

**PART I – THE SCHEDULE**

**SECTION H**

**SPECIAL CONTRACT REQUIREMENTS**

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## H.1 DOE-H-7001 FACILITIES (SEP 2017)

DOE agrees to furnish and make available to the Contractor, for its possession and use in performing the work under this contract, the facilities designated as follows:

- (a) The Government-owned or leased land, buildings, utilities, equipment and other facilities situated at or near the Savannah River National Lab. The SRNL main technical area covers approximately 39 acres. This area includes a total of three (3) Nuclear Hazard Category II and III facilities that have over 200,000 sq. ft. of radiologically controlled laboratory and process space, with 155 laboratories and 326 offices. Total footprint of SRNL buildings, facilities, and other structures is approximately 829,800 sq. ft. with an additional 58,850 sq. ft. of leased facility space (i.e., Aiken County Savannah River Research Campus, Aiken County Technology Laboratory, Hydrogen Technology & Energy Materials Research Labs).
- (b) Government-owned or leased facilities at such other locations as may be approved by DOE for use under this contract; and
- (c) Subject to mutual agreement, other facilities may be used in the performance of the work under this contract.

DOE reserves the right to make part of the above-mentioned land or facilities available to other Government agencies or other users on the basis that the responsibilities and undertakings of the Contractor will not be unreasonably interfered with. Before exercising its right to make any part of the land or facilities available to another agency or user, DOE will confer with the Contractor.

## H.2 DOE-H-7002 LONG-RANGE PLANNING, PROGRAM DEVELOPMENT AND BUDGETARY ADMINISTRATION (SEP 2017)

- (a) Basic Considerations. Throughout the process of planning, and budget development and approval, the Parties recognize the desirability for close consultation, for advising each other of plans or developments on which subsequent action will be required, and for attempting to reach mutual understanding in advance of the time that action needs to be taken.
- (b) Long Range Planning. It is the intent of the Parties to develop a five-year strategic outlook for SRNL. Development of this document is the strategic planning process by which the Parties, through mutual consultation, reach agreement on the general types and levels of activity which will be conducted at the Laboratory for the designated period. It also serves as a baseline for placement of work at the Laboratory. The contents of the plan should include: Mission Overview, Funding by Source, Human Resources, Core Capabilities, Science Strategies for the Future, Major Initiatives, Infrastructure Plans, Mission Readiness and Strategic Partnership Projects. The Contractor shall submit an annual Laboratory Plan which provides

insight into accomplishments against this strategic document. The Contractor is expected to contribute to long range planning conducted by the Office of Environmental Management.

- (c) Budgetary Administration. DOE approval of program proposals and budget estimates will be reflected in work authorizations and financial plans developed and issued to the Contractor.

### **H.3 DOE-H-7003 CONTRACTOR ASSURANCE SYSTEM (SEP 2017) (REVISED)**

- (a) The Contractor shall develop and execute a contractor assurance system that is validated by the Contractor's Board of Directors (or equivalent corporate oversight entity) and implemented throughout the Contractor's organization. This system provides reasonable assurance that the objectives of the contractor management systems are being accomplished and that the systems and controls will be effective and efficient. The contractor assurance system, at a minimum, shall include the following key attributes:
  - (1) A comprehensive description of the assurance system with processes, key activities, and accountabilities clearly identified.
  - (2) A method for verifying/ensuring effective assurance system processes. Third party audits, peer reviews, independent assessments, and external certification (such as VPP and ISO 9001 or ISO 14001) may be used.
  - (3) Timely notification to the Contracting Officer of significant assurance system changes prior to the changes.
  - (4) Rigorous, risk-based, credible self-assessments, and feedback and improvement activities, including utilization of nationally recognized experts, and other independent reviews to assess and improve the Contractor's work process and to carry out independent risk and vulnerability studies.
  - (5) Identification and correction of negative performance/compliance trends before they become significant issues.
  - (6) Integration of the assurance system with other management systems including Integrated Safety Management.
  - (7) Metrics and targets to assess performance, including benchmarking of key functional areas with other DOE contractors, industry and research institutions. Assure development of metrics and targets that result in efficient and cost-effective performance.

- (8) Continuous feedback and performance improvement.
- (9) An implementation plan (if needed) that considers and mitigates risks.
- (10) Timely and appropriate communication to the Contracting Officer, including electronic access, of assurance related information.

The initial contractor assurance system description shall be approved by the Contracting Officer.

- (b) The Government may revise its level and/or mix of oversight of this contract when the Contracting Officer determines that the assurance system is or is not operating effectively.

#### **H.4 DOE-H-7004 DEFENSE AND INDEMNIFICATION OF EMPLOYEES (SEP 2017)**

- (a) The Parties recognize that, under applicable State law, the Contractor could be required to defend and indemnify its officers and employees from and against civil actions and other claims which arise out of the performance of work under this contract. Except for defense costs made unallowable by law, Section I Clause entitled "DEAR 970.5232-2 – Payments and Advances", or the Major Fraud Act (41 U.S.C. §256(k)), the costs and expenses, including judgments, resulting from the defense and indemnification of employees from and against such civil actions and claims shall be allowable costs under this contract if incurred pursuant to the terms of Section I Clause entitled "DEAR 970.5228-1 – Insurance--Litigation and Claims".
- (b) Costs and expenses, including judgments, resulting from the defense and indemnification of employees from civil fraud actions filed in federal court by the Government will be unallowable where the employee pleads nolo contendere or the action results in a judgment against the defendant.
- (c) Where in accordance with applicable State law, the Contractor determines it must defend an employee in a criminal action, DOE will consider in good faith, on a case-by-case basis, whether the Contractor has such an obligation. If DOE concurs, the costs and expenses, including judgments, resulting from the defense and indemnification of employees shall be allowable.
- (d) The Contractor shall immediately furnish the Contracting Officer written notice of any such claim or civil action filed against any employee of the Contractor arising out of the work under this contract together with copies of all pleadings filed. The Contractor shall furnish to the Contracting Officer a written determination by the Contractor's counsel that the defense or indemnity of the employee is required by the provisions of applicable State law, that the employee was acting within the course and scope of employment at the time of the acts or omissions which gave rise

to the claim or civil action, and that any exclusions set forth under applicable State law for fraud, corruption, malice, willful misconduct, or lack of good faith on the part of the employee does not apply. A copy of any letter asserting a reservation of rights under applicable State law with respect to the defense or indemnification of such employee shall also be provided to the Contracting Officer. The costs associated with the settlement of any such claim or civil action shall not be treated as an allowable cost unless approved in writing by the Contracting Officer.

#### **H.5 DOE-H-7005 ADVANCE UNDERSTANDINGS REGARDING ADDITIONAL ITEMS OF ALLOWABLE AND UNALLOWABLE COSTS AND OTHER MATTERS (SEP 2017)**

Allowable costs under this contract shall be determined according to the requirements of Section I Clause entitled "DEAR 970.5232-2 – Payments and Advances". For purposes of effective contract implementation, certain items of cost are being specifically identified below as allowable and/or unallowable under this contract to the extent indicated:

- (a) ITEMS OF ALLOWABLE COSTS:
- (1) Cost for the defense and indemnification of employees in accordance with the provisions of Section H Clause entitled "Defense and Indemnification of Employees".
  - (2) Rentals and leases of land, buildings, and equipment owned by third parties, allowances in lieu of rental, charges associated therewith and costs of alteration, remodeling and restorations where such items are used in the performance of the contract, except that such rentals and leases directly chargeable to the contract shall be subject to such approval by the Contracting Officer.
  - (3) Notwithstanding the provisions of FAR 31.205-44 (e), stipends and payments made to reimburse travel or other expenses of researchers and students who are not employed under this contract but are participating in research, educational or training activities under this contract to the extent such costs are incurred in connection with fellowship, international agreements, or other research, educational or training programs approved by the Contracting Officer.
  - (4) Notwithstanding the provisions of FAR 31.205-44 (e), payments to educational institutions for tuition and fees, or institutional allowances, in connection with fellowship or other research, educational or training programs for researchers and students who are not employed under this contract.

- (5) Costs incurred or expenditures made by the Contractor, as directed, approved or ratified by the Contracting Officer and not otherwise unallowable under any other provisions of this contract.
  - (6) Subject to any other limitations on allowability contained in this contract, costs incurred and expenditures made by the Contractor's Board of Directors (or equivalent corporate oversight entity), its members, committees, panels and support personnel in connection with performance of work under this contract. The Contractor shall provide to the Contracting Officer, for an allowability determination, an annual accounting of these costs incurred and expenditures made.
  - (7) Reachback costs for individuals from the home office directly supporting transition activities.
- (b) ITEMS OF UNALLOWABLE COSTS:
- (1) Premium Pay for wearing radiation-measuring devices for Laboratory and all-tier cost-type subcontract employees.
  - (2) Salaries or other salary-like compensation of the Contractor's Board members, or that of members of subcommittees of the Board who are employees of the Contractor, or the equivalent corporate oversight entity/entities.
  - (3) Home office expenses, whether direct or indirect, relating to activities of the Contractor, except as otherwise specifically agreed to elsewhere in this contract or subsequently in writing by the Contracting Officer.

(c) OTHER MATTER:

Pursuant to Section I Clause entitled "DEAR 970.5208-1 – Printing", the Contractor is authorized to certify, prior to the printing of individual jobs, that the use of more than one color of ink fulfills a specific functional need in accordance with the guidance provided in the Government Printing and Binding Regulations, Title 44 of the U.S. Code and DOE directives related thereto. This authorization is subject to the Contractor providing to the Contracting Officer, on an annual basis, a report on all multicolor printing activities supported with DOE funds.

## **H.6 DOE-H-7006 ADMINISTRATION OF SUBCONTRACTS (SEP 2017)**

- (a) The administration of all subcontracts entered into and/or managed by the Contractor, including responsibility for payment hereunder, shall remain with the Contractor unless assigned at the direction of DOE.

- (b) The DOE reserves the right to direct the Contractor to assign to the DOE, or another Contractor, any subcontract awarded under this contract.
- (c) The DOE reserves the right to identify specific work activities in Section C entitled “Description/Specs/Work Statement” to be removed (de-scoped) from the contract in order to contract directly for the specific work activities. The Department will work with the Contractor to identify the areas of work that can be performed by small businesses in order to maximize direct federal contracts with small businesses. The Contractor agrees to facilitate these actions. This facilitation will include identifying direct contracting opportunities valued at \$5 million or above for small businesses for work presently performed under subcontracts, as well as work performed by contractor employees. The Contractor shall notify the DOE one-year in advance of the expiration of any of its subcontracts valued at \$5 million or above, or if applicable, one-year prior to the exercise of an option and/or the option notification requirement, if any, contained in the subcontracts. The DOE will review this information and the requirements of the Contractor to determine the appropriateness for small business opportunities. This review may result in the DOE electing to enter in contracts directly with small businesses for these areas of work. The Contracting Officer will give notice to the Contractor not less than 120 calendar days prior to the date for exercising the option and/or the expiration of the subcontract and/or prior to entering into contract for work being performed by contractor employees. Following award of these direct federal contracts, DOE may assign administration of these contracts to the Contractor. The Contractor agrees to accept assignments from the DOE for the administration of these contracts. The parameters of the Contractor's responsibilities for the small business contracts and/or changes, if any, to this contract will be incorporated via a modification to the contract. The Contractor will accept management and administration responsibilities, if so determined.
- (d) To the extent that DOE removes (de-scopes) work from this contract, any such removed or withdrawn work shall be treated as a change in accordance with Section I Clause entitled “DEAR 970.5243-1 – Changes”. A “material change” for the purpose of this clause is defined as cumulative changes during a fiscal year that result in a plus or minus 10% change to the Laboratory’s budget. To the extent that DOE assigns the administration of a contract to the Contractor, or removes (de-scopes) work, the Parties reserve the right to negotiate an equitable adjustment in the Contractor’s annual available performance fee. The negotiation of fee will be in accordance with the Section I Clause entitled “DEAR 970.5215-1 – Total Available Fee: Base Fee Amount and Performance Fee Amount. The Parties will also negotiate appropriate adjustments to the Contractor’s Subcontracting Plan or any other applicable contract terms and conditions impacted by such withdrawal or addition of work scope to recognize the changes to the Contractor’s subcontracting base and goals.

