



# ACQUISITION LETTER

This Acquisition Letter is issued under the authority of the Senior Procurement Executives of DOE and NNSA. It is intended for use by procurement professions of DOE and NNSA, primarily Contracting Officers, and other officials of DOE and NNSA that are involved in the acquisition process. Other parties are welcome to its information, but definitive interpretations of its effect on contracts, and related procedures, if any, may only be made by DOE and NNSA Contracting Officers.

**Subject: Contractor Business Systems - REVISED**

## **References:**

### **Federal Acquisition Regulation (FAR) Parts and Subparts**

- 2.1 – Definitions
- 8.4 – Federal supply schedules
- 9.4 – Debarment, suspension, and ineligibility
- 9.6 – Contractor teaming arrangements
- 15.4 – Contract pricing
- 17.5 – Interagency acquisitions
- 31 – Contract cost principles and procedures
- 32 – Contract financing
- 34.2 – Earned value management system
- 42 – Contract administration and audit services
- 42.15 – Contractor performance information
- 44 – Subcontracting policies and procedures
- 45 – Government Property

### **Department of Energy Acquisition Regulation (DEAR) Parts and Subparts**

- 906 – Competition requirements
- 915.4 – Contract pricing

### **DOE Acquisition Guide (AG) Chapters**

- 9.4 – Contractor Responsibility Determinations
- 15.4-3 – Negotiation Documentation: Pre-negotiation Plan & the Price Negotiation Memorandum
- 15.4-4 – General Guide for Technical Analysis of Cost Proposals for Acquisition Contracts
- 42.5 – Contract Management Planning
- 42.15 – Contractor Performance Information

### **DOE Order**

- 413.3B, or current version, Program and Project Management for the Acquisition of Capital Assets

**When is this Acquisition Letter (AL) effective?**

This Acquisition Letter (AL) is effective immediately upon issuance.

**When does this AL expire?**

This AL remains in effect until superseded or canceled.

**Who is the intended audience for this AL?**

Heads of Contracting Activities and Contracting Officers responsible for administering and managing DOE contracts for non-management and operating (non-M&O) contracts in support of Capital Assets, as prescribed in DOE Order 413.3 B or current version, or non-capital asset projects.

**Who are the points of contact?**

For questions regarding the AL, contact MA-611, Barbara Binney at (202) 287-1340 or [Barbara.Binney@hq.doe.gov](mailto:Barbara.Binney@hq.doe.gov).

For earned value management system (EVMS) questions, contact Robert Loop at (202) 287-4342 or [Robert.Loop@hq.doe.gov](mailto:Robert.Loop@hq.doe.gov).

For site implementation questions, contact the MA-621 assigned representative.

For additional information on ALs and other issues, visit our website at <http://energy.gov/management/office-management/operational-management/procurement-and-acquisition>.

**What is the purpose of this AL?**

This AL implements compliance enforcement mechanisms in the form of business systems clause and related clauses that requires the contractor to have acceptable business systems that comply with system criteria. The contractor will be required to have acceptable business systems for cost estimating, accounting, earned value management, purchasing and property management. When a contractor's business system contains identified significant deficiencies, the contracting officer will be able to withhold a percentage of payments in accordance with the applicable system clause.

**What types of contracts are affected by this AL?**

This AL applies to DOE and NNSA for non-M&O contracts in support of Capital Assets (as prescribed in DOE Order 413.3 B or latest version), or non-capital asset projects (other than M&O).

## Exceptions

The requirements of this AL do not apply to acquisitions for—

- Small business set-asides;
- Energy savings performance contracts as required by the Energy Policy Act of 1992;
- Services for—
  - “Advisory and assistance services” as defined at 48 CFR 2.101, unless otherwise designated as applicable by the Senior Procurement Executive or the Head of the Contracting Activity;
  - Security Guards;
  - Housekeeping;
  - Education and training;
  - National Environmental Policy Act of 1969 Support; or
  - Utilities;
- Office of the Deputy Administrator for Naval Reactors;
- Interagency acquisitions in accordance with 48 CFR 17.5; or
- Orders against another Federal agency contract, e.g. Federal Supply Services (FAR 8.4).

## What is the background information?

Contractor business systems and its internal controls are the first line of defense against waste, fraud, and abuse. Weak control systems increase the risk of unallowable and unreasonable cost on Government contracts. When a contract includes these business systems clauses, it will require the contractor to meet business system criteria for its estimating system, accounting system, earned value management system, purchasing management system, and property management system. When the contractor has acceptable business systems that comply with the terms and conditions of the contract, this will improve contract performance. Under certain conditions, if the business system has significant deficiencies, the contracting officer will be able to withhold a percentage of payments until the significant deficiencies are corrected.

## What is the guidance contained in this AL?

The DOE and NNSA Contracting Officers shall implement attachment A requirements attachment B clauses of this AL into existing contracts as described in the applicability section below. For exceptions, see *What type of contracts are affected by this AL?*

➤ **Applicability**

- **Thresholds.** It applies to DOE and NNSA in support of Capital Assets (other than M&O), as prescribed in DOE Order 413.3 B, or non-capital asset projects (other than M&O), when--

(a)(1) The prime contract is awarded to a large business, to include a contractor teaming arrangement (as defined at Federal Acquisition Regulation (FAR) 9.601(1)), and

(2) The total contract value exceeds \$50 million, including options; or

(b) (1) The prime contract totaling \$10 million or more including options (but less than \$50 million) is awarded to a large business, to include a contractor teaming arrangement (as defined at FAR 9.601(1)); and

(2) The contracting officer determines it to be in the best interest of the Government (e.g., significant estimating problems are believed to exist or the contractor's sales are predominantly Government.

- **EVMS Thresholds.** Based on dollar thresholds EVMS applies to Capital Asset Projects (other than M&O) on cost or incentive contracts and subcontracts.

- ***Contract valued at \$20,000,000 or more.*** For contracts valued at \$20,000,000 or more, the contractor shall have an EVMS determined to be in compliance with the guidelines in the American National Standards Institute/Electronic Industries Alliance Standard 748, EVMS (ANSI/EIA-748, current version at time of award). In addition, for contracts valued at \$20,000,000 but not exceeding \$50,000,000, the contractor shall conduct self-certification review and periodic surveillance reviews.

When the contractor has two or more contracts in support of DOE capital asset projects and the total contract value for a contract is \$20,000,000 or greater and the combined total contract values for these contracts is \$50,000,000 or more, those contracts shall be subject to certification and surveillance reviews for contract values for \$50,000,000 and above.

For example, the contractor has 3 contracts in support of DOE capital asset projects. Contract A is for \$15,000,000. Contract B is for \$21,000,000. Contract C is for \$30,000,000. Contracts B and C are by themselves \$20,000,000 or greater. The combined total contract values for these two contracts (B at \$21,000,000 and C at \$30,000,000) is \$50,000,000 or more. Therefore, DOE would conduct certification reviews and surveillance reviews for these 2 contracts.

- ***Contract valued at \$50,000,000 or but not exceeding \$100,000,000.*** When the contract value is \$50,000,000 but not exceeding \$100,000,000, the applicable DOE Program Office will conduct certification reviews and periodic surveillance reviews to ensure continued compliance with ANSI/EIA-748 (current version at time of award).

- **Contract valued at \$100,000,000 or more.** When the contract value is \$100,000,000 or more, DOE Office of Acquisition and Project Management will conduct certification reviews and periodic surveillance reviews to ensure continued compliance with ANSI/EIA-748 (current version at time of award).

- **Contract type.** It applies to –

- Fixed priced contract awarded to a large business to include a contractor teaming arrangement (as defined at 9.601(1)) on the basis of adequate price competition without submission of cost or pricing data; or

- Covered contract (generally referring to cost reimbursable type contract) that is subject to the Cost Accounting Standards in at 48 CFR 9903.201-1(a) and is not exempted at 9903.201-1(b)(1) through (14).

