

**PART I - THE SCHEDULE  
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SPECIAL CONTRACT REQUIREMENTS**

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## **H.1 PROGRAMMATIC RISKS AND UNCERTAINTIES**

Completion of the SOW will require DOE and the Contractor to successfully resolve, mitigate, eliminate, or avoid many types of risk. Risks to the workers, public, and the environment are managed through the Environment, Safety and Health (ES&H) Program and Integrated Safety Management System (ISMS) identified in the SOW. A Risk Management Plan shall be submitted with the contract performance baseline documents as required in the Section H clause entitled “Project Control Systems and Reporting Requirements” to address program and project management risks. The Plan shall be updated at least annually.

## **H.2 MODIFICATION AUTHORITY**

Notwithstanding any of the other provisions of this Contract, the Contracting Officer (CO) shall be the only individual under this Contract authorized to:

- Accept nonconforming material;
- Waive any requirement of this Contract; or
- Modify any term or condition of this Contract.

## **H.3 DOE CONTRACT ADMINISTRATION AND OVERSIGHT**

The Liquid Waste System at SRS presents significant workscope challenges to the Contractor, and makes it imperative that DOE has a focused approach for providing oversight of Contractor work. This approach shall provide effective DOE oversight of project work, yet it must not present the Contractor with burdensome or “non-value added” work related distractions. The oversight approach will be documented in the DOE Contract Management Plan and will include reviews of periodic progress reports submitted by the Contractor and direct observation by DOE employees of Contractor work in progress.

DOE oversight activities will focus primarily on ensuring safe operation and management of the Liquid Waste System at SRS. The DOE oversight will be conducted in a tailored and proactive manner with minimal interference with project progress. The Contractor shall respond to DOE oversight and to concerns, findings, and observations as identified by the CO or COR during the conduct of these oversight activities. The areas of oversight are:

- Project Management Oversight: This includes field inspections and the monthly assessment of project status, which will be used to determine and validate project performance.

- **Contract Management Oversight:** Administration and monitoring of the prime contract will be in accordance with the contract terms and conditions which include, but are not limited to, the oversight required under FAR Subchapter G – Contract Management (FAR Parts 42-51) and its supplements.
- **Financial Management Oversight:** DOE will review all budgetary data submitted by the Contractor to be provided into the Integrated Planning, Accountability, and Budgeting System (IPABS). DOE or its representative will monitor and audit Contractor funds management practices and procedures to ensure compliance with applicable regulations and statutes.
- **Daily Oversight:** The DOE Federal Project Director, Safety System Oversight (SSO), Facility Representatives and/or Subject Matter Experts will conduct daily oversight and assessments. The purpose of these contacts will be to assess performance. In addition to this daily involvement, the Contractor shall support:
  - Management walkthroughs conducted in areas of the project or locations where work is ongoing;
  - Periodic walkthroughs by the regulators or DOE Headquarters personnel; and
  - Employee concerns elevated to DOE for evaluation.

#### **H.4 STOP-WORK AND SHUTDOWN AUTHORIZATION**

All Contractor and DOE employees have the right to stop any activity, regardless of who is performing the activity, if continuation of that activity would be considered an imminent health and safety hazard.

“Imminent Health and Safety Hazard” is a given condition or situation which, if not immediately corrected, could result in a serious injury or death, including radiation, toxic/hazardous chemicals, electrical and steam hazards.

**Stop-Work:** In the event of an imminent health and safety hazard, identified by facility line management or operators or facility health and safety personnel over-viewing facility operations, or other individuals, the individual or group identifying the imminent hazard situation shall immediately take actions to eliminate or mitigate the hazard (i.e., by directing the operator/implementer of the activity or process causing the imminent hazard to stop work, or by initiating emergency response actions or other actions) to protect the health and safety of the workers and the public and to protect 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 stop work or other actions, as required. Such mitigating action should subsequently be coordinated with DOE and

Contractor management. The suspension or stop-work order should be promptly confirmed in writing from the CO.

Contractor and DOE employees have the right to recommend a facility shutdown, regardless of who is performing the activity, if continuation of that activity would be considered an imminent danger in relation to the Facility Safety Envelope.

“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) Radiation Exposure, (2) Fire/Explosion, and/or (3) Hazardous Chemical Exposure.

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 management or operators, facility health and safety personnel over-viewing facility operations, or other individuals, the individual or group identifying the potential health and safety hazard may recommend facility shutdown in addition to any immediate actions needed to mitigate the situation. However, the recommendation must be coordinated with Contractor management, and the DOE Federal Project Director and appropriate COR. Any written direction to suspend operations shall be issued by the CO, pursuant to the Section F clause entitled FAR 52.242-15 Stop Work Order.

Facility Representatives: DOE personnel designated as Facility Representatives (FR) provide the technical oversight of operations. The FR has the authority to “stop work,” which may apply to the suspension of operations of an entire plant, activity, or job. This stop-work authority will be used for an operation of a facility which is performing work the FR believes:

- Poses an imminent danger to health and safety of workers or the public if allowed to continue;
- Could adversely affect the safe operation of, or could cause serious damage to, the facility if allowed to continue; or
- Could result in the release of radiological or chemical hazards to the environment in excess of regulatory limits.

The CO may at any time during the performance of this contract issue an order stopping work in whole or in part due to environmental, safety, and health reasons.

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

## **H.5 KEY PERSONNEL**

The personnel specified in Section J, Appendix B, Key Personnel, are considered to be essential to the work being performed hereunder. Unless approved in writing by the

CO, no Key Personnel position will remain unfilled by a permanent replacement for more than 60 days.

The Contractor shall designate a Project Manager, who will supervise the performance of all technical and administrative work under the contract. The Contractor's Project Manager shall receive and execute, on behalf of the Contractor, such technical directions as the CO or COR may issue within the terms and conditions of the contract.

Anytime any designated Key Personnel is replaced or removed for any reason under the Contractor's control within two (2) years of contract award, or within two years (2) of being placed in the position, whichever is later, the Contractor shall forfeit \$1,000,000 in fee if said Key Personnel is the Contractor's Project Manager, and \$500,000 in fee for each occurrence with all other Key Personnel. Likewise, if within two (2) years of contract award, or within two (2) years of being placed in the position, whichever is later, any Key Personnel voluntarily resigns, the Contractor shall forfeit \$1,000,000 in fee if said Key Personnel is the Contractor's Project Manager, and \$500,000 in fee for each occurrence with all other Key Personnel. The Contractor may request, in writing, that the CO waive all or part of these reductions in fee, if special circumstances exist. The CO shall have unilateral discretion to waive or not to waive all or part of a fee reduction.

#### **H.6 NO THIRD PARTY BENEFICIARIES**

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

#### **H.7 LABOR RELATIONS**

- (a) The Contractor shall respect the right of employees to organize and to form, join, or assist labor organizations, to bargain collectively through their chosen labor representatives, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of these activities.
- (b) The Contractor shall meet with the CO or designee(s) for the purpose of reviewing the Contractor's bargaining objectives prior to negotiations of any collective bargaining agreement or revision thereto and shall consult with and obtain the approval of the CO regarding appropriate economic bargaining parameters, including those for pension and medical benefit costs, prior to the Contractor entering into the collective bargaining process. During the collective bargaining process, the Contractor shall notify the Contracting Officer before submitting or agreeing to any collective bargaining proposal which can be calculated to affect allowable costs under this Contract or which could involve other items of special interest to the Government. During the collective bargaining process, the

Contractor shall obtain the approval of the CO before proposing or agreeing to changes in any pension or other benefit plans.

- (c) The Contractor will seek to maintain harmonious bargaining relationships that reflect a judicious expenditure of public funds, equitable resolution of disputes and effective and efficient bargaining relationships consistent with the requirements of FAR, Subpart 22.1 and DEAR, Subpart 970.2201 and all applicable Federal and State Labor Relations laws.
- (d) The Contractor will notify the CO or designee in a timely fashion of all labor relations issues and matters of local interest including organizing initiatives, unfair labor practice, work stoppages, picketing, labor arbitrations, and settlement agreements and will furnish such additional information as may be required from time to time by the CO.

## **H.8 WORKFORCE TRANSITION**

### **INCUMBENT EMPLOYEES HIRING PREFERENCES**

The Contractor shall use the transition period to make hiring decisions and to establish the management structures necessary to conduct an employee relations program. In establishing an initial workforce, and through the first six months after Contract award, the Contractor shall give a first preference in hiring for vacancies in non-managerial positions under this Contract to Incumbent Employees as defined in H.9(e) who meet the qualifications for a particular position. This hiring preference takes priority over the hiring preference provided in the Section I clause entitled DEAR 952.226-74 Displaced Employee Hiring Preference. It does not apply to the Contractor's hiring of management staff (i.e., first line supervisors and above).

## **H.9 EMPLOYEE COMPENSATION: PAY AND BENEFITS**

### **(a) Human Resources Compensation Plan**

The Contractor shall submit by May 1, 2008, a *Human Resources Compensation Plan* demonstrating how the Contractor will comply with the requirements of this Contract. The *Human Resources Compensation Plan* shall describe the Contractor's policies regarding compensation, pensions and other benefits, and how these policies will support, at reasonable cost, the effective recruitment and retention of a highly skilled, motivated, and experienced workforce.