## **H.7 DOE-H-7008 PRIVACY ACT RECORDS (SEP 2017)**

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a (Public Law 93-579) and implementing DOE Regulations (10 CFR 1008), the Contractor shall maintain the following "Systems of Records" on individuals in order to accomplish the United States Department of Energy functions:

- (a) “Personnel Medical Records” (DOE-33) (Excepting Contractor Employees).
- (b) "Personnel Radiation Exposure Records" (DOE-35) respecting Contractor employees, DOE employees, and visitors to the Contract site.
- (c) “Employee and Visitor Access Control Records” (DOE-51).
- (d) “Access Control Records of International Visits, Assignments, and Employment at DOE Facilities and Contractor Sites” (DOE-52).

The parenthetical Department of Energy number designations for each system of records refers to the official "System of Records" number published by the United States Department of Energy in the Federal Register pursuant to the Privacy Act.

If DOE requires the Contractor to design, develop, or maintain additional systems of Government-owned records on individuals to accomplish an agency function in accordance with the Privacy Act of 1974 and 10 CFR 1008, the Contracting Officer, or designee, shall so notify the Contractor, in writing, and such Privacy Act system shall be deemed added to the above list whether incorporated by formal contract modification or not. The Parties shall mutually agree to a schedule for implementation of the Privacy Act with respect to each such system.

## **H.8 DOE-H-7009 ADDITIONAL DEFINITIONS (SEP 2017)**

- (a) “Contractor” means “the Offeror” as specified in Block 15A of Standard Form 33, Section A entitled “Solicitation, Offer and Award” of the contract.
- (b) The term “DOE” means the Department of Energy, “NNSA” means the National Nuclear Security Administration.
- (c) The term "DOE Directive" means DOE Policies, Orders, Notices, Manuals, Regulations, Technical Standards and related documents, and Guides, including for purposes of this contract those portions of DOE's Accounting and Procedures Handbook applicable to integrated Contractors, issued by DOE. The term does not include temporary written instructions by the Contracting Officer for the purpose of addressing short-term or urgent DOE concerns relating to health, safety, or the environment.
- (d) “Head of Agency” means: (i) The Secretary; (ii) Deputy Secretary; (iii) Under Secretaries of the Department of Energy; and (iv) the Chairman, Federal Energy Regulatory Commission.
- (e) “Head of Contracting Activity” - As Designated by EM
- (f) “Laboratory” means the Savannah River National Laboratory (SRNL) composed of Government-owned and leased buildings and facilities together with the necessary

utilities, now existing or hereafter to be acquired, constructed and equipped. The SRNL main technical area covers approximately 39 acres. This area includes a total of three (3) Nuclear Hazard Category II and III facilities that have over 200,000 sq. ft. of radiologically controlled laboratory and process space, with 155 laboratories and 326 offices. Total footprint of SRNL buildings, facilities, and other structures is approximately 829,800 sq. ft. with an additional 58,850 sq. ft. of leased facility space (i.e., Aiken County Savannah River Research Campus, Aiken County Technology Laboratory, Hydrogen Technology & Energy Materials Research Labs), and, when complete, the approximately 65,000 sq. ft. Advanced Manufacturing Collaborative facility.

(g) The term “non-profit organization” means:

- (1) a university or other institution of higher education,
- (2) an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 as amended and exempt from taxation under section 501(a) and the Internal Revenue Code,
- (3) any nonprofit scientific or educational organization qualified as a nonprofit by the laws of the State of its organization or incorporation, or
- (4) a combination of qualifying entities organized for a nonprofit purpose (e.g., partnership, joint venture or limited liability company) each member of which meets the requirements of (1), (2), or (3) above.

(h) The term “Senior Procurement Executive” means for:

- (1) Department of Energy – Director, Office of Acquisition and Project Management;  
and
- (2) National Nuclear Security Administration – Associate Administrator for Acquisition and Project Management.

## **H.9 DOE-H-7010 SERVICE CONTRACT LABOR STANDARDS (SEP 2017)**

The Service Contract Labor Standards statute (formerly known as The Service Contract Act of 1965) is not applicable to this contract. However, in accordance with Section I Clause entitled “DEAR 970.5244-1 – Contractor Purchasing System”, subcontracts awarded by the Contractor are subject to the Standards to the same extent and under the same conditions as contracts awarded by DOE. The Contractor and the Contracting Officer shall develop a procedure whereby DOE will determine if the Service Contract Labor Standards statute is applicable to particular subcontracts. In cases determined to be covered by the Service Contract Labor Standards Statute, the Contractor shall prepare SF-98 and 98A “Notice of Intention to Make a Service Contract” (or documentation

considered equivalent by the Contracting Officer) and forward it to the Contracting Officer or his designee to obtain a wage determination.

#### **H.10 DOE-H-7011 CONTRACTS FOR MATERIALS, SUPPLIES, ARTICLES, AND EQUIPMENT EXCEEDING \$15,000 (SEP 2017)**

Except as otherwise may be approved, in writing, by the Contracting Officer, the Contractor agrees to insert the following provision in noncommercial Purchase Orders and subcontracts under this contract. "If this contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed \$15,000.00 and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S. Code 35-45), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect."

#### **H.11 DOE-H-7013 SOURCE AND SPECIAL NUCLEAR MATERIAL (SEP 2017)**

The Contractor shall comply with all applicable regulations and instructions of DOE relative to the control of and accounting for source and special nuclear material (as these terms are defined in applicable regulations). The Contractor shall make such reports and permit such inspections as DOE may require with reference to source and special nuclear materials. The Contractor shall take all reasonable steps and precautions to protect such materials against theft and misappropriations and to minimize all losses of such materials.

#### **H.12 DOE-H-7014 STANDARDS OF CONTRACTOR PERFORMANCE EVALUATION (SEP 2017)**

- (a) Use of objective standards of performance, self-assessment and performance evaluation:
  - (1) The Parties agree that the Contractor will utilize a comprehensive performance-based management approach for overall Laboratory management. The performance-based management approach will include the use of objective performance goals and indicators, agreed to in advance of each performance evaluation period, as standards against which the Contractor's overall performance of the scientific and technical mission obligations under this contract will be assessed. The performance criteria will be limited in number and focus on results to drive improved performance and increased effective and efficient management of the Laboratory.
  - (2) The Parties agree to utilize the process described within Section J, Attachment J-2 Performance Evaluation and Measurement Plan, to evaluate the performance of the Laboratory. The Parties further agree that the evaluation process described in

Section J, Attachment J-2 Performance Evaluation and Measurement Plan will be reviewed annually and modified, if necessary, by agreement of the Parties. If agreement of the Parties cannot be reached, the Contracting Officer has the unilateral right to establish the evaluation process.

- (3) The Parties agree that the Contractor will conduct an ongoing self-assessment process as the principal means of determining its compliance with the contract Statement of Work and performance indicators identified within Section J, Attachment J-2 Performance Evaluation and Measurement Plan. To assist the DOE in accomplishing the appropriate level of oversight, the Contractor shall work in partnership and cooperation with DOE and other external organization, as appropriate, in the self-assessment process. This work includes, but is not limited to, the development and execution of self-assessments and the utilization of the results for continuous improvement.
- (4) The Contractor shall provide periodic updates, as requested by the DOE, on the performance against the Section J, Attachment J-2 Performance Evaluation and Measurement Plan. The Contractor shall provide a formal status briefing at mid-year and year-end. Specific due dates and formats for the above-mentioned briefings shall be agreed to by the Laboratory Director and the Manager of Savannah River Operations Office and/or Director of Savannah River Laboratory Office.
- (5) DOE, as a part of its responsibility for oversight, evaluation, and information exchange, shall provide an annual programmatic appraisal and other appraisals, and reviews of the Contractor's performance of authorized work in accordance with the terms and conditions of this contract. The EM Laboratory Policy Office has the lead responsibility for oversight of the programs and activities conducted by the Contractor.
- (6) The Contracting Officer shall annually provide a written assessment of the Laboratory's performance to the Contractor, which shall be based upon the process described in Section J, Attachment J-2 Performance Evaluation and Measurement Plan. The Parties acknowledge that the performance levels achieved against the specific performance objectives and measures shall be the primary, but not sole, criteria for determining the Contractor's final performance evaluation and rating. The Contractor's self-assessment results, to include results of any third-party reviews which may have been conducted during the evaluation period, will be considered at all levels to assess and evaluate the Contractor's performance. The Contracting Officer may also consider other relevant information not specifically measured by the objectives and measures established within Section J, Attachment J-2 Performance Evaluation and Measurement Plan, that is deemed to have an impact (either positive or negative) on the Contractor's performance. Other relevant information that may be used by the Contracting Officer may include, but is not limited to, information gained from peer reviews, operational awareness, outside agency reviews (i.e., Office of Inspector General (OIG), Government Accountability Office (GAO), Defense Contract Audit Agency (DCAA), etc.) conducted

throughout the year, annual reviews (if needed), and DOE “for cause” reviews. Contractor success or failure in meeting performance expectations in a management or operating area may affect the level and/or mix of oversight attributed to a particular functional element.

(b) Standards of performance measure review:

- (1) The Parties agree to review the PEMP elements (goals, objectives, performance indicators, and expected levels of performance) contained in Section J, Attachment J-2 Performance Evaluation and Measurement Plan annually and to modify them upon the agreement of the Parties; provided, however, that if the Parties cannot reach agreement on all the goals, objectives, performance indicators, and expected levels of performance for the next period, the Contracting Officer shall have the unilateral right to establish reasonable new goals, objectives, performance indicators and expected levels of performance and/or to modify and/or delete existing goals, objectives, performance indicators, and expected levels of performance. It is expected that the goals, objectives, performance indicators, and expected levels of performance will be modified by the Contractor and the DOE as new areas of emphasis or priorities emerge which the Parties may agree warrant recognition in the performance-based integrated management approach.
- (2) Failure to include an objective or performance indicator in the contract Section J, Attachment J-2 Performance Evaluation and Measurement Plan does not eliminate the Contractor’s obligation to comply with all applicable terms and conditions as set forth elsewhere within the contract.
- (3) In the event the Contracting Officer decides to exercise the rights set forth in paragraphs (a)(2), (a)(6) or (b)(1) above, he/she will notify the Contractor, in writing, of the intended decision 10 days prior to issuance.

(c) DOE Quality Assurance Surveillance Plan:

DOE’s Quality Assurance Surveillance Plan (QASP) for evaluating the Contractor’s performance under the contract shall consist primarily of the PEMP as called for within the Section I Clause entitled “DEAR 970.5203-1 – Management Controls”. The QASP establishes the process DOE shall use to ensure that the Contractor has performed in accordance with the performance standards and expectations and acceptable quality levels for each task, describes how performance will be monitored and measured; describes how the results will be evaluated; and states how the results will affect contract payment.

### **H.13 DOE-H-7015 CAP ON LIABILITY (SEP 2017)**

- (a) The Parties have agreed that the Contractor's liability, for certain obligations it has assumed under this contract, shall be limited as set forth in paragraph (b) below. These limitations or caps shall only apply to obligations the Contractor has assumed pursuant to the following clauses:
- (1) The Section I Clauses entitled "FAR 52.245-1 – Government Property" and "DEAR 970.5245-1 – Property", paragraph (f)(1)(i)(C);
  - (2) The Section I Clause entitled "DEAR 970.5228-1 – Insurance--Litigation and Claims", paragraph (f); with respect to prudent business judgment only; and
  - (3) The Section I Clause entitled "DEAR 970.5228-1 – Insurance--Litigation and Claims", paragraph (g)(2); except for punitive damages resulting from the willful misconduct or lack of good faith on the part of the Contractor's managerial personnel as defined in the Section I Clauses entitled FAR 52.245-1 Government Property" and "DEAR 970.5245-1 – Property".
- (b) Unless otherwise prohibited by law or regulation, the Contractor shall be liable each fiscal year for an amount not-to-exceed 1.25 times the maximum performance fee available for that fiscal year. The annual cap which will apply shall be based on the fiscal year in which the Contractor's act or failure to act was the proximate cause of the liability assumed by the Contractor. In the event the Contractor's act or failure to act overlaps more than one (1) fiscal year, the limitation will be the annual limitation for the last fiscal year in which the Contractor's act or failure to act occurred. If the Contractor's cumulative obligations for a fiscal year equal the amount of the annual limitation of liability, the Contractor shall have no further responsibility for the costs of the liabilities it has assumed for that fiscal year pursuant to (a)(1) through (3) above.

