

## **Part I – The Schedule**

### **Section H**

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### **H.1 DOE-H-2013 Consecutive Numbering (Oct 2014)**

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

## **CONTRACTOR HUMAN RESOURCE MANAGEMENT (CHRM) CLAUSES**

### **H.2 DOE-H-2002 No Third Party Beneficiaries (Oct 2014)**

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

### **H.3 Definitions**

For purposes of clauses H.4, *Workforce Transition and Employee Hiring Preferences Including through Period of Performance*; through H.7, *Workforce Restructuring*; the following definitions are applicable (unless otherwise specified):

- (a) “Contract Award Date” means the date the contract is signed by the Contracting Officer (Contracting Officer), noted in Block 28 of the SF 33, *Solicitation, Offer and Award*.
- (b) “Contract Transition Period” means the transition period as defined in Section C of this Contract.
- (c) “Notice to Proceed (NTP)” means the authorization issued by the Contracting Officer for the Contractor to start incoming transition performance of this Contract.
- (d) Contractor” means “the Offeror” as specified in Block 15A of Standard Form 33, Section A entitled “Solicitation, Offer and Award” of the contract.
- (e) “Incumbent Contractor” means Catawba-TEA, LLC performing work under Contract No. 89303323DEM000087.
- (f) “Incumbent Employees” means employees who are regular employees of the Incumbent Contractor(s) as of the effective date of the NTP.
- (g) “Non-Incumbent Employees” means new hires, i.e. employees other than Incumbent Employees hired by the Contractor after the effective date of the NTP.

### **H.4 Special Provisions Applicable to Workforce Transition and Employee Compensation: Pay and Benefits**

- (a) Preference in Hiring. The Contractor and its subcontractors shall maintain and develop trained and qualified personnel to perform the work scope included in Section C, consistent with applicable law, and the terms of this Contract, including the paragraphs set forth below. Means of maintaining and developing a trained and qualified workforce may include, but are not limited to, the utilization of apprentices, interns, veterans, and summer hires.

(1) The Contractor shall provide, during the transition period, preferences in hiring for vacancies at the various sites noted in the PWS for non-exempt positions in accordance with applicable law as set forth below:

- (i) The Contractor shall provide Incumbent Employees the hiring preferences in paragraphs (A) and (B) in descending order of priority:
  - (A) A preference in hiring for vacancies in non-exempt positions that are substantially equivalent to the position each respective Incumbent Employee held on the effective date of the NTP.
  - (B) A preference in hiring for vacancies in non-exempt positions for Incumbent Employees not hired into a substantially equivalent position in (i) but who meet the qualifications for another position.

(b) Employee Compensation: Pay and Benefits.

(1) Contractor Employee Compensation Plan

The Contractor shall submit, for Contracting Officer approval, by close of the Transition Period, a Contractor Employee Compensation Plan (to be submitted during contract transition only) demonstrating how the Contractor will comply with the compensation requirements of this Contract. The Contractor Employee Compensation Plan shall describe the Contractor's policies regarding compensation, pensions, and other benefits, and how these policies will support at reasonable cost the effective recruitment and retention of a highly skilled, motivated, and experienced workforce.

A description of the Contractor Employee Compensation Program should include the following components:

- (i) Philosophy and strategy for all pay delivery programs.
- (ii) System for establishing a job worth hierarchy.
- (iii) Method for relating internal job worth hierarchy to external market.
- (iv) System that links individual and/or group performance to compensation decisions.
- (v) Method for planning and monitoring the expenditure of funds.
- (vi) Method for ensuring compliance with applicable laws and regulations.
- (vii) System for communicating the programs to employees.
- (viii) System for internal controls and self-assessment; and
- (ix) System to ensure that reimbursement of compensation, including stipends, for employees who are on joint appointments with a parent or other organization shall be on a pro-rated basis.

(2) Total Compensation System

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

(3) Reports and Information.

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

- (i) 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, and planned distribution of funds for the following year.
- (ii) A list of the top five most highly compensated executives as defined in FAR 31.205-6(p)(14)(i) and their total cash compensation at the time of NTP and at the time of any subsequent change to their total cash compensation no later than March 1st of each year.

Section 702 of the Bipartisan Budget Act of 2013 (BBA; Pub. L. 113-67, December 26, 2013) establishes a cap on the reimbursement of compensation costs for contractor employees, adjusted annually to reflect the change in the Employment Cost Index for all workers as calculated by the Bureau of Labor Statistics (BLS).

(4) Pay and Benefit Programs

The Contractor shall establish pay and benefit programs consistent with applicable law, provided however, that employees scheduled to work fewer than 20 hours per week receive only those benefits required by law. Employees are eligible for benefits, subject to the terms, conditions, and limitations of each benefit program.

All 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.

The Contractor shall submit the below information, as applicable, to the Contracting Officer for a determination of cost allowability for reimbursement under the Contract:

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

- (ii) Variable pay programs/incentives. If not already authorized under Appendix A of the contract [or an Advance Agreement if there is no Appendix A], a justification shall be provided with proposed costs and impacts to budget, if any.
- (iii) In the absence of Departmental policy to the contrary (e.g., Secretarial pay freeze) a Contractor that meets the criteria, as set forth below, is not required to submit a Compensation Increase Plan (CIP) request to the Contracting Officer for an advance determination of cost allowability for a Merit Increase fund or Promotion/Adjustment fund:
  - (A) The Merit Increase and Promotion/Adjustment funds do not exceed the mean percent increase included in the annual Departmental guidance providing the WorldatWork Salary Budget Survey's salary increase projected for the CIP year.
  - (B) The budget used for both Merit Increase funds and Promotion/Adjustment funds shall be based on the payroll for the end of the previous CIP year.
  - (C) Salary structure adjustments do not exceed the mean WorldatWork structure adjustments projected for the CIP year and communicated through the annual Department CIP guidance.
  - (D) Please note: No later than the first day of the CIP cycle, Contractors must provide notification to the Contracting Officer of planned increases and position to market data by mutually agreed-upon employment categories. No presumption of allowability will exist for employee job classes that exceed market position.
- (iv) If a Contractor does not meet the criteria included in (iii) above, a CIP must be submitted to the Contracting Officer for an advance determination of cost allowability, unless the Contracting Officer, in accordance with the subparagraph (7) *Alternate Contractor Human Resource Requirements*, obtains an audit of the Contractor's compensation and benefits system and of its incurred costs from either DCAA, or an independent public accounting firm under the DOE contract for such services. Otherwise, the CIP should include the following components and data:
  - (A) Comparison of average pay to market average pay.
  - (B) Information regarding surveys used for comparison.
  - (C) Aging factors used for escalating survey data and supporting information.
  - (D) Projection of escalation in the market and supporting information.
  - (E) Information to support proposed structure adjustments, if any.

- (F) Analysis to support special adjustments.
- (G) Funding requests for each pay structure to include breakouts of merit, promotions, variable pay, special adjustments, and structure movement.
- (H) The proposed plan totals shall be expressed as a percentage of the payroll for the end of the previous CIP year.
- (I) All pay actions granted under the CIP are fully charged when they occur regardless of the time of year in which the action transpires and whether the employee terminates before year end.
- (J) Specific payroll groups (e.g., exempt, nonexempt) for which CIP amounts are intended shall be defined by mutual agreement between the Contractor and the Contracting Officer.
- (K) The Contracting Officer may adjust the CIP amount after approval based on major changes in factors that significantly affect the plan amount (for example, in the event of a major reduction in force or significant ramp-up).
- (L) A discussion of the impact of budget and business constraints on the CIP amount.
- (M) Comparison of pay to relevant factors other than market average pay.
- (v) Individual compensation actions for the top contractor official (e.g., laboratory director/plant manager or equivalent) and Key Personnel not included in the CIP. For those Key Personnel included in the CIP, DOE will approve salaries upon the initial Contract award and when key personnel are replaced during the life of the Contract. DOE will have access to all individual salary reimbursements. This access is provided for transparency; DOE will not approve individual salary actions (except as previously stated).
- (vi) The Contracting Officer's approval of individual compensation actions will be required only for the top Contractor official (e.g., laboratory director/plant manager or equivalent) and Key Personnel as stated in (v) above. The base salary reimbursement level for the top contractor official establishes the maximum allowable base salary reimbursement under the Contract. Unusual circumstances may require a deviation for an individual on a case-by-case basis. Any such deviations must be approved by the Contracting Officer.
- (vii) Severance Pay is not payable to an employee under this Contract if the employee:

- (A) Voluntarily separates, resigns, or retires from employment,
- (B) Is offered employment with a successor/replacement contractor,
- (C) Is offered employment with a parent or affiliated company, or
- (D) Is discharged for cause.

(5) Service Credit.

The Contractor shall provide service credit for leave as set forth below:

- (i) Service Credit for Leave. For Incumbent Employees hired by the Contractor as set forth in clause H.3, entitled *Definitions*, the Contractor shall carry over accrued leave balances and the length of service credit from Incumbent Contractors for purposes of determining rates of accruing leave for these employees unless otherwise required by applicable law and applicable collective bargaining agreement(s).
- (ii) Service Credit for Fringe Benefits Other Than Leave. Service credit for all individuals hired by the Contractor shall be applied consistent with any applicable law, and the terms of the applicable benefit plan(s).
- (iii) Service Credit for purposes of determining severance pay does not include any period of prior service for which severance pay has been previously paid through a DOE cost-reimbursement contract.

(6) Other Benefit Programs.

No presumption of allowability will exist when the Contractor implements a new benefit plan, or makes changes to existing benefit plans and the Contractor has not provided the Contracting Officer the opportunity to review the allowability of the changes prior to implementation. The Contractor shall submit for prior approval benefit changes that result in increases to the Department's long-term liabilities that are reported in the Department's financial statement, and increases in other benefits such as paid time off, insurance and employer contributions for defined contribution pension plans. Examples of benefits changes that increase the Department's long-term liabilities include defined benefit pension plan changes and postretirement benefits other than pensions. Any changes made by the Contractor shall be in accordance with and pursuant to the terms and conditions of the contract. Advance notification, rather than approval, is required for changes that do not increase costs and are not contrary to Departmental policy or written instruction.

(7) Alternate Contractor Human Resource Requirements.

Alternatively, the Contracting Officer may obtain an audit of the Contractor's compensation and benefits system and of its incurred costs from either DCAA or from DOE's independent public accounting firm (under contract with DOE); if the Contracting Officer does, the Contractor will not be required to submit the Compensation Increase Plan.

- (8) Allowable Salary for Key Personnel. Within 20 days after the effective date of the NTP, or as identified by the Contracting Officer, the Contractor shall submit EM Form 3220.5, Application for Contractor Compensation Approval, to the Contracting Officer for each key personnel position listed in the Contract for a determination of cost allowability for reimbursement under the Contract. To support a reasonableness determination, the contractor shall also provide compensation market survey data to support/justify the requested salary and any other information as requested by the Contracting Officer.
- (9) Annual Actuarial Valuations. Notwithstanding the above, the Contractor has responsibility for administering and maintaining the qualified status of all pension and other benefit plans that it sponsors under this Contract consistent with the plan documents. The Contractor shall submit to the Contracting Officer certification that the benefit plans are in full compliance with IRC and ERISA requirements.

#### **H.5 Workforce Transition and Benefits Transition: Plans and Timeframes**

- (a) Workforce Transition Plan. The Contractor shall submit a Workforce Transition Plan for Contracting Officer approval, describing in detail the Contractor's plans and procedures as to how the Contractor will comply with the hiring preferences set forth in clause H.4 *Special Provisions Applicable to Workforce Transition and Employee Compensation: Pay and Benefits* and Section I clause DEAR 952.226-74, *Displaced Employee Hiring Preference*.
  - (1) Within 5 days after the effective date of the NTP, the Contractor shall:
    - (i) Provide the Contracting Officer with a list of Contractor personnel who will be responsible for transitioning the Incumbent Employees and for development of the transition agreements, including specifically the personnel responsible for ensuring that the Contractor complies with the National Labor Relations Act and clause H.6, *DOE-H-2028 Labor Relations*, and contact information for the above personnel.
    - (ii) Submit to the Contracting Officer a description of any and all transition agreements that it intends to enter into with the Incumbent Contractor to ensure compliance with clauses H.4 *Special Provisions Applicable to Workforce Transition and Employee Compensation: Pay and Benefits* during the transition period.
    - (iii) Obtain information from the Incumbent Contractor(s), identifying the Incumbent Employees as defined in Clause H.3, *Definitions*.
  - (2) Within 10 days after the effective date of the NTP the Contractor shall submit to the Contracting Officer copies of the draft Workforce Transition Plan for the Contractor, including processes and procedures regarding how the Contractor will implement and ensure compliance with the hiring preferences set forth in clause H.4 *Special Provisions Applicable to Workforce Transition and Employee Compensation: Pay*

*and Benefits*, and with the requirements of clause H.6 *H-2028 Labor Relations*, as applicable.

- (3) Within 15 days after the effective date of the NTP, the Contractor shall provide to the Contracting Officer a copy of the final Workforce Transition Plan described in paragraph (2) above.
- (4) Within 15 days after the effective date of the NTP, the Contractor shall provide to the Contracting Officer copies of the final transition agreements described in paragraph (a)(1)(ii) above.
- (5) The Contractor shall submit reports to the Contracting Officer regarding the Contractor's and its subcontractors' implementation of the hiring preferences required by clause H.4 *Special Provisions applicable to Workforce Transition and Employee Compensation: Pay and Benefits* in accordance with the timeframes set forth below. These reports shall include the following information: employee, hire date or anticipated hire dates; and, where applicable, the Incumbent Contractor or subcontractor that employed the employee and the Contractor or subcontractor that hired the employee.
  - (i) During the transition period, such reports shall be provided to the Contracting Officer on a weekly basis; or
  - (ii) On a less frequent basis, if requested by the Contracting Officer.
- (6) The Contractor shall implement the transition activities as set forth in the approved transition plan and such other transition activities as may be authorized or directed by the Contracting Officer.