### **(b) Total Compensation System**

The Contractor shall develop, implement and maintain formal policies, practices and procedures to be used in the administration of its compensation system including a compensation system Self-Assessment Plan consistent with FAR 31.205-6 and DEAR 970.3102-05-6; "Compensation for Personal Services" ("Total Compensation System"). DOE-approved standards (e.g., set forth in an

advance understanding or appendix), if any, shall be applied to the Total Compensation System. The Contractor's Total Compensation System shall meet the tests of allowability established by and in accordance with FAR 31.205-6 and DEAR 970.3102-05-6, be fully documented, consistently applied, and acceptable to the CO. Costs incurred in implementing the Total Compensation System shall be consistent with the Contractor's documented Human Resources Compensation Plan as approved by the CO.

(c) Appraisals of Contractor Performance

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

(d) Reports and Information

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

- (1) An Annual Contractor Salary-Wage Increase Expenditure Report to include, at a minimum, breakouts for merit, promotion, variable pay, special adjustments, and structure movements for each pay structure showing actual against approved amounts.
- (2) A list of the top five most highly compensated executives as defined in FAR 31.205-6(p)(2)(ii) and their total cash compensation at the time of Contract award, and at the time of any subsequent change to their total cash compensation.
- (3) An Annual Report of Contractor Expenditures for Employee Supplemental Compensation through the Department Workforce Information System (WFIS) Compensation and Benefits Module no later than March 1 of each year.
- (4) A performance self-assessment of the Total Compensation System implementation and results to include an evaluation of total benefits using the Employee Benefits Value Study and the Employee Benefits Cost Survey Comparison Analysis described in paragraph (f) below.

(e) Pay and Benefit Programs

The Contractor shall establish pay and benefit programs for Incumbent Employees and Non-Incumbent Employees as defined in paragraphs (1) and (2) below; provided, however, that employees scheduled to work fewer than 20 hours

per week receive only those benefits required by law. Employees are eligible for benefits, subject to the terms, conditions, and limitations of each benefit program.

(1) Incumbent Employees are the employees who hold regular appointments of Washington Savannah River Company LLC, (WSRC), Bechtel Savannah River Company, Inc. (BSRI), BWXT Savannah River Company, BNG America Savannah River Corporation/Energy Solutions and CH2 Savannah River Company as of April 1, 2008.

(A) Pay. Subject to Section H.8 above, the Contractor shall provide equivalent base pay to Incumbent Employees as compared to base pay provided by WSRC for at least the first year of the term of the Contract to individuals who are employed by the Contractor in positions with duties and responsibilities substantially equivalent to their duties and responsibilities with the predecessor contractor at Contract transition. Any changes in the job positions or classifications of management staff of the predecessor contractor hired by the Contractor shall be consistent with the Contractor's approved Total Compensation System as set forth in H.9 (b) and base pay shall be adjusted in accordance with any changes in their responsibilities or duties.

(B) Pension and Other Benefits. The Contractor shall provide a total package of benefits to Incumbent Employees who are hired by the Contractor during the first six months after Contract award comparable to that provided by WSRC. Comparability of the total benefit package shall be determined by the CO in his/her sole discretion.

Subject to plan eligibility requirements and applicable law, Incumbent Employees who are hired by the Contractor during the first six months after Contract award shall remain in their existing pension plans (or comparable successor plans if continuation of the existing plans is not practicable). The Contractor shall become a sponsor of the existing pension and other benefit plans (or comparable successor plans), including other post-retirement benefit (PRB) plans, as applicable, for Incumbent Employees and retired plan participants, with responsibility for management and administration of the plans. The Contractor shall be responsible for maintaining the qualified status of those plans. 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) Non-Incumbent Employees are new hires (i.e., employees other than Incumbent Employees) who are hired by the Contractor after April 1, 2008. All Non-Incumbent Employees shall receive a total pay and benefits

package that provides for market-based retirement and medical benefit plans that are competitive with the industry from which the Contractor recruits its employees and in accordance with Contract requirements.

(3) Cash Compensation

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

- (i) Any additional compensation system self-assessment data requested by the CO that may be needed to validate and approve the total compensation system.
- (ii) Any proposed major compensation program design changes prior to implementation.
- (iii) An Annual Compensation Increase Plan (CIP).
- (iv) Individual compensation actions for the Key Personnel, including initial and proposed changes to base salary and/or payments under an Executive Incentive Compensation Plan.
- (v) Any proposed establishment of an incentive compensation plan (variable pay plan/pay-at-risk).

(B) The CO's approval of individual compensation actions will be required only for the top five (5) most highly compensated employees, or others as identified by the CO.

(C) Severance Pay is not payable to an employee under this Contract if the employee:

- (i) Voluntarily separates, resigns, or retires from employment;
- (ii) Is offered employment with a successor/replacement contractor;
- (iii) Is offered employment with a parent or affiliated company;  
or
- (iv) Is discharged for cause.

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

(f) Pension and Other Benefit Programs

- (1) No presumption of allowability will exist when the Contractor implements a new benefit plan or makes changes to existing benefit plans for either Incumbent Employees or Non-Incumbent Employees until the CO makes a determination of cost allowability for reimbursement for new or changed benefit plans.
- (2) Cost reimbursement for Incumbent Employee and Non-Incumbent 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 (A) and (B) below. The studies shall be used by the Contractor as part of its performance self-assessment described in paragraph (d)(4) above and in calculating the cost of benefits under existing benefit plans. In addition, the Contractor shall submit updated studies to the CO for approval prior to the adoption of any change to a pension or other benefit plan.
  - (A) An Employee Benefits Value Study (Ben-Val), every two years each for Incumbent and Non-Incumbent Employees benefits, which is an actuarial study of the relative value (RV) of the benefits programs offered by the Contractor to Incumbent and Non-Incumbent Employees measured against the RV of benefit programs offered by comparator companies approved by the CO. To the extent that the value studies do not address post retirement benefits other than pensions, the Contractor shall provide a separate cost and plan design data comparison for the post retirement benefits other than pensions using external benchmarks derived from nationally recognized and CO approved survey sources and,
  - (B) An Employee Benefits Cost Study Comparison, annually each for Incumbent and Non-Incumbent Employees that analyzes the Contractor's employee benefits cost for Incumbent and Non-Incumbent Employees on a per capita basis per full time equivalent employee and as a percent of payroll and compares it with the cost reported by the U.S. Chamber of Commerce Annual Employee Benefits Cost Survey or other CO approved broad based national survey.
- (4) When the net benefit value exceeds the comparator group by more than five percent, the Contractor shall submit a corrective action plan to the CO.

- (5) When the average total benefit per capita cost or total benefit cost as a percent of payroll exceeds the comparator group by more than five percent, and if required by the CO, the Contractor shall submit an analysis of the specific plan costs that are above the per capita cost range or total benefit cost as a percent of payroll and a corrective action plan to achieve conformance with a CO directed per capita cost range or total benefit cost as a percent of payroll.
  - (6) Within two years of CO approval of the Contractor's corrective action plan, the Contractor shall align employee benefit programs with the benefit value and per capita cost range as approved by the CO.
  - (7) The Contractor shall submit the Report of Contractor Expenditures for Supplementary Compensation for the previous calendar year via the DOE Workforce Information System (WFIS) Compensation and Benefits Module no later than March 1 of the current calendar year.
  - (8) The Contractor may not terminate any benefit plan during the term of the Contract without the prior approval of the CO in writing.
  - (9) Cost reimbursement for PRBs is contingent on DOE approved service eligibility requirements for PRB that shall be based on a minimum period of continuous employment service not less than 5 years under a DOE cost reimbursement contract(s) immediately prior to retirement. Unless required by Federal or State law, advance funding of PRBs is not allowable.
- (g) Establishment and Maintenance of Pension Plans for which DOE Reimburses Costs
- (1) For cost allocability and reimbursement purposes, any defined benefit (DB) or defined contribution (DC) pension plans established and/or implemented by the Contractor shall be maintained consistent with the requirements of the Internal Revenue Code and Employee Retirement Income Security Act.
  - (2) Contractor policies, practices, and procedures used in the administration of pension plans shall be consistent with applicable laws and regulations.
  - (3) Employees working for the Contractor shall only accrue credit for service under this Contract after the date of Contract award.
  - (4) Any pension plan maintained by the Contractor, for which DOE reimburses costs, shall be maintained as a separate pension plan distinct from any other pension plan which provides credit for service not performed under a DOE cost-reimbursement contract.

- (5) For each pension plan or portion of a pension plan for which DOE reimburses costs, the Contractor shall provide the CO with the following information within nine months of the last day of the current pension plan year.
  - (A) Copies of IRS forms 5500 with schedules; and
  - (B) Copies of all forms in the 5300 series that document the establishment, amendment, termination, spin-off, or merger of a plan.
- (6) Prior to the adoption of any changes to a pension plan, the Contractor shall submit the information required below, as applicable, to the CO for approval or disapproval and a determination as to whether the costs to be incurred are consistent with the Contractor's documented Human Resources Compensation Plan and are deemed allowable pursuant to FAR 31.205-6, as supplemented by DEAR 970.3102-05-6.
  - (A) For proposed changes to pension plans and pension plan funding, an analysis of the impact of any proposed changes on actuarial accrued liabilities and an analysis of relative benefit value; and,
  - (B) The Contractor shall obtain the advance written approval of the CO for any non-statutory pension plan changes that may increase costs or liabilities, and any proposed special programs (including, but not limited to, plan-loan features, employee contribution refunds, or ancillary benefits) and shall provide DOE with an analysis of the impact of special programs on the actuarial accrued liabilities of the pension plan, and on relative benefit value, if applicable.
  - (C) The Contractor shall not terminate any pension plan without at least 60 days notice to and the approval of the CO prior to the scheduled date of plan termination.