### **H.14 DOE-H-7016 NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS – SENSE OF CONGRESS (SEP 2017)**

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

### **H.15 DOE-H-7017 APPLICATION OF DOE CONTRACTOR REQUIREMENTS DOCUMENTS (SEP 2017)**

- (a) Performance. The Contractor will perform the work of this contract in accordance with each of the Contractor Requirements Documents (CRDs) appended to this contract as Section J, Attachment J-5 List of Applicable Laws and Regulations (List A)/DOE Directives (List B), until such time as the Contracting Officer approves the substitution of an alternative procedure,

standard, system of oversight, or assessment mechanism resulting from the process described below.

- (b) Laws and Regulations Excepted. The process described in this clause shall not affect the application of otherwise applicable laws and regulations of the United States, including regulations of the Department of Energy.
- (c) Deviation Processes in Existing Orders. This clause does not preclude the use of deviation processes provided for in existing DOE directives.
- (d) Proposal of Alternative. The Laboratory Director may, at any time during performance of this contract, propose an alternative procedure, standard, system of oversight, or assessment mechanism to the requirements in a listed CRD by submitting to the Contracting Officer a signed proposal describing the nature and scope of the alternative procedure, standard, system of oversight, or assessment mechanism (alternative), the anticipated benefits, including any cost benefits, to be realized by the Contractor in performance under the contract, and a schedule for implementation of the alternate. In addition, the Contractor shall include an assurance signed by the Laboratory Director that the revised alternative is an adequate and efficient means to meet the objectives underlying the CRD. Upon request, the Contractor shall promptly provide the Contracting Officer any additional information that will aid in evaluating the Contractor's proposal.
- (e) Action of the Contracting Officer. The Contracting Officer shall within 60 days:
  - (1) deny application of the proposed alternative;
  - (2) approve the proposed alternative, with conditions or revisions;
  - (3) approve the proposed alternative; or
  - (4) provide a date by which a decision will be made (not to exceed an additional 60 days).
- (f) Implementation and Evaluation of Performance. Upon approval in accordance with (e)(2) or (e)(3) above, the Contractor shall implement the alternative. In the case of a conditional approval under (e)(2) above, the Contractor shall provide the Contracting Officer with an assurance statement, signed by the Laboratory Director, that the revised alternative is an adequate and efficient means to meet the objectives underlying the CRD. Additionally, the statement shall describe any changes to the schedule for implementation. The Contractor shall then implement the revised alternative. DOE will evaluate performance of the approved alternative from the date scheduled by the Contractor for implementation.
- (g) Application of Additional or Modified CRDs. During performance of the contract, the Contracting Officer may notify the Contractor that he or she intends to unilaterally add CRDs not then listed in Section J, Attachment J-5 entitled "List of Applicable Laws and Regulations (List A)/DOE Directives (List B)" or modifications to listed CRDs. Upon receipt of that notice, the Contractor, within 30 calendar days, may, in accordance with paragraph (d) of this clause,

propose an alternative procedure, standard, system of oversight, or assessment mechanism. The resolution of such a proposal shall be in accordance with the process set out in paragraphs (e) and (f) of this clause. If an alternative proposal is not submitted by the Contractor within the 30 calendar day period, or, if made, is denied by the Contracting Officer under paragraph (e), the Contracting Officer may unilaterally add the CRD or modification to Section J, Attachment J- 5 entitled "DOE Directives/List B". The Contractor and the Contractor Officer shall identify and, if appropriate, agree to any changes to other contract terms and conditions, including cost and schedule, resulting from the addition of the CRD or modification.

- (h) Deficiency and Remedial Action. If, during performance of this contract, the Contracting Officer determines that an alternative procedure, standard, system of oversight, or assessment mechanism adopted through the operation of this clause is not satisfactory, the Contracting Officer may, in his or her sole discretion, determine that corrective action is necessary and require the Contractor to prepare a corrective action plan for the Contracting Officer's approval. If the Contracting Officer is not satisfied with the corrective action taken, the Contracting Officer may direct corrective action to remedy the deficiency, including, if appropriate, the reinstatement of the CRD.

#### **H.16 DOE-H-7018 EXTERNAL REGULATION (SEP 2017)**

The Parties commit to full cooperation with regard to complying with any statutory mandate regarding external regulation of Laboratory facilities, whether by the Nuclear Regulatory Commission, the Occupational Safety and Health Administration, and/or state and local entities with regulatory oversight authority, and including but not limited to the conduct of pilot programs simulating external regulation, and the application for materials, facilities, or other licenses by or on behalf of the DOE.

#### **H.17 DOE-H-7019 SEPARATE ENTITY AND CORPORATE GUARANTEE (SEP 2017)**

- (a) The work performed under this contract shall be by a separate entity, either an autonomous organization or an identifiable separate operating unit of a parent organization. The separate entity, whether a new corporate or legal entity formed solely to perform this contract or as a qualifying part of an existing legal or corporate entity, must be set up solely to perform this contract.
- (1) The separate entity shall perform no other commercial work for work for other Government agencies except as may be authorized under the terms of this contract.
  - (2) The contractor shall not utilize or otherwise divert contractor employees to other corporate work except as may be authorized under the terms of this contract or as otherwise authorized by the Contracting Officer.

- (b) If the Contractor forms a new separate corporate or legal entity from its parent organization(s) to perform the work under this contract, the new separate corporate or legal entity shall also be totally responsible for all contract activities.
- (1) The Contractor shall provide a guarantee of performance from its parent company in the form set forth in Section J, Attachment J-8 Performance Guarantee Agreement. If the Contractor is a joint venture, newly-formed Limited Liability Company (LLC), or other similar entity where more than one company is involved in a business relationship created for the purpose of this procurement, the parent companies of all the entities forming the new entity shall each provide Guarantees for joint and severable liability for the performance of the Contractor.
- (2) In the event any of the signatories to the Guarantee of performance enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer.

**H.18 DOE-H-7020 RESPONSIBLE CORPORATE OFFICIAL (SEP 2017) (REVISED)**  
**(mod 63)**

The Government may contact, as necessary, the single responsible corporate official identified below, who is at a level above the Contractor separate entity performing the contract, and who is accountable for the Contractor regarding Contractor performance issues:

Name: Dr. Mark Peters  
Position: Executive Vice President, National Laboratory Management & Operations  
Company/Organization: Battelle Memorial Institute  
Address: 505 King Ave., Columbus, OH 43201  
Phone: 614-309-8710  
Facsimile: 614-458-5200  
Email: [petersmt@battelle.org](mailto:petersmt@battelle.org)

DOE expects the Responsible Corporate Official to proactively work with the parent companies to ensure contract performance issues are prevented or identified as early as possible with appropriate notification to DOE with a mitigation strategy. Should the responsible parent corporate official change during the period of the contract, the Contractor shall promptly notify the Contracting Officer in writing of the change.

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

Corporate Board of Directors (or equivalent corporate oversight entity):

Name: Dr. Mark Peters

Position: Executive Vice President, National Laboratory Management & Operations  
Company/Organization: Battelle Memorial Institute  
Address: 505 King Ave., Columbus, OH 43201  
Phone: 614-309-8710  
Facsimile: 614-458-5200  
Email: [petersmt@battelle.org](mailto:petersmt@battelle.org)

Name: Aimee Kennedy  
Position: Senior Vice President, Human Resources  
Company/Organization: Battelle Memorial Institute  
Address: 505 King Ave., Columbus, OH 43201  
Phone: 614-424-4460  
Facsimile: 614-458-4460  
Email: [kennedya@battelle.org](mailto:kennedya@battelle.org)

Name: Kelly Beierschmitt  
Position: Deputy Director, Operations  
Company/Organization: Los Alamos National Laboratory (Triad National Security, LLC)  
Address: P.O. Box 1663, MS A100, Los Alamos, NM 87545  
Phone: 505-667-5101  
Facsimile: N/A  
Email: [beierschmitt@lanl.gov](mailto:beierschmitt@lanl.gov)

Scott Branham  
Position: Director, Business Services and Chief Financial Officer  
Company/Organization: Oak Ridge National Laboratory (UT-Battelle, LLC)  
Address: P.O. Box 2008 Oak Ridge, Tennessee 37831  
Phone: 865-241-7614  
Facsimile: N/A  
Email: [branhams@ornl.gov](mailto:branhams@ornl.gov)

Name: Jud Virden  
Position: Associate Laboratory Director for the Energy and Environment Directorate  
Company/Organization: Pacific Northwest National Laboratory (Battelle Memorial Institute)  
Address: 902 Battelle Boulevard, P.O. Box 999, Richland, WA 99352  
Phone: 509-375-6512  
Facsimile: N/A  
Email: [jud.virden@pnl.gov](mailto:jud.virden@pnl.gov)

Name: Dr. Tanju Karanfil  
Position: Vice President for Research  
Company/Organization: Clemson University  
Address: 230 Kappa Street, Suite 200, Clemson, SC 29634  
Phone: 864-656-7701  
Facsimile: 864-656-7700  
Email: [tkaranf@clemson.edu](mailto:tkaranf@clemson.edu)

Name: Dr. Chaouki Abdallah  
Position: Executive Vice President for Research  
Company/Organization: Georgia Institute of Technology on behalf of the Georgia Tech  
Research Corporation  
Address: Georgia Institute of Technology, North Avenue, Atlanta GA 30332  
Phone: 404-894-8805  
Facsimile: 404-894-7035  
Email: [ctabdallah@gatech.edu](mailto:ctabdallah@gatech.edu)

Name: Alexander Conyers  
Position: President  
Company/Organization: South Carolina State University  
Address: 300 College Street NE, Orangeburg, SC 29117  
Phone: 803-536-8622  
Facsimile: 803-533-3622  
Email: [aconyer4@scsu.edu](mailto:aconyer4@scsu.edu)

Name: Dr. Karen Burg  
Position: Vice President for Research  
Company/Organization: University of Georgia on behalf of the University of Georgia  
Research Foundation, Inc.  
Address: 150B Paul D. Coverdell Center, 500 D.W. Brooks Drive, Athens, GA 30602  
Phone: 706-542-4582  
Facsimile: 706-542-5946  
Email: [kburg@uga.edu](mailto:kburg@uga.edu)

Name: Dr. Prakash Nagarkatti  
Position: Vice President for Research  
Company/Organization: University of South Carolina  
Address: 202 Osborne Administrative Building, Columbia, SC 29208  
Phone: 803-777-5458  
Facsimile: 803-777-5457  
Email: [prakash@mailbox.sc.edu](mailto:prakash@mailbox.sc.edu)

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

The Responsible Corporate Official and Corporate Board of Directors (or equivalent corporate oversight entity) shall be engaged and accountable for performance of the contract scope and the highest standard of business integrity through a robust performance assurance system and support in accordance with DOE Order 226.1 *Implementation of Department of Energy Oversight Policy* and the Section H clause entitled *Contractor Assurance System*. The Contractor shall submit to the Contracting Officer a quarterly report using appropriate corporate metrics for DOE-EM senior management review. This rigorous, risk-informed, and credible self-assessment and feedback shall

include individual project performance, technical solutions, as needed, and appropriate coverage of potentially high consequence activities under contract. The annual contractor performance assessment shall consider the execution of the requirements of this clause.

## **H.19 DOE-H-2001 EMPLOYEE COMPENSATION: PAY AND BENEFITS**

### **(a) Contractor Employee Compensation Plan**

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

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

- a. Philosophy and strategy for all pay delivery programs.
- b. System for establishing a job worth hierarchy.
- c. Method for relating internal job worth hierarchy to external market.
- d. System that links individual and/or group performance to compensation decisions.
- e. Method for planning and monitoring the expenditure of funds.
- f. Method for ensuring compliance with applicable laws and regulations.
- g. System for communicating the programs to employees.
- h. System for internal controls and self-assessment.
- i. System to ensure that reimbursement of compensation, including stipends, for employees who are on joint appointments with a parent or other organization shall be on a pro-rated basis.

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

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

### **(c) Reports and Information**

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

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

A list of the top five most highly compensated executives as defined in FAR 31.205-6(p)(4)(ii) and their total cash compensation at the time of Contract award, and at the time of any subsequent change to their total cash compensation. This should be the same information provided to the System for Award Management (SAM) per FAR 52.204-10.

