permit scenario, the Contractor shall make no commitments or set precedents that are detrimental to DOE or other site contractors. The Contractor shall coordinate its permitting activities with DOE, and with other contractors which may be affected by the permit or precedent established therein, prior to taking the permit action. Whenever reasonably possible, all such materials shall be provided to DOE and other affected site contractors not later than 90 days prior to the date they are to be submitted to the regulatory agency. Any such schedule revision shall be effective only upon approval from the CO.

(2) DOE as Permittee, or Contractor and DOE as Joint Permittees. Where appropriate, required by law, or required by applicable regulatory agencies, DOE will sign permits as permittee, or as owner or as owner/operator with the Contractor as operator or co-operator, respectively. DOE will co-sign hazardous waste permit applications as owner/operator where required by applicable law. In this scenario, the Contractor shall coordinate its actions with DOE. DOE is responsible for timely notification to the Contractor of any issues or changes in the regulatory environment that impact or may impact contractor implementation of any permit requirement. The Contractor shall be responsible for timely notification to DOE of any issues or changes in the regulatory environment that impact or may impact contractor implementation of any permit requirement. Notification by the Contractor to DOE may be initially verbal with written documentation fully explaining the impact and the reason/rationale for the impact and possible consequences. Whenever reasonably possible all such materials shall be provided to DOE not later than 90 days prior to the date they are to be submitted to the regulatory agency.

(3) Multiple Contractors as Permittees. Where appropriate, in situations where multiple contractors are operators or co-operators of operations requiring environmental permits, DOE will sign such permits as owner or co-operator and affected contractors shall sign as operators, or co-operators. In this scenario, the Contractor shall coordinate as appropriate with DOE and contractors affected by the permit.

(b) Permit Applications. The Contractor shall maintain clear lines of authority and accountability regarding compliance with environmental requirements. At a minimum, the Contractor shall have a single point of accountability at the site-area level (e.g., INTEC and RWMC) for all activities at those facilities. The Contractor may further delegate responsibility for individual buildings, permitted facilities, or similar discrete units provided there is adherence to the principle of single point of accountability. The Contractor shall provide to DOE for review and comment in draft form any permit applications and other regulatory materials necessary to be submitted to regulatory agencies for the purposes of obtaining a permit. Whenever reasonably possible all such materials shall be provided to DOE initially not later than 90 days prior to the date they are to be submitted to the regulatory agency. The Contractor shall normally provide final regulatory documents to DOE at least 30 days prior to the date of submittal to the regulatory agencies for DOE's final review and signature or concurrence. Special circumstances may require permits to be submitted in a shorter timeframe. As soon as the Contractor is aware of any such special circumstance, the Contractor shall provide notice to DOE as to the timeframe in which the documents will be submitted to DOE. The Contractor may submit for DOE's consideration, requests for alternate review, comment, or signature, schedules for environmental permit applications or other regulatory materials covered by this Clause. Any such requests shall be submitted 30 days before such material would ordinarily be required to be provided to DOE. Any such schedule revision shall be effective only upon approval from the CO.

(c) Copies, Technical Information. The Contractor shall provide DOE copies of all environmental permits, authorizations, and regulatory approvals issued to the Contractor by the regulatory agencies. DOE will, upon request, make available to the Contractor access to

copies of environmental permits, authorizations, and approvals issued by the regulatory agencies to DOE that the Contractor may need to comply with under applicable law. The Contractor shall and DOE will provide to each other copies of all documentation, such as letters, reports, or other such materials transmitted either to or from regulatory agencies relating to the contract work. The Contractor and DOE shall maintain all necessary technical information and regulatory analysis required to support applications for revision of DOE or other Site contractor environmental permits when such regulatory analysis, applications or revisions are related to the Contractor's operations. Upon request, the Contractor or DOE shall provide to the other party access to all necessary and available technical information required to support applications for or revisions to permits or permit applications. Unless specific text is required by the regulation or permit, the Contractor shall provide to DOE a certification statement relating to such technical information in the form required by the following paragraph.

(d) Certifications. The Contractor shall provide a written certification statement attesting that information DOE is requested to sign was prepared in accordance with applicable requirements. The Contractor shall include the following certification statement in the submittal of such materials to DOE:

*I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted.*

*Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

The certification statement shall be signed by the individual authorized to sign such certification statements submitted to federal or state regulatory agencies under the applicable regulatory program.

(e) Termination, Expiration, Permit Transfer. In the event of expiration or termination of this Contract, DOE may require the Contractor to take all necessary steps to transfer some or all environmental permits held by the Contractor. DOE will assume responsibility for such permits, with the approval of the regulating agency, and the Contractor shall be relieved of all liability and responsibility to the extent that such liability and responsibility results from the acts or omissions of a successor Contractor, DOE, or their agents, representatives, or assigns. The Contractor shall remain liable for all unresolved costs, claims, demands, fines, and penalties, including reasonable legal costs, arising prior to the date such permits are transferred to another party. The Contractor shall not be liable for any such claims occurring after formal transfer unless said claims result from the Contractor's action or inaction that occurred prior to transfer.