(b) Benefits Transition Plan.

- (1) The Contractor shall submit a Benefits Transition Plan for Contracting Officer approval, within 15 days after the effective date of the NTP, as set forth herein.
  - (i) A detailed description of the Contractor's plans and procedures on how the Contractor will comply with clauses H.4 *Special Provisions Applicable to Workforce Transition and Employee Compensation: Pay and Benefits*; and this paragraph (b).
  - (ii) All transitions of the existing pension(s) plans including market-based retirement and medical plans and other existing benefit plans, as well as establishment of any new plans, shall be completed by the end of the transition period.
  - (iii) A detailed description of the Contractor's policies regarding pensions and other benefits for which the Department reimburses costs under this Contract, and how these policies will support a reasonable cost the effective recruitment and retention of a highly skilled, motivated, and experienced workforce.

- (iv) A written description of how benefit plans provided to employees pursuant to clauses H.4 *Special Provisions Applicable to Workforce Transition and Employee Compensation: Pay and Benefits* will be transitioned, or if needed, developed, and implemented on or before the last day of the transition Period.
  - (v) Provide the Contracting Officer with a list of Contractor personnel who will be responsible for communicating and implementing the benefit plans transition of existing benefit plans
  - (vi) Provide estimated costs and detailed breakouts of the costs to accomplish workforce and benefits transition activities within the timeframes specified,
  - (vii) Submit a detailed description of its plans and processes, including timeframes and specific projected dates for accomplishment of each activity necessary to ensure compliance with the requirements set forth in clause H.4 *Special Provisions Applicable to Workforce Transition and Employee Compensation: Pay and Benefits* including, the establishment of employee benefit plans.
  - (viii) Identify relevant Contractor personnel or other personnel who will administer or assist in administering the benefit plans, including the Contractor's benefit plan administrators and personnel, head of human resources, ERISA counsel, actuaries, and any other personnel deemed necessary by the Contractor.
  - (ix) If needed, draft or proposed final versions of any defined benefit and defined contribution pension plans, and other benefit plans including applicable draft Summary Plan Descriptions that the Contractor proposes to sponsor.
- (2) The Contractor shall respond to any comments provided by the Contracting Officer under any of the above subparagraphs (b)(1) within two days of receipt of the comments, or the period of time specified by the Contracting Officer.
- (3) After the Contract Transition Period and throughout the remaining period of performance of the Contract the Contractor shall promptly provide upon request the following information to the Contracting Officer:
- (i) Documents relating to benefit plans offered to Contractor employees, including but not limited to Summary Plan Descriptions, all Plan documents, applicable amendments, employee handbooks that summarize benefits provided to employees, and other documents that describe benefits provided to employees of the Contractor who perform work on this Contract;
  - (ii) Any and all other documents pertaining to implementation of and compliance with implementation of the compensation and benefit programs

identified in clause H.4 *Special Provisions Applicable to Workforce Transition and Employee Compensation: Pay and Benefits*; and

- (iii) Additionally, the contractor shall provide timely data responses to Departmental annual and ad hoc data requests. Such data responses shall be provided within the timeframe established by the Contracting Officer for each response and, if no timeframe is specified, the Contractor shall provide the data response within one calendar day.

#### **H.6 DOE-H-2028 Labor Relations (Oct 2014) (Revised)**

- (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 these activities.
- (b) The Contractor shall use its best efforts to ensure that collective bargaining agreements negotiated under this Contract contain provisions designed to assure no disruption in services during the performance of the Contract. All such collective bargaining agreements entered into during the Contract Period of Performance should, to the extent that the parties to those collective bargaining agreements agree, provide that grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout or other disruption in services. For this purpose, each collective bargaining agreement should provide an effective grievance procedure with arbitration as its final step, unless the parties agree upon some other method of assuring no disruption in services. The Contractor shall include the substance of this subparagraph (b) in any subcontracts.
- (c) In addition to FAR 52.222-1, Notice to the Government of Labor Disputes, and other requirements in the contract, the Contractor shall immediately notify the Contracting Officer or designee of all labor relations issues and matters of interest, including, but not limited to, organizing initiatives, unfair labor practice charges or complaints, work stoppages, picketing, labor arbitrations, National Labor Relations Board charges, legal or judicial proceedings, and settlement agreements and will furnish such additional information as may be required from time to time by the Contracting Officer.

#### **H.7 Workforce Restructuring (Revised) (Feb 2019)**

- (a) The Contractor shall regularly analyze workforce requirements and will develop appropriate workforce restructuring strategies to ensure continued availability of the critical workforce knowledge, skills, and abilities necessary for performance under this Contract.
- (b) When the Contractor determines that a change in the workforce is necessary, the Contractor shall accomplish the workforce restructuring in a manner consistent with the DOE General Workforce Restructuring Plan, if applicable, in effect for the facility or site. The General Plan lays out how contractor workforce restructuring will be conducted at the applicable site in a manner that is consistent with DOE policy.

The Contractor is only required to provide notification of Self-Select Voluntary Separation

Programs of 100 or more if consistent with the following parameters: 1) in accordance with approved laboratory and contractor policies and contract requirements; 2) no enhanced benefits (severance or pension); 3) no backfilling or re-employment of employees for a one-year period after severance is paid; 4) business case submitted 30 business days in advance of notification date that includes maximum number of voluntary separations, maximum dollars, positions/skills impacted; reasons separations are needed, including how conducting a Self-Select Voluntary Separation Program will better position the contractor to conduct the mission work; copies of the self-select application and any employee waivers or releases of claims, and a communication plan; and 5) voluntary separations offered to employees in a non-discriminatory and legally compliant manner. There is no backfilling where a separating employee is replaced by an internal candidate so long as:

- (1) The separating employee is leaving voluntarily;
  - (2) The internal replacement is a regular, permanent employee on the contractor's payroll, not a temporary hire, staff augmentee, or someone serving under a post-doctoral program, or other short-term program;
  - (3) The replacement results in a net reduction in headcount and costs of regular employees; and
  - (4) The replacement is accomplished in an otherwise legally compliant manner, including no unlawful intent to discriminate based upon age.
- (c) The Contractor shall ensure it does not hire or rehire individuals who volunteered for termination during a Self-Select Voluntary Separation Program, at any DOE or NNSA site, during the one-year period following the separation. If an employee is hired or rehired prior to the one-year period, the employee may be required to pay back, to the contractor who provided the severance payment, all or a pro-rata amount of the severance received under the Voluntary Separation Program.
- (d) The Contractor must prepare and submit to the Contracting Officer a specific workforce restructuring plan (Specific Plan), as described below in paragraph (e), if the Contractor intends to reduce its workforce by 100 or more employees through an involuntary separation action within a rolling 12-month period.
- (e) The Contractor's Specific Plan shall lay out how the Contractor will conduct its workforce restructuring action at the site. The Contractor's Specific Plan for reducing 100 or more employees through an involuntary separation action shall be submitted to the Contracting Officer for approval at least 60 days in advance of the first communication planned to be given to the employees and public. Any other Specific Plans must be submitted 30 business days in advance of the first communication planned to be given to the employees and public. The templates for contractor Involuntary Separation Plan, as well as the General Release and Waiver Forms, are available online at: <http://www.energy.gov/gc/services/technology-transfer-and-procurement/office-assistant-general-counsel-labor-and-pension>.
- (f) Pay-in-lieu of notice beyond two workweeks requires written advance Contracting Officer approval. The Contractor shall submit the request to the Contracting Officer as part of the

Workforce Restructuring package submitted for approval in (e) above, and include the number of days of pay-in-lieu of notice requested, above two work-weeks, a detailed business justification, and the associated costs.

- (g) The Contractor is encouraged to consider the use of employee waivers and releases. DOE has developed a model waiver and release of claims. The forms are available online at the website set forth in (e) above. Any deviation from the models must be approved by the Contracting Officer.
- (h) The Contractor must perform an adverse impact analysis (also known as a diversity analysis) as part of its determination to undertake involuntary separation action(s). A copy of the diversity analysis for involuntary separation action(s) affecting 100 or more contractor employees within a rolling 12-month period shall be submitted to the Contracting Officer and DOE or NNSA site counsel, as applicable, prior to notification of employees selected for involuntary separation.
- (i) The Contracting Officer will review and approve any Specific Plan or diversity analysis submitted for review affecting the reduction of 100 or more employees through an involuntary separation action within 10 business days after submission of a complete package by the Contractor unless the Contractor is notified of issues necessitating an extension of time. Should DOE request additional information from the Contractor regarding any Specific Plan or diversity analysis, the Contractor will respond to such request within 3 business days.
- (j) The Contractor is responsible and accountable for conducting and defending all voluntary and involuntary separation actions in compliance with applicable laws, regulations, and the contract terms and conditions.
- (k) Questions of cost allowability related to: a) any Self-Select Voluntary Separation Programs for which the Contractor provides only notification, or b) any involuntary separation program(s) conducted without Contracting Officer approval will be resolved consistently with applicable laws and regulations and with the terms and conditions of this contract, including, but not limited to, DEAR at 48 C.F.R. 952.231-71(f).

#### **H.8 DOE-H-2049 Insurance Requirement (Oct 2014)**

- (a) In accordance with the clause DEAR 952.231-71, Insurance-Litigation and Claims, the following types and minimum amounts of insurance shall be maintained by the Contractor:
  - (1) Workers' compensation – Amount in accordance with applicable Federal and State workers' compensation and occupational disease statutes.
  - (2) Employer's liability – \$100,000 (except in States with exclusive or monopolistic funds that do not permit worker's compensation to be written by private carriers).
  - (3) Comprehensive bodily injury liability – \$500,000.
  - (4) Property damage liability – None, unless otherwise required by the Contracting Officer.
  - (5) Comprehensive automobile bodily injury liability – \$200,000 per person and \$500,000 per occurrence.

- (6) Comprehensive automobile property damage – \$20,000 per occurrence.
- (b) The Contractor shall provide evidence of such insurance, if requested by the Contracting Officer; and the Contracting Officer may require such evidence to be provided prior to the commencement of work under the contract.

### **H.9 DOE-H-2073 Risk Management and Insurance Programs**

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

#### **(a) Basic Requirements**

- (1) Maintain commercial insurance or a self-insured program, (i.e., any insurance policy or coverage that protects the Contractor from the risk of legal liability for adverse actions associated with its operation, including malpractice, injury, or negligence) as required by the terms of the Contract. Types of insurance include automobile, general liability, and other third-party liability insurance. Other forms of coverage must be justified as necessary in the operation of the Department facility and/or the performance of the Contract, and approved by the DOE.
- (2) Contractors shall not purchase insurance to cover public liability for nuclear incidents without DOE authorization (see DEAR 950.5070 entitled, Indemnification and DEAR 950.70 entitled, Nuclear Indemnification of DOE Contractors).
- (3) Demonstrate that insurance programs and costs comply with the cost limitations and exclusions at FAR 28.307 entitled, Insurance Under Cost Reimbursement Contracts, FAR 31.205-19 entitled, Insurance and Indemnification, DEAR 931.205-19 entitled, Insurance and Indemnification, DEAR 952.231-71 entitled Insurance-Litigation and Claims, and DEAR 970.5228-1 entitled Insurance-Litigation and Claims.
- (4) Demonstrate that the insurance program is being conducted in the Government's best interest and at a reasonable cost.
- (5) The Contractor shall submit copies of all insurance policies or insurance arrangements to the Contracting Officer no later than 30 days after the purchase date.
- (6) When purchasing commercial insurance, the Contractor shall use a competitive process to ensure costs are reasonable.
- (7) Ensure self-insurance programs include the following elements:
  - (i) Compliance with criteria set forth in FAR 28.308 entitled, Self-Insurance. Approval of self-insurance is predicated upon submission of verifiable proof that the self-insurance charge does not exceed the cost of purchased insurance. This includes hybrid plans (i.e., commercially purchased insurance with self-insured retention, such as large deductible, matching deductible, retrospective rating cash flow plans, and other plans where insurance reserves are under the control of the insured). The self-insured retention components of such plans are self-insurance and are subject to the approval and submission requirements of FAR 28.308, as applicable.

- (ii) Demonstration of full compliance with applicable state and federal regulations and related professional administration necessary for participation in alternative insurance programs.
  - (iii) Safeguards to ensure third party claims and claims settlements are processed in accordance with approved procedures.
  - (iv) Accounting of self-insurance charges.
  - (v) Accrual of self-insurance reserve. The Contracting Officer's approval is required and predicated upon the following:
    - (A) The claims reserve shall be held in a special fund or interest-bearing account.
    - (B) Submission of a formal written statement to the Contracting Officer stating that use of the reserve is exclusively for the payment of insurance claims and losses, and that DOE shall receive its equitable share of any excess funds or reserve.
    - (C) Annual accounting and justification as to the reasonableness of the claims reserve submitted for Contracting Officer review.
    - (D) Claim reserves, not payable within the year the loss occurred, are discounted to present value based on the prevailing Treasury rate.
  - (8) Separately identify and account for interest cost on a Letter of Credit used to guarantee self-insured retention, as an unallowable cost and omitted from charges to the DOE contract.
  - (9) Comply with the Contracting Officer's written direction for ensuring the continuation of insurance coverage and settlement of incurred and/or open claims and payments of premiums owed or owing to the insurer for prior DOE contractors.
- (b) Plan Experience Reporting. The Contractor shall:
- (1) Provide the Contracting Officer with annual experience reports for each type of insurance (e.g., automobile and general liability), listing the following for each category:
    - (i) The amount paid for each claim.
    - (ii) The amount reserved for each claim.
    - (iii) The direct expenses related to each claim.
    - (iv) A summary for the year showing the total number of claims.
    - (v) A total amount for claims paid.
    - (vi) A total amount reserved for claims.
    - (vii) The total amount of direct expenses.
  - (2) Provide the Contracting Officer with an annual report of insurance costs and/or self-insurance charges. When applicable, separately identify total policy expenses (e.g., commissions, premiums, and costs for claims servicing) and major claims during the year, including those expected to become major claims (e.g., those claims valued at \$100,000 or greater).