An Annual Compensation and Benefits Report no later than March 15<sup>th</sup> of each year.

(d) Pay and Benefit Programs

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

(1) Incumbent Employees are the employees who hold regular appointments of the incumbent Contractor. (Full Service, Fixed Term and those Limited Service Employees working at least 20 hours per week—see L-4 Workforce by Appointment Category).

(A) Pay. Subject to the Workforce Transition Clause, the Contractor shall provide equivalent base pay to Incumbent Employees as compared to pay provided by Savannah River Nuclear Solutions, LLC for at least the first year of the term of the Contract.

(B) Pension and Other Benefits. The Contractor shall provide a total package of benefits to Incumbent Employees (as defined in (d) (1) above) comparable to that provided by Savannah River Nuclear Solutions, LLC. Comparability of the total benefit package shall be determined by the Contracting Officer in his/her sole discretion.

Incumbent Employees shall remain in their existing pension plans (or comparable successor plans if continuation of the existing plans is not practicable) pursuant to pension plan eligibility requirements and applicable law.

(2) Non-Incumbent Employees are new hires, i.e., employees other than Incumbent Employees who are hired by the Contractor after date of award. All Non-Incumbent Employees shall receive a total pay and benefits package that provides for market-based retirement and medical benefit plans that are competitive with the industry from which the Contractor recruits its employees and in accordance with Contract requirements.

(3) Cash Compensation

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

- (i) Any proposed major compensation program design changes prior to implementation.
- (ii) Variable pay programs/incentives. If not already authorized under Appendix A of the contract, a justification shall be provided with proposed costs and impacts to budget, if any.
- (iii) In the absence of Departmental policy to the contrary (e.g., Secretarial pay freeze) a Contractor that meets the criteria, as set forth below, is not required to submit a Compensation Increase Plan (CIP) request to the Contracting Officer for an advance determination of cost allowability for a Merit Increase fund or Promotion/Adjustment fund:
  - The Merit Increase fund does not exceed the mean percent increase included in the annual Departmental guidance providing the WorldatWork Salary Budget Survey's salary increase projected for the CIP year. The Promotion/Adjustment fund does not exceed **1.1** percent in total.
  - The budget used for both Merit Increase funds and Promotion/Adjustment funds shall be based on the payroll for the end of the previous CIP year.
  - Salary structure adjustments do not exceed the mean WorldatWork structure adjustments projected for the CIP year and communicated through the annual Department CIP guidance.
  - Please note: No later than the first day of the CIP cycle, Contractors must provide notification to the Contracting Officer of planned increases and position to market data by mutually agreed-upon employment categories. No presumption of allowability will exist for employee job classes that exceed market position.
- (iv) If a Contractor does not meet the criteria included in (iii) above, a CIP must be submitted to the Contracting Officer for an advance determination of cost allowability. The CIP should include the following components and data:
  - (1) Comparison of average pay to market average pay.
  - (2) Information regarding surveys used for comparison.
  - (3) Aging factors used for escalating survey data and supporting information.
  - (4) Projection of escalation in the market and supporting information.

- (5) Information to support proposed structure adjustments, if any.
  - (6) Analysis to support special adjustments.
  - (7) Funding requests for each pay structure to include breakouts of merit, promotions, variable pay, special adjustments, and structure movement. (a) The proposed plan totals shall be expressed as a percentage of the payroll for the end of the previous CIP year. (b) All pay actions granted under the compensation increase plan are fully charged when they occur regardless of time of year in which the action transpires and whether the employee terminates before year end. (c) Specific payroll groups (e.g., exempt, nonexempt) for which CIP amounts are intended shall be defined by mutual agreement between the Contractor and the Contracting Officer. (d) The Contracting Officer may adjust the CIP amount after approval based on major changes in factors that significantly affect the plan amount (for example, in the event of a major reduction in force or significant ramp-up).
  - (8) A discussion of the impact of budget and business constraints on the CIP amount.
  - (9) Comparison of pay to relevant factors other than market average pay.
  - (v) After receiving DOE CIP approval or if criteria in (d)(3)(A)(iii) was met, contractors may make minor shifts of up to 10% of approved CIP funds by employment category (e.g., Scientist/Engineer, Admin, Exempt, Non-Exempt) without obtaining DOE approval.
  - (vi) Individual compensation actions for the top Contractor official (e.g., laboratory director/plant manager or equivalent) and Key Personnel not included in the CIP. For those Key Personnel included in the CIP, DOE will approve salaries upon the initial contract award and when Key Personnel are replaced during the life of the contract. DOE will have access to all individual salary reimbursements. This access is provided for transparency; DOE will not approve individual salary actions (except as previously stated).
- (B) The Contracting Officer's approval of individual compensation actions will be required only for the top Contractor official (e.g., laboratory director/plant manager or equivalent) and Key Personnel as stated in (d)(3)(A)(vi) above. The base salary reimbursement level for the top Contractor official establishes the maximum allowable base salary reimbursement under the contract. Unusual circumstances may require a deviation for an individual on a case-by-case basis. Any such deviations must be approved by the Contracting Officer.
- (C) Severance Pay is not payable to an employee under this Contract if the employee:

- (i) Voluntarily separates, resigns or retires from employment. However employees whose applications for Voluntary Self-Select separation pursuant to a DOE-approved workforce restructuring action are accepted will be entitled to the severance benefits consistent with the terms of the DOE Workforce Restructuring Plan for the Savannah River Site.
    - (ii) Is offered employment with a successor/replacement Contractor,
    - (iii) Is offered employment with a parent or affiliated company, or
    - (iv) Is discharged for cause.
  - (D) Service Credit for purposes of determining severance pay does not include any period of prior service for which severance pay has been previously paid through a DOE cost-reimbursement contract.
- (e) Pension and Other Benefit Programs
- (1) No presumption of allowability will exist when the Contractor implements a new benefit plan, or makes changes to existing benefit plans that increase costs or are contrary to Departmental policy or written instruction or until the Contracting Officer makes a determination of cost allowability for reimbursement for new or changed benefit plans. Changes shall be in accordance with and pursuant to the terms and conditions of the contract. Advance notification, rather than approval, is required for changes that do not increase costs and are not contrary to Departmental policy or written instruction.
  - (2) Cost reimbursement for Employee pension and other benefit programs sponsored by the Contractor will be based on the Contracting Officer's approval of Contractor actions pursuant to an approved "Employee Benefits Value Study" and an "Employee Benefits Cost Survey Comparison" as described below.
  - (3) Unless otherwise stated, or as directed by the Contracting Officer, the Contractor shall submit the studies required in paragraphs (A) and (B) below. The studies shall be used by the Contractor in calculating the cost of benefits under existing benefit plans. An Employee Benefits Value (Ben-Val) Study Method using no less than 15 comparator organizations and an Employee Benefits Cost Survey Comparison method shall be used in this evaluation to establish an appropriate comparison method. In addition, the Contractor shall submit updated studies to the Contracting Officer for approval prior to the adoption of any change to a pension or other benefit plan which increases costs.
    - (A) The Ben-Val, every two years for each benefit tier (e.g., group of employees receiving a benefit package based on date of hire), which is an actuarial study of the relative value (RV) of the benefits programs offered by the Contractor to Employees measured against the RV of benefit programs offered by the Contracting Officer approved comparator companies. To the extent that the value studies do not address post retirement benefits other than pensions, the Contractor shall provide a separate cost

and plan design data comparison for the post retirement benefits other than pensions using external benchmarks derived from nationally recognized and Contracting Officer approved survey sources and,

- (B) An Employee Benefits Cost Study Comparison, annually for each benefit tier that analyzes the Contractor's employee benefits cost for employees as a percent of payroll and compares it with the cost as a percent of payroll, including geographic factor adjustments, reported by the U.S. Department of Labor's Bureau of Labor Statistics or other Contracting Officer approved broad based national survey.
- (4) When the net benefit value exceeds the comparator group by more than five percent, the Contractor shall submit a corrective action plan to the Contracting Officer for approval, unless waived in writing by the Contracting Officer.
- (5) When the benefit costs as a percent of payroll exceeds the comparator group by more than five percent, when and if required by the Contracting Officer, the Contractor shall submit an analysis of the specific plan costs that result in or contribute to the percent of payroll exceeding the costs of the comparator group and submit a corrective action plan if directed by the Contracting Officer.
- (6) Within two years, or longer period as agreed to between the Contractor and the Contracting Officer, of the Contracting Officer acceptance of the Contractor's corrective action plan, the Contractor shall align employee benefit programs with the benefit value and the cost as a percent of payroll in accordance with its corrective action plan.
- (7) The Contractor may not terminate any benefit plan during the term of the Contract without the prior approval of the Contracting Officer in writing.
- (8) Cost reimbursement for post-retirement benefits other than pensions (PRBs) is contingent on DOE approved service eligibility requirements for PRB that shall be based on a minimum period of continuous employment service not less than 5 years under a DOE cost reimbursement contract(s) immediately prior to retirement. Unless required by Federal or State law, advance funding of PRBs is not allowable.
- (9) Each Contractor sponsoring a defined benefit pension plan and/or postretirement benefit plan will participate in the plan management process which includes written responses to a questionnaire regarding plan management, providing forecasted estimates of future reimbursements in connection with the plan(s) and participating in a conference call to discuss the Contractor submission (see (g)(6) below for Pension Management Plan requirements).
- (10) Each Contractor will respond to data calls issued through iBenefits, or its successor system.
- (f) Establishment and Maintenance of Pension Plans for which DOE Reimburses Costs

- (1) Employees working for the Contractor shall only accrue credit for service under this Contract after the date of Contract award.
- (2) Except for Commingled Plans (see (n) Definitions at the end of this clause) in existence as of the effective date of the Contract, any pension plan maintained by the Contractor for which DOE reimburses costs, shall be maintained as a separate pension plan distinct from any other pension plan that provides credit for service not performed under a DOE cost-reimbursement contract. When deemed appropriate by the Contracting Officer, Commingled Plans shall be converted to Separate Plans at the time of new contract award or the extension of a contract.

(g) Basic Requirements

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

- (1) The Contractor shall become a sponsor of the existing pension and other benefit plans (or comparable successor plans), including other PRB plans, as applicable. All plan sponsors shall have responsibility for maintaining the qualified status of those plans consistent with the requirements of ERISA and the Internal Revenue Code (IRC). All plan sponsors will have representation on the Pension and Savings Administrative Committee. Savannah River Nuclear Solutions (or its successor) is the Plan Administrator. The Contractor shall carry over the length of service credit and leave balances accrued as of the date of the Contractor's assumption of Contract performance.
- (2) Each Contractor defined benefit and defined contribution pension plan shall be subjected to a limited-scope audit annually that satisfies the requirements of ERISA section 103, except that every third year the Contractor must conduct a full-scope audit of defined benefit plan(s) satisfying ERISA section 103. Alternatively, the Contractor may conduct a full-scope audit satisfying ERISA section 103 annually. In all cases, the Contractor must submit the audit results to the Contracting officer. In years in which a limited scope audit is conducted, the Contractor must provide the Contracting Officer with a copy of the qualified trustee or custodian's certification regarding the investment information that provides the basis for the plan sponsor to satisfy reporting requirements under ERISA section 104.