(f) Miscellaneous. The Contractor shall accept assignment or transfer of permits pertaining to matters under this Contract currently held by DOE and its existing Contractor. The

Contractor may submit for DOE's consideration requests for alternate review, comment, or signature schedules for environmental permit applications or other regulatory materials covered by this Clause. Any such schedule revision shall be effective only upon written approval from the CO.

## H.57 PARTNERING

The Contractor and the Government will establish a non-binding, signed Partnering Agreement for the ICP at the INL Site. The agreement will establish a common vision with supporting goals and objectives and expectations of doing business together in a manner that brings the best value to the Government. Partnering between DOE and the Contractor shall be conducted in a manner similar to the DOD Integrated Product and Process Development (IPPD) framework. The IPPD technique simultaneously integrates all essential activities to facilitate meeting cost and performance objectives.

## H.58 LAWS, REGULATIONS, AND DOE DIRECTIVES

(a) In performing work under this Contract, the Contractor shall comply with the requirements of applicable Federal, State, and local laws and regulations (including DOE regulations), unless relief has been granted in writing by the appropriate regulatory agency. Section J, Attachment J-3, List A, Applicable Federal, State and Local Regulations may be appended to this Contract for information purposes. Omission of any applicable law or regulation from the Contract does not affect the obligation of the Contractor to comply with such law or regulation pursuant to this paragraph.

(b) In performing work under this Contract, the Contractor shall comply with the requirements of those Department of Energy directives, or parts thereof, identified in the List of Applicable Directives (List B) appended to this Contract, until such time as the Contracting Officer approves the substitution of an alternative procedure, standard, system of oversight, or assessment mechanism.

(c) Except as otherwise directed by the Contracting Officer, the Contractor shall procure all necessary permits or licenses required for the performance of work under this Contract.

(d) Regardless of the performer of the work, the Contractor is responsible for compliance with the requirements of this clause. The Contractor is responsible for flowing down the requirements of this clause to subcontracts at any tier to the extent necessary to ensure the Contractor's compliance with the requirements.

## H.59 NATIONAL NUCLEAR SECURITY ADMINISTRATION/ENVIRONMENTAL MANAGEMENT STRATEGIC SOURCING PARTNERSHIP

The Contractor shall participate in the National Nuclear Security Administration (NNSA)/Environmental Management (EM) Strategic Sourcing Partnership. Under this partnership, EM contractors shall work with the NNSA/EM Supply Chain Management Center to yield an enterprise-wide, synergistic strategic sourcing solution that leverages NNSA and EM

purchasing power to gain pricing, processing, and report efficiencies to reduce costs overall for the Government.

## H.60 MENTOR-PROTÉGÉ PROGRAM

Both DOE and the Small Business Administration (SBA) have established Mentor-Protégé Programs to encourage Federal prime contractors to assist small businesses, firms certified under Section 8(a) of the Small Business Act by the SBA, other small disadvantaged businesses, women-owned small businesses, historically black colleges and universities and minority institutions, other minority institutions of higher learning, and small business concerns owned and controlled by service-disabled veterans in enhancing its business abilities. During the Master IDIQ Contract ordering period (excluding the Transition Task Order), the Contractor shall mentor at least two (2) active Protégés (whether new or existing) through the DOE and/or SBA Mentor-Protégé Programs. Mentor and Protégés will develop and submit "lessons learned" evaluations to DOE at the conclusion of the Master IDIQ Contract.

(a) DOE Mentor-Protégé Agreements shall be in accordance with DEAR Subpart 919.70 entitled, The Department of Energy Mentor-Protégé Program.

(b) SBA Mentor-Protégé Agreements shall be in accordance with applicable SBA regulations.

## H.61 LEGAL MANAGEMENT

(a) The Contractor shall maintain a legal function to support litigation, arbitration, environmental, procurement, employment, labor, and the Price Anderson Amendments Act areas of law. The Contractor shall provide sound litigation management practices. Within 60 days of contract award, the Contractor shall provide a Litigation Management Plan compliant with 10 CFR 719, *Contractor Legal Management Requirements*.

(b) As required by the CO, the Contractor shall provide legal and related support to the Government on regulatory matters, third-party claims, and threatened or actual litigation. Support includes, but is not limited to case preparation, document retrieval, review and reproduction, witness preparation, expert witness testimony, and assistance with discovery or other information requests responsive to any legal proceeding.

(c) When evaluating requests for reimbursement or allowability of Contractor costs associated with defense and/or settlement of legal claims brought against the Contractor by a third party:

(1) DOE will not reimburse Contractor legal defense costs or damages incurred where a judgment is issued finding that the Contractor engaged in discriminatory conduct prohibited by the terms of the Contract, such as those covered by FAR 52.222-26, *Equal Opportunity*; FAR 52.222-35, *Equal Opportunity for Veterans*; and FAR 52.222-36, *Equal Opportunity for Workers With Disabilities*.