➤ **Instruction.** When the threshold and contract type are met, the contracting officer will negotiate bilaterally with the contractor who hold affected contract to incorporate the clauses of this AL into the affected contract within 90 days. The contracting officers will also incorporate the clauses of this AL into affected contracts before extending them or exercising options under them by negotiating bilaterally with the contractors.

➤ **Attachments A and B follow.**

Attachment A - Contracting Officer Requirements to implement Contractor Business Systems Clauses and Provision

Attachment B – Contract Clauses and Provision

## Attachment A to AL 2013-11

### A – Contracting Officer Requirements to implement Contractor Business Systems Clauses and Provision

#### I. Purpose.

This attachment to AL 2013-11 prescribes procedures to implement contractor business systems clause requirements in applicable solicitations and contracts to include how to determine if a business system is acceptable and complies with the system criteria in the applicable system clause, how to notify contractor if there are significant deficiencies, and how to withhold payments when the contractor business systems has significant deficiencies. **See the AL for types of contracts affected, exceptions to the AL, applicability for thresholds and contract types, and instructions to contracting officer.**

The contracting officer shall ensure that the contractor establish and maintain acceptable business systems in accordance with the terms and conditions of the contract. A contractor's business system is an acceptable business system when that business system complies with the terms and conditions of the applicable business system clause. When a contractor business system is unacceptable, it has a significant deficiency which is a shortcoming in the system that materially affects the ability of DOE officials to rely upon information produced by the system that is needed for management purposes.

#### II. Clauses and Provision.

There are 6 clauses and 1 provision to include in solicitations and contracts, as applicable. **It is important to read each clause to fully understand each clause and how these clauses interrelate.** The 6 clauses are briefly described below. For earned value management system (EVMS), there is 1 provision.

➤ **Contractor Business Systems clause** - This clause provides terms and conditions on how significant deficiencies are reported to the contractor, the final determination process for withholding payments, and the process to reinstate withheld payments after significant deficiencies are corrected. *In order to withhold any payments related to identified significant deficiencies, this clause must be in the contract along with related business system clauses, e.g., estimating, accounting, earned value management, purchasing system or property management.* The clause explains:

How the contractor shall respond to an initial determination that there are one or more significant deficiencies in one or more of the contractor's business systems.

How the contracting officer will proceed after evaluating contractor's response when one or more significant deficiencies were identified by issuing a final determination to include a notice to withhold payments.

How the contracting officer will direct the contractor to withhold 5 percent from its invoices until the contracting officer has determined that the contractor has corrected all significant deficiencies as directed by the final determination.

How the contracting officer will reinstate withheld payments.

- **Accounting System Administration clause** – This clause provides terms and conditions on an acceptable accounting system to include system criteria, notification of significant deficiencies, and process to withhold payments. In order to withhold any payments related to identified significant deficiencies, this clause must be in the contract along with related contractor business systems clause.
- **Cost Estimating System Requirements clause** – This clause provides terms and conditions on an acceptable estimating system to include system criteria which includes procedures to ensure subcontract prices are reasonably based with documented review and analysis, notification of significant deficiencies, and process to withhold payments. In order to withhold any payments related to identified significant deficiencies, this clause must be in the contract along with related contractor business systems clause.
- **Contractor Purchasing System Administration clause** – This clause provides terms and conditions on an acceptable purchasing system to include system criteria which includes subcontract management oversight, notification of significant deficiencies, and process to withhold payments. In order to withhold any payments related to identified significant deficiencies, this clause must be in the contract along with related contractor business systems clause.
- **Contractor Property Management System Administration clause** – This clause provides terms and conditions on an acceptable property management system to include system criteria which includes subcontract management oversight, notification of significant deficiencies, and process to withhold payments. In order to withhold any payments related to identified significant deficiencies, this clause must be in the contract along with related contractor business systems clause.
- **Earned Value Management System (EVMS)** - For cost or incentive contracts in support of a Capital Asset Project, as prescribed in DOE Order (DOE O) 413.3B, or current version, valued at \$20,000,000 or more, and for other contracts for which EVMS will be applied in accordance with this attachment—
  - (a) Use the provision at attachment B, Notice of Earned Value Management System, instead of the provisions at 48 CFR 52.234-2, Notice of Earned Value Management System—Pre-Award IBR, and 48 CFR 52.234-3, Notice of Earned Value Management System—Post-Award IBR, in the solicitation; and
  - (b) Use the clause at attachment B, Earned Value Management System, instead of the clause at 48 CFR 52.234-4, Earned Value Management System, in the solicitation and contract.

- **Earned Value Management System provision** – This provision requires offeror to provide documentation to show that proposed EVMS complies with industry standards or if EVMS is not compliant with industry standards a comprehensive plan for compliance is required.
- **Earned Value Management System clause** – This clause provides terms and conditions on an acceptable earned value management system to include system criteria which includes subcontractor flow down requirements, notification of significant deficiencies, and process to withhold payments. In order to withhold any payments related to identified significant deficiencies, this clause must be in the contract along with related contractor business systems clause.

### III. Solicitation Preparation

When preparing the solicitation, the contracting officer shall ensure that contract, Part I – The Schedule, addresses in the business administration section, or similar section, that the contractor shall submit its (1) cost estimating system, (2) EVMS, (3) accounting system, (4) purchasing system and (5) property management system for DOE review and acceptance with full implementation of the system to be in place no later than 60 days after contract award. Remember: If the contractor plans to adopt the existing system from previous contractor, the contractor is responsible for the system and shall comply with the system requirements required in each clause.

Be sure any preaward or post award planning includes submission of these business systems plans as contract deliverables. AG Chapter 42.5 – Contract Management Planning provides assistance in formulating a structured and integrated approach for performing contract management planning to include contract deliverables.

For a cost reimbursement contract requiring EVMS, the solicitation and the contract shall include instructions to the prime contractor to electronically upload earned value and schedule data into the Project Assessment and Reporting System (PARS II) (or current DOE project performance reporting system) in accordance with the “Contractor Project Performance Upload Requirements” document maintained by the Office of Acquisition and Project Management (OAPM). Unless OAPM has granted a temporary exemption, all requested data shall be submitted timely and accurately. Data shall be loaded into PARS II no later than the last workday of every month. This data shall be current as of the close of the previous month’s accounting period.

### IV. Other Preaward Considerations

#### ➤ Contract Audit and Pricing Support

It is important for the contracting officer to obtain adequate audit and pricing support to:

- Provide scrutiny into the offeror’s or contractor’s cost or price proposal;
- Confirm that the offeror’s or contractor’s accounting system and practices are adequate for the contract type; and



- Ensure that the cost or price to be paid is fair and reasonable.

When the contract will be based on cost or pricing data submitted by the offeror/contractor, prior to contract negotiation or modification negotiation in excess of FAR threshold stated at FAR 15.403-4(a)(1), DEAR 915.404-2-70, Audit as an aid in proposal analysis, requires a cognizant Federal audit activity to review the offeror's/contractor's proposal. This requirement applies to preaward actions, post award actions such as modifications that include changes, definitization of unpriced change orders, request for equitable adjustments, overrun proposals, claims, etc.

#### ➤ **Contractor Responsibility Determinations**

AG Chapter 9.4 – Contractor Responsibility Determinations provides a general overview of the contracting officer responsibilities for making responsibility determinations of prospective contractors before awarding a contract. FAR 9.106 requires the contracting officer to obtain information on the prospective contractor's responsibility to include any required preaward survey, when necessary. Standard forms 1403 through 1408 document the survey.