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

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

- (4) For existing Commingled Plans, the Contractor shall be liable for any shortfall in the plan assets caused by funding or events unrelated to DOE contracts.
  - (5) The Contractor shall comply with the requirements of ERISA if applicable to the pension plan and any other applicable laws.
  - (6) The Pension Management Plan (PMP) shall include a discussion of the Contractor's plans for management and administration of all pension plans consistent with the terms of the Contract. The PMP shall be submitted in the iBenefits system, or its successor system no later than January 31st of each applicable year. A full description of the necessary reporting will be provided in the annual management plan data request. Within sixty (60) days after the date of the submission, appropriate Contractor representatives shall participate in a conference call to discuss the Contractor's PMP submission and any other current plan issues or concerns.
- (h) Reimbursement of Contractors for Contributions to Defined Benefit (DB) Pension Plans
- (1) Contractors that sponsor single employer or multiple employer defined benefit pension plans will be reimbursed for the annual required minimum contributions under the Employee Retirement Income Security Act (ERISA), as amended by the Pension Protection Act (PPA) of 2006 and any other subsequent amendments. Reimbursement above the annual minimum required contribution will require prior approval of the Contracting Officer. Minimum required contribution amounts will take into consideration all pre-funding balances and funding standard carryover balances. Early in the fiscal year but no later than the end of November, the Contractor requesting above the minimum may submit/update a business case for funding above the minimum if preliminary approval is needed prior to the Pension Management Plan process. The business case shall include a projection of the annual minimum required contribution and the proposed contribution above the minimum. The submission of the business case will provide the opportunity for the Department to provide preliminary approval, within 30 days after contractor submission, pending receipt of final estimates, generally after January 1st of the calendar year. Final approval of funding will be communicated by the Head of Contracting Activity (HCA) when discount rates are finalized and it is known whether there are any budget issues with the proposed contribution amount.
  - (2) Contractors that sponsor multi-employer DB pension plans will be reimbursed for pension contributions in the amounts necessary to ensure that the plans are funded to meet the annual minimum requirement under ERISA, as amended by the PPA. However, reimbursement for pension contributions above the annual minimum contribution required under ERISA, as amended by the PPA, will require prior approval of the Contracting Officer and will be considered on a case by case basis. Reimbursement amounts will take into consideration all pre-funding balances and funding standard carryover balances. Early in the fiscal year but no later than the end of November, the Contractor requesting above the minimum may submit/update a business case for funding above the minimum if preliminary approval is needed prior to the Pension Management Plan process. The business case shall include a projection of the annual minimum required contribution and

the proposed contribution above the minimum. The submission of the business case will provide the opportunity for the Department to provide preliminary approval, within 30 days after contractor submission, pending receipt of final estimates, generally after January 1st of the calendar year. Final approval of funding will be communicated by the HCA when discount rates are finalized and it is known whether there are any budget issues with the proposed contribution amount.

(i) Reporting Requirements for Designated Contracts

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

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

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

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

(j) Changes to Pension Plans

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

For proposed changes to pension plans and pension plan funding, the Contractor shall provide the following to the Contracting Officer:

- a copy of the current plan document (as conformed to show all prior plan amendments), with the proposed new amendment indicated in redline/strikeout,
- an analysis of the impact of any proposed changes on actuarial accrued liabilities and costs,
- except in circumstances where the Contracting Officer indicates that it is unnecessary, a legal explanation of the proposed changes from the counsel used by the plan for purposes of compliance with all legal requirements applicable to private sector defined benefit pension plans,
- the Summary Plan Description, and
- any such additional information as requested by the Contracting Officer.

- (2) Contractors shall submit new benefit plans and changes to plan design or funding methodology with justification to the Contracting Officer for approval, as applicable (see (e)(1) above). The justification must:
- demonstrate the effect of the plan changes on the contract net benefit value or percent of payroll benefit costs,
  - provide the dollar estimate of savings or costs, and
  - provide the basis of determining the estimated savings or cost.

(k) Terminating Operations

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

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

(l) Terminating Plans

- (1) DOE Contractors shall not terminate any pension plan (Commingled or site specific) without requesting Departmental approval at least 60 days prior to the scheduled date of plan termination.
- (2) To the extent possible, the Contractor shall satisfy plan liabilities to plan participants by the purchase of annuities through competitive bidding on the open annuity market or lump sum payouts. The Contractor shall apply the assumptions and procedures of the Pension Benefit Guaranty Corporation.

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

(m) Special Programs

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

(n) Definitions

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

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

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

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

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

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

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

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

**Spun-off Plan.** A new plan which satisfies IRC Reg. 1.414(l)-1 requirements for a single plan and which is created by separating assets and liabilities from a larger original plan. The funding level of each individual participant's benefits shall be no less than before the event, when calculated on a "plan termination basis."

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

(a) **Service Credit.** The Contractor shall provide pension and other benefit plans to Incumbent Employees (as defined in H.19 (d) (1)) and all other employees hired by the Contractor and service credit for leave as set forth below:

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

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

(b) **Allowable Salary for Key Personnel, if required:** Within 20 days after the start of the transition period, or as identified by the CO, the Contractor shall submit EM proposed allowable base salaries to the CO for each key personnel position listed in the Contract for a determination of cost allowability for reimbursement under the Contract. To support a reasonableness

determination, the Contractor shall also provide compensation market survey data to support/justify the requested salary and any other information as requested by the CO.

## **H.21 DOE-H-7021 POST CONTRACT RESPONSIBILITIES FOR PENSION AND OTHER BENEFIT PLANS (SEP 2017)**

- (a) If this contract expires or terminates and DOE has awarded a contract under which the new Contractor becomes a sponsor and assumes responsibility for management and administration of the pension or other benefit plans covering active or retired contractor employees with respect to service at SRNL (collectively, the “Plans”), the Contractor shall cooperate and transfer to the new Contractor its responsibility for sponsorship, management and administration of the Plans consistent with direction from the Contracting Officer. If a commingled plan is involved, the Contractor shall:
- (1) Spin-off the DOE portion of any commingled plan used to cover employees working at the DOE facility into a separate plan. The new plan will normally provide benefits similar to those provided by the commingled plan and shall carry with it the DOE assets on an accrual basis market value, including DOE assets that have accrued in excess of DOE liabilities.
  - (2) Bargain in good faith with DOE or the successor Contractor to determine the assumptions and methods for establishing the liabilities involved in a spin-off. DOE and the Contractor(s) shall establish an effective date of spin-off. On or before the same day as the Contractor notifies the IRS of the spin-off or plan termination, all plan assets assigned to a spun-off or terminating plan shall be placed in a low-risk liability matching portfolio until the successor trustee, or an insurance company, is able to assume stewardship of those assets.
- (b) If this contract expires or terminates and DOE has not awarded a contract to a new Contractor under which the new Contractor becomes a sponsor and assumes responsibility for management and administration of the Plans, or if the Contracting Officer determines that the scope of work under the contract has been completed (any one such event may be deemed by the Contracting Officer to be “Contract Completion” for purposes of this clause), whichever is earlier, and notwithstanding any other obligations and requirements concerning expiration or termination under any other clause of this contract, the following actions shall occur regarding the Contractor’s obligations regarding the Plans at the time of Contract Completion:
- (1) Subject to subparagraph (2) below, and notwithstanding any legal obligations independent of the contract the Contractor may have regarding responsibilities for sponsorship, management, and administration of the Plans, the Contractor shall remain the sponsor of the Plans, in accordance with applicable legal requirements.

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

## **H.22 DOE-H-7022 CONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATIONS OR ALLEGED VIOLATIONS, FINES, AND PENALTIES (SEP 2017)**

- (a) The Contractor shall accept, in its own name, service of notices of violations or alleged violations (NOVs/NOAVs) issued by Federal or State regulators to the Contractor resulting from the Contractor's performance of work under this contract, without regard to liability. The allowability of the costs associated with fines and penalties shall be subject to the other provisions of this contract.
- (b) The Contractor shall notify DOE promptly when it receives service from the regulators of NOVs/NOAVs and fines and penalties.

## **H.23 DOE-H-7023 ALLOCATION OF RESPONSIBILITIES FOR CONTRACTOR**

- (a) The Parties commit to full cooperation with regard to acquiring any necessary permits or licenses required by environmental, safety and health (ES&H) laws, codes, ordinances, and regulations of the United States, states or territories, municipalities or other political subdivisions, and which are applicable to the performance of work under this contract. It is recognized that certain ES&H permits will be obtained jointly as co-permittees, and other permits will be obtained by either party as the sole permittee. The Contractor, unless otherwise directed by the Contracting Officer, shall procure all necessary non-ES&H permits or licenses.
- (b) This clause allocates the responsibilities of DOE and the Contractor, referred to collectively as the "Parties", for implementing the environmental requirements at facilities within the scope of the contract. In this clause, the term "environmental requirements" means requirements imposed by applicable Federal, State, and local environmental laws and regulations, including, without limitation, statutes, ordinances, regulations, court orders, consent decrees, administrative orders, or compliance agreements, including the Interagency Agreement (Administrative Docket No.: II-CERCLA-FFA-00202, Spring 1992), consent orders, permits, and licenses.

- (c)
- (i) Liability and responsibility for civil fines or penalties arising from or related to violations of environmental requirements shall be borne by the party causing the violation irrespective of the fact that the cognizant regulatory authority may assess any such fine or penalty upon either party or both Parties without regard to the allocation of responsibility or liability under this contract. This contractual allocation of liability for any such fine or penalty is effective regardless of which party signs permit applications, manifests, reports, or other required documents, is a permittee, or is the named subject of an enforcement action or assessment of a fine or penalty. The allowability of the costs associated with fines and penalties assessed against the Contractor shall be subject to the other provisions of this contract.
  - (ii) In the event that the Contractor is deemed to be the primary party causing the violation, and the costs of fines and penalties proposed by the regulatory agency to be assessed against the Government (or the Government and Contractor jointly) are determined by the Government to be presumptively unallowable if allocated against the Contractor, then the Contractor shall be afforded the opportunity to participate in negotiations to settle or mitigate the penalties with the regulatory authority. If the Contractor is the sole party of the enforcement action, the Contractor shall take the lead role in the negotiations and the Government shall participate and have final authority to approve or reject any settlement involving costs charged to the contract.
- (d) DOE agrees that if bonds, insurance, or administrative fees are required as a condition for permits obtained by the Contractor under this contract, and the Contractor has been directed by the Contracting Officer to obtain such permits after the Contractor has notified the Contracting Officer of the costs of complying with such conditions, such costs shall be allowable. In the event such costs are determined by DOE to be excessive or unreasonable, DOE shall provide the regulatory agency with the acceptable form of financial responsibility. Under no circumstances shall the Contractor be required to provide any corporate resources or corporate guarantees to satisfy such regulatory requirements.

#### **H.24 DOE-H-7024 WORKERS' COMPENSATION INSURANCE (SEP 2017)**

- (a) Contractors, other than those whose workers' compensation coverage is provided through a state funded arrangement or a corporate benefits program, shall submit to the Contracting Officer for approval all new compensation policies and all initial proposals for self-insurance (contractors shall provide copies to the Contracting Officer of all renewal policies for workers compensation).
- (b) Workers compensation loss income benefit payments, when supplemented by other programs (e.g., salary continuation and/or short-term disability) are to be administered so that total benefit payments from all sources shall not exceed 100 percent of the employee's net pay.

- (c) Contractors approve all workers compensation settlement claims up to \$25,000. Settlement claims above the \$25,000 require Contracting Officer approval.
- (d) The Contractor shall obtain approval from the Contracting Officer before making any significant change to its workers compensation coverage and shall furnish reports as may be required from time to time by the Contracting Officer.

#### **H.25 DOE-H-2080 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (APR 2018)**

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

#### **H.26 DOE-H-7025 LABOR RELATIONS (SEP 2017) (REVISED)**

*Except for paragraphs (a) and (g), please note that the rest of this clause is not currently applicable, but will become applicable if a collective bargaining agreement is established.*

- (a) The Contractor shall respect the right of employees to organize and to form, join, or assist labor organizations, to bargain collectively through their chosen labor representatives, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of these activities.
- (b) Consistent with applicable labor laws and regulations, the Contractor shall recognize and bargain in good faith with the collective bargaining representative(s) of employees performing work that has previously been performed by represented employees and is covered by the scope of this Contract.
- (c) The Contractor shall submit its economic bargaining parameters to, and obtain the approval of, the Contracting Officer regarding allowability of the costs, and compliance with the terms and conditions of the contract, including those for pension and medical benefit costs, prior to the Contractor entering into the collective bargaining process. During the collective bargaining negotiations, the Contractor shall notify, and obtain the approval of, the Contracting Officer before submitting or agreeing to any collective bargaining proposal that increases or may increase allowable costs above those previously approved in the economic bargaining parameters, or that could involve changes in any pension or other benefit plans, and such other items of special interest to DOE as are identified by the Contracting Officer. The preliminary approval of the Contracting Officer under this paragraph does not waive any other terms and conditions of the contract.
- (d) The Contractor will seek to maintain harmonious bargaining relationships that reflect a judicious expenditure of public funds, equitable resolution of disputes and effective and efficient bargaining relationships consistent with the requirements of FAR 22.1 and DEAR 970.2201 and all applicable Federal and State Labor Relations laws.
- (e) The Contractor shall use its best efforts to ensure that collective bargaining agreements negotiated under this Contract contain provisions designed to assure no disruption in services during the performance of the Contract. All such collective bargaining agreements entered into during the Contract period of performance should, to the extent that the parties voluntarily agree, provide that grievances and disputes involving the interpretation or application of the collective bargaining agreement will be settled without resorting to strike, lockout, or other disruption in services. For this purpose, each collective bargaining agreement should provide an effective grievance procedure with arbitration as its final step, unless the parties mutually agree upon some other method of assuring no disruption in services. The Contractor shall include the substance of this subparagraph (e) in any subcontracts.
- (f) In addition to FAR 52.222-1, Notice to the Government of Labor Disputes, and other requirements in the contract, the Contractor shall immediately notify the Contracting Officer of labor relations issues, including, but not limited to, organizing efforts, unfair labor practice, picketing, labor arbitrations, National Labor Relations Board (NLRB) charges, legal or judicial proceedings, and settlement agreements, and will furnish such additional information as may be required from time to time by the Contracting Officer.