- (3) Provide additional claim financial experience data as may be requested on a case- by-case basis.
- (c) Terminating Operations. The Contractor shall:
- (1) Ensure protection of the Government’s interest through proper recording of cancellation credits due to policy terminations and/or experience rating;
  - (2) Identify and provide continuing insurance policy administration and management requirements to a successor, other DOE contractor, or as specified by the Contracting Officer; and
  - (3) Reach agreement with DOE on the handling and settlement of self-insurance claims incurred but not reported at the time of contract termination; otherwise, the Contractor shall retain this liability.
- (d) Successor Contractor or Insurance Policy Cancellation. The Contractor shall:
- (1) Obtain the written approval of the contracting officer for any change in program direction; and
  - (2) Ensure insurance coverage replacement is maintained as required and/or approved by the contracting officer.

#### **H.10 Overtime Control Reporting**

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

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

Summary Overtime Justification Reports will be used to assist the Contracting Officer in determining reasonableness and cost allowability. If the total overtime hours on a rolling 12-month average exceeds 10 percent, the Contractor shall submit to the Contracting Officer an Overtime Control Plan. The overtime percentage is to be calculated by dividing total overtime hours worked by total hours worked (i.e. the sum of overtime hours and straight time hours). This overtime premium will not be considered a Contracting Officer determination of overtime reasonableness or cost allowability.

#### **BUSINESS SYSTEM CLAUSES**

##### **H.11 DOE-H-2022 Contractor Business Systems (Oct 2014) (Revised)**

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

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

Contractor business systems means—

- (1) Accounting system, if this contract includes the Section H clause Accounting System Administration; and
- (2) Purchasing system, if this contract includes the Section H clause Contractor Purchasing System Administration.

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

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

(c) Significant deficiencies.

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

(d) Withholding payments.

- (1) If the Contracting Officer issues the final determination with a notice to withhold payments for significant deficiencies in a contractor business system required under this contract, the Contracting Officer will direct the Contractor, in writing, to withhold five percent from its invoices until the Contracting Officer has determined that the Contractor has corrected all significant deficiencies as directed by the Contracting Officer's final determination. The Contractor shall, within 45 days of receipt of the notice, either—
  - (i) Correct the deficiencies; or
  - (ii) Submit an acceptable corrective action plan showing milestones and actions to eliminate the deficiencies. The plan shall contain—
    - (A) Root cause(s) identification of the problem(s);
    - (B) The proposed corrective action(s) to address the root cause(s);

- (C) A schedule for implementation; and
  - (D) The name of the person responsible for the implementation.
- (2) If the Contractor submits an acceptable corrective action plan within 45 days of receipt of a notice of the Contracting Officer's intent to withhold payments, and the Contracting Officer, in consultation with the auditor or functional specialist, determines that the Contractor is effectively implementing such plan, the Contracting Officer will direct the Contractor, in writing, to reduce the percentage withheld on invoices to two percent until the Contracting Officer determines the Contractor has corrected all significant deficiencies as directed by the Contracting Officer's final determination. However, if at any time, the Contracting Officer determines that the Contractor has failed to follow the accepted corrective action plan, the Contracting Officer will increase withholding and direct the Contractor, in writing, to increase the percentage withheld on invoices to the percentage initially withheld, until the Contracting Officer determines that the Contractor has corrected all significant deficiencies as directed by the Contracting Officer's final determination.
- (3) Payment withhold percentage limits.
- (i) The total percentage of payments withheld on amounts due on this contract shall not exceed—
    - (A) Five percent for one or more significant deficiencies in any single contractor business system; and
    - (B) Ten percent for significant deficiencies in multiple contractor business systems.
  - (ii) If this contract contains pre-existing withholds, and the application of any subsequent payment withholds will cause withholding under this clause to exceed the payment withhold percentage limits in paragraph (e)(3)(i) of this clause, the Contracting Officer will reduce the payment withhold percentage in the final determination to an amount that will not exceed the payment withhold percentage limits.
- (4) For the purpose of this clause, payment means invoicing for any of the following payments authorized under this contract:
- (i) Interim payments under—
    - (A) Cost-reimbursement contracts;
    - (B) Incentive type contracts;
    - (C) Time-and-materials contracts; or
    - (D) Labor-hour contracts.
  - (ii) Progress payments to include fixed-price contracts.
  - (iii) Performance-based payments to include fixed-price contracts.
- (5) Payment withholding shall not apply to payments on fixed-price line items where performance is complete and the items were accepted by the Government.

- (6) The withholding of any amount or subsequent payment to the Contractor shall not be construed as a waiver of any rights or remedies the Government has under this contract.
  - (7) Notwithstanding the provisions of any clause in this contract providing for interim, partial, or other payment withholding on any basis, the Contracting Officer may withhold payment in accordance with the provisions of this clause.
  - (8) The payment withholding authorized in this clause is not subject to the interest-penalty provisions of the Prompt Payment Act.
- (e) Correction of deficiencies.
- (1) The Contractor shall notify the Contracting Officer, in writing, when the Contractor has corrected the business system's deficiencies.
  - (2) Once the Contractor has notified the Contracting Officer that all deficiencies have been corrected, the Contracting Officer will take one of the following actions:
    - (i) If the Contracting Officer determines that the Contractor has corrected all significant deficiencies as directed by the Contracting Officer's final determination, the Contracting Officer will direct the Contractor, in writing, to discontinue the payment withholding from invoices under this contract associated with the Contracting Officer's final determination, and authorize the Contractor to bill for any monies previously withheld that are not also being withheld due to other significant deficiencies. Any payment withholding under this contract due to other significant deficiencies, will remain in effect until the Contracting Officer determines that those significant deficiencies are corrected.
    - (ii) If the Contracting Officer determines that the Contractor still has significant deficiencies, the Contractor shall continue withholding amounts from its invoices in accordance with paragraph (e) of this clause, and not invoice for any monies previously withheld.
    - (iii) If the Contracting Officer determines, based on the evidence submitted by the Contractor, that there is a reasonable expectation that the corrective actions have been implemented and are expected to correct the significant deficiencies, the Contracting Officer will discontinue withholding payments, and release any payments previously withheld directly related to the significant deficiencies identified in the Contractor notification, and direct the Contractor, in writing, to discontinue the payment withholding from invoices associated with the Contracting Officer's final determination, and authorize the Contractor to bill for any monies previously withheld.
    - (iv) If, within 90 days of receipt of the Contractor notification that the Contractor has corrected the significant deficiencies, the Contracting Officer has not made a determination in accordance with paragraphs (f)(2)(i), (ii), or (iii) of this clause, the Contracting Officer will direct the Contractor, in writing, to reduce the payment withholding from invoices directly related to the significant deficiencies identified in

- the Contractor notification by a specified percentage that is at least 50 percent, but not authorize the Contractor to bill for any monies previously withheld until the Contracting Officer makes a determination in accordance with paragraphs (f)(2)(i), (ii), or (iii) of this clause.
- (v) At any time after the Contracting Officer directs the Contractor to reduce or discontinue the payment withholding from invoices under this contract, if the Contracting Officer determines that the Contractor has failed to correct the significant deficiencies identified in the Contractor's notification, the Contracting Officer will reinstate or increase withholding and direct the Contractor, in writing, to reinstate or increase the percentage withheld on invoices to the percentage initially withheld, until the Contracting Officer determines that the Contractor has corrected all significant deficiencies as directed by the Contracting Officer's final determination.

#### **H.12 DOE-H-2025 Accounting System Administration (Oct 2014) (Revised)**

- (a) Definitions. As used in this clause—
- (1) Acceptable accounting system means a system that complies with the system criteria in paragraph (c) of this clause to provide reasonable assurance that—
    - (i) Applicable laws and regulations are complied with;
    - (ii) The accounting system and cost data are reliable;
    - (iii) Risk of misallocations and mischarges are minimized; and
    - (iv) Contract allocations and charges are consistent with billing procedures.
  - (2) Accounting system means the Contractor's system or systems for accounting methods, procedures, and controls established to gather, record, classify, analyze, summarize, interpret, and present accurate and timely financial data for reporting in compliance with applicable laws, regulations, and management decisions, and may include subsystems for specific areas such as indirect and other direct costs, compensation, billing, labor, and general information technology.
  - (3) Significant deficiency means a shortcoming in the system that materially affects the ability of officials of the Department of Energy to rely upon information produced by the system that is needed for management purposes.
- (b) General. The Contractor shall establish and maintain an acceptable accounting system. If the Contractor plans to adopt the existing system from the previous Contractor, the Contractor is responsible for the system and shall comply with the system criteria required in this clause. The Contractor shall provide in writing to the Contracting Officer documentation that its accounting system meets the system criteria in paragraph (c) of this clause no later than 120 days after contract award. Failure to maintain an acceptable accounting system, as defined in this clause, may result in disapproval of the system.
- (c) System criteria. The Contractor's accounting system shall provide for—

- (1) A sound internal control environment, accounting framework, and organizational structure;
  - (2) Proper segregation of direct costs from indirect costs;
  - (3) Identification and accumulation of direct costs by contract;
  - (4) A logical and consistent method for the accumulation and allocation of indirect costs to intermediate and final cost objectives;
  - (5) Accumulation of costs under general ledger control;
  - (6) Reconciliation of subsidiary cost ledgers and cost objectives to general ledger;
  - (7) Approval and documentation of adjusting entries;
  - (8) Exclusion from costs charged to Government contracts of amounts which are not allowable in terms of 48 CFR part 31, Contract Cost Principles and Procedures, and other contract provisions;
  - (9) Identification of costs by contract line item and by units (as if each unit or line item were a separate contract), if required by the contract;
  - (10) Cost information, as required, to readily calculate indirect cost rates from the books of accounts;
  - (11) Billings that can be reconciled to the cost accounts for both current and cumulative amounts claimed and comply with contract terms;
  - (12) Adequate, reliable data for use in pricing follow-on acquisitions; and
  - (13) Accounting practices in accordance with standards promulgated by Generally Accepted Accounting Principles (GAAP).
- (d) Significant deficiencies.
- (1) The Contracting Officer will provide an initial determination to the Contractor, in writing, on any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.
  - (2) The Contractor shall respond within 45 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's accounting system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing. In the event the Contractor did not respond in writing to the initial determination within the response time, this lack of response shall indicate that the Contractor agrees with the initial determination.
  - (3) The Contracting Officer will evaluate the Contractor's response or the Contractor's lack of response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—
    - (i) Remaining significant deficiencies;

- (ii) The adequacy of any proposed or completed corrective action; and
  - (iii) System disapproval, if the Contracting Officer determines that one or more significant deficiencies remain.
- (e) If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the significant deficiencies.
- (f) Withholding payments. If the CO makes a final determination to disapprove the Contractor's accounting system, and the Contract includes the Section H clause entitled, Contractor Business Systems, the CO will withhold payments in accordance with that clause.