The contracting officer shall ensure that the offeror/contractor has an approved accounting system and purchasing system for use under the contract. If the offeror/contractor does not have an approved accounting system and purchasing system, the contracting officer shall request audit and pricing support. Standard Form 1408 – Preaward Survey of Prospective Contractor Accounting System documents the results of the contractor's accounting system preaward survey.

### **V. Contract Administration**

#### **1. Reviewing and Determining Contractor Business Systems Compliance.**

(a) When the solicitation or contract includes the Contractor Business Systems clause and related clauses, the cognizant contracting officer, in consultation with the auditor, functional specialist, or in the case of EVMS, either DOE program office or Office of Acquisition and Project Management (OAPM), shall—

(1) Ensure that the contractor submits written documentation that each business system meets the system criteria required in each clause no later than 60 days after contract award. Remember: If the contractor plans to adopt the existing system from previous contractor, the contractor is responsible for the system and shall comply with the system requirements required in each clause.

(2) Evaluate and determine the acceptability of a contractor's business system to ensure it complies with the system criteria established in each system clause and approve or disapprove the system. For EVMS, in addition to initial compliance with system criteria, there shall be certification reviews and periodic surveillance reviews conducted by the cognizant DOE program office or OAPM, as applicable, based on contract value; and

(3) Pursue correction of any deficiencies in a business system if these exist.

(b) In evaluating the acceptability of each contractor's system, the contracting officer, in consultation with the auditor or functional specialist, shall determine whether each contractor's system complies with the system criteria for an acceptable system as prescribed in each clause.

(c) *Disposition of findings* — (1) *Reporting of findings*. The auditor or functional specialist shall document findings and recommendations in a report to the contracting officer. If the auditor or functional specialist identifies any significant system deficiencies as defined and described in the clause, the report shall describe the deficiencies in sufficient detail to allow the contracting officer to understand the deficiencies.

(2) *Initial determination*. (i) The contracting officer shall review findings and recommendations and, if there are no significant deficiencies, shall promptly notify the contractor, in writing, that the contractor's system (state which system) is acceptable and approved; or

(ii) If the contracting officer finds that there are one or more significant deficiencies (as defined in the clause) due to the contractor's failure to meet one or more of the system criteria (state which system) in the applicable clause, the contracting officer shall—

(A) Within 30 days of receiving the report, provide an initial determination of deficiencies in writing, describing each significant deficiency in sufficient detail to allow the contractor to understand the deficiency and provide a copy of the report to the contractor;

(B) Request the contractor to respond, in writing, to the initial determination within 30 days; and

(C) Within 30 days of receiving the contractor's response or if the contractor does not submit a response, the date the response was due, in consultation with the auditor or cognizant functional specialist, evaluate the contractor's response or the contractor's lack of response and make a final determination.

(3) *Final determination*. (i) The contracting officer shall make a final determination and notify the contractor, in writing, that—

(A) The contractor's system (state which system) is acceptable and approved, and no significant deficiencies remain, or

(B) Significant deficiencies remain. The notice shall identify any remaining significant deficiencies, and indicate the adequacy of any proposed or completed corrective action. The contracting officer shall—

(1) Request that the contractor, within 45 days of receipt of the final determination, either correct the deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the deficiencies;

(2) Make a determination to disapprove the system in accordance with the applicable clause; and

(3) Withhold payments in accordance with the Contractor Business Systems clause, if the clause is included in the contract.

(ii) Monitoring a contractor's corrective action and the correction of significant deficiencies.

(A) *Monitoring contractor's corrective action.* The contracting officer or designee shall monitor the contractor's progress in correcting deficiencies. If the contractor fails to make adequate progress, the contracting officer shall take whatever action is necessary to ensure that the contractor corrects the deficiencies. Examples of actions the contracting officer can take include disapproving the system; implementing or increasing the withholding in accordance with Contractor Business Systems clause, if applicable; and recommending non-award of potential contracts.

(B) *Correction of significant deficiencies.* (1) When the contractor notifies the contracting officer that the contractor has corrected the significant deficiencies, the contracting officer shall request that the auditor or functional specialist review the correction to determine if the deficiencies have been resolved.

(2) The contracting officer shall determine if the contractor has corrected the deficiencies.

(3) If the contracting officer determines the contractor has corrected the deficiencies, the contracting officer's notification shall be sent to the auditor or functional specialist, invoice approving official, payment office, appropriate action officers responsible for reporting past performance, affected DOE contracting offices having substantial business with the contractor, and the Department of Energy's or National Nuclear Security Administration's Heads of the Contracting Activities and Senior Procurement Executives.

(d) *System approval.* The contracting officer shall promptly approve a previously disapproved system (state which system) and notify the contractor when the contracting officer determines that there are no remaining significant deficiencies.

(e) *Contracting officer notifications.* The cognizant contracting officer shall promptly distribute copies of a determination to approve a system, disapprove a system and withhold payments, or approve a previously disapproved system and release withheld payments to the auditor, invoice approving official, payment office, affected DOE contracting offices having substantial business with the contractor, and the Department of Energy's or National

Nuclear Security Administration's Heads of the Contracting Activities and Senior Procurement Executives.

(f) *Contractor performance information.* The contracting officer, or designee, shall evaluate the contractor's business systems performance and compliance in all evaluations in accordance with 48 CFR 42.15 and DOE Acquisition Guide Chapter 42.15 Contractor Performance Information.

(g) *Mitigating the risk on specific proposals.*

(1) *Accounting system deficiencies on specific proposals.* (i) Functional specialist or field pricing team shall discuss identified accounting system deficiencies and their impact in all reports on contractor proposals until the deficiencies are resolved.

(ii) The contracting officer responsible for negotiation of a proposal generated by an accounting system with an identified deficiency shall evaluate whether the deficiency impacts the negotiations. If it does not, the contracting officer should proceed with negotiations. If it does, the contracting officer should consider other alternatives, *e.g.* —

(A) Allowing the contractor additional time to correct the accounting system deficiency and submit a corrected proposal;

(B) Considering another type of contract;

(C) Using additional cost analysis techniques to determine the reasonableness of the cost elements affected by the accounting system's deficiency;

(D) Reducing the negotiation objective for profit or fee; or

(E) Including a contract (reopener) clause that provides for adjustment of the contract amount after award.

(iii) The contracting officer is responsible for negotiating price adjustments required by the clause. Any reopener clause necessitated by an accounting system deficiency should—

(A) Clearly identify the amounts and items that are in question at the time of negotiation;

(B) Indicate a specific time or subsequent event by which the contractor will submit a supplemental proposal, including certified cost or pricing data, identifying the cost impact adjustment necessitated by the deficient accounting system;

(C) Provide for the contracting officer to adjust the contract price unilaterally if the contractor fails to submit the supplemental proposal; and

(D) Provide that failure of the Government and the contractor to agree to the price adjustment shall be a dispute under the Disputes clause.

(2) *Purchasing system deficiencies on specific proposals.* (i) The functional specialist shall discuss identified purchasing system deficiencies and their impact in all reports on contractor proposals until the deficiencies are resolved.

(ii) The contracting officer responsible for negotiation of a proposal generated by a purchasing system with an identified deficiency shall evaluate whether the deficiency impacts the negotiations. If it does not, the contracting officer should proceed with negotiations. If it does, the contracting officer should consider other alternatives, *e.g.* —

(A) Allowing the contractor additional time to correct the purchasing system deficiency and submit a corrected proposal;

(B) Considering another type of contract, *e.g.*, a fixed-price incentive (firm target) contract instead of firm-fixed-price;

(C) Using additional cost analysis techniques to determine the reasonableness of the cost elements affected by the purchasing system's deficiency;

(D) Segregating the questionable areas as a cost-reimbursable line item;

(E) Reducing the negotiation objective for profit or fee; or

(F) Including a contract (reopener) clause that provides for adjustment of the contract amount after award.