#### **H.10 POST CONTRACT RESPONSIBILITIES FOR PENSION AND OTHER BENEFIT PLANS**

- a. If this Contract expires or terminates and DOE has awarded a contract under which the new contractor becomes a sponsor and assumes responsibility for management and administration of the pension or other benefit plans covering active or retired contractor employees with respect to service at the Savannah River Site (collectively, the "Plans"), the Contractor shall cooperate and transfer to the new contractor its responsibility for sponsorship, management and administration of the Plans consistent with direction from the CO.

- b. If this Contract expires or terminates and DOE has not awarded a contract to a new contractor under which the new contractor becomes a sponsor and assumes responsibility for management and administration of the Plans, or if the CO determines that the scope of work under the Contract 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, the following actions shall occur regarding the Contractor’s obligations regarding the Plans at the time of Contract Completion:
- (1) Subject to subparagraph (2) below, and notwithstanding any legal obligations independent of the Contract the Contractor may have regarding responsibilities for sponsorship, management, and administration of the Plans, the Contractor shall remain the sponsor of the Plans, in accordance with applicable legal requirements.
  - (2) The parties shall exercise their best efforts to reach agreement on the Contractor’s responsibilities for sponsorship, management and administration of the Plans prior to or at the time of Contract Completion. However, if the parties have not reached agreement on the Contractor’s responsibilities for sponsorship, management and administration of the Plans prior to or at the time of Contract Completion, unless and until such agreement is reached, the Contractor shall comply with written direction from the 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 provisions.

#### **H.11 AGE DISCRIMINATION IN EMPLOYMENT**

The Contractor shall not discriminate against any employee, applicant for employment, or former employee on the basis of age. The Contractor shall comply with the Age Discrimination in Employment Act, with any state or local legislation regarding discrimination based on age, and with all applicable regulations under such laws.

#### **H.12 GOVERNMENT FURNISHED SERVICES AND ITEMS**

DOE and the Contractor recognize that implementation of the SOW in an optimized fashion is dependent upon many activities, including Government Furnished Services and Items (GFS/I). Section J, Appendix L, provides a description of the GFS/I to be furnished under this contract. DOE is committed to providing effective support to the Contractor throughout the period of Contract performance, and the Contractor may request that DOE consider providing additional GFS/I. To manage the GFS/I to be

furnished under the Contract and to evaluate the additional GFS/I that may be required by the Contractor, the Contractor shall submit for DOE approval:

- GFS/I Request: a 12-month advance projection of GFS/I to be furnished under the Contract, to be submitted no later than 6 months after contract award and three months prior to each fiscal year; and
- GFS/I Update (if needed): a quarterly update to the projection of GFS/I to be furnished under the Contract.

DOE will review the GFS/I Request and GFS/I Update. If DOE can support the additional Contractor-requested GFS/I, DOE will notify the Contractor within 30 days that the additional Contractor-requested GFS/I can be provided, and will provide the Contractor details regarding the DOE action(s). The supported GFS/I will be added to Section J, Appendix L, Detailed Description of Government Furnished Services and Items, as a DOE commitment to the Contractor.

If DOE cannot support a Contractor request, DOE will notify the Contractor within 30 days that the requested GFS/I cannot be provided, and there will be no DOE commitment to the Contractor to furnish the GFS/I.

In the event that DOE is unable, for any reason, to provide the Contractor with its requested additional GFS/I, the Contractor remains fully and solely responsible for obtaining the needed services and/or information in a timely manner and without any further recourse against DOE, including, but not limited to, requests for equitable adjustment.

### **H.13 ACCESS TO DOE-OWNED OR LEASED FACILITIES**

- (a) The performance of this contract requires that employees of the Contractor have physical access to DOE-owned or leased facilities; however, this clause does not control requirements for an employee's obtaining a security clearance. The Contractor understands and agrees that DOE has a prescribed process with which the Contractor and its employees must comply in order to receive a security badge that allows such physical access. The Contractor further understands that it must propose employees whose background offers the best prospect of obtaining a security badge approval for access, considering the following criteria, which are not all inclusive and may vary depending on access requirements:
  - (1) Is, or is suspected of being, a terrorist;
  - (2) Is the subject of an outstanding warrant;
  - (3) Has deliberately omitted, concealed, or falsified relevant and material facts from any Questionnaire for National Security Positions (SF-86), Questionnaire for Non-Sensitive Positions (SF-85), or similar form;

- (4) Has presented false or forged identity source documents;
  - (5) Has been barred from Federal employment;
  - (6) Is currently awaiting a hearing or trial or has been convicted of a crime punishable by imprisonment of six (6) months or longer; or
  - (7) Is awaiting or serving a form of pre-prosecution probation, suspended or deferred sentencing, probation or parole in conjunction with an arrest or criminal charges against the individual for a crime that is punishable by imprisonment of six (6) months or longer.
- (b) The Contractor shall assure:
- (1) In initiating the process for gaining physical access, (i) compliance with procedures established by DOE in providing its employee(s) with any forms directed by DOE, (ii) that the employee properly completes any forms, and (iii) that the employee(s) submits the forms to the person designated by the CO.
  - (2) In completing the process for gaining physical access, that its employee (i) cooperates with DOE officials responsible for granting access to DOE –owned or leased facilities and (ii) provides additional information, requested by those DOE officials.
- (c) The Contractor understands and agrees that DOE may unilaterally deny a security badge to an employee and that the denial remains effective for that employee unless DOE subsequently determines that access may be granted. Upon notice from DOE that an employee’s application for a security badge is or will be denied, the Contractor shall promptly identify and submit the forms referred to in subparagraph (b)(1) of this clause for the substitute employee. The denial of a security badge to individual employees by DOE shall not be cause for extension of the period of performance of this Contract or any contractor claim against DOE.
- (d) The Contractor shall return to the CO or designee the badge(s) or other credential(s) provided by DOE pursuant to this clause, granting physical access to DOE-owned or leased facilities by the Contractor’s employee(s), upon (1) the termination of this Contract; (2) the expiration of this Contract; (3) the termination of employment on this Contract by an individual employee; or (4) demand by DOE for return of the badge.
- (e) The Contractor shall include this clause, including this paragraph (e), in any subcontract, awarded in the performance of this Contract, in which an employee(s) of the subcontractor will require physical access to DOE-owned or leased facilities.

## H.14 PROJECT CONTROL SYSTEMS AND REPORTING REQUIREMENTS

(a) Project Control System

The Contractor shall establish, maintain and use a project control system that is tailored based on the project's size, risk and complexity. Project documentation requirements are tailored by degree of detail, not omitted entirely. The project control system shall reflect the project status relative to cost and schedule performance, and tracks changes to the baseline. This system shall be fully integrated with the financial accounting system to ensure consistent reporting of costs. The Contractor shall maintain a project control system in accordance with the following requirements:

1. Attachment 1 to DOE Order 413.3A, Program and Project Management for the Acquisition of Capital Assets, July 28, 2006, and its implementing manual, DOE Manual 413.3-1.
2. Integrated Planning, Accountability, and Budgeting System Information Systems (IPABS-IS) Data Requirements, February 16, 1999.
3. Primavera Project Manager Version 5.0, or as may be directed by the CO, for scheduling activities to ensure standardization as required by DOE-EM and to allow integration with the EM Integrated Schedule.
4. Costs incurred in performance of this contract shall be reported in compliance with the Environmental Cost Element Structure (ECES), ASTM International Designation E: 2150-04 and in a format ready for incorporation into DOE's Environmental Cost Analysis System (ECAS) database.

The Contractor shall provide the CO with a detailed written description of the proposed project control system for review and approval within sixty (60) days after award of this contract. Cost effective, graded application of controls will be a critical factor in determining acceptability of the proposed system.

The DOE COR or designated representatives will conduct a compliance review of the Contractor's proposed project control system to determine if the description and procedures meet the intent of this contract clause. The Contractor shall provide the Contracting Officer, or designated authorized representatives, access to any and all information and documents comprising the Contractor's project control and reporting system.

(b) Baseline Development and Cost Collection.

The Contractor shall develop and submit for approval by the CO, a baseline consistent with the terms and conditions of this contract and its proposal no later than 6 months after award. The baseline shall be developed in accordance with

DOE Order 413.3A and include all of the scope identified in the SOW. The Work Breakdown Structure (WBS) shall provide the basis for all project control system components, including estimating, scheduling, budgeting, performing, managing, and reporting, as required under this contract. The Contractor shall propose a WBS and dictionary that represents the SOW.

The Contractor shall develop a Risk Management Plan (RMP) in accordance with DOE Order 413.3A that identifies internal and external risks to achieving the project baseline including programmatic, operational, legislative, regulatory, institutional, and other requirements, constraints, and assumptions that may affect technical, schedule, and cost baselines. The RMP will define, analyze and provide a quantitative assessment of potential technical, performance, cost and schedule risks, as well as document actions taken and planned to mitigate potential impacts to scope execution. The Contractor shall provide its assessment of the impact of these uncertainties on project execution. If, in the Contractor's opinion, the risks are significant, the Contractor shall describe its approach to eliminate, avoid, or mitigate the risks. When developing approaches to eliminate, avoid or mitigate risks, the Contractor shall propose an allocation of risk responsibility to the organization best suited to manage the risk. The RMP shall be submitted with the Contract Performance Baseline and updated at least annually.