- (g) The Contractor shall immediately notify the Contracting Officer of any planned or actual strike or work stoppage involving its employees or employees of a subcontractor.
- (h) The Contractor shall provide the Contracting Officer a copy of all arbitration decisions issued by an arbitrator within one week of receipt of the decision.
- (i) The Contractor shall provide the Contracting Officer with a “Report of Settlement” after ratification of a collective bargaining agreement by accessing and inputting the information into the Labor Relations module (GCLR) of DOE’s iBenefits reporting system, or its successor system, during the next open quarter. Such information shall include negotiated wages, pension, medical and other benefits costs, and a copy of the collective bargaining agreement and any subsequent modifications.
- (j) The Contractor shall provide to the Contracting Officer a semi-annual report on grievances for which further judicial or administrative proceedings are anticipated, and all final step grievances. Within one day of receipt, the Contractor shall provide information on all arbitration requests. The reports are due June 30 and December 31, of each year, and should include the following information:
  - 1. A list of all final step grievances filed during the previous six-month period and grievances for which further judicial or administrative proceedings are anticipated, together with the dates filed;
  - 2. A brief description of issues regarding each grievance;
  - 3. If settled, the date of settlement, and terms of the settlement. If a denial is made at the final step and the period for requesting arbitration passes, report the matter as closed;
  - 4. If not settled during the six-month reporting period, carry the item over to the subsequent six-month reporting periods until settlement, request for arbitration, closure, or other proceeding occurs.

## **H.27 DOE-H-7026 ADDITIONAL LABOR REQUIREMENTS (SEP 2017) (Revised)**

The Contractor shall conduct payroll and job-site audits and conduct investigations of complaints as authorized by DOE on all Wage Rate Requirements (Construction) statute (formerly known as the Davis-Bacon Act) activities, including any subcontracts, as may be necessary to determine compliance with the statute. The Contractor shall ensure that appropriate labor standards clauses and requirements are flowed down to and incorporated into any applicable subcontracts. Where violations are found, the Laboratory shall report them to DOE Contracting Officer. The Contracting Officer may require that the Contractor assist in the determination of the amount of restitution and withholding of funds from a subcontractor so that sufficient funds are withheld to provide restitution for back wages due for workers inappropriately classified and paid, fringe benefits owed, overtime payments due, and liquidated damages assessed.

When performing work subject to the Wage Rate Requirements (Construction), the Contractor shall maintain payroll records for a period of three years from completion of the Contract, for laborers

and mechanics performing the work. In accordance with FAR 52.222-41(g) and FAR 52.222-6(b)(4), the Contractor and its subcontractors shall post in a prominent job-site location, the wage determination and, as applicable, Department of Labor Publication: WH-1231, *Notice to Employees Working on Federal or Federally Assisted Construction Projects* and/or WH-1313, *Notice to Employees Working on Government Contracts*.

The Contractor shall notify the Contracting Officer of any complaints and significant labor standards violations whether caused by the Contractor or subcontractors. The Laboratory shall assist DOE and/or the Department of Labor in the investigation of any alleged violations or disputes involving labor standards. The Contractor shall furnish a Davis-Bacon Semi-Annual Enforcement Report, Form OMB 1910-5165, to DOE by April 21 and October 21 each year.

### **H.28 DOE-H-7027 DOE MENTOR-PROTÉGÉ PROGRAM (SEP 2017)**

The Department of Energy has established a Mentor-Protégé Program to encourage its prime contractors to assist small businesses, firms certified under section 8(a) of the Small Business Act by SBA, other small disadvantaged businesses, women-owned small businesses, Historically Black Colleges and Universities and Minority Institutions, other minority institutions of higher learning and small business concerns owned and controlled by service disabled veterans in enhancing their business abilities. Consistent with the provisions set forth in DEAR 919.70, the Contractor shall mentor at least one (1) active Protégé company at all times during the performance of this contract. Mentor and Protégé firms will develop and submit “lessons learned” evaluations to DOE at the conclusion of the contract.

### **H.29 DOE-H-7028 LOBBYING RESTRICTION (SEP 2017)**

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

### **H.30 DOE-H-7029 INTELLECTUAL AND SCIENTIFIC FREEDOM (SEP 2017)**

- (a) The Parties recognize the importance of fostering an atmosphere at the Laboratory conducive to scientific inquiry and the development of new knowledge and creative and innovative ideas related to national interests.
- (b) The Parties further recognize that the free exchange of ideas among scientists and engineers at the Laboratory and colleagues at universities, colleges, and other laboratories or scientific facilities is vital to the success of scientific, engineering, and technical work performed by Laboratory personnel.

- (c) The Parties also recognize that protecting proprietary and national security interest, information and assets is a paramount concern and duty of the Laboratory and its personnel.
- (d) In order to further the goals of the Laboratory and the national interest, as well as protect proprietary information and national security, it is agreed by the Parties that the scientific and engineering personnel at the Laboratory shall be accorded the rights of publication or other dissemination of research, and participation in open public debate and in scientific, educational, or professional meetings and conferences, subject to limitations included in technology transfer agreements, work for other agreements, and such other limitations as may be required by the terms of this contract. Nothing in this clause is intended to interfere with the obligations of the Parties, including all Laboratory personnel, to protect proprietary, classified, Privacy Act, or other sensitive information as provided for or required by law, regulation, Department of Energy Directive or Order, or elsewhere in this contract.

### **H.31 DOE-H-7030 CONFERENCE SPENDING (MANAGEMENT AND OPERATING CONTRACTS) (SEP 2017)**

The Contractor agrees that:

- (a) The contractor shall ensure that contractor-sponsored conferences reflect the DOE/NNSA's commitment to fiscal responsibility, appropriate stewardship of taxpayer funds and support the mission of DOE/NNSA as well as other sponsors of work. In addition, the contractor will ensure conferences do not include any activities that create the appearance of taxpayer funds being used in a questionable manner.
- (b) The definition of a conference is provided in Attachment 2 of a letter from the Deputy Secretary of Energy, to the Under Secretary for Science and Energy, the Under Secretary for Nuclear Security, the Deputy Under Secretary for Management and Performance, Head of All Departmental Elements, Field Site Managers, and Laboratory Directors entitled *Updated Guidance on Conference-Related Activities and Spending*, dated August 17, 2015.
- (c) Contractor--sponsored conferences include those events that meet the conference definition and either or both of the following:
  - (1) The contractor provides funding to plan, promote, or implement an event, except in instances where a contractor:
    - (i) covers participation costs in a conference for specified individuals (e.g., students, retirees, speakers, etc.) in a total amount not to exceed \$10,000 (by individual contractor for a specific conference) or
    - (ii) purchases goods or services from the conference planners (e.g., attendee registration fees, renting booth space).
  - (2) The contractor authorizes use of its official seal, or other seals/logos/trademarks to promote a conference. Exceptions include non-M&O contractors who use their seal to promote a conference that is unrelated to their DOE contract(s) (e.g., if a DOE IT contractor were to host a general conference on cyber security).

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

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

- (1) Conference title, description, and date
- (2) Location and venue
- (3) Description of any unusual expenses (e.g., promotional items)
- (4) Description of contracting procedures used (e.g., competition for space/support)
- (5) Costs for space, food/beverages, audio visual, travel/per diem, registration costs, recovered costs (e.g., through exhibition fees)
- (6) Number of attendees

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

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

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

- (i) covers participation costs in a conference for specified individuals (e.g., students, retirees, speakers, etc.) in a total amount not to exceed \$10,000 (by individual contractor for a specified conference) or
- (ii) purchases goods or services from the conference planners (e.g., attendee registration fees; renting booth space); or providing funding to the conference planners through Federal grants.

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

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

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

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

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

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

### **H.32 DOE-H-7031 INFORMATION TECHNOLOGY ACQUISITIONS (SEP 2017)**

All information technology acquisitions shall include the appropriate information technology security policies and requirements, including use of common security configurations available from the National Institute of Standards and Technology's website at <http://checklists.nist.gov> commensurate with the mission of the contract and conducive to the research and development efforts of the laboratory. This requirement shall be included in all subcontracts which are for information technology acquisitions; and the Laboratory CIO shall annually certify to the Contracting Officer that this requirement is being incorporated into information technology acquisitions.

### **H.33 DOE-H-7032 WORK PROGRAMS (SEP 2017)**

- (a) Work programs shall be developed by the Contractor and approved by DOE in accordance with applicable DOE directives, and shall constitute work to be performed under this contract during the pertinent periods involved. Such work programs may include program and project performance objectives and milestones. The Contractor shall consult with DOE, as necessary, during the process of developing work programs. Subject to the other provisions of this contract, changes in the agreed work program, not constituting major changes, may be made by the Contractor when it appears to the Contractor, to be in the best interest of the scientific and technical objectives of the agreed work program to do so. It is understood that the nature of the research and development work under this contract is of a specialized character not readily reducible to production schedules. In view of these circumstances, it is agreed that the research and development work is performed on a best effort basis.
- (b) Due to the critical character of the work from the standpoint of national significance, it is understood by the Parties hereto that very close collaboration will be required between the Contractor and DOE with respect to direction, emphasis, trends and adequacy of the total program.
- (c)
  - (1) The annual work program and budget are principal devices used by DOE in program development, integration, execution, and cost estimating. To make the work program and budget most effective in assuring comprehensive coverage of DOE missions, it is the responsibility of DOE to keep the operators of DOE's laboratories continually advised of DOE's overall program goals, scientific and technological problems, and its current long-range objectives. In light of such information, the

Contractor will propose possible new objectives and present preliminary work programs in the area of its competence which, from its point of view, will either strengthen the overall DOE program or provide additional support in areas which, in the Contractor's judgment, are being inadequately exploited, or initiate new areas of investigation which appear of potential importance.

- (2) It is the responsibility of DOE to formulate overall program budgets, taking into consideration the proposals submitted by the Contractor, consistent with funds appropriated by the Congress and all its other program needs.
  - (3) The Contractor shall prepare a final work program and budget consistent with DOE's overall program budget. Upon DOE approval, it is the Contractor's responsibility to conduct its work program within limits established by these approvals unless and until they are modified by DOE.
- (d) In accordance with the basic considerations stated in paragraph (c) above, the Contractor and DOE will utilize the Program Budget procedures on a Government fiscal year basis for the establishment of the Laboratory Program Budget. Procedures for the presentation of work programs and cost estimates shall be jointly developed. In order to meet the requirements of Government budgetary practice, the Parties agree:
- (1) As early as possible in each calendar year, DOE shall supply the Contractor with the dollar amounts for the Laboratory contained in the President's Budget, with Program assumptions and guidance which the Contractor will be expected to consider in the development of its program and budget, and with all changes to existing budget and accounting policies and procedures to be used in the current budget preparation.
  - (2) Prior to April 1 (or such other date as may be agreed upon) the Contractor shall submit to DOE for approval a comprehensive work program for the next two (2) fiscal years, together with a description of the current work program, and the Contractor shall submit a budget estimate for the next two (2) fiscal years, together with a revised budget estimate for the current fiscal year.
  - (3) As soon as possible after October 1 of each year, DOE shall issue Work Authorizations and an Approved Funding Program to the Contractor for the current fiscal year.
- (e)
- (1) DOE approved work programs, program performance expectations and milestones as appropriate, and budget estimates shall be reflected in Work Authorizations/Annual Program Letters/Activity Data Sheets/Program Baseline Summaries and Approved Funding Programs. These documents will be issued to the Contractor as soon as possible after funds become available. If, in preparing Work Authorizations/Annual Program Letters/Activity Data Sheets/Program Baseline Summaries and Approved Funding Programs, it is determined that changes are needed in the work program and budget estimates submitted by the Contractor,

DOE and the Contractor shall agree upon the changes in the work before final issuance of these documents, provided, however, that nothing herein shall preclude DOE from directing a change in the work pursuant to the Section I Clause entitled "DEAR 970.5243-1 – Changes".