(iii) The contracting officer is responsible for negotiating price adjustments required by the clause. Any reopener clause necessitated by a purchasing system deficiency shall—

(A) Clearly identify the amounts and items that are in question at the time of negotiation;

(B) Indicate a specific time or subsequent event by which the contractor will submit a supplemental proposal, including certified cost or pricing data, identifying the cost impact adjustment necessitated by the deficient purchasing system;

(C) Provide for the contracting officer to adjust the contract price unilaterally if the contractor fails to submit the supplemental proposal; and

(D) Provide that failure of the Government and the contractor to agree to the price adjustment shall be a dispute under the Disputes clause.

## **2. Contractor Business Systems Deficiencies Procedures.**

(a) *Determination to withhold payments.* If the contracting officer makes a final determination to disapprove a contractor's business system in accordance with the Contractor Business Systems clause, the contracting officer shall—

(1) Identify if within DOE there is one or more fixed-price contracts awarded on the basis of adequate price competition without submission of cost or pricing data with large businesses or covered contracts containing Contractor Business Systems clause from which payments will be withheld. When identifying the contracts from which to withhold payments, the contracting officer shall ensure that the total amount of payment withholding under the clause, does not exceed 10 percent of progress payments, performance-based payments, and interim payments under cost-reimbursement, labor-hour, and time-and-materials, contracts billed under each of the identified contracts. Similarly, the contracting officer shall ensure that the total amount of payment withholding under Contractor Business Systems clause, for each business system does not exceed five percent of progress payments, performance-based payments, and interim payments under cost-reimbursement, labor-hour, and time-and-materials contracts billed under each of the identified covered contracts. The contracting officer has the sole discretion to identify the covered contracts from which to withhold payments.

(2) Promptly notify the contractor, in writing, of the contracting officer's determination to implement payment withholding in accordance with the clause. The notice of payment withholding shall be included in the contracting officer's written final determination for the contractor business systems and shall inform the contractor that—

(i) Payments shall be withheld from the contract or contracts identified in the written determination in accordance with the clause, until the contracting officer determines that there are no remaining significant deficiencies; and

(ii) The contracting officer reserves the right to take other actions within the terms and conditions of the contract.

(3) Provide all contracting officers administering the selected contracts from which payments will be withheld, a copy of the determination. The contracting officer shall also provide a copy of the determination to the auditor, invoice approving official, and payment office.

(b) *Monitoring contractor's corrective action.* The contracting officer, in consultation with the auditor, functional specialist, or designee, shall monitor the contractor's progress in correcting the deficiencies. The contracting officer shall notify the contractor of any decision to decrease or increase the amount of payment withholding in accordance with the clause.

(c) *Correction of significant deficiencies.* (1) If the contractor notifies the contracting officer that the contractor has corrected the significant deficiencies, the contracting officer shall request the auditor or functional specialist to review the correction to verify that the deficiencies have been corrected. If, after receipt of verification, the contracting officer determines that the contractor has corrected all significant deficiencies as directed by the

contracting officer's final determination, the contracting officer shall discontinue the withholding of payments, release any payments previously withheld, and approve the system, unless other significant deficiencies remain.

(2) Prior to the receipt of verification, the contracting officer may discontinue withholding payments pending receipt of verification, and release any payments previously withheld, if the contractor submits evidence that the significant deficiencies have been corrected, and the contracting officer, in consultation with the auditor or functional specialist, determines that there is a reasonable expectation that the corrective actions have been implemented and are expected to correct the significant deficiencies.

(3) Within 90 days of receipt of the contractor notification that the contractor has corrected the significant deficiencies, the contracting officer shall—

(i) Make a determination that—

(A) The contractor has corrected all significant deficiencies as directed by the contracting officer's final determination in accordance with paragraph (d)(1) of this section;

(B) There is a reasonable expectation that the corrective actions have been implemented in accordance with paragraph (d)(2) of this section; or

(C) The contractor has not corrected all significant deficiencies as directed by the contracting officer's final determination in accordance with paragraph (d)(1) of this section, or there is not a reasonable expectation that the corrective actions have been implemented in accordance with paragraph (d)(2) of this section; or

(ii) Direct the contractor, in writing, to reduce the percentage withheld on invoices by at least 50 percent, until the contracting officer makes a determination in accordance with paragraph (d)(3)(i) of this section.

(4) If, at any time, the contracting officer determines that the contractor has failed to correct the significant deficiencies identified in the contractor's notification, the contracting officer will continue, reinstate, or increase withholding and direct the contractor, in writing, to continue, 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.

(d) *Determinations regarding payment withholding.* The contracting officer shall use the written notification format or similar format to document the contracting officer determinations to initiate payment withholding, reduce payment withholding, and discontinue payment withholding in accordance with Contractor Business Systems clause. The final determination regarding payment withholding is not a final decision within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601, et seq.).

(1) *Final determination for payment withholding.* Use the sample format or similar format for final determination for payment withholding in accordance with the clause 952.242-71, Contractor Business Systems. Tailor the notice in paragraph (4) to use the appropriate version to reflect invoice payments or advance payments under a special bank account (letter of credit).

*[Begin notice]*

Payment Withholding

(1) The purpose of this final determination is to disapprove your *[identify the contractor business system(s)]* and implement payment withholding per the terms of the Contractor Business Systems clause.

(2) It is my final determination that XXX System(s) contains the following significant deficiencies:

*--[list all significant deficiencies]*

(3) Effective immediately, five percent (or a lesser percentage if five percent will exceed the withhold limitations in the Contractor Business Systems clause) of each request for payment under the contracts in Attachment A will be withheld as described below for significant deficiencies in XXX system. Upon receipt of an acceptable corrective action plan and my determination that this corrective action plan is being effectively implemented, I will issue a notification with respect to reducing the percentage being withheld to two percent until I determine that all significant deficiencies, as identified in this final determination, have been corrected. Failure to follow the accepted corrective action plan will result in an increase in the percentage withheld against each payment under this contract to five percent (or a lesser percentage if five percent will exceed the withhold limitations in Contractor Business Systems clause). *[Repeat this paragraph, as necessary, if multiple withholds are being applied to multiple systems in accordance with paragraph (d)]*

(4) *[For invoice payments use the following paragraph.]* For invoice payments, the Contractor shall apply a five percent (or a lesser percentage if five percent will exceed the withhold limitations in Contractor Business Systems clause) withhold to the amount requested. For invoices in Vendor Invoicing Payment Electronic Reporting System (VIPERS), the Contractor shall invoice for the net amount due after application of the withhold and show the amount withheld on the current billing, as well as the cumulative amount withheld to date on this contract in accordance with the Contractor Business Systems clause, in the Description field of the VIPERS invoice or as supporting documentation attached to the voucher. When approving the invoice for payment in the Vendor Invoice Approval System (VIAS), the Contracting Officer or Invoice Approving Official will verify that the Contractor reduced the invoice the five percent (or a lesser percentage if five percent will exceed the withhold limitations in Contractor Business Systems clause). In the event the Contractor did not submit the invoice with the proper withholding, the Contracting Officer or Invoice Approving Official will reject the invoice and enter the reason for the rejection in the VIAS Comments field. When the Contractor reviews the Invoice Status Report in VIPERS, the reason for the reduced payment will be displayed in the Invoice



Description field.