### **H.13 DOE-H-2026 Contractor Purchasing System Administration (Oct 2014) (Revised)**

- (a) Definitions. As used in this clause—
- (1) Acceptable purchasing system means a purchasing system that complies with the system criteria in paragraph (c) of this clause.
  - (2) Purchasing system means the Contractor's system or systems for purchasing and subcontracting, including make-or-buy decisions, the selection of vendors, analysis of quoted prices, negotiation of prices with vendors, placing and administering of orders, and expediting delivery of materials.
  - (3) Significant deficiency means a shortcoming in the system that materially affects the ability of officials of the Department of Energy to rely upon information produced by the system that is needed for management purposes.
- (b) General. The Contractor shall establish and maintain an acceptable purchasing system. If the Contractor plans to adopt the existing system from the previous Contractor, the Contractor is responsible for the system and shall comply with the system criteria required in this clause. The Contractor shall provide in writing to the Contracting Officer documentation that its purchasing system meets the system criteria in paragraph (c) of this clause no later than 120 days after contract award. Failure to maintain an acceptable purchasing system, as defined in this clause, may result in disapproval of the system by the Contracting Officer.
- (c) System criteria. The Contractor's purchasing system shall—
- (1) Have an adequate system description including policies, procedures, and purchasing practices that comply with the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) and the Department of Energy Acquisition Regulation (48 CFR Chapter 9);
  - (2) Ensure that all applicable purchase orders and subcontracts contain all flowdown clauses, including terms and conditions and any other clauses needed to carry out the requirements of the prime contract;

- (3) Maintain an organization plan that establishes clear lines of authority and responsibility;
- (4) Ensure all purchase orders are based on authorized requisitions and include a complete and accurate history of purchase transactions to support vendor selected, price paid, and document the subcontract/purchase order files which are subject to Government review;
- (5) Establish and maintain adequate documentation to provide a complete and accurate history of purchase transactions to support vendors selected and prices paid;
- (6) Apply a consistent make-or-buy policy that is in the best interest of the Government;
- (7) Use competitive sourcing to the maximum extent practicable, and ensure debarred or suspended contractors are properly excluded from contract award;
- (8) Evaluate price, quality, delivery, technical capabilities, and financial capabilities of competing vendors to ensure fair and reasonable prices;
- (9) Require management level justification and adequate cost or price analysis, as applicable, for any sole or single source award;
- (10) Perform timely and adequate cost or price analysis and technical evaluation for each subcontractor and supplier proposal or quote to ensure fair and reasonable subcontract prices;
- (11) Document negotiations in accordance with 48 CFR 15.406-3;
- (12) Seek, take, and document economically feasible purchase discounts, including cash discounts, trade discounts, quantity discounts, rebates, freight allowances, and company-wide volume discounts;
- (13) Ensure proper type of contract selection and prohibit issuance of cost-plus-a-percentage-of-cost subcontracts;
- (14) Maintain subcontract surveillance to ensure timely delivery of an acceptable product and procedures to notify the Government of potential subcontract problems that may impact delivery, quantity, or price;
- (15) Document and justify reasons for subcontract changes that affect cost or price;
- (16) Enforce adequate policies on conflict of interest, gifts, and gratuities, including the requirements of the 41 U.S.C. chapter 87, Kickbacks;
- (17) Establish and maintain policies and procedures to ensure purchase orders and subcontracts contain mandatory and applicable flowdown clauses, as required by the 48 CFR chapter 1, including terms and conditions required by the prime contract and any clauses required to carry out the requirements of the prime contract;

- (18) Provide for an organizational and administrative structure that ensures effective and efficient procurement of required quality materials and parts at the best value from responsible and reliable sources;
  - (19) Establish and maintain selection processes to ensure the most responsive and responsible sources for furnishing required quality parts and materials and to promote competitive sourcing among dependable suppliers so that purchases are reasonably priced and from sources that meet contractor quality requirements;
  - (20) Establish and maintain procedures to ensure performance of adequate price or cost analysis on purchasing actions;
  - (21) Establish and maintain procedures to ensure that proper types of subcontracts are selected, and that there are controls over subcontracting, including oversight and surveillance of subcontracted effort; and
  - (22) Establish and maintain procedures to timely notify the Contracting Officer, in writing, if-
  - (23) The Contractor changes the amount of subcontract effort after award such that it exceeds 70 percent of the total cost of the work to be performed under the contract, task order, or delivery order. The notification shall identify the revised cost of the subcontract effort and shall include verification that the Contractor will provide added value; or
  - (24) Any subcontractor changes the amount of lower-tier subcontractor effort after award such that it exceeds 70 percent of the total cost of the work to be performed under its subcontract. The notification shall identify the revised cost of the subcontract effort and shall include verification that the subcontractor will provide added value as related to the work to be performed by the lower-tier subcontractor(s).
- (d) Significant deficiencies.
- (1) The Contracting Officer will provide notification of initial determination to the Contractor, in writing, of any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.
  - (2) The Contractor shall respond within 45 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's purchasing system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing. In the event the Contractor did not respond in writing to the initial determination within the response time, this lack of response shall indicate that the Contractor agrees with the initial determination.
  - (3) The Contracting Officer will evaluate the Contractor's response or the Contractor's lack of response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—

- (i) Remaining significant deficiencies;
  - (ii) the adequacy of any proposed or completed corrective action; and
  - (iii) System disapproval, if the Contracting Officer determines that one or more significant deficiencies remain.
- (e) If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the deficiencies.

#### **DOE CORPORATE CLAUSES OTHER THAN CHRM OR BUSINESS SYSTEMS**

##### **H.15 DOE-H-2014 Contractor Acceptance of Notices of Violation or Alleged Violations, Fines, and Penalties (Oct 2014) (Revised)**

- (a) The Contractor shall accept, in its own name, notices of violation(s) or alleged violations (NOVs/NOAVs) issued by federal or state regulators to the Contractor resulting from the Contractor's performance of work under this contract, without regard to liability. The allowability of the costs associated with fines and penalties shall be subject to other provisions of this Contract.
- (b) Liability and responsibility for fines or penalties and associated costs arising from or related to violations of environmental requirements imposed by applicable Federal, state, and local environmental laws and regulations, including, without limitation, statutes, ordinances, regulations, court orders, consent decrees, administrative orders, or compliance agreements, consent orders, permits, and licenses; and safety, health or quality requirements shall be borne by the party that caused the violation(s). This clause resolves liability for fines and penalties though the cognizant regulatory authority may assess such fines or penalties upon either party or both parties without regard to the allocation of responsibility or liability under this contract. The allocation of liability for such fine or penalty is effective regardless of which party signs permit application, manifest, reports, or other required documents, is assessed a fine or penalty, is a permittee, or is named subject of an enforcement action.
- (c) After providing DOE advance written notice, the Contractor shall conduct negotiations with regulators regarding NOVs/NOAVs, fines, and penalties. DOE may participate in all negotiations with regulatory agencies regarding permits, fines, penalties, and any other proposed notice, notice, administrative order, and any similar type of notice as described in paragraphs (a) and (b) above. However, the Contractor shall not make any commitments or offers to regulators that would bind the Government, including monetary obligations, without first obtaining written approval from the CO. Failure to obtain advance written approval may result in otherwise allowable costs being declared unallowable and/or the Contractor being liable for any excess costs to the Government associated with or resulting from such offers/commitments.
- (d) The Contractor shall notify DOE promptly when it receives service from the regulators of NOVs/NOAVs and fines and penalties.

**H.16 DOE-H-2016 Performance Guarantee Agreement (Oct 2014)**

The Contractor’s parent organization(s) or all member organizations if the Contractor is a joint venture, limited liability company, or other similar entity, shall guarantee performance of the contract as evidenced by the Performance Guarantee Agreement incorporated in the Contract in Section J, Attachment J-6. If the Contractor is a joint venture, limited liability company, or other similar entity where more than one organization is involved, the parent(s) or all member organizations shall assume joint and severable liability for the performance of the contract. In the event any of the signatories to the Performance Guarantee Agreement enters into proceedings related to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the CO.

**H.17 DOE-H-2017 Responsible Corporate Official and Corporate Board of Directors (Oct 2014) (Revised)**

The Contractor has provided a guarantee of performance from its parent company(s) in the form set forth in Section J, Attachment J-6 entitled, *Performance Guarantee Agreement*. The individual signing the *Performance Guarantee Agreement* for the parent company(s) should be the Responsible Corporate Official. The Responsible Corporate Official is the person who has sole corporate (parent company(s)) authority and accountability for Contractor performance. DOE may contact, as necessary, the single Responsible Corporate Official identified below regarding Contract performance issues. The parent companies shall proactively support the Responsible Corporate Official to ensure adverse contract performance issues are avoided, identified, and/or resolved in a timely manner. The Responsible Corporate Official shall promptly notify the DOE Contracting Officer of the corrective actions (both taken and planned) to address the adverse contract performance.

Responsible Corporate Official: [Offeror Fill-In]

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Company/Organization: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Email: \_\_\_\_\_

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

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

Corporate Board of Directors: [Offeror Fill-In]

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Company/Organization: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Email: \_\_\_\_\_

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

The Responsible Corporate Official and Corporate Board of Directors shall be engaged and accountable for performance of the contract scope and the highest standard of business integrity through the Contractor’s robust performance assurance system in accordance with DOE Order 226.1B *Implementation of Department of Energy Oversight Policy* and the Section H clause entitled *Contractor Assurance System*. The Responsible Corporate Official through the Contractor shall submit to the Contracting Officer a quarterly report using appropriate corporate metrics for DOE review. The quarterly report shall be risk-informed and a credible self-assessment that includes individual project performance, technical solutions, as needed, and appropriate coverage of potentially high consequence activities under the contract, including work of subcontractors. The annual Contractor Performance Assessment Reporting System (CPARS) evaluation shall consider the execution of the requirements of this clause, including the Contractor’s performance managing its subcontractors.

**H.18 DOE-H-2018 Privacy Act Systems of Records (Oct 2014) (Revised)**

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

DOE Privacy Act System No.	DOE Privacy Act System Description [Tailor/update list as necessary in coordination with Federal records personnel]
DOE-3	Employee Concerns Program Records

<b>DOE Privacy Act System No.</b>	<b>DOE Privacy Act System Description [Tailor/update list as necessary in coordination with Federal records personnel]</b>
DOE-5	Personnel Records of Former Contractor Employees (Includes All Former Workers)
DOE-10	Energy Employees Occupational Illness Compensation Program Act Files
DOE-11	Emergency Operations Notification Call List
DOE-14	Report of Compensation
DOE-15	Intelligence-Related Access Authorization
DOE-18	Financial Accounting System
DOE-23	Property Accountability System
DOE-26	Official Travel Records
DOE-28	General Training Records
DOE-31	Firearms Qualification Records
DOE-33	Personnel Medical Records (Present and Former DOE Employees and Contractor Employees)
DOE-34	Employee Assistance Program (EAP) Records
DOE-35	Personnel Radiation Exposure Records
DOE-38	Occupational and Industrial Accident Records
DOE-41	Legal Files (Claims, Litigation, Criminal Violations, Patents, and Others)
DOE-43	Personnel Security Clearance Files
DOE-48	Security Education and/or Infraction Reports
DOE-51	Employee and Visitor Access Control Records
DOE-52	Access Control Records of International Visits, Assignments, and Employment at DOE Facilities and Contractor Sites
DOE-53	Access Authorization for ADP Equipment
DOE-63	Personal Identity Verification (PIV) Files
DOE-88	Epidemiologic and Other Health Studies, Surveys, and Surveillances

If the above list does not address all of the systems of records that are generated based on contract performance, then the Contractor shall notify the CO as soon as the discrepancy is discovered. The Contractor shall monitor the identified systems and notify the CO immediately if

there is a change to an existing system or if a new system is needed. Lack of notification does not exempt the Contractor from complying with the Privacy Act. To ensure that systems are monitored consistently, the Contractor must review the list annually and notify the CO, in writing, that the list is accurate and up to date.

The above list shall be revised by mutual agreement between the Contractor and the CO, in consultation with the local Privacy Act Officer and/or General Counsel, as necessary, to keep it current. A formal modification to the contract is not required to incorporate these revisions; however, the revisions become effective upon mutual written agreement of the parties. The mutually agreed-upon revisions shall have the same effect as if they were actually among the systems listed in the table above, for the purpose of satisfying the listing requirement contained in paragraph (a)(1) of the contract clause for FAR 52.2242 entitled, *Privacy Act*. The revisions will be formally incorporated at the next convenient contract modification. Additional information on Privacy Act Systems of Records can be found on the DOE Privacy Office home page.

FAR 52.224-1 entitled, *Privacy Act Notification*, FAR 52.224-2 entitled, *Privacy Act*, and FAR 52.224-3 entitled, *Privacy Training* are mandatory flow-down clauses that must be included in any subcontract requiring design, development, or operation of a Privacy Act system of records, including third-party medical services contracts. Such subcontracts also require flow down of clauses specifically identifying applicable Privacy Act systems of records into the subcontracts. For example, medical services contracts must include the substance of this clause identifying system of records DOE-33, *Personnel Medical Records*, along with language on records turnover when employees terminate. Subcontracts must also contain scope requirements necessary to ensure DOE and contractor compliance with applicable records management and Privacy Act requirements.

#### **H.19 DOE-H-2019 Disposition of Intellectual Property – Failure to Complete Contract (Jul 2018)**

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

- (a) The Government may take possession of and use all technical data, including limited rights data, restricted computer software, and data and software obtained from subcontractors, licensors, and licensees, necessary to complete the work in conformance with this contract, including the right to use the data in any Government solicitations for the completion of the work contemplated under this contract. Technical data includes, but is not limited to, specifications, designs, drawings, operational manuals, flowcharts, software, databases, and any other information necessary for of the completion of the work under this contract. Limited rights data and restricted computer software will be protected in accordance with the provisions of the Section I clause FAR 52.227-14 *Rights in Data - General*. The Contractor shall ensure that its subcontractors and licensors make similar rights available to the Government and its contractors.

- (b) The Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice by the Contractor, and any other intellectual property, including technical data, which are owned or controlled by the Contractor, at any time through completion of this contract and which are incorporated or embodied in the construction of the facilities or which are utilized in the operation or remediation of the facilities or which cover articles, materials or products manufactured at a facility: (1) to practice or to have practiced by or for the Government at the facility; and (2) to transfer such license with the transfer of that facility. The acceptance or exercise by the Government of the aforesaid rights and license shall not prevent the Government at any time from contesting the enforceability, validity, or scope of, or title to, any rights or patents or other intellectual property herein licensed.
- (c) In addition, the Contractor will take all necessary steps to assign permits, authorizations, leases, and licenses in any third party intellectual property to the Government, or such other third party as the Government may designate, that are necessary for the completion of the work contemplated under this Contract.