Cost estimates shall be integrated with the WBS and use estimating methodologies consistent with DOE Order 413.3A. Costs shall be discernable by direct, indirect and fee. The project control system must maintain capability to provide total estimated cost (TEC), total project cost (TPC), estimates-to-complete (ETC), and estimates-at-completion (EAC). The cost estimate format elements shall be compatible with ECES, ASTM International Designation E: 2150-04.

Schedules shall be developed that integrate with the WBS using the DOE standard project management software. All project workscope shall be included regardless of funding source. Each WBS element will have assigned duration that will be based on workscope. Activity logic links shall depict all workscope constraints and decision points and shall be integrated into a total project network schedule. Activities shall be resource loaded at the lowest practical level of the WBS to develop time-phased budgets that are integrated with the schedule. Labor resources shall be loaded based upon a staffing analysis. Float analysis will be summarized at the total project level. Project management systems and baseline network schedules shall have the capability to provide detailed schedule and cost analysis for alternative baselines or "what-if" scenarios. This analysis capability is separate from and in addition to baseline change and configuration control processes.

The Contractor shall analyze DOE proposed or directed funding changes for its impact on technical, schedule, and cost elements of the baseline, along with

potential impacts to the total estimated cost and schedule of the contract. Any Contractor-requested changes or DOE-directed changes shall be addressed through the established change control process. This process will not, in and of itself, have the authority to change the total estimated cost or schedule of the contract.

Prior to the release of funds for each fiscal year, DOE will analyze the baseline for that fiscal year. By June 30 each year, DOE will provide an estimate of any budget restrictions or specific technical or schedule guidance for the upcoming fiscal years through the remainder of the project.

The Contractor shall prepare a project performance forecast three months prior to the end of the fiscal year for all remaining fiscal years from the approved project baseline.

The Contractor shall provide variance justification for differences between planned and actual performance against the total project baseline and the estimated cost and schedule. Performance analysis techniques shall be documented using earned-value methods as described by ANSI/EIA 748-A-1998. This performance data shall be reported to DOE. Performance metrics (i.e., quantities) are preferred for all technical workscope unless otherwise approved by the CO. For variances greater than 10%, the analysis shall detail the causes for variance and corrective action required.

The EAC for the fiscal year shall be evaluated quarterly to ensure that it is consistent with observed trends in performance, emerging or resolved issues, and changes in the assessment of project risk.

All actual direct costs incurred for resources applied in the performance of work shall be recorded on a timely basis each month. Actual costs incurred must be recorded in the same accounting period that performance is measured and recorded. Any indirect costs shall also be collected and allocated to the appropriate cost elements. The Contractor must also maintain a proper accounting system that is separate and distinct from its project control system.

Costs shall be collected at a charge number level and be able to be summarized. Mischarges on time cards or other administrative or accounting errors shall be corrected in a timely manner.

(c) Project Reporting.

The Contractor shall provide quarterly status reports of the PBS in a format approved by the CO. The status shall include cost and schedule variance to the Project Baseline Summary (PBS), the status of major milestones, and critical technical or programmatic issues. This report shall also include overall narrative summaries, analysis of schedule trends and project float, analysis of critical

manpower skills of other resources, budget and funding figures, and project risk updates. The analysis of funds expenditure shall include a report of monthly and cumulative costs of performance by cost element in a format compatible with ECES and ready for incorporation into the ECAS database by DOE.

Plans and reports shall be prepared in such a manner as to provide for consistency with the contract SOW, the baseline, and the approved PBS. The Contractor's reporting system shall be able to provide for the following at the total PBS level:

- Timely incorporation of contractual changes affecting estimated cost and schedule;
- Reconciliation of estimated costs for those elements of the PBS with current performance measurement budgets in terms of changes to the authorized work and internal re-planning;
- Changes to records pertaining to work performed that will change previously reported costs for correction of errors and routine accounting adjustments; and
- Revisions to the contract estimated costs for Government-directed changes to the contractual effort.

The Contractor shall provide the CO, or designated authorized representatives, access to any and all information and documents comprising the Contractor's project control and reporting system. Generally, access will not be requested more than one level below the level chosen by the CO for control and approval authority, except during compliance reviews.

The Contractor shall include graded reporting requirements in all subcontracts adequate to fairly evaluate performance and support the Contractor's reporting requirements.

(d) Baseline Change Management.

The baseline is the source document for all project control and baseline change management. The processes for managing and administering changes to all elements of the baseline shall be timely, formal, and documented. Baseline changes shall be proposed when:

- Necessitated by project delays, events or other impacts outside the control of the Contractor that result in an impact to the Contractor's ability to meet the overall target cost and schedule and target fee structure;

- The parties have negotiated an equitable adjustment in accordance with the section I clause entitled, “Changes - Cost Reimbursement” or other clauses of this contract.

NOTE: Cost and schedule variances do not constitute or necessitate a baseline change.

Provided that the change does not affect total cost or schedule for the reasons stated above, the baseline change control thresholds for scope, cost and schedule shall be the lesser of the following:

DOE Headquarters	\$10,000,000 or 20% of the PBS annually
Local DOE	\$5,000,000 or 10% of the PBS annually
Contractor	Up to the local DOE Level

Additional work scope can only be authorized by the CO regardless of the threshold level.

The current year EAC Analysis shall track and manage changes in funding at the PBS level.

Specific change control time frames for consideration and approval will be established by the CO. Each change control threshold level shall accommodate emergency changes. Retroactive changes that affect schedule and cost performance data are not allowed except to correct administrative errors. A record of all approved changes, at any level, shall be maintained through the life of the project. Change control records shall maintain a clear distinction between approved changes in funding and baseline changes. Ownership of Change Control Board records and project management records resides with DOE.

Any changes to cost, schedule, or fee shall be executed only through a contract modification by the CO pursuant to the contract terms and conditions. Baseline changes will not imply the need for changes to cost, schedule, or fee.

## **H.15 STAKEHOLDER INTERACTION**

The Contractor shall engage in cooperative interactions through and with stakeholders, including but not limited to:

- U.S. Nuclear Regulatory Commission (NRC)
- U.S. Environmental Protection Agency (USEPA)
- South Carolina Department of Health and Environmental Control (SCDHEC)
- Occupational Safety and Health Administration (OSHA)
- Department of Energy Headquarters (DOE-HQ)
- Congressional Staff
- U.S. Department of Labor (DOL)

- DOE Inspector General (IG)
- U.S. Attorney's Office
- Government Accountability Office (GAO)
- Defense Contract Audit Agency (DCAA)
- Local Emergency Responders and Law Enforcement
- Local Citizen's Advisory Board (CAB)
- Defense Nuclear Facilities Safety Board (DNFSB)
- Other State and Federal Agencies, as applicable.

## **H.16 PRIVACY ACT SYSTEMS OF RECORDS**

The Contractor shall design, develop, or operate the following systems of records on individuals to accomplish an agency function pursuant to the clause in Section I, FAR 52.224-2 -- Privacy Act.

### DOE System Title/Number

DOE-05	Personnel Records of Former Contractor Employees
DOE-15	Payroll, and Pay Related Data for Employees of Terminated Contractors
DOE-33	Personnel Medical Records
DOE-35	Personnel Radiation Exposure Records
DOE-38	Occupational and Industrial Accident Records
DOE-40	Contractor Insurance Claims
DOE-43	Personnel Security Clearance Files
DOE-51	Employee and Visitor Access Control Records

The above list shall be revised from time to time by the CO as may be necessary to keep it current. Such changes will be formally incorporated by modification.

## **H.17 PRICE ANDERSON AMENDMENTS ACT NONCOMPLIANCE**

The Contractor shall maintain an internal Price Anderson Amendments Act (PAAA) noncompliance identification, tracking, reporting, and corrective action system and shall provide access to and fully support DOE reviews of the system. The Contractor shall be accountable for ensuring that teaming partners, subcontractors, etc., adhere to the PAAA aforementioned requirements.

## **H.18 DISPOSITION OF INTELLECTUAL PROPERTY-FAILURE TO COMPLETE CONTRACT PERFORMANCE**

- (a) In the event of a termination for default or termination for convenience, DOE may take possession of all technical information, including limited rights data and data obtained from subcontractors, licensors, and licensees, necessary for design, construction, operation, cleanup and closure activities associated with the SOW, subject to the Rights in Data – Facilities clause of this contract. Technical information includes, but is not limited to, designs, operation manuals, flowcharts,

software, work progress reports, and any other information necessary for design, construction, operation, cleanup and closure activities associated with the Liquid Waste SOW.