*[For advance payments under a special bank account (letter of credit) use the following paragraph.]* For advance payments under a special bank account (letter of credit), the Contractor shall immediately be subject to the advance approval requirements by the Contracting Officer or Government countersigning agent for cash withdrawals against the letter of credit. Each Contractor request for cash withdrawal for the net amount due after the withhold shall contain the amount of expenditure, the amount withheld on the current request, as well as the cumulative amount withheld to date on this contract in accordance with the Contractor Business Systems clause, and the net amount requested after application of the withhold. When approving the request for cash withdrawal, the Contracting Officer or Government countersigning agent will verify that the Contractor reduced the request by five percent (or a lesser percentage if five percent will exceed the withhold limitations in Contractor Business Systems). In the event the Contractor did not submit the cash withdrawal request with the proper withholding, the Contracting Officer or Government countersigning agent will reject the request for cash withdrawal for non-compliance with the requirements of this clause in his/her response.

*[End of notice]*

(2) *Reduction of temporary payment withholding.* Use the sample format or similar format for determination to reduce payment withholding in accordance with the Contractor Business Systems clause. Tailor the notice in paragraph (3) to use the appropriate version to reflect invoice payments or advance payments under a special bank account (letter of credit).

*[Begin notice]*

#### Reduction of Temporary Payment Withholding

(1) The purpose of this determination is to reduce the payment withholding percentage per the terms of the Contractor Business Systems clause, as a result of receiving an acceptable corrective action plan from the contractor, dated YYYY/MM/DD, for resolving deficiencies in its XXX system(s) as identified in the Contracting Officer's determination, dated YYYY/MM/DD. This reduction is prospective and previous amounts withheld will not be reduced or released at this time.

(2) Effective immediately, two percent of each request for payment under this contract will be withheld as described below. The two percent being withheld will remain in effect until the Contracting Officer determines that the Contractor has corrected all significant deficiencies as directed by the Contracting Officer's determination. Failure to follow the accepted corrective action plan will result in an increase in the percentage withheld against each payment under this contract to five percent (or a lesser percentage if five percent will exceed the withhold limitations in Contractor Business Systems clause).

(3) *[For invoice payments use the following paragraph.]* For invoice payments, the Contractor shall apply a two percent withhold to the amount being requested. For invoices in Vendor Invoicing Payment Electronic Reporting System (VIPERS), the Contractor shall invoice for the net amount due after withholding and show the amount withheld on the

current billing, as well as the cumulative amount withheld to date on this contract in accordance with the Contractor Business Systems clause, in the Description field of the VIPERS invoice or as supporting documentation attached to the invoice. When approving the invoice for payment in the Vendor Invoice Approval System (VIAS), the Contracting Officer or Invoice Approving Official will verify that the Contractor reduced the invoice the two percent. In the event the Contractor did not submit the invoice with the proper withholding, the Contracting Officer or Invoice Approving Official will reject the invoice and enter the reason for the rejection in the VIAS Comments field. When the Contractor reviews the Invoice Status Report in VIPERS, the reason for the reduced payment will be displayed in the Invoice Description field.

*[For advance payments under a special bank account (letter of credit) use the following paragraph.]* For advance payments under a special bank account (letter of credit), the Contractor shall immediately be subject to the advance approval requirements by the Contracting Officer or Government countersigning agent for cash withdrawals against the letter of credit. Each Contractor request for cash withdrawal for the net amount due after the withhold shall contain the amount of expenditure, the amount withheld on the current request, as well as the cumulative amount withheld to date on this contract in accordance with the Contractor Business Systems clause, and the net amount requested after application of the withhold. When approving the request for cash withdrawal, the Contracting Officer or Government countersigning agent will verify that the Contractor reduced the request by five percent (or a lesser percentage if two percent will exceed the withhold limitations in Contractor Business Systems clause). In the event the Contractor did not submit the cash withdrawal request with the proper withholding, the Contracting Officer or Government countersigning agent will reject the request for cash withdrawal for non-compliance with the requirements of this clause in his/her response.

***[End of notice]***

(3) *Discontinuation of payment withholding pending verification.* Use the sample format or similar format if payment withholding is discontinued after auditor or functional specialist verification and based on evidence that the Contractor has corrected all significant deficiencies, in accordance with Contractor Business Systems clause. Tailor the notice in paragraph (3) to use the appropriate version to reflect invoice payments or advance payments under a special bank account (letter of credit).

***[Begin notice]***

**Discontinuation of Payment Withholding Pending Verification**

(1) The purpose of this determination is to approve your *[identify system(s)]* pending verification, discontinue the payment withhold as identified in the Contracting Officer's determination dated YYYY/MM/DD, and release previous amounts withheld on the contracts in Attachment A, in accordance with Contractor Business Systems clause.

(2) The discontinuation of the payment withhold is made pending receipt of verification and based on my review of the evidence submitted by the Contractor that all the Contractor's system(s) deficiencies identified in the Contracting Officer's determination dated

YYYY/MM/DD have been corrected.

(3) *[For invoice payments use the following paragraph.]* For invoice payments in Vendor Invoicing Payment Electronic Reporting system (VIPERS), the Contractor is authorized to submit an invoice in the amount of \$XXXXXXXX. The billed amount should be submitted on the same type of invoice as the withhold was originally taken, as appropriate.

*[For advance payments under a special bank account (letter of credit) use the following paragraph.]* For advance payments under a special bank account (letter of credit), the Contractor is authorized to submit a request for cash withdrawal for amount of \$XXXXXXXX.

***[End of notice]***

(4) *Discontinuation of Payment Withholding.* Use the sample format or similar format if payment withholding is discontinued after auditor or functional specialist verification that the Contractor has corrected all significant deficiencies, in accordance with Contractor Business Systems clause. Tailor the notice in paragraph (3) to use the appropriate version to reflect invoice payments or advance payments under a special bank account (letter of credit).

***[Begin of notice]***

Discontinuation of Payment Withholding

(1) The purpose of this determination is to approve your *[identify system(s)]*, discontinue the payment withhold as identified in the Contracting Officer's determination dated YYYY/MM/DD, and release previous amounts withheld on the contracts in Attachment A, in accordance with Contractor Business Systems clause.

(2) The discontinuation of the payment withhold is made based on verification that all the Contractor's system(s) deficiencies identified in the Contracting Officer's final determination dated YYYY/MM/DD have been corrected.

(3) *[For invoice payments use the following paragraph.]* For invoice payments in Vendor Invoicing Payment Electronic Reporting system (VIPERS), the Contractor is authorized to submit an invoice in the amount of \$XXXXXXXX. The billed amount should be submitted on the same type of invoice as the withhold was originally taken, as appropriate.

*[For advance payments under a special bank account (letter of credit) use the following paragraph.]* For advance payments under a special bank account (letter of credit), the Contractor is authorized to submit a request for cash withdrawal for amount of \$XXXXXXXX.

***[End of notice]***

(e) *Contract closeout.* At the end of contract performance, if significant deficiencies remain in the disapproved system or systems and payment withholdings are in effect, the payment withholdings will be released during contract closeout. However, the release of

the payment withholdings from one contract will not mean the system is approved. If there are other contracts where payment withholdings are in effect, the payment withholdings will continue on those contracts. These payment withholding are contract financing payments; therefore, these payments withholdings are not subject to the interest penalty provisions of the Prompt Payment Act.

## Attachment B to AL 2013-11

### B – Section H Contract Business Systems Clauses and Section K Provision.

Unless one of the exceptions in AL 2013-11 apply, include the following clauses in Section H, in all solicitations and contracts, in support of a Capital Asset Project (other than a management and operating contract), as prescribed in DOE O 413.3B, or current version, or for a non-capital asset project when a large business contractor, to include a contractor teaming arrangement, as defined at 48 CFR 9.601(1), is awarded a prime contract, when the total contract value exceeds \$50 million, including options, or when the total contract exceeds \$10 million or more, including options, (but less than \$50 million) and the contracting officer determines it to be in the best interest of the Government (e.g., significant estimating problems are believed to exist or the contractor's sales are predominantly Government).