- (2) The Work Authorizations/Annual Program Letters, and with respect to any work that may be funded by the Office of Environmental Management, Program Baseline Summaries and Approved Funding Programs, specify the funds available for work under the contract for the fiscal year and, in addition, may establish limitations on costs to be incurred for individual portions of the work. The Contractor shall comply with such limitations and shall promptly notify the Contracting Officer, in writing, whenever it becomes apparent that there is likely to be an overrun with respect to any specific limitation in the Work Authorization/Annual Program Letters, and with respect to any work that may be funded by the Office of Environmental Management, Program Baseline Summaries, and Approved Funding Programs. Funds made available for work under the contract, and set forth in Approved Funding Programs or other funding documents, shall not be reduced except by written agreement of the Parties.
  - (3) Additional programs and projects to be conducted at the Laboratory within the scope of the contract may be established by agreement between the DOE and the Contractor.
- (f) A contract modification shall be issued to the Contractor on or before September 30 of each year (or such other date as may be agreed upon) to provide additional funds, and further contract modifications may be issued or entered into from time to time to provide appropriate modifications in the total amount of funds made available under the contract. DOE agrees to use its best efforts to provide stable funding in support of the contract work and it is DOE's intention that there shall be so provided at all times sufficient funds to support the work program at the level authorized by DOE.
  - (g) During the course of the work, DOE shall review the work program and its costs based upon information submitted by the Contractor and may, after consultation with the Contractor, revise the Work Authorizations and Approved Funding Programs established by DOE under paragraph (e) above. The Contractor shall make any necessary revisions to the documents cited in this clause consistent with DOE direction.
  - (h) It is the intent of the Contractor and DOE to agree from time to time upon long-term work programs covering certain portions of the work to be performed under this contract.
  - (i) The Contractor shall maintain current cost information adequate to reflect the cost of performing the work under this contract at all times while the work is in progress, and shall prepare and furnish to the Government such written estimates of cost and information in support thereof as the Contracting Officer may request.

### **H.34 DOE-H-7033 SPECIAL FINANCIAL INSTITUTION ACCOUNT AGREEMENT (SEP 2017)**

If the Contractor elects to use a Special Financial Institution Account Agreement, it shall be in accordance with DOE requirements (Financial Management Handbook, Chapter 6) and appended to the Contract in Section J, Attachment J-3 entitled “Special Financial Institution Account Agreement”.

### **H.35 DOE-H-7035 ACTIVITIES DURING CONTRACT TRANSITION (SEP 2017) (REVISED)**

- (a) The Contractor will commence Transition Activities immediately after the Notice to Proceed is issued by the Contracting Officer and complete the following activities (to the extent identified in the Contractor’s proposal and the clause here in) within 120 days, except as otherwise authorized by the Contracting Officer. It is currently estimated that transition activities will be completed 120 days after the Notice to Proceed. After completion of these activities, and such other Transition Activities as may be authorized by the Contracting Officer, the Contractor shall advise the Contracting Officer that it is ready to assume full responsibility for the Laboratory. Upon receipt of written notification from the Contracting Officer that the Transition Activities are considered complete, the Contractor shall assume full responsibility for the Laboratory, effective 12:01 A.M., the next day.
- (1) Scientific Research. Complete the activities that will allow the Contractor to assume control of SRNL’s scientific programs and facilities.
  - (2) Management Systems. Analyze, enhance, modify or replace, if needed, the existing management systems {e.g., Finance, Property, Procurement, Human Resources, Information Management, Real Property Asset Management, Mission Computing Services, Integrated Safety Management System (including the Environmental Management System)} to assure system adequacy.
  - (3) Assignment of Existing Agreements. Initiate and complete the planning to assume the responsibility for existing regulatory (e.g., environmental permits) and commercial agreements (e.g., subcontracts, purchase orders, etc.) to be assigned to the Contractor by the Incumbent Contractor, or otherwise taken over by the Contractor.
  - (4) Joint Reconciliation Property Inventory. Initiate and complete the planning for a joint reconciliation property inventory with the Incumbent Contractor, as stated in Section I Clauses entitled “DEAR 970.5244-1(k) – Contractor Purchasing System”, “FAR 52.245-1 Government Property”, and “DEAR 970.5245-1(i)(2)(ii) – Property”, in accordance with overall guidance provided by the Contracting Officer.
  - (5) Litigation Management. Contractor shall consult with the Incumbent Contractor and DOE to determine whether the Contractor should assume some level of management

of any litigation resulting from laboratory operations predating the effective date of this contract. The decision should be based on consideration of cost efficiency, named parties and DOE litigation management regulations and guidelines.

(6) Human Resources

- (A) The Contractor will transition the workforce without break in service as operations cease under Contract No. DE-AC09-08SR22470 per Section H clause entitled, Workforce Transition and Employee Hiring Preference Including Through Period of Performance.
- (B) The Contractor will conduct work force planning, documented in the form of a plan, to be submitted to the Contracting Officer for review and approval at the end of the transition period. The Plan will identify critical-skills necessary to meet mission and contract requirements, provide a gap analysis, and outline the strategy for the recruitment and/or retention of those skills.
- (C) If the Contractor intends to utilize “Joint Appointees”, determine how said “Joint Appointees” will be utilized; terms to be utilized; and a description of the reimbursement process to be negotiated with the appointees’ home organization(s).
- (D) Review applicable collective bargaining agreements, and/or project labor agreements and initiate contact with the representatives of the various unions.
- (E) Provide to the Contracting Officer for approval, the Contractor Employee Total Compensation Plan required under the Section H Clause entitled “Employee Compensation: Pay and Benefits”, specifically addressing:
  - (i) The framework for the pension and health/welfare benefits applicable to the transferring workforce, with assessments in the form of a Benefit Value Study and Cost Comparison Survey, as described under the Section H Clause entitled “Employee Compensation: Pay and Benefits”, demonstrating comparability of value and cost relative to the pension and benefits provided by the Incumbent Contractor (SRNS). Guidance on acceptable Benefit Value and Cost Comparison tools will be provided by the Contracting Officer.
  - (ii) The framework of the total compensation package applicable to new hires under the contract.
- (F) Determine the strategy for meeting the requirements identified in Section H Clause entitled “Employee Compensation: Pay and Benefits” pertaining to pensions.

- (G) If desired, propose an incentive compensation strategy for “Key Personnel,” other management personnel, and other employees, as appropriate, that meets the criteria of the DOE Acquisition Guide, 70.3102-05-6, *Contractor Compensation - Variable Pay*, which can be located on the internet at <https://www.energy.gov/management/downloads/departement-energy-acquisition-guide>.
  - (H) Initiate the change in sponsorship of benefit programs, as applicable.
  - (I) Initiate analysis of workers’ compensation program relative to SRNL liabilities.
- (7) Worker Safety and Health Program (WS&H), Environment, Safety and Health (ES&H), Safeguards and Security (S&S)
- (A) The Contractor shall submit its strategy for blue-sheeting the current WS&H, ES&H, and S&S programs or submitting new plans as part of its transition plan.
  - (B) The Contractor shall have blue-sheeted or submitted new plans and obtained DOE approval for each of these plans (WS&H, ES&H and S&S) before the transition period ends.
- (8) Contractor’s Resources. Within 60 days after the start of the transition period, the Contractor shall submit a completed Attachment J-14 *Contractor’s Resources*, identifying and detailing the integration of resources that will be provided at no cost to the Government, as discussed in L.14 *Proposal Preparation Instructions, Volume II - Laboratory Vision*, for review and approval by the Contracting Officer. After approval, Attachment J-14 *Contractor’s Resources* will be incorporated into the Contract to codify the resource commitments.
- (b) Contractor agrees to perform the activities set forth in paragraph (a) above, including relocation of Contractor’s “Key Personnel,” as described in its Cost Proposal, at an allowable cost not to exceed \$6,000,000.11. Allowable costs included in the proposed transition ceiling amount that are incurred after the transition period ends may be reimbursed against the transition ceiling (e.g., completion of the relocation process for Key Personnel, return trip of transition team personnel after completion of transition, etc.). The Contractor’s transition costs shall be separately accounted for and maintained after the transition period. In the event the actual cost of said activities exceeds such amount, including any costs for relocation of Contractor’s “Key Personnel” incurred after the conclusion of the transition period, Contractor agrees that it will be solely responsible for costs greater than said amount.
  - (c) During the Transition Period only, the Contractor shall use Standard Form 1034, Public Voucher for Purchases and Services Other than Personal, when requesting payment for work performed under the Contract. The Contractor shall submit vouchers electronically through the DOE Office of Finance and Accounting Payment Services Team Vendor

Inquiry Payment Electronic Reporting System (VIPERS). VIPERS allows vendors to submit vouchers, attach supporting documentation and check the payment status of any voucher submitted to the DOE. Instructions concerning Contractor enrollment and use of VIPERS can be found at <https://vipers.doe.gov>. A paper copy of a voucher that has been submitted electronically will not be accepted. Billing procedures for the Transition Period will be finalized during the post-award conference, and will be in accordance with all applicable regulations and best practices.

- (d) Under the prior contract for the management and operation of SRNL, the Contractor performed work which was subject to indemnification under P.L. 85-804. Such work may continue under the Statement of Work for this new contract. If the awardee determines that it requires P.L. 85-804 indemnification, the awardee shall prepare and submit to the Contracting Officer, a P.L. 85-804 indemnification request as early as possible to ensure continuity of work.

Under the prior contract for the management and operation of SRNL, the previous Contractor participated in the Department's Non-Federal Agreements for Commercializing Technology (ACT). If the awardee determines that it wished to participate in the ACT Pilot program, the awardee shall prepare and submit to the Contracting Officer its request with implementing procedures as early as possible to ensure continuity of the program.

### **H.36 WORKFORCE TRANSITION AND EMPLOYEE HIRING PREFERENCES, INCLUDING THROUGH PERIOD OF PERFORMANCE**

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

- (a) The Contractor shall provide Incumbent Employees, during the transition period, preferences in hiring for vacancies at the Savannah River National Laboratory for non-managerial positions (i.e., all those below the first line of supervision) in accordance with the hiring preferences in paragraphs (1) and (2) below, in descending order of priority, any applicable collective-bargaining agreement(s), the site seniority list(s) as provided to the Contractor by the Contracting Officer, and applicable law.
- (1) A preference in hiring for vacancies in non-managerial positions that are substantially equivalent to the position each respective Incumbent Employee held on the Notice to Proceed.
  - (2) A preference in hiring for vacancies in non-managerial positions for Incumbent Employees not hired into a substantially equivalent position in (1), but who meet the qualifications for another position.
- (b) The Contractor shall provide, throughout the period of performance, preferences in hiring for vacancies at the Savannah River National Laboratory for non-managerial positions (i.e., all those below the first line of supervision), in accordance with the hiring preferences in paragraphs (1) – (4) below, in descending order of priority.