(2) DOE will not reimburse the Contractor legal costs associated with a settlement agreement (including legal defense costs, settlement awards, or both) associated with legal claims brought against the Contractor by a third party relating to discriminatory conduct prohibited by the terms of the Contract, such as those covered by FAR 52.222-26, *Equal*

*Opportunity*; FAR 52.222-35, *Equal Opportunity for Veterans*; and FAR 52.222-36, *Affirmative Action for Workers with Disabilities*, where the CO determines that the plaintiff's claim(s) had more than very little likelihood of success on the merits. Where the plaintiff's claim had very little likelihood of success on the merits, the defense and settlement costs related to the claim are allowable if the costs are otherwise allowable under the Contract (e.g., reasonable, allocable).

## H.62 EMERGENCY RESPONSE

(a) The DOE Manager of the ICP, in coordination with DOE Idaho Operations Office (DOE-ID) Manager, will coordinate with the Contractor and the INL contractor when an emergency situation may exist at the INL or FSV sites and notify the appropriate emergency response organization. In the event of an emergency, the DOE Manager of the ICP and the DOE-ID Manager of the affected site(s) will have the authority to direct any and all activities of the Contractor and subcontractors necessary to resolve the emergency situation. Upon termination of the emergency event, the Contractor shall perform recovery actions as appropriate.

(b) The Contractor shall include this clause in all subcontracts at any tier for work performed in support of the on-site (INL and FSV) work under this contract.

## H.63 DEPARTMENT OF ENERGY NATIONAL TRAINING CENTER

The Contractor is encouraged to utilize the DOE National Training Center (NTC) training resources for occupational health, safety, safeguards, and security. NTC training is funded by DOE with no cost to the Contractor. NTC course offerings, information on NTC site certification, enrollment, and contact information can be found at https://ntc.doe.gov.

NTC training should be considered common core fundamental material. The Contractor may need to provide gap training to address site specifics identified through its approved Integrated Safety Management Program and associated program plans required by existing DOE requirements. Gap training should not repeat fundamental training core content.

## H.64 MANAGEMENT OF ACCOUNTABLE PROPERTY

Accountable personal property is any property item with an original unit acquisition cost of $10,000 or more; or meeting the precious metals, sensitive, or high-risk personal property definitions. Accountable property records must be managed and maintained current in a property management system of record from inception to formal disposition and removal from DOE inventory.

## H.65 REAL PROPERTY ASSET MANAGEMENT

(a) The Contractor shall in accordance with DOE Order 430.1 *Real Property Asset Management*, comply with Departmental requirements and guidance involving the acquisition, management, maintenance, disposition, or disposal of real property assets to ensure that real property assets are available, utilized, and in a suitable condition to accomplish DOE's

missions in a safe, secure, sustainable, and cost-effective manner. Contractors shall meet these functional requirements through tailoring their business processes and management practices, and using standard industry practices and standards as applicable. The Contractor shall flow down these requirements to subcontracts at any tier to the extent necessary to ensure the Contractor's compliance with the requirements.

(b) The Contractor shall:

(1) Submit all real estate actions to acquire, utilize, and dispose of real property assets to DOE for review and approval and maintain complete and current real estate records.

(2) Perform physical condition and functional utilization assessments on each real property asset at least once every five-year period or at another risk-based interval, as approved by DOE, based on industry leading practices, voluntary consensus standards, and customary commercial practices.

(3) Establish a maintenance management program including a computerized maintenance management system; a condition assessment system; a master equipment list; maintenance service levels; a method to determine for each asset the minimum acceptable level of condition; methods for categorizing deficiencies as either deferred maintenance and repair or repair needs; management of the deferred maintenance and repair backlog; a method to prioritize maintenance work; and a mechanism to track direct and indirect funded expenditures for maintenance, repair, and renovation at the asset level.

(4) Maintain Facilities Information Management System (FIMS) data and records for all lands, buildings, trailers, and other structures and facilities. FIMS data must be current and must be verified annually.

## H.66 ORGANIZATIONAL CONFLICT OF INTEREST – AFFILIATE (S)

The prime contractor, [Offeror to insert name of Prime Contractor] comprised of [Offeror to insert names of partner companies], is responsible for the completion of all aspects of this contract. In order to effectively and satisfactorily execute its responsibility to manage and accomplish the contract work, the prime contractor must have complete objectivity in its oversight and management of its subcontractors. Therefore, consistent with the principle contained in Federal Acquisition Regulation subpart 9.5 and specifically section 9.505(a), and notwithstanding any other provision of this Contract, the prime contractor is, absent prior written consent from the CO as provided herein, prohibited from entering into a subcontract arrangement with any affiliate or any affiliate of its partners, or utilize any affiliate or affiliate of its partners, to perform work under a subcontract. Such contractual relationship(s) are presumed to create an impaired objectivity type conflict of interest. If the Contractor believes the capabilities of an affiliate could be utilized in such a manner as to neutralize or avoid the existence of an organizational conflict of interest, the Contractor must obtain the CO's written consent prior to placing the subcontract.

For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.