The clauses are—

- Contractor Business Systems;
- Cost Estimating System Requirements;
- Accounting System Administration;
- Contractor Purchasing System Administration; and
- Contractor Property Management System Administration.

To implement earned value management system (EVMS) requirements, for cost or incentive contracts in support of a Capital Asset Project, as prescribed in DOE Order (DOE O) 413.3B, or current version, valued at \$20,000,000 or more, and for other contracts for which EVMS will be applied in accordance with the EVMS thresholds in AL 2013-11—

- In Section K, use the provision Notice of Earned Value Management System, instead of the provisions at 48 CFR 52.234-2, Notice of Earned Value Management System—Pre-Award IBR, and 48 CFR 52.234-3, Notice of Earned Value Management System—Post-Award IBR, in the solicitation; and
- In Section H, use the clause Earned Value Management System, instead of the clause at 48 CFR 52.234-4, Earned Value Management System, in the solicitation and contract.

## **COST ESTIMATING SYSTEM REQUIREMENTS (AUG 2013)**

### *(a) Definitions.*

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

- (1) Is maintained, reliable, and consistently applied;
- (2) Produces verifiable, supportable, documented, and timely cost estimates that are an acceptable basis for negotiation of fair and reasonable prices;
- (3) Is consistent with and integrated with the Contractor's related management systems; and
- (4) Is subject to applicable financial control systems.

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

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

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

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

*(c) Applicability.* Paragraphs (d) and (e) of this clause apply if the Contractor is a large business to include a contractor teaming arrangement, as defined at 48 CFR 9.601(1), performing a contract in support of a Capital Asset Project (other than a management and operating contract as described at 917.6), as prescribed in DOE Order (DOE O) 413.3B, or current version; or a non-capital asset project and either—

- (1) The total prime contract value exceeds \$50 million, including options; or
  - (2) The Contractor was notified, in writing, by the Contracting Officer that paragraphs (d) and (e) of this clause apply.
- (d) *System requirements.* (1) The Contractor shall disclose its estimating system to the Contracting Officer, in writing. If the Contractor wishes the Government to protect the information as privileged or confidential, the Contractor must mark the documents with the appropriate legends before submission. If the Contractor plans to adopt the existing system from the previous Contractor, the Contractor is responsible for the system and shall comply with the system requirements required in this clause.
- (2) An estimating system disclosure is acceptable when the Contractor has provided the Contracting Officer with documentation no later than 60 days after contract award that—
- (i) Accurately describes those policies, procedures, and practices that the Contractor currently uses in preparing cost proposals; and
  - (ii) Provides sufficient detail for the Government to reasonably make an informed judgment regarding the acceptability of the Contractor's estimating practices.
- (3) The Contractor shall—
- (i) Comply with its disclosed estimating system; and
  - (ii) Disclose significant changes to the cost estimating system to the Contracting Officer on a timely basis.
- (4) The Contractor's estimating system shall provide for the use of appropriate source data, utilize sound estimating techniques and good judgment, maintain a consistent approach, and adhere to established policies and procedures. An acceptable estimating system shall accomplish the following functions:
- (i) Establish clear responsibility for preparation, review, and approval of cost estimates and budgets.
  - (ii) Provide a written description of the organization and duties of the personnel responsible for preparing, reviewing, and approving cost estimates and budgets.
  - (iii) Ensure that relevant personnel have sufficient training, experience, and guidance to perform estimating and budgeting tasks in accordance with the Contractor's established procedures.
  - (iv) Identify and document the sources of data and the estimating methods and rationale used in developing cost estimates and budgets.
  - (v) Provide for adequate supervision throughout the estimating and budgeting process.

- (vi) Provide for consistent application of estimating and budgeting techniques.
  - (vii) Provide for detection and timely correction of errors.
  - (viii) Protect against cost duplication and omissions.
  - (ix) Provide for the use of historical experience, including historical vendor pricing information, where appropriate.
  - (x) Require use of appropriate analytical methods.
  - (xi) Integrate information available from other management systems.
  - (xii) Require management review, including verification of compliance with the company's estimating and budgeting policies, procedures, and practices.
  - (xiii) Provide for internal review of, and accountability for, the acceptability of the estimating system, including the budgetary data supporting indirect cost estimates and comparisons of projected results to actual results, and an analysis of any differences.
  - (xiv) Provide procedures to update cost estimates and notify the Contracting Officer in a timely manner.
  - (xv) Provide procedures that ensure subcontract prices are reasonable based on a documented review and analysis provided with the prime proposal, when practicable.
  - (xvi) Provide estimating and budgeting practices that consistently generate sound proposals that are compliant with the provisions of the solicitation and are adequate to serve as a basis to reach a fair and reasonable price.
  - (xvii) Have an adequate system description, including policies, procedures, and estimating and budgeting practices, that comply with the Federal Acquisition Regulation (48 CFR chapter 1) and Department of Energy Acquisition Regulation (48 CFR chapter 9).
- (e) *Significant deficiencies.* (1) The Contracting Officer will provide an initial determination to the Contractor, in writing, of any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.
- (2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's estimating system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing. In the event the Contractor did not respond in writing to the initial determination within the response time, this lack of response shall indicate that the Contractor agrees with the initial determination.



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

(i) Remaining significant deficiencies;

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

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

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

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

**(End of clause)**

## NOTICE OF EARNED VALUE MANAGEMENT SYSTEM (AUG 2013)

(a) If the offeror submits a proposal for a Department of Energy (DOE) Capital Asset Project —

(1) In the amount of \$50,000,000 or more; or

(2) Where the offeror has a contract or other contracts in support of DOE Capital Asset Projects and the total contract values are \$20,000,000 or greater per contract for a total contract values of \$50,000,000 or more—

(i) The offeror shall provide documentation that an authorized government representative has determined that the proposed Earned Value Management System (EVMS) complies with the EVMS guidelines in the American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems (ANSI/EIA-748) (current version at time of solicitation). The Government reserves the right to perform reviews of the EVMS when deemed necessary to verify compliance.

(ii) If the offeror proposes to use a system that has not been determined to be in compliance with the requirements of paragraph (a)(1) of this provision, the offeror shall submit a comprehensive plan for compliance with the guidelines in ANSI/EIA-748.

(A) The plan shall—

(1) Describe the EVMS the offeror intends to use in performance of the contract, and how the proposed EVMS complies with the EVMS guidelines in ANSI/EIA-748;

(2) Distinguish between the offeror's existing management system and modifications proposed to meet the EVMS guidelines;

(3) Describe the management system and its application in terms of the EVMS guidelines;

(4) Describe the proposed procedure for administration of the EVMS guidelines as applied to subcontractors; and

(5) Describe the process the offeror will use to determine subcontractor compliance with ANSI/EIA-748.

(B) The offeror shall provide information and assistance as required by the Contracting Officer to support review of the plan.

(C) The offeror's EVMS plan must provide milestones that indicate when the offeror anticipates that the EVMS will be compliant with the guidelines in ANSI/EIA-748.

(b) If the offeror submits a proposal in an amount less than \$50,000,000 and does not meet the condition described at (a)(2) above—

(1) The offeror shall submit a written description of the management procedures it will use and maintain in the performance of any resultant contract to comply with the requirements of the Earned Value Management System clause of the contract. The description shall include—

(i) A matrix that correlates each guideline in ANSI/EIA-748 (current version at time of solicitation) to the corresponding process in the offeror's written management procedures; and

(ii) The process the offeror will use to determine subcontractor compliance with ANSI/EIA-748.

(2) If the offeror proposes to use an EVMS that has been determined by the CFA to be in compliance with the EVMS guidelines in ANSI/EIA-748, the offeror may submit a copy of the documentation of such determination instead of the written description required by paragraph (b)(1) of this provision.