#### **H.20 DOE-H-2021 Work Stoppage and Shutdown Authorization (Oct 2014) (Revised)**

- (a) Imminent Health and Safety Hazard is a given condition or situation which, if not immediately corrected, could result in serious injury or death, including exposure to radiation and toxic/hazardous chemicals. Imminent Danger in relation to the facility safety envelope is a condition, situation, or proposed activity which, if not terminated, could cause, prevent mitigation of, or seriously increase the risk of (1) nuclear criticality, (2) radiation exposure, (3) fire/explosion, and/or (4) toxic hazardous chemical exposure.
- (b) Work Stoppage. In the event of an Imminent Health and Safety Hazard, an activity that could adversely affect the safe operation of, or could cause serious damage to the facility if allowed to continue, or an action that could result in the release of radiological or chemical hazards to the environment in excess of regulatory limits, identified by facility line management or operators or facility health and safety personnel overseeing facility operations, or other individuals, the individual or group identifying the imminent hazard situation shall immediately take actions to eliminate or mitigate the hazard (e.g., directing the operator/implementer of the activity or process causing the imminent hazard to stop work, initiating emergency response actions or other actions) to protect the health and safety of the workers and the public, and to protect DOE facilities and the environment. In the event an Imminent Health and Safety Hazard is identified, the individual or group identifying the hazard should coordinate with an appropriate Contractor official, who will direct the shutdown or other actions, as required. Such mitigating action(s) should subsequently be coordinated with the DOE and Contractor management. The suspension or stop-work order should be promptly confirmed in writing by the CO.
- (c) Shutdown. In the event of an imminent danger in relation to the facility safety envelope or a non-Imminent Health and Safety Hazard identified by facility line managers, facility operators, health and safety personnel overseeing facility operations, or other individuals,

the individual or group identifying the potential health and safety hazard may recommend facility shutdown in addition to any immediate actions needed to mitigate the situation. However, the recommendation must be coordinated with Contractor management, and the DOE Site Manager. Any written direction to suspend operations shall be issued by the CO.

- (d) This clause flows down to all subcontractors at all tiers. Therefore, the Contractor shall insert a clause, modified appropriately to substitute “Contractor Representatives” for “the CO” in all subcontracts.

### **H.21 DOE-H-2033 Alternative Dispute Resolution (Oct 2014)**

- (a) DOE and the Contractor both recognize that methods for fair and efficient resolution of contractual issues in controversy by mutual agreement are essential to the successful and timely completion of contract requirements. Accordingly, DOE and the Contractor shall use their best efforts to informally resolve any contractual issue in controversy by mutual agreement. Issues of controversy may include a dispute, claim, question, or other disagreement. The parties agree to negotiate with each other in good faith, recognizing their mutual interests, and attempt to reach a just and equitable solution satisfactory to both parties.
- (b) If a mutual agreement cannot be reached through negotiations within a reasonable period of time, the parties may use a process of alternate dispute resolution (ADR) in accordance with the clause at FAR 52.233-1 entitled, *Disputes*. The ADR process may involve mediation, facilitation, fact-finding, group conflict management, and conflict coaching by a neutral party. The neutral party may be an individual, a board comprised of independent experts, or a company with specific expertise in conflict resolution or expertise in the specific area of controversy. The neutral party will not render a binding decision, but will assist the parties in reaching a mutually satisfactory agreement. Any opinions of the neutral party shall not be admissible as evidence in any subsequent litigation proceedings.
- (c) Either party may request that the ADR process be used. The Contractor shall make a written request to the CO, and the CO shall make a written request to the appropriate official of the Contractor. A voluntary election by both parties is required to participate in the ADR process. The parties must agree on the procedures and terms of the process, and officials of both parties who have the authority to resolve the issue must participate in the agreed-upon process.
- (d) ADR procedures may be used at any time that the CO has the authority to resolve the issue in controversy. If a claim has been submitted by the Contractor, ADR procedures may be applied to all or a portion of the claim. If ADR procedures are used subsequent to issuance of a CO’s final decision under the clause at FAR 52.233-1 entitled, *Disputes*, their use does not alter any of the time limitations or procedural requirements for filing an appeal of the CO’s final decision and does not constitute reconsideration of the final decision.
- (e) If the CO rejects the Contractor’s request for ADR proceedings, the CO shall provide the Contractor with a written explanation of the specific reasons the ADR process is not appropriate for the resolution of the dispute. If the Contractor rejects the CO’s request to use

ADR procedures, the Contractor shall provide the CO with the reasons for rejecting the request.

### **H.22 DOE-H-2034 Contractor Interface with Other Contractors and/or Government Employees (Oct 2014) (Revised)**

The Government may award contracts to other contractors for work to be performed at a DOE-owned or DOE-controlled site or facility. The Contractor shall cooperate fully with all other onsite DOE contractors and Government employees. The Contractor shall coordinate its own work with such other work as may be directed by the CO or a duly authorized representative. The Contractor shall not commit any act which will interfere with the performance of work by any other contractor or by a Government employee and seek CO direction if there is an unresolved conflict.

### **H.23 DOE-H-2035 Organizational Conflict of Interest Management Plan (Oct 2014) (Revised)**

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

- (a) The procedures for identifying and evaluating past, present, and anticipated contracts of the Contractor, its related entities, and other performing entities under the Contract.
- (b) The procedures the Contractor will utilize to avoid, neutralize, or mitigate potential or actual conflicts of interest.
- (c) The procedures for reporting actual or potential conflicts of interest to the CO. The resolution of potential or actual conflicts of interest that exist or may arise during contract performance shall be documented as part of the Plan.
- (d) The procedures the Contractor will utilize to oversee, implement, and update the Plan, to include assigning responsibility for management, oversight, and compliance to an individual in the Contractor's organization with full authority to implement the Plan.
- (e) The procedures for ensuring all required representations, certifications and factual analyses are submitted to the CO for approval in a timely manner.
- (f) The procedures for protecting agency information that could lead to an unfair competitive advantage if disclosed including collecting disclosure agreements covering all individuals, subcontractors, and other entities with access to agency-sensitive information and physical safeguarding of such information.
- (g) An OCI training and awareness program that includes periodic, recurring training and a process to evidence employee participation.

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

#### **H.24 DOE-H-2043 Assignment and Transfer of Prime Contracts and Subcontracts (Oct 2014) (Revised)**

- (a) Assignment and Transfer of other DOE Prime Contracts. During the period of performance (POP) of this Contract it may become necessary for the DOE to transfer and assign existing or future DOE prime contracts in whole or in part supporting site work to this Contract. The Contractor shall accept the transfers and assignments of contracts. Transfer and assignment of prime contracts to the Contractor, if any, will be for administration purposes, and once transferred, will become subcontracts to the Contractor. Any recommendations and/or suggestions on individual transfers shall be submitted in writing to the CO prior to the transfer or assignment.
- (b) Assignment and Transfer of this Prime Contract. During the POP of this Contract it may become necessary for the DOE to transfer and assign in whole or in part this Contract to another DOE contractor. The Contractor shall accept the transfers and assignment. Transfer and assignment, if any, will be for administration purposes, and once transferred, will become a subcontract to the assignee. Any recommendations and/or suggestions on individual transfers shall be submitted in writing to the CO prior to the transfer or assignment.
- (c) Transfer and Assignment of Subcontracts. The Contractor agrees to transfer and assign or accept transfer and assignment of existing subcontracts including lower-tier subcontracts as determined necessary by DOE for continuity of operations. The transfer and assignment may be to or from another contractor or to or from DOE as a prime contractor. Transfer or assignment of subcontracts to or from the Contractor, if any, will be for administration purposes, and once transferred, will become subcontracts to the Contractor. The Contractor shall use its best efforts to negotiate changes to the assigned subcontracts incorporating mandatory flow-down provisions at no cost. If the subcontractor refuses to accept the changes or requests price adjustments, the Contractor will notify the CO in writing. This Clause is required as a flow-down clause in all subcontracts.

#### **H.25 DOE-H-2046 Diversity Program (Oct 2014)**

- (a) The Contractor shall develop and implement a diversity program consistent with and in support of the DOE's diversity program. A diversity plan covering the full period of performance shall be submitted to the CO for approval within 60 calendar days after the NTP. Once the diversity plan is approved by the CO, the Contractor shall implement the diversity plan within 30 calendar days of its approval by the CO.
- (b) The diversity plan shall address, at a minimum, the Contractor's approach, to ensure an effective diversity program (including addressing applicable affirmative action and equal employment opportunity regulations) to include:
  - (1) A statement of the Contractor's policies and practices; and

- (2) Planned initiatives and activities that demonstrate a commitment to a diversity program, including recruitment strategies for hiring a diverse workforce. The diversity program shall also address, at a minimum, the Contractor's approach for promoting diversity through (1) the Contractor's workforce; (2) educational outreach, including a mentor/protégé program; (3) stakeholder involvement and outreach; (4) subcontracting; and (5) economic development.
- (c) An annual diversity report shall be submitted pursuant to Section J, Attachment J-3 entitled, *Contract Deliverables*. This report shall provide a list of accomplishments achieved, both internally and externally during the current reporting period, and projected initiatives during the next reporting period. The report shall also list any proposed changes to the diversity plan which shall be subject to the CO's approval.

#### **H.26 DOE-H-2048 Public Affairs – Contractor Releases of Information (Oct 2014)**

In implementation of the clause at DEAR 952.204-75, Public Affairs, all communications or releases of information to the public, the media, or Members of Congress prepared by the Contractor related to work performed under the contract shall be reviewed and approved by DOE prior to issuance. Therefore, the Contractor shall, at least 14 calendar days prior to the planned issue date, submit a draft copy to the Contracting Officer of any planned communications or releases of information to the public, the media, or Members of Congress related to work performed under this contract. The Contracting Officer will obtain necessary reviews and clearances and provide the Contractor with the results of such reviews prior to the planned issue date.

#### **H.27 DOE-H-2052 Representations, Certifications, and Other Statements of the Offeror (Oct 2014) (Revised)**

The Contractor's Representations, Certifications, and Other Statements, dated [Offeror Fill-In] made in response to Solicitation No. 89303322REM000114 are hereby incorporated into the contract.

#### **H.28 Employee Safety & Health**

- (a) The Contractor shall comply with all applicable safety and health requirements set forth in the EM Field Site Federal Employee Occupational Safety and Health (FEOSH) Program. In performance of the work, the Contractor shall provide a safe and healthful workplace and must comply with the Field Site approved FEOSH Program and all applicable federal and state environment, health, and safety regulations.
- (b) The Contractor shall take all reasonable precautions to protect the environment, health, and safety of its employees, DOE personnel, and members of the public. When more than one contractor works in a shared workplace, the Contractor shall coordinate with the other contractors to ensure roles, responsibilities, and worker safety and health provisions are clearly delineated. When requested, the Contractor shall participate in all emergency response drills and exercises related to the Contractor's work, and interface with other DOE contractors.

- (c) The Contractor shall take all necessary and reasonable steps to minimize the impact of its work on DOE functions and employees, and immediately report all job-related injuries and/or illnesses which occur in any DOE facility to the EM Field Site Computerized Accident/Incident Reporting System (CAIRS) Technical Manager and the Contracting Officer Representative (COR). Upon request, the Contractor shall provide to the COR a copy of occupational safety and health self--assessments and/or inspections of work sites for job hazards for work performed at DOE facilities.
- (d) The CO may notify the Contractor, in writing, of any noncompliance with the terms of this clause, and the corrective action(s) to be taken. After receipt of such notice, the Contractor shall immediately take such corrective action(s).
- (e) In the event that the Contractor fails to comply with the terms and conditions of this clause, the CO may, without prejudice to any other legal or contractual rights, issue a stop-work order halting all or any part of the work. Thereafter, the CO may, at his or her discretion, cancel the stop-work order so that the performance of work may be resumed. The Contractor shall not be entitled to an equitable adjustment of the contract amount or extension of the performance schedule due to any stop-work order issued under this clause.
- (f) The Contractor shall flow down the requirements of this clause to all subcontracts at any tier.
- (g) In the event of a conflict between the requirements of this clause and the requirements set forth of the EM Field Site FEOSH Program, the requirements of the EM Field Site FEOSH Program shall take precedence.

**H.29 DOE-H-2058 Designation and Consent of Teaming Subcontracts – Alternate I (Oct 2014) (Revised)**

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

[Offeror Fill-in]

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

In the event that the Contractor proposes to use a new, or replace, one or more of the approved Teaming Subcontractors identified in paragraph (a) above in performance of the contract, the Contractor shall provide advance notification to, and obtain consent from the cognizant Contracting Officer notwithstanding any other terms and conditions of the contract. Consent of these subcontracts is retained by the cognizant Contracting Officer and will not be delegated. The Contractor shall provide rationale and a detailed explanation including the equivalency or similarity of the experience and qualifications to the above

listed Teaming Subcontractor and any other information requested by the cognizant Contracting Officer.