- (b) Upon request, the Contractor agrees to grant to the Government an irrevocable, nonexclusive, paid-up license in and to any intellectual property, including any technical information and limited rights data, which are owned or controlled by the Contractor, at any time through completion or termination of this contract and which are necessary for the continued design, construction, operation, cleanup, and closure activities associated with the SOW, (1) to practice or to have practiced by or for the Government at the facility, and (2) to transfer such license to future contractors for the design, construction, operation, cleanup, and closure activities associated with the SOW. 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, and any licenses in any third party intellectual property for the design, construction, cleanup, and closure activities associated with the SOW to DOE or such other third party as DOE may designate.
- (d) Only to the extent DOE requires use of technical data or other intellectual property as set forth above to perform the scope of work contemplated under this Contract, the Government agrees that in the event this Contract is terminated in the Government's interest pursuant to Article I-109, FAR 52.249-6(a)(1) the Government agrees to consider a request from the Contractor for a royalty payment to the Contractor for use of limited rights data, restricted computer software, and other intellectual property of the Contractor for any such use following termination in accordance with Article I-109, FAR 52.249-6(a)(1). If DOE agrees that the equities of the situation warrant the payment of a royalty, DOE agrees to negotiate for the payment of a reasonable royalty which shall take into account the extent of use of such intellectual property by DOE or its contractors, the validity of such intellectual property rights, and other factors deemed appropriate. Contractor will not be entitled to any compensation from DOE for use of technical data or other intellectual property to perform the scope of work contemplated under this Contract. Furthermore, DOE and Contractor agree that in the event of any dispute or controversy during the negotiations of payment of said royalty or thereafter concerning the use of Contractor's or its related companies' limited rights data and restricted computer software or amounts due thereof, such data will be delivered to DOE pending resolution of any such dispute, and, neither the Contractor nor its related companies shall seek or obtain injunctive relief prohibiting the Government or its contractors from using such data and computer software to perform the scope of work contemplated under this Contract; provided, however, that such limitation shall not be construed to prevent the Contractor from recovering compensation from the Government for such use. For purposes of this paragraph (d), the Government's rights of access and use provided in paragraphs (a), (b), and (c)

shall commence upon notice to Contractor of the Government's intention to terminate this agreement, irrespective of any compensation that may be due Contractor.

- (e) The obligations under this clause are not dependent upon any payments by the Government. The obligations arise immediately upon the request of the CO.

#### **H.19 SPECIAL FINANCIAL INSTITUTION ACCOUNT AGREEMENT**

The Contractor shall provide in accordance with DOE requirement a Special Financial Institution Account Agreement which shall be in place prior to assuming full responsibility for performance of the contract (i.e., prior to the completion of transition activities). This agreement shall be included as Section J, Appendix C.

#### **H.20 INCORPORATION OF REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS**

The representations, certifications, and other statements of Offeror, completed by the Contractor, and dated \_\_\_\_\_, are hereby incorporated by reference.

#### **H.21 STANDARD INSURANCE REQUIREMENTS**

In accordance with DEAR 952.231-71 "Insurance – Litigation and Claims," the following kinds and minimum amounts of insurance are required during the performance of this contract:

- (1) Worker's compensation and employer's liability insurance:

The amount required by the state in which work is performed under applicable workers' compensation and occupational disease statutes.

Employer's liability insurance in the amount of \$250,000.

- (2) General liability insurance:

Bodily injury liability coverage written on the comprehensive form of policy of at least \$500,000 per occurrence.

- (3) Automobile liability insurance:

Coverage shall be provided on a comprehensive basis. It shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performance of this contract. Policies covering automobiles operated in the United States shall provide coverage of at least

\$200,000 per person and \$500,000 per occurrence for bodily injury and \$50,000 per occurrence for property damage.

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

## **H.22 WAGE DETERMINATION RATES**

In the performance of this contract, the Contractor shall comply with the requirements of U.S. Department of Labor Wage Determination in Part III, Section J, Appendix J, U.S. Department of Labor Wage Determination. Revised wage determinations shall be required from the Department of Labor and incorporated into this contract at least once every two (2) years but not more often than yearly.

## **H.23 LOBBYING RESTRICTION (ENERGY & WATER DEVELOPMENT APPROPRIATIONS ACT, 2006)**

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

## **H.24 NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS - SENSE OF CONGRESS**

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

## **H.25 ALLOCATION OF LIABILITY FOR FINES AND PENALTIES TO RESPONSIBLE PARTY**

- (a) 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” is defined as 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.
- (b) Liability and responsibility for civil fines or penalties arising from or related to violations of environmental requirements shall be borne by the party causing the violation irrespective of the fact that the cognizant regulatory authority may assess any such fine or penalty upon either party or both parties without regard to the allocation of responsibility or liability under this contract. This contractual allocation of liability for any such fine or penalty is effective regardless of which

party (i) signs the permit applications, manifests, reports or other required documents; (ii) is a permittee; (iii) is the named subject of an enforcement action; or, (iv) is assessed a fine or penalty by the cognizant regulatory authority.

- (c) Regardless of which party to this Contract is the named subject (Contractor or DOE) of an enforcement action for noncompliance with environmental requirements by the cognizant regulatory authority, provisions of this Contract related to allowable costs will govern liability for payment of any fine or penalty. If the named subject of an enforcement action or assessment of a fine or penalty is DOE and the fine or penalty would not otherwise be reimbursable under the allowable cost provisions of this contract if the Contractor was the named subject of the enforcement action, the Contractor will either pay the fine or penalty, or reimburse DOE (if DOE pays the fine or penalty).

## **H.26 PERMITS, APPLICATIONS, LICENSES, AND OTHER REGULATORY DOCUMENTS**

The Contractor shall be responsible for becoming a party to all regulatory compliance agreements, and licenses and permits issued by any federal, state or local regulatory agency associated with the SOW under this contract, including those previously executed. The Contractor is responsible for complying with all permits, licenses, certifications, authorizations and approvals from federal, state, and local regulatory agencies that are necessary for all activities under this contract (hereinafter referred to collectively as “permits”). Section J, Appendix I, describes permits currently held by SR or the current contractor. Except as specifically provided in this section and to the extent not prohibited by law or the cognizant regulatory authority, the Contractor (or, if applicable, its subcontractors) will be the sole applicant for any such permits associated with the SOW under this contract. The Contractor must take all appropriate actions to obtain transfer of existing permits, and DOE will use all reasonable means to facilitate transfer of existing permits. If DOE determines it is appropriate or if DOE is required by the cognizant regulatory authority to sign permit applications, DOE may elect to sign as owner, co-operator, or some other similar designation, but the Contractor (or, if applicable, its subcontractors) must also sign as operator or similar designation reflecting its responsibility under the permit unless DOE waives this requirement in writing.

Unless otherwise authorized by the CO, the Contractor must submit to the CO for review and comment, all permit applications, reports, or other documents required to be submitted to the cognizant regulatory authority. Such draft documents must be provided to DOE within a time frame, identified by DOE, sufficient to allow DOE substantive review and comment; and DOE will perform such substantive review and comment within such time frame. When providing DOE with documents that are to be signed or co-signed by DOE, the Contractor will accompany such documents with a certification statement, signed by the appropriate Contractor corporate officer, attesting to DOE that the document has been prepared in accordance with all applicable requirements and the information is true, accurate, and complete.

Except as specifically provided in this clause and to the extent not prohibited by law or cognizant regulatory authority, the Contractor (or, if applicable, its subcontractors) will be the signatory for reports, hazardous waste manifests, and other similar documents required under environmental permits or applicable environmental laws and regulations.

In the event of termination or expiration of this contract, DOE will require the new Contractor to accept transfer of all environmental permits executed by the Contractor, or DOE will accept responsibility as operator for such permits.

## **H.27 LEGAL MANAGEMENT PLAN**

The Contractor shall comply with all requirements of 10 CFR 719. As part of that compliance, the Contractor shall submit a Legal Management Plan in accordance with 10 CFR 719, and include the item set forth in 10 CFR 719.10 to the CO for approval within sixty (60) days after contract award.

The Plan shall describe the Contractor's practices for managing legal costs and matters for which it procures the services of retained legal counsel. In doing so, the plan shall describe the matters in-house counsel will perform as well as anticipates performing throughout the life of the contract. The Contractor should not retain outside counsel for matters that can be performed by in-house counsel. Within this plan, the Contractor shall compare rates of retained legal counsel with the rates of firms in the Central Savannah River Area (CSRA). Once approved by the CO, the Plan, as well as applicable regulations and contract provisions, forms the basis for approvals by the CO to reimburse litigation and other legal expenses performed by retained legal counsel. The Plan may be revised from time to time to conform to legal management rules or policies established or adopted by the Department of Energy.

## **H.28 PERFORMANCE EVALUATION AND MEASUREMENT PLAN**

- (a) The determination of award fee earned shall be based upon a Performance Evaluation and Measurement Plan (PEMP), which includes the performance criteria for earning award fee and the distribution of award fee as provided in paragraph (d) below. The PEMP will be unilaterally established by the Government. A copy of the plan shall be provided to the Contractor with approval of the Contract Performance Baseline.
- (b) Key aspects of the technical approach proposed by the Contractor and accepted by the Government will be incorporated into the PEMP. If the contractor fails to make progress towards successful execution or achievement of these key aspects of the technical approach, the Government may exercise any of its rights and remedies under the contract, including those contained in Section B.5 clause entitled, Conditional Payment of Fee, Profit, and Other Incentives – Facility Management Contracts (Alternate II) (JAN 2004) (Deviation). These key aspects will be identified at time of award and incorporated herein.
- (c) The PEMP will set forth the evaluation period(s) and the criteria upon which the Contractor will be evaluated. The Contractor may submit a self-evaluation of

performance for each evaluation period. While it is recognized that the basis for determination of the fee shall be the evaluation by the Government, the self-evaluation which is to be received within 15 days after the end of the period being evaluated will be given such consideration as the FDO shall find appropriate.