(c) The offeror shall identify the subcontractors (or the subcontracted effort if subcontractors have not been selected) to whom the EVMS requirements will apply. The offeror and the Government shall agree to the subcontractors or the subcontracted effort selected for application of the EVMS requirements. The offeror shall be responsible for ensuring that the selected subcontractors comply with the requirements of the Earned Value Management System clause of the contract.

**(End of provision)**

## EARNED VALUE MANAGEMENT SYSTEM (FEB 2014)

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

*Acceptable earned value management system* means an earned value management system that generally complies with system criteria in paragraph (b) of this clause.

*Earned value management system* means an earned value management system that complies with the earned value management system guidelines in the ANSI/EIA-748.

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

*Over Target Schedule* means the term used to describe a condition where a baseline schedule is time-phased beyond the contract completion date.

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

(b) *System criteria.* In the performance of this contract, the Contractor shall use—

(1) An Earned Value Management System (EVMS) that complies with the EVMS guidelines in the American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems (ANSI/EIA-748, current version at time of award); and

(2) *Management procedures.* (i) Management procedures provide for generation of timely, reliable, and verifiable information for DOE Integrated Program Management Report (IPMR) data item of this contract.

(ii) The Contractor shall use Department of Energy's (DOE) modified version of Department of Defense's Data Item Description (DID) Integrated Program Management Report (IPMR), DI-MGMT-81861, (DOE version, current version at time of award) which contains data for measuring cost and schedule performance for this DOE contract. The Contractor shall submit the data electronically by uploading the data into the Project Assessment and Reporting System (PARS II) in accordance with the "Contractor Project Performance Upload Requirements" document maintained by the DOE Office of Acquisition and Project Management (OAPM). All requested data shall be submitted timely and accurately, and shall be current as of the close of the previous month's accounting period.

(c) If the Contractor has one or more DOE contracts valued at \$20,000,000 or greater per contract for a total contract value of \$50,000,000 or more which support DOE Capital Asset Projects, the Contractor shall use an EVMS that has been determined to be acceptable by

DOE. If, at the time of award, the Contractor's EVMS has not been determined by DOE to be in compliance with the EVMS guidelines as stated in paragraph (b)(1) of this clause, the Contractor shall apply its current system to the contract and shall take necessary actions to meet the milestones in the Contractor's EVMS plan.

(d) If this contract has a total value of less than \$50,000,000 and does not meet the condition described at (c) above, the Government will not make a formal determination that the Contractor's EVMS complies with the EVMS guidelines in ANSI/EIA-748 with respect to the contract. The use of the Contractor's EVMS for this contract does not imply a Government determination of the Contractor's compliance with the EVMS guidelines in ANSI/EIA-748 for application to future contracts.

(e) The Contractor shall submit notification of all proposed changes to the EVMS procedures and the impact of those changes to DOE. If this contractor has one or more contracts in support of DOE Capital Asset Projects and the total contract values are \$20,000,000 or greater per contract for total contract values of \$50,000,000 or more, unless a waiver is granted by DOE, any EVMS changes proposed by the Contractor require approval of DOE prior to implementation. DOE will advise the Contractor of the acceptability of such changes as soon as practicable (generally within 30 calendar days) after receipt of the Contractor's notice of proposed changes. If DOE waives the advance approval requirements, the Contractor shall disclose EVMS changes to DOE at least 14 calendar days prior to the effective date of implementation.

(f) *Integrated baseline reviews.* (1) The purpose of the integrated baseline reviews (IBR) is to verify the technical content and the realism of the related performance budgets, resources, and schedules. It should provide a mutual understanding of the inherent risks in the offerors'/contractors' performance plans and the underlying management control systems, and it should formulate a plan to handle these risks. DOE and the Contractor will use the IBR process described in the National Defense Industrial Association Program Management Systems Committee Integrated Baseline Review (NDIA PMSC IBR) Guide (current version at time of award).

(2) The Government will schedule IBRs as early as practicable, and the review process will be conducted not later than 180 calendar days after—

- (i) Contract award;
- (ii) The exercise of significant contract options; and
- (iii) The incorporation of major modifications.

During such reviews, the Government and the Contractor will jointly assess the Contractor's baseline to be used for performance measurement to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.

(g) The Contractor shall provide access to all pertinent records and data requested by the Contracting Officer or duly authorized representative as necessary to permit Government

surveillance to ensure that the EVMS complies, and continues to comply, with the performance criteria referenced in paragraph (b) of this clause.

(h) When indicated by contract performance, the Contractor shall submit a request for approval to initiate an over-target baseline or over-target schedule to the Contracting Officer. The request shall include a top-level projection of cost and/or schedule growth, a determination of whether or not performance variances will be retained, and a schedule of implementation for the rebaselining. The Government will acknowledge receipt of the request in a timely manner (generally within 30 calendar days).

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

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

(3) The Contracting Officer, with input from the applicable DOE OAPM or the DOE Program Office functional specialist, 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 noncompliance, when the Contractor's existing EVMS fails to comply with the earned value management system guidelines in the ANSI/EIA-748.

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

(j) *Withholding payments.* If the Contracting Officer makes a final determination that one or more significant deficiencies exists and the contract includes the Section H clause Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

(k) With the exception of paragraphs (i) and (j) of this clause, for contracts valued at \$20 million or more requiring EVMS, the contractor shall flow down appropriate EVMS requirements to its subcontractors in order for the contractor to meet all requirements of this clause.

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

(1) *Adopting previous Contractor's previously certified earned value management (EVM) process.* If the Contractor plans to adopt the existing system from the previous Contractor or DOE-site, the Contractor is responsible for the system and shall comply with the system requirements required in this clause. The existing system shall utilize the same DOE approved EVM Process Description and the same EVM training as the previous system. The Contractor shall –

- (1) Identify the corporate entity which owns the certified EVM process and provide the certification documentation;
- (2) Obtain DOE prior approval or Advanced Agreement including DOE approval of process changes and joint surveillance;
- (3) Be responsible for compliance with the system criteria required in paragraph (b) of this clause; and
- (4) Be responsible for correcting any significant deficiencies previously identified to the previous Contractor by the Contracting Officer in accordance with paragraph (i) of this clause. Within 45 days after receiving a copy of the previous contractor's final determination, the Contractor shall follow paragraph (i)(4) and either correct any significant deficiencies or submit an acceptable corrective action plan. The Contracting Officer or designee, will provide a copy of the previous contractor's final determination.

**(End of clause)**

## CONTRACTOR BUSINESS SYSTEMS (AUG 2013)

(a) This clause only applies to fixed-price contract awarded to a large business on the basis of adequate price competition with or without submission of cost or pricing data; or covered contract that is subject to the Cost Accounting Standards under 41 U.S.C. chapter 15, as implemented in regulations found at 48 CFR 9903.201-1(a) and is not exempted at 9903.201-1(b)(1) through (14) (see the 48 CFR Appendix).

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

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

*Contractor business systems* means—

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

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

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

(d) *Significant deficiencies.* (1) The Contractor shall respond, in writing, within 30 days to an initial determination that there are one or more significant deficiencies in one or more of the Contractor's business systems.

(2) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the final determination as to whether the Contractor's business system contains significant deficiencies. If the Contracting Officer determines that the Contractor's business system contains significant deficiencies, the final determination



will include a notice to withhold payments.

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

(i) Correct the deficiencies; or

(ii) Submit an acceptable corrective action plan showing milestones and actions to eliminate the deficiencies. The plan shall contain—

(A) Root cause(s) identification of the problem(s);

(B) The proposed corrective action(s) to address the root cause(s);

(C) A schedule for implementation; and

(D) The name of the person responsible for the implementation.