### **H.30 DOE-H-2059 Preservation of Antiquities, Wildlife, and Land Areas (Oct 2014)**

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

### **H.31 DOE-H-2061 Change Order Accounting (Oct 2014)**

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

### **H.32 DOE-H-2063 Confidentiality of Information (Feb 2022) (Revised)**

- (a) Performance of work under this Contract may result in the Contractor having access to Controlled Unclassified Information (CUI), via written or electronic documents, or by virtue of having access to DOE's electronic or other systems. Such CUI includes personally identifiable information (such as social security account numbers) or proprietary business, technical, or financial information belonging to the Government or other companies or organizations. The Contractor shall treat this information as confidential and agrees not to use this information for its own purposes, or to disclose the information to third parties, unless specifically authorized to do so in writing by the CO.
- (b) The restrictions set out in paragraph (a) above, however, do not apply to:
  - (1) Information which, at the time of receipt by the Contractor, is in the public domain;

- (2) Information which, subsequent to receipt by the Contractor, becomes part of the public domain through no fault or action of the Contractor;
  - (3) Information which the Contractor can demonstrate was previously in its possession and was not acquired directly or indirectly as a result of access obtained by performing work under this contract;
  - (4) Information which the Contractor can demonstrate was received from a third party who did not require the Contractor to hold it in confidence; or
  - (5) Information which is subject to release under applicable law.
- (c) These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General or the Office of Special Counsel of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.
- (d) The Contractor shall obtain a written agreement from each of its employees who are granted access to, or furnished with, confidential information, whereby the employee agrees that he or she will not discuss, divulge, or disclose any such information to any person or entity except those persons within the Contractor's organization directly concerned with the performance of the contract. The agreement shall be in a form satisfactory to the CO.
- (e) Upon request of the CO, the Contractor agrees to execute an agreement with any party which provides CUI to the Contractor pursuant to this contract, or whose facilities the Contractor is given access to that restrict use and disclosure of CUI obtained by the Contractor. A copy of the agreement, which shall include all material aspects of this clause, shall be provided to the CO for approval.
- (f) Upon request of the CO, the Contractor shall supply the Government with reports itemizing the confidential or proprietary information it receives under this contract and identify the source (company, companies, or other organizations) of the information.
- (g) The Contractor agrees to flow down this clause to all subcontracts issued under this contract.

### **H.33 DOE-H-2064 Use of Information Technology Equipment, Software, and Third Party Services - Alternate I (Oct 2014)**

- (a) Acquisition of Information Technology. The Government may provide information technology equipment, existing computer software (as described in 48 CFR 27.405), and third-party services for the Contractor's use in the performance of the contract; and the

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

- (b) The Contractor shall immediately provide written notice to the Contracting Officer's Representative when an employee of the Contractor no longer requires access to the Government information technology systems.
- (c) The Contractor shall not violate any software licensing agreement, or cause the Government to violate any licensing agreement.
- (d) The Contractor agrees that its employees will not use, copy, disclose, modify, or reverse engineer existing computer software provided to it by the Government except as permitted by the license agreement or any other terms and conditions under which the software is made available to the Contractor.
- (e) If at any time during the performance of this contract the Contractor has reason to believe that its utilization of Government furnished existing computer software may involve or result in a violation of the software licensing agreement, the Contractor shall promptly notify the Contracting Officer, in writing, of the pertinent facts and circumstances. Pending direction from the Contracting Officer, the Contractor shall continue performance of the work required under this contract without utilizing the software.
- (f) The Contractor agrees to include the requirements of this clause in all subcontracts at any tier.
- (g) The Contractor shall comply with the requirements of those DOE directives, or parts thereof, identified in Section J, Attachment J-2, in implementing the requirements of this clause. The Contracting Officer may, at any time, unilaterally amend this clause in order to add, modify or delete specific requirements.

#### **H.34 DOE-H-2068 Conference Management (Mar 2023)**

The Contractor agrees that:

- (a) The Contractor shall ensure that contractor-sponsored conferences, and Contractor participation in DOE conferences sponsored by a Departmental Element, reflect the DOE/NNSA's commitment to fiscal responsibility, appropriate stewardship of taxpayer funds and support the mission of DOE/NNSA as well as other sponsors of work. In addition, the Contractor shall ensure its sponsored conferences do not include any activities that create the appearance of taxpayer funds being used in a questionable manner.
- (b) For the purposes of this clause, "conference" is first defined by the Federal Travel Regulation (FTR) as "[a] meeting, retreat, seminar, symposium, or event that involves attendee travel. The term 'conference' also applies to training activities that are considered to be conferences

under 5 C.F.R 410.404.” Additionally, the Department’s conference activity reporting guideline expands the FTR conference definition to disregard attendee travel as a determining factor, i.e., reporting can be required without the existence of attendee travel.

- (c) Contractor-sponsored conferences include those events that meet the Department’s expanded conference definition, and a DOE contractor holds the role of primary decision-maker for key planning items such as conference theme, agenda, location/venue, dates, and conference participation.
- (d) Merely providing the contractor’s facility space for a conference, or contractor staff participating in a conference, or procuring conference booth space, giving a speech, or serving as an honorary chairperson does not connote contractor sponsorship.
- (e) The Contractor will provide information on conferences they plan to sponsor, when expected costs exceed \$100,000 in net costs to the Department, in the Department’s Conference Management Tool (CMT), including:
  - (1) Conference title, description, and date
  - (2) Location and venue
  - (3) Description of any unusual expenses (e.g., promotional items)
  - (4) Description of contracting procedures used (e.g., competition for space/support)
  - (5) Costs for space, food/beverages, audio visual, travel/per diem, attendee registration costs
  - (6) Number of attendees
- (f) The Contractor will not expend funds on the proposed contractor-sponsored conferences with expenditures estimated to exceed \$100,000 until notified of approval by the Contracting Officer and approved by the corresponding federal executive oversight entity.
- (g) For DOE-sponsored conferences (i.e., sponsored by a Departmental Element), the Contractor will not expend funds on the proposed conference that exceeds \$100,000 in net estimated DOE cost, until it is approved in the CMT by the management of the Departmental Element sponsoring the conference,
  - (1) DOE-sponsored conferences include events that meet the Department’s expanded conference definition, and a Departmental Element holds the role of primary decision-maker for key planning items such as conference theme, agenda, location/venue, dates, and conference participation.
  - (2) Merely providing Federal facility space for a conference, or Federal staff participating in a conference, or procuring conference booth space, giving a speech, or serving as an honorary chairperson does not connote DOE sponsorship.
  - (3) The Contractor will provide cost and attendance information on their participation in all DOE-sponsored conferences in the DOE Conference Management Tool.
- (h) For conferences sponsored by a non-DOE external entity, the Contractor shall develop and implement a process to ensure costs related to such conferences are tracked, allowable, allocable, reasonable, and further the mission of DOE/NNSA.

- (i) Contractors are not required to enter participation or cost information on conferences sponsored by a non-DOE external entity in DOE'S Conference Management Tool.

**H.35 DOE-H-2069 Payments for Domestic Extended Personnel Assignments (Oct 2014)  
(Revised)**

- (a) Definition. For purposes of this clause, “domestic extended personnel assignments” are defined as any assignment of contractor personnel to a domestic location different than (and more than 50 miles from) their permanent duty station for a period expected to exceed 30 consecutive calendar days.
- (b) For domestic extended personnel assignments, the Contractor shall be reimbursed the lesser of temporary relocation costs (Temporary Change of Station allowances as described in the Federal Travel Regulation at §302-3.400 - §302-3.429) or a reduced per diem (Extended Travel Duty) in accordance with the allowable cost provisions of the contract and the following:
  - (1) When a reduced per diem method (Extended Travel Duty) is utilized, the allowances are as follows:
    - (i) Lodging. For the first 60 days and last 30 days of the assignment, the Government will reimburse costs associated with lodging at the lesser of actual cost or 100% of the Federal per diem rate at the assignment location. The intervening days’ lodging will be reimbursed at the lesser of actual cost or 55% of Federal per diem.
    - (ii) Meals and Incidental Expenses. For the first 30 days and last 30 days of the assignment, the Government will reimburse costs associated with meals and incidental expenses (M&IE) at a rate not to exceed 100% of the Federal per diem rate at the assignment location. The intervening days M&IE will be reimbursed at a reduced rate, not to exceed 55% of Federal per diem.
    - (iii) Receipts are required to substantiate all lodging expenses and any other authorized expense greater than \$75.
  - (2) The Government will not reimburse any costs associated with per diem (except for en route travel) unless the contractor employee maintains a residence at the permanent duty station.
  - (3) The Government will not reimburse costs associated with salary premiums, per diem, lodging, or other subsidies for contractor employees on domestic extended personnel assignments after three (3) years (except for the reimbursements described above during the last 30 days of the assignment).
  - (4) If an assignment has breaks within a three-year period, the calculation of the total length of the assignment will be as follows: If the break between assignments is less than 12 months, the Government will consider the assignment continuous for purposes of the three-year clock. For instance, if a contractor employee completes a two-year assignment at location A and returns to his/her permanent duty station for 12 months, a subsequent new two-year assignment back to location A will restart the three-year clock. The assignments will be considered two separate two-year assignments. On the other hand, if

in the previous example the employee’s return to his/her permanent duty station was for six months, the Government would consider the second assignment to be a continuation of the first for purposes of the three-year rule.

- (5) The Government will not reimburse costs associated with salary premiums that exceed 10% of base salary.
- (6) The Contractor shall include the substance of this clause in all subcontracts in which travel will be reimbursed at cost.

**H.36 DOE-H-2070 Key Personnel – Alternate I (Oct 2014) (Revised)**

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

**Table H-1. Key Personnel**

Name	Position
[Offeror Fill-In]	Program Manager
[Offeror Fill-In]	Business Manager

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

- (1) Key personnel team requirements. The CO and designated COR(s) shall have direct access to the key personnel assigned to the contract. All key personnel shall be assigned full-time to their respective positions. The Contractor shall notify the CO and request approval in writing at least 60 days in advance of any changes to key personnel.
  - (2) No key person position shall remain vacant for a period more than 30 days following CO approval of a change in key personnel or the Contractor will be subject to reduction of fee according to (c)(1) or (c)(2) below respective to the key position vacated
  - (3) Approval of changes to key personnel is at the unilateral discretion of the CO.
  - (4) The Key Personnel must have the ability to obtain and maintain a “Q” clearance level by the end of the Transition period.
- (b) Definitions. In addition to the definitions contained in the clause DEAR 952.215-70, the following shall apply:
    - (1) Key personnel are considered “managerial personnel” under the clause DEAR 952.231-71 entitled, *Insurance – Litigation and Claims*.
    - (2) For the purposes of this Clause, “Changes to Key Personnel,” is defined as: (i) any change to the position assignment of a current key person under the Contract, except for a person who acts for short periods of time, in the place of a key person during his

or her absence, the total time of which shall not exceed 30 working days during any given year (ii) utilizing the services of a new substitute key person for assignment to the Contract beyond 30 working days; or (iii) assigning a current key person for work outside the Contract.

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

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

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

- (1) Notwithstanding the approval by the CO, any time the Program Manager is removed, replaced, or diverted within three years of being placed in the position, the earned fee under the Contract may be permanently reduced by \$50,000 for each and every such occurrence. A change to a key person “Beyond the Contractor’s Control” shall not result in a permanent reduction of fee under this subsection.
- (2) Notwithstanding the approval by the CO, any time a key person other than the Program Manager is removed, replaced, or diverted within three years of being placed in the position, the earned fee may be permanently reduced by \$25,000 for each and every such occurrence. A change to a key person, other than the Program Manager, “Beyond the Contractor’s Control” shall not result in a permanent reduction of fee under this subsection.
- (3) The Contractor may request in writing that the CO consider waiving all or part of a reduction in earned fee. Such a written request shall include the Contractor’s basis for the removal, replacement, or diversion of any key personnel. The CO shall have the unilateral discretion to make the determination to waive all or part of the reduction in earned fee.

**H.37 DOE-H-2071 Department of Energy Directives (Oct 2014)**

- (a) In performing work under this contract, the Contractor shall comply with the requirements of those Department of Energy (DOE) directives, or parts thereof listed in Section J, Attachment J-2.
- (b) The Contracting Officer may, at any time, unilaterally amend this clause, or other clauses which incorporate DOE directives, in order to add, modify or delete specific requirements. Prior to revising the listing of directives, the Contracting Officer shall notify the Contractor in writing of the Department's intent to revise the list, and the Contractor shall be provided with the opportunity to assess the effect of the Contractor's compliance with the revised list on contract cost and funding, technical performance, and schedule, and identify any potential inconsistencies between the revised list and the other terms and conditions of the contract. Within 30 days after receipt of the Contracting Officer's notice, the Contractor shall advise

the Contracting Officer in writing of the potential impact of the Contractor's compliance with the revised list. Based on the information provided by the Contractor and any other information available, the Contracting Officer shall decide whether to revise the listing of directives and so advise the Contractor not later than 30 days prior to the effective date of the revision.

- (c) Notwithstanding the process described in paragraph (b), the Contracting Officer may direct the Contractor to immediately begin compliance with the requirements of any directive.
- (d) The Contractor and the Contracting Officer shall identify and, if appropriate, agree to any changes to other contract terms and conditions, including cost and schedule, associated with the revision pursuant to the changes clauses in Section I of this contract.
- (e) Regardless of the performer of the work, the Contractor is responsible for compliance with the requirements of this clause. The Contractor shall include this clause in all subcontracts to the extent necessary to ensure the Contractor's compliance with these requirements.

### **H.38 DOE-H-2072 Use of Government Vehicles by Contractor Employees (Oct 2014)**

- (a) The Government will provide Government-owned and/or Government-leased motor vehicles for the Contractor's use in performance of this contract in accordance with the clause FAR 52.245--1 entitled, *Government Property* and FAR 52.251-2 entitled, *Interagency Fleet Management System Vehicles and Related Services*.
- (b) The Contractor shall ensure that its employees use and operate Government--owned and/or Government-leased motor vehicles in a responsible and safe manner to include the following requirements:
  - (1) Use vehicles only for official purposes and solely in the performance of the Contract.
  - (2) Do not use vehicles for transportation between an employee's residence and place of employment, unless authorized by the CO.
  - (3) Comply with Federal, state, and local laws and regulations for the operation of motor vehicles.
  - (4) Possess a valid state, District of Columbia, or commonwealth's operator license or permit for the type of vehicle to be operated.
  - (5) Operate vehicles in accordance with the operator's packet furnished with each vehicle.
  - (6) Use seat belts while operating or riding in a Government vehicle.
  - (7) Do not use tobacco products while operating or riding in a Government vehicle.
  - (8) Do not provide transportation to strangers or hitchhikers.