- (d) The PEMP may be revised unilaterally by the Government at any time during the period of performance. Notification of such changes shall be provided to the Contractor 30 calendar days prior to the start of the evaluation period to which the change will apply.
- (e) The Total Available Award Fee, identified in Section B.2, will be earned for the Contractor's performance against the criteria established in the PEMP.
- (f) The PEMP will identify the fee-bearing activities and establish the method of award fee determination.
- (g) Any unearned fee from the award fee made available for each evaluation period, Performance Based Incentive (PBI), or other incentive shall not be eligible to be earned under future periods, PBIs, or incentives.
- (h) While it is recognized that the basis for determination of the fee shall be the evaluation by the Government in accordance with this clause and the PEMP, the FDO may also consider any information available to him or her which relates to the Contractor's performance of contract requirements, regardless of whether or not those requirements are specifically identified. To the extent the Contractor does not perform those requirements, the FDO may reduce the fee determination. In the event that the Contractor's performance is considered unacceptable in any area of contract performance, even if no weight or fee is specifically assigned to the particular performance area, the FDO may at his/her sole discretion determine the Contractor's overall performance to be unacceptable, and accordingly may withhold the entire performance fee for the evaluation period.

## **H.29 COOPERATION WITH OTHER SITE CONTRACTORS**

DOE may have, undertake, or award other prime contracts for additional work at SRS. Such prime contracts may include, but are not limited to, the following activities: infrastructure services, transportation, mechanical, and health and human services (other than those specified in the SOW).

The Contractor shall cooperate in a timely manner with DOE and any DOE contractor performing work at the site, especially DOE prime contractors. Cooperation includes, but is not limited to, working together to resolve interface and work performance issues; establishing schedules to support accommodation of the work being performed under the other contract(s); establishing work groups; participating in meetings (including quarterly DOE/Contractor interface meetings); providing access to applicable technical and contract information and data, such as schedule and milestone data; discussing technical

matters related to SRS; and, providing access to Contractor facilities or areas. The Contractor shall ensure that its activities in support of the other prime contractors are fully coordinated with DOE and the other prime contractors.

The Contractor shall work with the SR M&O Contractor in the maintenance and execution of the SRS Interface Management Plan (IMP). The IMP is an Interface Management tool only and does not take precedence over the requirements identified herein.

The Contractor is not authorized to direct any DOE contractor, except as specified elsewhere in this contract or as directed by the CO. The CO has the authority to direct the Contractor to cease interference in the activities of other DOE contractors.

The Contractor shall immediately notify the CO if the Contractor's activities will interfere with any DOE contractor or if there is an interference or conflict with any DOE contractor in performance of the Contractor's activities in support of DOE or another DOE contractor.

In the event that the Contractor violates this clause in any material and significant way, that is, that the Contractor's interference or lack of cooperation with another DOE contractor causes or substantially contributes to that other DOE contractor's inability to produce timely any deliverable, the CO may reduce the Contractor's fee by no more than five percent (5%) of the total amount of fee earned by the Contractor for the performance evaluation period in which the violation occurred.

### **H.30 MENTOR-PROTÉGÉ PROGRAM**

Both the 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 their business abilities. The Contractor may mentor an active Protégé company through the DOE and/or SBA Mentor-Protégé Programs.

DOE Mentor-Protégé Agreements shall be in accordance with Department of Energy Acquisition Regulation (DEAR) 919.70.

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

### **H.31 COMPLIANCE WITH INTERNET PROTOCOL VERSION 6 (IPV6) IN ACQUIRING INFORMATION TECHNOLOGY**

This contract involves the acquisition of Information Technology (IT) that uses Internet Protocol (IP) technology. The Contractor agrees that: (1) all deliverables that involve IT

that uses IP (products, services, software, etc.) will comply with IPv6 standards and interoperate with both IPv6 and IPv4 systems and products; and (2) it has IPv6 technical support for development and implementation and fielded product management available. If the Contractor plans to offer a deliverable that involves IT that is not initially compliant, the Contractor agrees to: (1) obtain the CO's approval before starting work on the deliverable; (2) provide a migration path and firm commitment to upgrade to IPv6 for all application and product features by June 2008; and (3) have IPv6 technical support for development and implementation and fielded product management available.

Should the Contractor find that the SOW or specifications of this contract do not conform to the IPv6 standard, it must notify the CO of such nonconformance and act in accordance with instructions of the CO.

### **H.32 CRITICAL SUBCONTRACTS – DESIGNATION AND CONSENT**

Critical subcontracts are those subcontracts where failure would seriously jeopardize the successful completion and/or progress of the Liquid Waste program. Throughout the life of this contract, critical subcontracts will change as problems are identified and solved, milestone schedules passed, scope completed, etc.

The following subcontracts have been determined to be critical subcontracts:

[Name(s) of company(s)]

The above subcontracts require notification to, and consent by, the CO regardless of any exceptions that may be stated in the Subcontracts clause (FAR 52.244-2) of this contract. Consent of these subcontracts is retained by the CO and will not be delegated. The CO may unilaterally designate additional subcontracts as "critical" without such action constituting a basis for adjustment to any other terms of the contract.

### **H.33 SALES AND USE TAXES**

In accordance with the laws and regulations of the State of South Carolina, the Contractor is required to pay sales and use taxes on purchases of certain goods and services required under the contract.

### **H.34 ADMINISTRATION OF SUBCONTRACTS**

- (a) The administration of all subcontracts entered into and/or managed by the Contractor, including responsibility for payment hereunder, shall remain with the Contractor unless assigned at the direction of the CO.
- (b) DOE reserves the right to direct the contractor to assign to DOE or another Contractor any subcontract awarded under this contract.
- (c) The Contractor agrees to accept transfer of existing subcontracts as determined necessary by DOE for continuity of operations. The contractor shall attempt to

negotiate changes to the assigned subcontracts incorporating mandatory flow-down provisions at no cost. If the subcontractor refuses to accept the changes or requests price adjustments, the Contractor will notify the CO in writing.

- (d) DOE reserves the right to identify specific work activities in the SOW to remove (de-scope) from the contract in order to contract directly for the specific work activity. The Department will work with the Contractor to identify the areas of work that can be performed by small businesses in order to maximize direct federal contracts with small businesses. The Contractor agrees to facilitate these actions. This will include identifying direct contracting opportunities for small businesses for work presently performed under subcontracts as well as work performed by Contractor employees. The Contractor shall notify DOE one-year in advance of the expiration of any of its subcontracts or if applicable, one-year prior to the exercise of an option and/or the option notification requirement, if any, contained in a subcontract. DOE will review this information and the requirements of the Contractor to determine the appropriateness for small business opportunities. This review may result in DOE electing to enter in contracts directly with small businesses for these areas of work.

The CO will give notice to the Contractor not less than 120 calendar days prior to the date for exercising the option and/or the expiration of the subcontract and/or prior to entering into contract for work being performed by Contractor employees. Following award of these direct federal contracts, DOE may assign administration of these contracts to the Contractor. The Contractor agrees to accept assignments from DOE for the administration of these contracts. The parameters of the Contractor's responsibilities for the small business contracts and/or changes, if any, to the instant contract will be incorporated via a modification to the contract. The Contractor will accept management and administration responsibilities, if so determined.

### **H.35 COMMUNITY COMMITMENT**

It is the policy of 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.

### **H.36 PERFORMANCE GUARANTEE**

If the Contractor is a joint venture, limited liability company, other similar entity, or a newly formed entity, the Contractor's parent organization(s) or all member organizations shall guarantee performance of the contract as evidenced by the Performance Guarantee Agreement incorporated in the contract in Section J, Appendix F. 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 several 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.37 RECOGNITION OF PERFORMING ENTITY**

- (a) The Contractor and the Government recognize that the parties named below form the performing entity on which the award of this contract was based.

TO BE PROVIDED BY OFFEROR

- (b) Accordingly, the Contractor and the Government agree that:

The Contractor shall take no action to replace the components of the Offeror named in (a) above without the prior written approval of the CO.

**H.38 RESPONSIBLE CORPORATE OFFICIAL**

Notwithstanding the Section H provision entitled “Performance Guarantee,” the Government may contact, as necessary, the single responsible corporate official identified below, who is at a level above the Contractor and who is accountable for the performance of the Contractor. Should the responsible corporate official change during the period of the contract, the Contractor shall promptly notify the Government of the change in the individual to contact.

Name: \_\_\_\_\_  
Position: \_\_\_\_\_  
Company: \_\_\_\_\_

**H.39 TRANSITION ACTIVITIES**

- (a) During the transition period, as specified in the clause in Section F entitled “Term of the Contract,” the Contractor shall perform those activities that are necessary to transition the work from the incumbent contractor in a manner that (1) assures that all work for which the Contractor is responsible under the contract is continued without disruption; (2) provides for an orderly transfer of resources, responsibilities, and accountability from the incumbent contractor; and (3) provides for the ability of the Contractor to perform the work in an efficient, effective, and safe manner. The Contractor is responsible for providing all necessary personnel and logistical support (office space, computers, telephone, etc.) during the transition period, unless specifically directed otherwise by the CO.
- (b) The Contractor shall submit a transition plan and budget to the CO for approval within 5 working days after award of the contract. The plan shall include a schedule of major activities, and address as a minimum:

- Communication process among DOE, the incumbent SRS Contractor, assigned subcontractors, incumbent employees, other SRS contractors, and site tenants;
  - Identification of key transition issues and milestones;
  - Identification of a transition team (inclusive of consultants and teaming members, if any);
  - Integration of work packages (direct and indirect) and budgets from incumbent contractors;
  - Approach to minimizing impacts on continuity of operations;
  - Dispute Resolution;
  - Assumption of LW programs and projects;
  - Human resource management;
  - Implementation of existing or proposed management and operating systems (e.g., Project Management, Integrated Safety Management, Operating Procedures, General Electronic Data Processing, Budget and Planning, Purchasing Material, Compensation, Labor/Payroll, Indirect and Direct Costs, Property Management, Billing and Estimating);
  - Assumption of all ES&H responsibilities, functions, and activities;
  - A cost breakdown sufficient to support the proposed transition budget;
  - Development of all interface control documents;
  - Assumption of permits, applications, licenses, and other regulatory documents;
  - Implementation of the S/RID requirements;
  - Establishment of the Special Financial Institution Account Agreement;
  - Assumption of Authorization Bases documents and Documented Safety Analysis process.
- (c) Pursuant to Section H.8, the Contractor shall submit within 60 days of contract award a final report of the names of Incumbent Employees to be hired under this Contract.
- (d) After completion of the transition activities contained in the approved transition plan and such other transition activities as may be authorized or directed by the CO, the Contractor shall notify the CO in writing that it is ready to assume full responsibility for the work. The Contractor shall assume full responsibility for the work upon the date specified in writing by the CO.