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

(3) *Payment withhold percentage limits.*

(i) The total percentage of payments withheld on amounts due on this contract shall not exceed—

(A) Five percent for one or more significant deficiencies in any single contractor business system; and

(B) Ten percent for significant deficiencies in multiple contractor business systems.

(ii) If this contract contains pre-existing withholds, and the application of any subsequent

payment withholds will cause withholding under this clause to exceed the payment withhold percentage limits in paragraph (e)(3)(i) of this clause, the Contracting Officer will reduce the payment withhold percentage in the final determination to an amount that will not exceed the payment withhold percentage limits.

(4) For the purpose of this clause, payment means invoicing for any of the following payments authorized under this contract:

(i) Interim payments under—

(A) Cost-reimbursement contracts;

(B) Incentive type contracts;

(C) Time-and-materials contracts; or

(D) Labor-hour contracts.

(ii) Progress payments to include fixed-price contracts.

(iii) Performance-based payments to include fixed-price contracts.

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

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

(7) Notwithstanding the provisions of any clause in this contract providing for interim, partial, or other payment withholding on any basis, the Contracting Officer may withhold payment in accordance with the provisions of this clause.

(8) The payment withholding authorized in this clause is not subject to the interest-penalty provisions of the Prompt Payment Act.

(f) *Correction of deficiencies.* (1) The Contractor shall notify the Contracting Officer, in writing, when the Contractor has corrected the business system's deficiencies.

(2) Once the Contractor has notified the Contracting Officer that all deficiencies have been corrected, the Contracting Officer will take one of the following actions:

(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.

**(End of clause)**

## ACCOUNTING SYSTEM ADMINISTRATION (AUG 2013)

(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 60 days after contract award. Failure to maintain an acceptable accounting system, as defined in this clause, shall result in the withholding of payments if the contract includes the Section H clause Contractor Business Systems, and also may result in disapproval of the system.

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

- (1) A sound internal control environment, accounting framework, and organizational structure;
- (2) Proper segregation of direct costs from indirect costs;
- (3) Identification and accumulation of direct costs by contract;
- (4) A logical and consistent method for the accumulation and allocation of indirect costs to intermediate and final cost objectives;

- (5) Accumulation of costs under general ledger control;
  - (6) Reconciliation of subsidiary cost ledgers and cost objectives to general ledger;
  - (7) Approval and documentation of adjusting entries;
  - (8) Management reviews or internal audits of the system to ensure compliance with the Contractor's established policies, procedures, and accounting practices;
  - (9) A timekeeping system that identifies employees' labor by intermediate or final cost objectives;
  - (10) A labor distribution system that charges direct and indirect labor to the appropriate cost objectives;
  - (11) Interim (at least monthly) determination of costs charged to a contract through routine posting of books of account;
  - (12) Exclusion from costs charged to Government contracts of amounts which are not allowable in terms of 48 CFR part 31, Contract Cost Principles and Procedures, and other contract provisions;
  - (13) Identification of costs by contract line item and by units (as if each unit or line item were a separate contract), if required by the contract;
  - (14) Segregation of preproduction costs from production costs, as applicable;
  - (15) Cost accounting information, as required—
    - (i) By contract clauses concerning limitation of cost (48 CFR 52.232-20), limitation of funds (48 CFR 52.232-22), or allowable cost and payment (48 CFR 52.216-7); and
    - (ii) To readily calculate indirect cost rates from the books of accounts;
  - (16) Billings that can be reconciled to the cost accounts for both current and cumulative amounts claimed and comply with contract terms;
  - (17) Adequate, reliable data for use in pricing follow-on acquisitions; and
  - (18) Accounting practices in accordance with standards promulgated by the Cost Accounting Standards Board, if applicable, otherwise, Generally Accepted Accounting Principles.
- (d) *Significant deficiencies.* (1) The Contracting Officer will provide an initial determination to the Contractor, in writing, on any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.

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

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

(i) Remaining significant deficiencies;

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

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

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

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

**(End of clause)**

## CONTRACTOR PURCHASING SYSTEM ADMINISTRATION (AUG 2013)

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

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

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

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

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

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

- (1) Have an adequate system description including policies, procedures, and purchasing practices that comply with the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) and the Department of Energy Acquisition Regulation (48 CFR Chapter 9);
- (2) Ensure that all applicable purchase orders and subcontracts contain all flowdown clauses, including terms and conditions and any other clauses needed to carry out the requirements of the prime contract;
- (3) Maintain an organization plan that establishes clear lines of authority and responsibility;
- (4) Ensure all purchase orders are based on authorized requisitions and include a complete and accurate history of purchase transactions to support vendor selected, price paid, and document the subcontract/purchase order files which are subject to Government review;
- (5) Establish and maintain adequate documentation to provide a complete and accurate history of purchase transactions to support vendors selected and prices paid;
- (6) Apply a consistent make-or-buy policy that is in the best interest of the Government;
- (7) Use competitive sourcing to the maximum extent practicable, and ensure debarred or suspended contractors are properly excluded from contract award;

- (8) Evaluate price, quality, delivery, technical capabilities, and financial capabilities of competing vendors to ensure fair and reasonable prices;
- (9) Require management level justification and adequate cost or price analysis, as applicable, for any sole or single source award;
- (10) Perform timely and adequate cost or price analysis and technical evaluation for each subcontractor and supplier proposal or quote to ensure fair and reasonable subcontract prices;
- (11) Document negotiations in accordance with 48 CFR 15.406-3;
- (12) Seek, take, and document economically feasible purchase discounts, including cash discounts, trade discounts, quantity discounts, rebates, freight allowances, and company-wide volume discounts;
- (13) Ensure proper type of contract selection and prohibit issuance of cost-plus-a-percentage-of-cost subcontracts;
- (14) Maintain subcontract surveillance to ensure timely delivery of an acceptable product and procedures to notify the Government of potential subcontract problems that may impact delivery, quantity, or price;
- (15) Document and justify reasons for subcontract changes that affect cost or price;
- (16) Notify the Government of the award of all subcontracts that contain the 48 CFR Chapter 1 and 48 CFR Chapter 9 flowdown clauses that allow for Government audit of those subcontracts, and ensure the performance of audits of those subcontracts;
- (17) Enforce adequate policies on conflict of interest, gifts, and gratuities, including the requirements of the 41 U.S.C. chapter 87, Kickbacks;
- (18) Perform internal audits or management reviews, training, and maintain policies and procedures for the purchasing department to ensure the integrity of the purchasing system;
- (19) Establish and maintain policies and procedures to ensure purchase orders and subcontracts contain mandatory and applicable flowdown clauses, as required by the 48 CFR chapter 1, including terms and conditions required by the prime contract and any clauses required to carry out the requirements of the prime contract;
- (20) Provide for an organizational and administrative structure that ensures effective and efficient procurement of required quality materials and parts at the best value from responsible and reliable sources;
- (21) Establish and maintain selection processes to ensure the most responsive and responsible sources for furnishing required quality parts and materials and to promote



competitive sourcing among dependable suppliers so that purchases are reasonably priced and from sources that meet contractor quality requirements;

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

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

(24) Establish and maintain procedures to timely notify the Contracting Officer, in writing, if—

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

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

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

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

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

(i) Remaining significant deficiencies;

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

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

(e) If the Contractor receives the Contracting Officer's final determination of significant

deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the deficiencies.

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

**(End of clause)**

## CONTRACTOR PROPERTY MANAGEMENT SYSTEM ADMINISTRATION (AUG 2013)

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

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

*Property management system* means the Contractor's system or systems for managing and controlling Government property.

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

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

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

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

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

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

(i) Remaining significant deficiencies;

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

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

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

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

**(End of clause)**