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

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

(c) The Contractor shall:

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

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

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

**H.39 DOE-H-2075 Prohibition on Funding for Certain Nondisclosure Agreements (Oct 2014)**

The Contractor agrees that:

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

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

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

disclosures to Congress, or to an authorized official of an executive agency or the Department of Justice, that are essential to reporting a substantial violation of law.

#### **H.40 DOE-H-2076 Lobbying Restrictions (Nov 2018)**

In accordance with 18 U.S.C. § 1913, the Contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress. This restriction is in addition to those prescribed elsewhere in statute and regulation.

#### **H.41 DOE-H-2080 Agreement Regarding Workplace Substance Abuse Programs at DOE Sites (Apr 2018)**

- (a) Program implementation. The Contractor shall, consistent with 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, incorporated herein by reference with full force and effect, develop, implement, and maintain a workplace substance abuse program.
- (b) Remedies. In addition to any other remedies available to the Government, the Contractor's failure to comply with the requirements of 10 CFR part 707 or to perform in a manner consistent with its approved program may render the Contractor subject to: the suspension of contract payments, or, where applicable, a reduction in fee; termination for default; and suspension or debarment.
- (c) Subcontracts.
  - (1) The Contractor agrees to notify the Contracting Officer reasonably in advance of, but not later than 30 days prior to, the award of any subcontract the Contractor believes may be subject to the requirements of 10 CFR part 707, unless the Contracting Officer agrees to a different date.
  - (2) The Contractor shall require all subcontracts subject to the provisions of 10 CFR part 707 to agree to develop and implement a workplace substance abuse program that complies with the requirements of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, as a condition for award of the subcontract. The Contractor shall review and approve each subcontractor's program, and shall periodically monitor each subcontractor's implementation of the program for effectiveness and compliance with 10 CFR part 707.
  - (3) The Contractor agrees to include, and require the inclusion of, the requirements of this clause in all subcontracts, at any tier, that are subject to the provisions of 10 CFR part 707.

#### **H.42 DOE-H-2083 Safety Culture (Feb 2022)**

The Contractor shall promote a strong safety culture which encourages safe performance of work and involvement of workers in all aspects of work performance and promotes core values that should be deeply, strongly, and consistently held by managers and workers. Contractor organizations shall foster that culture through proscribed contract actions designed to establish leadership commitment and behaviors consistent with those values; promoting a safety conscious

work environment in which employees are encouraged to freely raise safety concerns to management without fear of retaliation; prioritizing concerns based on safety significance; addressing and resolving those concerns in a manner that provides transparency; and supporting a questioning attitude concerning safety by all employees.

(a) The Contractor shall:

- (1) Adopt and continuously improve Organizational Culture, Safety Culture, and Safety Conscious Work Environment, including implementation and utilization of programs/processes that support employees raising concerns without fear of retaliation. These programs/processes include, but are not limited to, the Employee Concerns Program; the Differing Professional Opinions Process; Ethics and Compliance Program/Process; and Alternative Dispute Resolution.
- (2) Continuously promote a work environment where employees are encouraged to raise concerns. The Contractor shall define expectations, rigorously reinforce those expectations, and take actions to mitigate the potential for a chilling effect.
- (3) Conduct business in a manner fully transparent to DOE. Activities are demonstrated by open, clear, and well-communicated management actions and technical and project documentation. Identified issues and trends are proactively shared with DOE.
- (4) Champion programs which encourage a culture that promotes proactive self-identification and reporting of issues that identifies and takes action on systemic weaknesses leading to sustained continuous self-improvement.
- (5) Champion programs which encourage and emphasize the following safety culture attributes as described in DOE G 450.4-1C ISMS Guide, Attachment 10, “Safety Culture Focus Areas and Associated Attributes.”
  - (i) Leadership
    - (A) Demonstrated safety leadership
    - (B) Risk-informed, conservative decision making
    - (C) Management engagement and time in the field
    - (D) Staff recruitment, selection, retention, and development
    - (E) Open communication and fostering an environment free from retribution
    - (F) Clear expectation and accountability
  - (ii) Employee/Worker Engagement
    - (A) Personal commitment to everyone’s safety
    - (B) Teamwork and mutual respect
    - (C) Participation in work planning and improvement

- (D) Mindfulness of hazards and controls
- (iii) Organizational Learning
  - (A) Credibility, trust, and reporting errors and problems
  - (B) Effective resolution of reported problems
  - (C) Performance monitoring through multiple means
  - (D) Use of operations experience
  - (E) Questioning attitude

### **OTHER CLAUSES**

#### **H.43 Parent Organization Support**

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

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

- (b) The Contractor may propose, or DOE may require, parent organization support to:
  - (1) Monitor safety and performance in the execution of Contract requirements;
  - (2) Ensure achievement of Contract environmental cleanup and closure commitments;
  - (3) Sustain excellence of Contract key personnel;
  - (4) Ensure effective internal processes and controls for disciplined Contract execution;
  - (5) Assess Contract performance and apply parent organization problem-solving resources on problem areas; and
  - (6) Provide other parent organization capabilities to facilitate Contract performance.
- (c) The CO may, with unilateral discretion, authorize parent organization support, and the corresponding indirect or direct costs, if a direct-benefit relationship to DOE is demonstrated. All parent organization support shall be authorized in advance by the CO.
- (d) If parent organization support is proposed by the Contractor or required by DOE, the Contractor shall submit for DOE review and approval, an annual Parent Organization Support Plan (POSP). The Contractor shall submit its initial POSP at least 30 days prior to:
  - (1) The end of the Contract Transition Period; or

- (2) The commencement date of parent organization support proposed by the Contractor or required by the Government.

Any subsequent POSP shall be submitted at least 60 days prior to the start of each year of Contract performance.

#### **H.44 Subcontractor Timekeeping Records Signature Requirement**

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

#### **H.45 Emergency Response**

- (a) The DOE Office of Environmental Management (EM) Manager or Contractor shall determine when an emergency situation may exist at **Environmental Management (EM) sites** and notify the appropriate emergency response organization. In the event of an emergency, the DOE Manager of the affected site will have the authority to direct any and all activities of the Contractor and subcontractors necessary to resolve the emergency situation. Upon termination of the emergency event, the Contractor shall perform recovery actions as appropriate.
- (b) The Contractor shall include this Clause in all subcontracts at any tier for work performed in support of the on-site work under this contract.

#### **H.46 Department of Energy National Training Center**

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

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

#### **H.47 Personal Property Management**

The Contractor shall establish a personal property management program in accordance with Section I clause FAR 52.245-1 *Government Property*. The program shall include written policies and procedures that enable sound property management practices and property lifecycle outcomes in compliance with 41 CFR 102 *Federal Management Regulation* and 41 CFR 109 *Department of Energy Property Management Regulations*. The Contractor shall:

- Identify government personal property through tagging or marking at the point of receipt;
- Create and maintain property records that correspond with tagged items in a property database capable of generating reports;
- Conduct physical inventories of property by DOE-approved methodology and schedule;
- Promptly report government property losses, damage, destruction, or suspected theft to DOE;
- Facilitate property movements through DOE-approved loans or transfers to or from other entities;
- Ensure required maintenance and repairs of equipment is performed and documented in a centralized computerized maintenance management system;
- Promptly identify and declare to DOE when property is excess to the needs of the Contractor and performance of this Contract; and
- Manage excess and surplus property beginning with reutilization screening through the disposition process until completion and retirement from the property system.

In addition, the Contractor shall ensure that adequate safeguards are in place, and adhered to, for the handling, control, and disposition of high-risk property in accordance with 41 CFR 109.53.

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

#### **H.48 Information Technology and Cyber Security Requirements**

In the performance of the information technology and cyber security requirements of this Contract, the Contractor is responsible for compliance with the following items. Consistent with Section H clause entitled *Laws, Regulations, and DOE Directives*, omission of any applicable law or regulation from this list does not affect the obligation of the Contractor to comply with such law or regulation.

(a) Code of Federal Regulations (CFR):

- (1) 10 CFR 824 et seq., Procedures Rules for the Assessment of Civil Penalties for Classified Information Security Violations
- (2) 10 CFR 1004 et seq., Freedom of Information Act
- (3) 36 CFR Chapter XII, Subchapter B et seq., Records Management
- (4) 41 CFR 102 et seq., Federal Management Regulation

(b) United States Code (USC):

- (1) 5 USC 552a et seq., Privacy Act
- (2) 6 USC 1 et seq., Homeland Security Organization
- (3) 6 USC 6 et seq., Cybersecurity
- (4) 15 USC Chapter 100 et seq., Cybersecurity Research and Development
- (5) 17 USC 1 § 101 et seq., Subject Matter and Scope of Copyright, Definitions
- (6) 18 USC 1030 et seq., Fraud and Related Activity in Connection with Computers
- (7) 18 USC Chapter 119 et seq., Wire and Electronic Communications Interception and Interception of Oral Communications
- (8) 18 USC Chapter 121 et seq., Stored Wire and Electronic Communications and Transactional Records Access
- (9) 29 USC 16, Subchapter V, 794 (d) et seq., Electronic and Information Technology
- (10) 31 USC § 501 et seq., Office of Management and Budget
- (11) 31 USC § 1101 et seq., The Budget and Fiscal, Budget, and Program Information; Definitions
- (12) 40 USC Subtitle III et seq., Information Technology Management
- (13) 41 USC Subtitle I, Division A, Chapter 1, Subchapter I, § 101 et seq., Federal Procurement Policy, Administrator
- (14) 44 USC 1 § 101 et seq., Joint Committee on Printing: Membership
- (15) 44 USC 21 et seq., National Archives and Records Administration
- (16) 44 USC 29 et seq., Records Management by the Archivist of the United States
- (17) 44 USC 31 et seq., Records Management by Federal Agencies
- (18) 44 USC 33 et seq., Disposal of Records
- (19) 44 USC 35 et seq., Coordination of Federal Information Policy
- (20) 44 USC 36 et seq., Management and Promotion of Electronic Government Services

(c) Executive Orders:

- (1) Executive Order 14117, Preventing Access to Americans' Bulk Sensitive Personal Data and United States Government-Related Data by Countries of Concern
- (2) Executive Order 14110, Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence
- (3) Executive Order 14105, Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern
- (4) Executive Order 14093, Prohibition on Use by the United States Government of Commercial Spyware That Poses Risks to National Security

- (5) Executive Order 14058, Transforming Federal Customer Experience and Service Delivery To Rebuild Trust in Government
- (6) Executive Order 14034, Protecting Americans’ Sensitive Data from Foreign Adversaries
- (7) Executive Order 14028, Improving the Nation’s Cybersecurity
- (8) Executive Order 13984, Taking Additional Steps to Address the National Emergency with Respect to Significant Malicious Cyber-Enabled Activities
- (9) Executive Order 13960, Promoting the Use of Trustworthy Artificial Intelligence in the Federal Government
- (10) Executive Order 13873, Securing the Information and Communications Technology and Services Supply Chain
- (11) Executive Order 13870, America's Cybersecurity Workforce
- (12) Executive Order 13859, Maintaining American Leadership in Artificial Intelligence
- (13) Executive Order 13858, Strengthening Buy-American Preferences for Infrastructure Projects
- (14) Executive Order 13833, Enhancing the Effectiveness of Agency CIOs
- (15) Executive Order 13800, Strengthening the Cybersecurity of Federal Networks and Critical Infrastructure
- (16) Executive Order 13702, Creating a National Strategic Computing Initiative
- (17) Executive Order 13691, Promoting Private Sector Cybersecurity Information Sharing
- (18) Executive Order 13642, Making Open and Machine Readable the New Default for Government Information
- (19) Executive Order 13636, Improving Critical Infrastructure Cybersecurity
- (20) Executive Order 13589, Promoting Efficient Spending
- (21) Executive Order 13587, Structural Reforms to Improve the Security of Classified Networks and the Responsible Sharing and Safeguarding of Classified Information
- (22) Executive Order 13556, Controlled Unclassified Information
- (23) Executive Order 13526, Classified National Security Information
- (24) Executive Order 13231, Critical Infrastructure Protection in the Information Age, as amended by Executive Order 13284, Amendment of Executive Orders, and Other Actions, in Connection With the Establishment of the Department of Homeland Security; Executive Order 13286, Amendment of Executive Orders, and Other Actions, in Connection With the Transfer of Certain Functions to the Secretary of Homeland Security; Executive Order 13316, Continuance of Certain Federal Advisory Committees; Executive Order 13385, Continuance of Certain Federal Advisory Committees and Amendments to and Revocation of Other Executive Orders; and Executive Order 13652, Continuance Of Certain Federal Advisory Committees
- (25) Executive Order 13218, 21st Century Workforce Initiative, as amended by Executive Order 13316, Continuance of Certain Federal Advisory Committees
- (26) Executive Order 13103, Computer Software Piracy
- (27) Executive Order 12958, Classified National Security Information E-Government, as amended by Executive Order 12958, Classified National Security Information

(d) Office of Management and Budget (OMB) Circulars/Memoranda:

- (1) OMB Circular A-11, Preparation, Submission, and Execution of the Budget
- (2) OMB Circular A-16, Coordination of Geographic Information, and Related Spatial Data Activities
- (3) OMB Circular A-130, Managing Federal Information as a Strategic Resource
- (4) OMB Memorandum M-24-10 Advancing Governance, Innovation, and Risk Management for Agency Use of Artificial Intelligence
- (5) OMB Memorandum M-24-08, Strengthening Digital Accessibility and the Management of Section 508 of the Rehabilitation Act (digital)
- (6) OMB Memorandum M-24-04, Fiscal Year 2024 Guidance on Federal Information Security and Privacy Management Requirements
- (7) OMB Memorandum M-23-22, Delivering a Digital-First Public Experience
- (8) OMB Memorandum M-23-18, Administration Cybersecurity Priorities for the FY 2025 Budget
- (9) OMB Memorandum M-23-16, Update to Memorandum M-22-18, Enhancing the Security of the Software Supply Chain through Secure Software Development Practices
- (10) OMB Memorandum M-23-13, “No TikTok on Government Devices” Implementation Guidance
- (11) OMB Memorandum M-23-10, The Registration and Use of .gov Domains in the Federal Government
- (12) OMB Memorandum M-23-07, Update to Transition to Electronic Records
- (13) OMB Memorandum M-23-02, Migrating to Post-Quantum Cryptography
- (14) OMB Memorandum M-22-18, Enhancing the Security of the Software Supply Chain through Secure Software Development Practices
- (15) OMB Memorandum M-22-16, Administration Cybersecurity Priorities for the FY 2024 Budget
- (16) OMB Memorandum M-22-09, Moving the U.S. Government Toward Zero Trust Cybersecurity Principles
- (17) OMB Memorandum M-22-01, Improving Detection of Cybersecurity Vulnerabilities and Incidents on Federal Government Systems through Endpoint Detection and Response
- (18) OMB Memorandum M-21-31, Improving the Federal Government’s Investigative and Remediation Capabilities Related to Cybersecurity Incidents
- (19) OMB Memorandum M-21-30, Protecting Critical Software Through Enhanced Security Measures
- (20) OMB Memorandum M-21-22, Update to Implementation of Performance Management Statutes
- (21) OMB Memorandum M-21-07 Completing the Transition to Internet Protocol Version 6 (IPv6)
- (22) OMB Memorandum M-21-06, Guidance for Regulation of Artificial Intelligence Applications
- (23) OMB Memorandum M-21-05, Extension of Data Center Optimization Initiative (DCOI)
- (24) OMB Memorandum M-21-04, Modernizing Access to and Consent for Disclosure of Records Subject to the Privacy Act

- (25) OMB Memorandum M-20-32, Improving Vulnerability Identification, Management, and Remediation
- (26) OMB Memorandum M-20-29, Research and Development Budget Priorities and Cross-cutting Actions
- (27) OMB Memorandum M-20-19, Harnessing Technology to Support Mission Continuity
- (28) OMB Memorandum M-19-26, Update to the Trusted Internet Connections (TIC) Initiative
- (29) OMB Memorandum M-19-21, Transition of Electronic Records
- (30) OMB Memorandum M-19-19, Update to Data Center Optimization Initiative
- (31) OMB Memorandum M-19-18, Federal Data Strategy – A Framework for Consistency
- (32) OMB Memorandum M-19-17, Enabling Mission Delivery through Improved Identity, Credential, and Access Management
- (33) OMB Memorandum M-19-16, Centralized Mission Support Capabilities for the Federal Government
- (34) OMB Memorandum M-19-10, Guidance for Achieving Interoperability with the National Freedom of Information Act (FOIA) Portal on FOIA.gov
- (35) OMB Memorandum M-19-03, Strengthening the Cybersecurity of Federal Agencies by enhancing the High Value Asset Program
- (36) OMB Memorandum M-18-12, Implementation of the Modernizing Government Technology Act
- (37) OMB Memorandum M-17-12, Preparing for and Responding to a Breach of Personally Identifiable Information
- (38) OMB Memorandum M-17-04, Additional Guidance for Data Act Implementation: Further Requirements for Reporting and Assuring Data Reliability
- (39) OMB Memorandum M-16-21, Federal Source Code Policy: Achieving Efficiency, Transparency, and Innovation through Reusable and Open Source Software
- (40) OMB Memorandum M-16-20, Category Management Policy 16-3: Improving the Acquisition and Management of Common Information Technology: Mobile Devices and Services
- (41) OMB Memorandum M-16-17, OMB Circular No. A-123, Management’s Responsibility for Enterprise Risk Management and Internal Control
- (42) OMB Memorandum M-16-16, 2016 Agency Open Government Plans
- (43) OMB Memorandum M-16-15, Federal Cybersecurity Workforce Strategy
- (44) OMB Memorandum M-16-14, Category Management Policy 16-2: Providing Comprehensive Identity Protection Services, Identity Monitoring, and Data Breach Response
- (45) OMB Memorandum M-16-12, Category Management Policy 16-1: Improving the Acquisition and Management of Common Information Technology: Software Licensing
- (46) OMB Memorandum M-16-04, Cybersecurity Strategy and Implementation Plan (CSIP) for the Federal Civilian Government
- (47) OMB Memorandum M-16-02, Category Management Policy 15-1: Improving the Acquisition and Management of Common Information Technology: Laptops and

Desktops

- (48) OMB Memorandum M-15-14, Management and Oversight of Federal Information Technology
- (49) OMB Memorandum M-15-13, Policy to Require Secure Connections across Federal Websites and Web Services
- (50) OMB Memorandum M-15-12, Increasing Transparency of Federal Spending by Making Federal Spending Data Accessible, Searchable, and Reliable
- (51) OMB Memorandum M-13-13, Open Data Policy – Managing Information as an Asset
- (52) OMB Memorandum M-13-10, Antideficiency Act Implications of Certain Online Terms of Service Agreements
- (53) OMB Memorandum M-12-21, Addendum to OMB Memorandum M-98-13 on Federal Use of Energy Savings Performance Contracts (ESPCs) and Utility Energy Service Contracts (UESCs)
- (54) OMB Memorandum M-12-10, Implementing PortfolioStat
- (55) OMB Memorandum M-11-03, Issuance of OMB Circular A-16 Supplemental Guidance
- (56) OMB Memorandum M-10-27, Information Technology Investment Baseline Management Policy
- (57) OMB Memorandum M-10-26, Immediate Review of Financial Systems IT Projects
- (58) OMB Memorandum M-10-23, Guidance for Agency Use of Third-Party Websites and Applications
- (59) OMB Memorandum M-10-22, Guidance for Online Use of Web Measurement and Customization Technologies
- (60) OMB Memorandum M-10-10, Federal Agency Coordination on Health Information Technology (HIT)
- (61) OMB Memorandum M-10-06, Open Government Directive
- (62) OMB Memorandum M-08-15, Tools Available for Implementing Electronic Records Management
- (63) OMB Memorandum M-07-13, Implementation of the OMB Bulletin on Good Guidance Practices and Executive Order 13422 (amending Executive Order 12866)
- (64) OMB Memorandum M-05-24, Implementation of Homeland Security Presidential Directive (HSPD) 12 – Policy for a Common Identification Standard for Federal Employees and Contractors
- (65) OMB Memorandum M-05-23, Improving Information Technology (IT) Project Planning and Execution
- (66) OMB Memorandum M-05-22, Transition Planning for Internet Protocol Version 6 (IPv6)
- (67) OMB Memorandum M-04-24, Expanded Electronic Government (E-Gov) President’s Management Agenda (PMA) Scorecard Cost, Schedule and Performance Standard for Success
- (68) OMB Memorandum M-04-19, Information Technology (IT) Project Manager (PM) Qualification Guidance
- (69) OMB Memorandum M-04-16, Software Acquisition

- (70) OMB Memorandum M-04-15, Development of Homeland Security Presidential Directive (HSPD) – 7 Critical Infrastructure Protection Plans to Protect Federal Critical Infrastructures and Key Resources
- (71) OMB Memorandum M-04-08, Maximizing Use of SmartBuy and Avoiding Duplication of Agency Activities with the President’s 24 E-Gov Initiatives
- (72) OMB Memorandum M-04-04, E-Authentication Guidance
- (73) OMB Memorandum M-03-22, OMB Guidance for Implementing the Privacy Provisions of the E-Government Act of 2002
- (74) OMB Memorandum M-03-18, Implementation Guidance for the E-Government Act of 2002
- (75) OMB Memorandum M-03-17, Program Assessment Rating Tool (PART) Update
- (76) OMB Memorandum M-03-04, Determination Orders Organizing the Department of Homeland Security
- (77) OMB Memorandum M-02-15, Revision of OMB Circular A-16
- (78) OMB FedRAMP Memorandum, Security Authorization of Information Systems in Cloud Computing Environments
- (79) OMB Memorandum M-02-09, Reporting Instructions for the Government Information Security Reform Act and Updated Guidance on Security Plans of Action and Milestones
- (80) OMB Memorandum M-02-01, Guidance for Preparing and Submitting Security Plans of Action and Milestones
- (81) OMB Memorandum M-01-05, Guidance on Inter-Agency Sharing of Personal Data – Protecting Personal Privacy
- (82) OMB Memorandum M-00-15, Guidance on Implementation of the Electronic Signatures in Global and National Commerce Act (E-SIGN)
- (83) OMB Memorandum M-00-10, OMB Procedures and Guidance on Implementing the Government Paperwork Elimination Act
- (84) OMB Memorandum M-00-07, Incorporating and Funding Security in Information Systems Investments
- (85) OMB Memorandum M-99-18, Privacy Policies on Federal Web Sites
- (86) OMB Memorandum M-99-05, Instructions on Complying with President’s Memorandum of May 14, 1998, “Privacy and Personal Information in Federal Records”
- (87) OMB Memorandum M-98-13, Federal Use of Energy Savings Performance Contracting
- (88) OMB Memorandum M-98-09, Updated Guidance on Developing a Handbook for Individuals Seeking Access of Public Information
- (89) OMB Memorandum M-98-04, Annual Performance Plans Required by the Government Performance and Results Act (GPRA)
- (90) OMB Memorandum M-97-09, Interagency Support for Information Technology
- (91) OMB Memorandum M-97-07, Multiagency Contracts Under the Information Technology Management Reform Act of 1996
- (92) OMB Memorandum M-97-02, Funding Information Systems Investments
- (93) OMB Memorandum M-96-20, Implementation of the Information Technology Management Reform Act of 1996

- (e) Department of Homeland Security (DHS) Cybersecurity and Infrastructure Security Agency (CISA) Emergency and Binding Operational Directives
  - (1) DHS CISA ED 24-02: Mitigating the Significant Risk from Nation-State Compromise of Microsoft Corporate Email System
  - (2) DHS CISA Supplemental Direction V2: ED 24-01, Mitigate Ivanti Connect Secure and Ivanti Policy Secure Vulnerabilities
  - (3) DHS CISA Supplemental Direction V1: ED 24-01, Mitigate Ivanti Connect Secure and Ivanti Policy Secure Vulnerabilities
  - (4) DHS CISA ED 24-01, Mitigate Ivanti Connect Secure and Ivanti Policy Secure Vulnerabilities
  - (5) DHS CISA ED 22-03, Mitigate VMWare Vulnerabilities
  - (6) DHS CISA ED 21-04, Mitigate Windows Print Spooler Service Vulnerability
  - (7) DHS CISA ED 21-03, Mitigate Pulse Connect Secure Product Vulnerabilities
  - (8) DHS CISA ED 21-02, Mitigate Microsoft Exchange On-Premises Product Vulnerabilities
  - (9) DHS CISA ED 21-01, Mitigate SolarWinds Orion Code Compromise
  - (10) DHS CISA ED 20-04, Mitigate Netlogon Elevation of Privilege Vulnerability from August 2020 Patch Tuesday
  - (11) DHS CISA ED 20-03, Mitigate Windows DNS Server Vulnerability from July 2020 Patch Tuesday
  - (12) DHS CISA ED 20-02, Mitigate Windows Vulnerabilities from January 2020 Patch Tuesday
  - (13) DHS CISA ED 19-01, Mitigate DNS Infrastructure Tampering
  - (14) DHS CISA BOD 23-02, Mitigating the Risk from Internet-Exposed Management Interfaces
  - (15) DHS CISA BOD 23-01, Improving Asset Visibility and Vulnerability Detection on Federal Networks
  - (16) DHS CISA BOD 22-01, Reducing the Significant Risk of Known Exploited Vulnerabilities
  - (17) DHS CISA BOD 20-01, Develop and Publish a Vulnerability Disclosure Policy
  - (18) DHS CISA BOD 19-02, Vulnerability Remediation Requirements for Internet Accessible Systems
  - (19) DHS CISA BOD 18-02, Securing High Value Assets
  - (20) DHS CISA BOD 18-01, Enhance Email and Web Security
  - (21) DHS CISA BOD 17-01, Removal of Kaspersky branded Products
  - (22) DHS CISA BOD 16-03, 2016 Agency Cybersecurity Reporting Requirements
  - (23) DHS CISA BOD 16-02, Threat to Network Infrastructure Devices
  
- (f) Secretarial Memoranda
  - (1) EXEC-2019-003477, Release of DOE Order 205.1C, Department of Energy Cybersecurity Program
  - (2) EXEC-2018-004906, Integrated Joint Cybersecurity Coordination Center

- (3) EXEC-2018-001779, Data Center Optimization Initiative (DCOI) Inventory
- (4) EXEC-2016-003721, Information Technology Management Reforms
- (5) EXEC-2016-007461, DOE Cyber Data Sharing Implementation Requirements

(g) Office of Environmental Management (EM) Requirements

- (1) DOE Enterprise Cybersecurity Program Plan v1.1
- (2) EM Cybersecurity Program Plan

**H.49 Organizational Conflict of Interest – Affiliate(s)**

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

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