#### **H.40 TRANSITION TO FOLLOW-ON CONTRACT**

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

That at the expiration of the contract term or any earlier termination thereof, the Contractor shall cooperate with a successor contractor or the Government by allowing either to interview its employees for possible employment, and if such employees accept employment with the replacement Contractor, shall release such employees at the time established by the new employer or by DOE. The Contractor shall cooperate with the replacement Contractor and Government with regard to the termination or transfer arrangements for such employees to assure maximum protection of employee service credits and fringe benefits.

After selection by the Government of any successor Contractor, the Contractor and such successor Contractor shall jointly prepare mutual detailed plans for phase-out and phase-in operations. Such plans shall specify a training and orientation program for the successor Contractor to cover each phase of the scope of work covered by the contract. A proposed date by which the successor Contractor will assume responsibility for such work shall be established. The Contractor shall assume full responsibility for such work until assumption thereof by the successor Contractor. Execution of the proposed plan or any part thereof shall be accomplished in accordance with the CO's direction and approval.

This clause shall apply to subcontracts as approved by the CO.

#### **H.41 SMALL BUSINESS SUBCONTRACTING PLAN**

The Small Business Subcontracting Plan submitted by the Contractor in accordance with the clause in Section I entitled "Small Business Subcontracting Plan" and approved by the CO is incorporated into the contract in Section J, Appendix A. The CO shall approve any necessary changes to the plan.

#### **H.42 EMPLOYEE CONCERNS PROGRAM**

The Contractor shall submit an implementation plan to the CO for approval within 90 days of contract award that describes an Employee Concerns Program (ECP) that implements all programmatic requirements in DOE Order 442.1A, and DOE Guide 442.1-1, Employee Concerns Program, and all superseding versions. Guidance for preparation of an ECP Plan is provided in Section J, Appendix G. This plan will replace guidance in Section J, Appendix G after CO approval.

#### **H.43 DETERMINATION OF APPROPRIATE LABOR STANDARDS**

DOE shall determine the appropriate labor standards, in accordance with the Service Contract Act, the Davis-Bacon Act, or other applicable labor laws which shall apply to work performed under this contract. Where requested by DOE, the Contractor shall provide such information in the form and time frame required by DOE, as may be necessary for DOE to make such labor standards determinations. The Contractor will then be responsible for ensuring that the appropriate labor standards provisions are

included in subcontracts, and for obtaining and applying the appropriate wage determinations.

#### **H.44 GOVERNMENT-OWNED PROPERTY AND EQUIPMENT**

All real and personal property, including equipment, material and facilities, currently assigned to the incumbent contractor to perform workscope included in this contract will be provided to the Contractor. During the transition period, an inventory of such property in the DOE Facilities Information Management System, Federal Inventory System, and applicable incumbent contractor property databases will be provided to the Contractor. Specifically, the following Property Acceptance requirements will be implemented.

- (1) The Contractor must agree to conduct and complete a full inventory of all accountable special nuclear material during the transition period and accept full accountability for that special nuclear material at the end of transition.
- (2) The Contractor must agree to accept, at the end of transition, transfer of accountability for the remaining government-owned property (real and personal) not covered under paragraph (1), based on existing inventory records, on an “as-is, where-is” basis, and complete a formal inventory of all other nuclear material, non-nuclear material, real property, and personal property within 120 calendar days after the end of transition. Any discrepancies from the existing inventory records shall be reported to the CO. As the formal inventories are completed, the Contractor shall assume responsibility and liability for subsequent losses and damages.

#### **H.45 COMPETITION AND LABOR RELATIONS IN MANAGEMENT AND OPERATING AND OTHER MAJOR FACILITIES CONTRACTS**

“Labor organization,” as used in this clause, shall have the same meaning it has in 42 U.S.C 2000e (d).

- (a) Unless acting in the capacity of a constructor on a particular project, the Contractor shall not:
  - (1) Require bidders, offerors, contractors, or subcontractors to enter into or adhere to nor prohibit those parties from entering into or adhering to agreements with one or more labor organizations, i.e., project labor agreements, that apply to construction project(s) to this contract; or
  - (2) Otherwise discriminate against bidders, offerors, contractors, or subcontractors for refusing to become or remain signatories or to otherwise adhere to project labor agreements for construction project(s) relating to this contract.
- (b) When the Contractor is acting in the capacity of a constructor, i.e., performing a substantial portion of the construction with its own forces, it may use its discretion

to require bidders, offerors, contractors, or subcontractors to enter into a project labor agreement that the Contractor has negotiated for that individual project.

- (c) Nothing in this clause shall limit the right of bidders, offerors, contractors, or subcontractors to voluntarily enter into project labor agreements.

#### **H.46 INCUMBENT EMPLOYEES, BENEFIT PLANS, AND APPROVAL FOR SUBCONTRACTORS TO PARTICIPATE IN THE MULTIPLE EMPLOYER PENSION PLAN**

- (a) DOE and the Contractor shall agree to those subcontractors that will be subject to the requirements to provide pension benefits for Incumbent Employees as defined in paragraph (e)(1) of the Section H Clause entitled, Employee Compensation: Pay and Benefits. The Contractor shall submit its proposed agreement to DOE no later than thirty days prior to the close of the Transition Period, as defined in the Section F Clause entitled, Term of the Contract.
- (b) The Contractor shall flow down to all subcontractors that are subject to the agreement in Section (a) of this Clause the requirements of paragraphs (d) (3) and (4), (f), and (g) of the Section H Clause entitled, Employee Compensation: Pay and Benefits, and paragraphs (a) and (b) of the Section H clause entitled, Post-Contract Responsibilities for Pension and Other Benefit Plans.
- (c) For the purpose of determining allowability of costs, the Contractor shall not take any action that would result in the change of status of any Incumbent Employee with respect to the continued active participation in the Plans identified in paragraph (e)(1)(B) of the Section H Clause entitled, Employee Compensation: Pay and Benefits, without the prior written approval of the Contracting Officer.
- (d) 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.

#### **H.47 PAYMENTS AND ADVANCES**

- (a) Payment of Total Available Award Fee: The base fee amount, if any, is payable in equal monthly installments. Total available award fee amount earned is payable following the Government's Determination of Total Available Award Fee Amount Earned in accordance with the clauses of this contract entitled "Estimated Cost and Award Fee" and "Submission of Invoices." Provisional payments of fee and total available award fee earned payments shall be made by direct payment or withdrawn from funds advanced or available under this contract, as determined by the

Contracting Officer. The Contracting Officer may offset against any such fee payment the amounts owed to the Government by the Contractor, including any amounts owed for disallowed costs under this contract. No provisional payments of fee or total available award fee amount earned payment may be withdrawn against the payments cleared financing arrangement without the prior written approval of the Contracting Officer.

- (b) Payments on Account of Allowable Costs. The Contracting Officer and the Contractor shall agree as to the extent to which payment for allowable costs or payments for other items specifically approved in writing by the Contracting Officer (for example, negotiated fixed amounts) shall be made from advances of Government funds. When pension contributions are paid by the Contractor to the retirement fund less frequently than quarterly, accrued costs therefor shall be excluded from costs for payment purposes until such costs are paid. If pension contributions are paid on a quarterly or more frequent basis, accrual therefor may be included in costs for payment purposes, provided that they are paid to the fund within 30 days after the close of the period covered. If payments are not made to the fund within such 30-day period, pension contribution costs shall be excluded from cost for payment purposes until payment has been made.
- (c) Special financial institution account-use. All advances of Government funds shall be withdrawn pursuant to a payments cleared financing arrangement prescribed by DOE in favor of the financial institution or, at the option of the Government, shall be made by direct payment or other payment mechanism to the Contractor, and shall be deposited only in the special financial institution account referred to in the Special Financial Institution Account Agreement, which is incorporated into this contract as Section J, Appendix C. No part of the funds in the special financial institution account shall be commingled with any funds of the Contractor or used for a purpose other than that of making payments for costs allowable and, if applicable, fees earned under this contract, negotiated fixed amounts, or payments for other items specifically approved in writing by the Contracting Officer. If the Contracting Officer determines that the balance of such special financial institution account exceeds the Contractor's current needs, the Contractor shall promptly make such disposition of the excess as the Contracting Officer may direct.
- (d) Title to funds advanced. Title to the unexpended balance of any funds advanced and of any special financial institution account established pursuant to this clause shall remain in the Government and be superior to any claim or lien of the financial institution of deposit or others. It is understood that an advance to the contractor hereunder is not a loan to the contractor, and will not require the payment of interest by the contractor, and that the contractor acquires no right, title or interest in or to such advance other than the right to make expenditures therefrom, as provided in this clause.
- (e) Financial settlement. The Government shall promptly pay to the Contractor the unpaid balance of allowable costs (or other items specifically approved in writing by the Contracting Officer) and fee upon termination of the work, expiration of the

term of the contract, or completion of the work and its acceptance by the Government after:

(1) Compliance by the contractor with DOE's patent clearance requirements, and

(2) The furnishing by the contractor of:

(i) An assignment of the contractor's rights to any refunds, rebates, allowances, accounts receivable, collections accruing to the contractor in connection with the work under this contract, or other credits applicable to allowable costs under the contract;

(ii) A closing financial statement;

(iii) The accounting for Government-owned property required by the clause entitled FAR 52.245-5 Government Property (Cost Reimbursement, Time-and-Material, or Labor-Hour Contracts) (MAY 2004); and

(iv) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract subject only to the following exceptions:

(A) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible to exact statement by the contractor;

(B) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the contractor to third parties arising out of the performance of this contract; provided that such claims are not known to the contractor on the date of the execution of the release; and provided further that the contractor gives notice of such claims in writing to the Contracting Officer promptly, but not more than one (1) year after the contractor's right of action first accrues. In addition, the contractor shall provide prompt notice to the Contracting Officer of all potential claims under this clause, whether in litigation or not (see also Contract Clause, DEAR 952.231.71, "Insurance-Litigation and Claims (APR 2002));

(C) Claims for reimbursement of costs (other than expenses of the Contractor by reason of any indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents; and

(D) Claims recognizable under the clause entitled, DEAR 952.250-70, Nuclear Hazards Indemnity Agreement, (OCT 2005).

(3) In arriving at the amount due the Contractor under this clause, there shall be deducted,

- (i) Any claim which the Government may have against the contractor in connection with this contract, and
  - (ii) Deductions due under the terms of this contract, and not otherwise recovered by or credited to the Government. The unliquidated balance of the special financial institution account may be applied to the amount due and any balance shall be returned to the Government forthwith.
- (f) Claims. Claims for credit against funds advanced for payment shall be accompanied by such supporting documents and justification as the Contracting Officer shall prescribe.
- (g) Discounts. The Contractor shall take and afford the Government the advantage of all known and available cash and trade discounts, rebates, allowances, credits, salvage, and commissions unless the Contracting Officer finds that action is not in the best interest of the Government.
- (h) Collections. All collections accruing to the Contractor in connection with the work under this contract, except for the Contractor's fee and royalties or other income accruing to the Contractor from technology transfer activities in accordance with this contract, shall be Government property and shall be processed and accounted for in accordance with applicable requirements imposed by the Contracting Officer pursuant to the Laws, Regulations, and DOE directives clause of this contract and, to the extent consistent with those requirements, shall be deposited in the special financial institution account or otherwise made available for payment of allowable costs under this contract, unless otherwise directed by the Contracting Officer.
- (i) Direct payment of charges. The Government reserves the right, upon ten days written notice from the Contracting Officer to the Contractor, to pay directly to the persons concerned, all amounts due which otherwise would be allowable under this contract. Any payment so made shall discharge the Government of all liability to the Contractor therefor.
- (j) Determining allowable costs. The Contracting Officer shall determine allowable costs in accordance with the Federal Acquisition Regulation Subpart 31.2 and the DEAR subpart 931.2 in effect on the date of this contract and other provisions of this contract.
- (k) Certification and penalties. The Contractor shall prepare and submit a "Statement of Costs Incurred and Claimed" (Cost Statement) for the total of net expenditures incurred for the period covered by the Cost Statement. It is anticipated that this will be an annual submission unless otherwise agreed to by the Contracting Officer. The Contractor shall certify the Cost Statement subject to the penalty provisions for

unallowable costs as stated in Sections 306(b) and (i) of the Federal Property and Administrative Services Act of 1949 (41.U.S.C. 256), as amended and FAR 52.216-7, Allowable Cost and Payment (DEC 2002) as modified by DEAR 952.216-7, Allowable Cost and Payment (DEC 2002) (ALT II) and as supplemented by Subpart 931-2 of the DEAR.

- (l) Remedies. If at any time during contract performance, the Contracting Officer determines that unallowable costs were claimed by the contractor to the extent of making the contractor's management controls suspect, or the contractor's management systems that validate costs incurred and claimed suspect, the Contracting Officer may, in his or her sole discretion, require the contractor to cease using the special financial institution account in whole or with regard to specified accounts, requiring reimbursable costs to be claimed by periodic vouchering. In addition, the Contracting Officer, where he or she deems it appropriate, may: impose a penalty under FAR 52.242-3, Penalties for Unallowable Costs (MAR 2001); require a refund; reduce the contractor's otherwise earned fee; and take such other action as authorized in law, regulation, or this contract.

#### **H.48 ACCOUNTS, RECORDS, AND INSPECTION**

- (a) Accounts. The contractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting: all allowable costs incurred or anticipated to be incurred; collections accruing to the contractor in connection with the work under this contract, other applicable credits, negotiated fixed amounts, and fee accruals under this contract; and the receipt, use, and disposition of all Government property coming into the possession of the contractor under this contract. The system of accounts employed by the contractor shall be satisfactory to DOE and in accordance with generally accepted accounting principles consistently applied.
- (b) Inspection and audit of accounts and records. All books of account and records relating to this contract shall be subject to inspection and audit by DOE or its designees in accordance with the provisions of Clause I.139, Access To and Ownership of Records (JUL 2005), at all reasonable times, before and during the period of retention provided for in paragraph (d) of this clause, and the contractor shall afford DOE proper facilities for such inspection and audit.
- (c) Audit of subcontractors' records. The contractor also agrees, with respect to any subcontracts (including fixed-price or unit-price subcontracts or purchase orders) where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor of any tier, to either conduct an audit of the subcontractor's costs or arrange for such an audit to be performed by the cognizant government audit agency through the Contracting Officer.

- (d) Disposition of records. Except as agreed upon by the Government and the contractor, all financial and cost reports, books of account and supporting documents, system files, data bases, and other data evidencing costs allowable, collections accruing to the contractor in connection with the work under this contract, other applicable credits, and fee accruals under this contract, shall be the property of the Government, and shall be delivered to the Government or otherwise disposed of by the contractor either as the Contracting Officer may from time to time direct during the progress of the work or, in any event, as the Contracting Officer shall direct upon completion or termination of this contract and final audit of accounts hereunder. Except as otherwise provided in this contract, including provisions of Clause I.139, Access To and Ownership of Records (JUL 2005), all other records in the possession of the contractor relating to this contract shall be preserved by the contractor for a period of three years after final payment under this contract or otherwise disposed of in such manner as may be agreed upon by the Government and the contractor.
- (e) Reports. The contractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this contract as the Contracting Officer may from time to time require.
- (f) Inspections. The DOE shall have the right to inspect the work and activities of the contractor under this contract at such time and in such manner as it shall deem appropriate.
- (g) Subcontracts. The contractor further agrees to require the inclusion of provisions similar to those in paragraphs (a) through (g) and paragraph (h) of this clause in all subcontracts (including fixed-price or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor. The Contractor further agrees to include an "Audit and Records - Negotiation" clause, the substance of which is the "Audit" clause set forth at 48 CFR 52.215-2, in each subcontract which does not include provisions similar to those in paragraph (a) through paragraph (h) of this clause, but which contains a "defective cost or pricing data" clause.
- (h) Comptroller General.
  - (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.
  - (2) This paragraph may not be construed to require the contractor or subcontractor to create or maintain any record that the contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(3) Nothing in this contract shall be deemed to preclude an audit by the Government Accountability Office of any transaction under this contract.

#### **H.49 INTERNAL AUDIT**

The contractor agrees to design and maintain an internal audit plan and an internal audit organization.

- (1) Upon contract award, the exercise of any contract option, or the extension of the contract, the contractor must submit to the Contracting Officer for approval an Internal Audit Implementation Design to include the overall strategy for internal audits. The Audit Implementation Design must describe:
  - (i) The internal audit organization's placement within the contractor's organization and its reporting requirements;
  - (ii) The audit organization's size and the experience and educational standards of its staff;
  - (iii) The audit organization's relationship to the corporate entities of the contractor;
  - (iv) The standards to be used in conducting the internal audits;
  - (v) The overall internal audit strategy of this contract, considering particularly the method of auditing costs incurred in the performance of the contract;
  - (vi) The intended use of external audit resources;
  - (vii) The plan for audit of subcontracts, both pre-award and post-award; and
  - (viii) The schedule for peer review of internal audits by other contractor internal audit organizations, or other independent third party audit entities approved by the DOE Contracting Officer.
- (2) By each January 31 of the contract performance period, the contractor must submit an annual audit report, providing a summary of the audit activities undertaken during the previous fiscal year. That report shall reflect the results of the internal audits during the previous fiscal year and the actions to be taken to resolve weaknesses identified in the contractor's system of business, financial, or management controls.

- (3) By each June 30 of the contract performance period, the contractor must submit to the Contracting Officer an annual audit plan for the activities to be undertaken by the internal audit organization during the next fiscal year that is designed to test the costs incurred and contractor management systems described in the internal audit design.
- (4) The Contracting Officer may require revisions to documents submitted under paragraphs (1), (2), and (3) of this clause, including the design plan for the internal audits, the annual report, and the annual internal audits.