- (1) Consistent with any applicable collective bargaining agreement(s) and site seniority lists at Savannah River National Laboratory , the Contractor shall give a preference in hiring to individuals who are former employees of the Incumbent Contractor, and who are entitled to recall rights.
- (2) The Contractor shall give a preference in hiring to individuals set forth below in paragraphs (A) and (B), in descending order of priority, who are eligible for the hiring preference in the Section I clause entitled “DEAR 952.226-74, Displaced Employee Hiring Preference,” consistent with the provisions of any applicable Workforce Restructuring Plan and Departmental guidance on workforce restructuring, as amended from time to time, regarding the preferential hiring of former employees:
  - (A) Former employees of the Incumbent Contractor or any other DOE contractor [or subcontractor of a DOE contractor] at Savannah River National Laboratory.
  - (B) Former employees of other DOE contractor(s) or subcontractor(s) at a DOE defense nuclear facility eligible for the hiring preference.
- (3) The Contractor shall give a preference in hiring to individuals who (A) were formerly employed at Savannah River National Laboratory; and (B) were involuntarily separated (other than for cause) from their employment at Savannah River National Laboratory; and (C) are qualified for the position or who are not qualified for a particular position, but who agree to become qualified on their own and can become qualified by the date set by the Contractor for commencement of active employment under this Contract.
- (4) The Contractor shall give a preference in hiring to individuals (A) who have separated from employment at the Savannah River National Laboratory for any reason other than for cause; (B) who are not precluded from seeking employment with a DOE or NNSA contractor by the terms of employee waivers or releases of claims they executed, absent repayment of severance consistent with the terms of those agreements; and (C) who are qualified for a particular position.

### **H.37 WORKFORCE RESTRUCTURING**

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

The Contractor is only required to provide notification of Self-Select Voluntary Separation Programs (SSVSP) of 100 or more if consistent with the following parameters: 1) in

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

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

- (f) Pay-in-lieu of notice beyond two work-weeks requires written advance Contracting Officer approval. The Contractor shall submit the request to the Contracting Officer as part of the Workforce Restructuring package submitted for approval in (e) above, and include the number of days of pay-in-lieu of notice requested, above two work-weeks, a detailed business justification, and the associated costs.
- (g) The Contractor is encouraged to consider the use of employee waivers and releases. DOE has developed a model waiver and release of claims. The forms are available on line at the website set forth in (e) above. Any deviation from the models must be approved by the Contracting Officer.
- (h) The Contractor must perform an adverse impact analysis (also known as a diversity analysis) as part of its determination to undertake involuntary separation action(s). A copy of the diversity analysis for involuntary separation action(s) affecting 100 or more contractor employees within a rolling 12-month period shall be submitted to the Contracting Officer and DOE or National Nuclear Security Administration (NNSA) site counsel, as applicable, prior to notification of employees selected for involuntary separation.
- (i) The Contracting Officer will review and approve any Specific Plan or diversity analysis submitted for review affecting the reduction of 100 or more employees through an involuntary separation action within 10 business days after submission of a complete package by the Contractor unless the Contractor is notified of issues necessitating an extension of time. Should DOE request additional information from the Contractor regarding any Specific Plan or diversity analysis, the Contractor will respond to such request within 3 business days.
- (j) The Contractor is responsible and accountable for conducting and defending all voluntary and involuntary separation actions in compliance with applicable laws, regulations, and the contract terms and conditions.
- (k) Questions of cost allowability related to: a) any SSVSPs for which the Contractor provides only notification, or b) any involuntary separation program(s) conducted without Contracting Officer approval will be resolved consistently with applicable laws and regulations and with the terms and conditions of this contract, including, but not limited to, Department of Energy Acquisition Regulation (DEAR) at 48 C.F.R. 952.23171(f).

### **H.38 DISPLACED WORKER MEDICAL BENEFIT PROGRAM**

Contractor employees who separate from employment voluntarily or involuntarily (other than for cause) and who were eligible for medical insurance coverage under the contractor's plan at the time of separation from employment are eligible for medical coverage under the DOE Displaced Workers' Medical Benefits Program or the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), provided they are not eligible for coverage under another plan, e.g. another employer's group health plan, the contractor's Retiree Medical Plan, a spouse's medical plan, or Medicare, based on the following schedule:

- (1) First Year: The Contractor's contribution for an active employee.
- (2) Second Year: One half of the Contractor's COBRA premium.
- (3) Third and Subsequent Years: Full COBRA premium plus reasonable administrative costs that exceed the two percent administrative fee paid by the displaced worker.

Eligibility is determined in accordance with Departmental guidance on workforce restructuring.

### **H.39 WORKFORCE TRANSITION AND BENEFITS TRANSITION: PLANS AND TIMEFRAMES**

- (a) Workforce Transition Plan. The Contractor shall submit a Workforce Transition Plan (WF Transition Plan) for Contracting Officer approval, describing in detail the Contractor's plans and procedures as to how the Contractor will comply with the hiring preferences set forth in Section H clause entitled, Workforce Transition and Employee Hiring Preferences, and Section I clause entitled, DEAR 952.226-74, Displaced Employee Hiring Preference. The WF Transition Plan shall also detail the Contractor's plan for incorporating, if applicable, multiple unions with separate bargaining agreements. Notwithstanding timeframes identified elsewhere in the Contract, the Contractor shall perform the following activities in the specified timeframes:
  - (1) Within 10 days after Notice to Proceed, the Contractor shall:
    - (A) Submit to the Contracting Officer a description of any and all transition agreements that it intends to enter into with the Incumbent Contractor(s) to ensure compliance with Section H clause entitled, Workforce Transition and Employee Hiring Preferences during the Contract Transition Period;
    - (B) Establish and submit to the Contracting Officer a draft communication plan detailing the communication the Contractor will engage in with the Incumbent Contractor(s), its employees, and any labor organizations representing those employees, regarding implementation of the hiring preference requirements set forth in Section H clause entitled, Workforce Transition and Employee Hiring Preferences;
    - (C) Obtain information from the Incumbent Contractor(s), identifying the Incumbent Employees as defined in Section H clause entitled, Definitions.
    - (D) Submit to the Contracting Officer a description of the process for regularly obtaining updated information from the Incumbent Contractor(s)

regarding the Incumbent Employees throughout the Contract Transition Period.

- (2) Within 15 days after NTP, the Contractor shall:
    - (A) Submit to the Contracting Officer copies of the draft WF Transition Plan for the Contractor, including processes and procedures regarding how the Contractor will implement and ensure compliance with the hiring preferences set forth in Section H clause entitled, Workforce Transition and Employee Hiring Preferences.
    - (B) Establish a final communication plan with the Incumbent Contractor(s) regarding the implementation of the hiring preferences in Section H clause entitled, Workforce Transition and Employee Hiring Preferences and provide a copy to the Contracting Officer. The communication plan shall also include a communication process among the Contractor, the Incumbent Contractor(s), DOE, site tenants, and, if applicable, labor organizations representing Incumbent Employees.
  - (3) Within 30 days after NTP, the Contractor shall provide to the Contracting Officer a copy of the final WF Transition Plan described in paragraph (a) above.
  - (4) Within 60 days after NTP, the Contractor shall provide to the Contracting Officer copies of the final transition agreements described in paragraph (a)(1)(A) above.
  - (5) The Contractor shall submit reports to the Contracting Officer regarding the Contractor's implementation of the hiring preferences required by Section H clause entitled, Workforce Transition and Employee Hiring Preferences, including paragraph (a) regarding the right of first refusal in accordance with the timeframes set forth below. These reports shall include the following information: employees hire dates or anticipated hire dates; and, where applicable, the Incumbent Contractor or subcontractor that employed the employee and the Contractor or subcontractor that hired the employee.
    - (A) During the 120 day Contract Transition Period such reports shall be provided to the Contracting Officer on a weekly basis; or
    - (B) On a less frequent basis, as requested by the Contracting Officer.
  - (6) The Contractor shall implement the transition activities as set forth in the approved transition plan and such other transition activities as may be authorized or directed by the Contracting Officer.
- (b) Benefits Transition Plan. The Contractor shall submit a draft Benefits Transition Plan for Contracting Officer approval, within 10 days after NTP, describing in detail the Contractor's plans and procedures as to how the Contractor will comply with Section

H clause entitled, Employee Compensation: Pay and Benefits, and this Paragraph (b). The Contractor shall provide a final Benefits Transition Plan to the Contracting Officer within 90 days after NTP. All transitions of the existing pension(s) plans and other existing benefit plans, as well as establishment of any new plans, shall be completed by the end of the Contract Transition Period.

(1) The Contractor shall perform the following activities within the specified timeframes:

(A) Within 10 days after NTP, the Contractor shall:

- (i) Provide the Contracting Officer with a list of Contractor personnel (or advisors or representatives) who will be responsible for transitioning the existing pension plan and other existing benefit plans, and/or development of new benefit plans, including specifically the personnel responsible for ensuring that the Contractor becomes a sponsor/participating employer of the Savannah River Nuclear Solutions Multiple Employer Pension Plan and contact information for the above personnel;
- (ii) Request the Incumbent Contractor(s) to provide information and documents necessary for the Contractor to adhere to the requirements set forth in this Contract pertaining to sponsorship of current employees of Savannah River National Laboratory participating in Savannah River Nuclear Solutions Multiple Employer Pension Plan and other existing benefits plans, or establishment of any new benefits plans, including but not limited to the transition of the existing pension and other benefit plans or establishment of any new benefits plans on or before the end of the 120-day Contract Transition Period; and
- (iii) Provide estimated costs and detailed breakouts of the costs to accomplish benefits transition activities within the timeframes specified, including the costs for enrolled actuaries and counsel.

(B) Within 15 days after NTP, the Contractor shall provide to the Contracting Officer a list of the information and documents the Contractor has requested from the Incumbent Contractor(s) pertaining to the transition of the current employees of Savannah River National Laboratory participating in Savannah River Nuclear Solutions Multiple Employer Pension Plan, and other existing benefit plans. The Contractor shall notify the Contracting Officer on a timely basis of any issues or problems it encounters in obtaining information or documents requested from the Incumbent Contractor(s). Regardless of such notification, the Contractor remains responsible under this Contract for ensuring compliance with the terms of this Contract, including the timeframes set forth in this clause and the

requirements in Section H clause entitled, Workforce Transition and Employee Hiring Preferences, and Section H clause entitled, Employee Compensation: Pay and Benefits.

- (C) Within 20 days after NTP, the Contractor shall:
- (i) Submit a detailed description of its plans (or plan segments) and processes, including timeframes and specific projected dates for accomplishment of each activity necessary to ensure compliance with the requirements set forth in Section H clause entitled, Employee Compensation: Pay and Benefits, including requirements pertaining to the transition of employee benefit plans (or plan segments); and
  - (ii) Identify relevant Contractor personnel or other personnel who will administer or assist in administering the benefit plans for the Savannah River Nuclear Solutions Multiple Employer Pension Plan, including the Contractor's benefit plan administrators and personnel, head of human resources, ERISA counsel, actuaries, and any and all other personnel deemed necessary by the Contractor.
- (D) Within 30 days after NTP, and as part of the Benefits Transition Plan, the Contractor shall provide a description of how the existing pension and other benefit plans provided to employees pursuant to Section H clause entitled, Employee Compensation: Pay and Benefits, will be amended or restated on or before the last day of the 120 day Contract Transition Period. If the creation of a new benefit plan(s) is necessary in order for the Contractor to adhere to the benefits sponsorship requirements set forth in this Contract, the Contractor shall provide a description of the necessary transactions, including but not limited to how the Contractor proposes to comply with the Contract and applicable law governing such transactions.
- (E) Within 45 days after NTP, the Contractor shall:
- (i) Submit to the Contracting Officer drafts of all amendments to or restatements of the pension and other benefit plans presently sponsored by the Incumbent Contractor(s), including but not limited to amendments effectuating the change in sponsorship/participating employer in Savannah River Nuclear Solutions Multiple Employer Pension Plan. If applicable, the Contractor shall also submit all draft restated benefit plans and draft Summary Plan Descriptions (SPDs) for pension and other benefit plans sponsored by the Incumbent Contractor(s). Any and all such amendments shall comply with applicable law governing such transactions and changes in sponsorship of the plans.

- (ii) Submit to the Contracting Officer drafts of any new benefit plan(s) as well as draft SPDs that the Contractor proposes to sponsor.
    - (iii) Provide draft copies of the transition agreements, which the Contractor will enter into with the Incumbent Contractor(s), to ensure the Contractor's compliance with the pay and benefits requirements set forth in Section H clause entitled, Employee Compensation: Pay and Benefits.
  - (F) No later than 60 days after NTP and prior to the adoption of the documents identified in Paragraphs (b)(1)(E)(ii) and (iii) above, the Contractor shall submit to the Contracting Officer the proposed final versions of these documents for approval.
  - (G) No later than the end of the Contract Transition Period the Contractor shall submit copies of the executed transition agreements as required in subparagraphs (a)(1)(A), (a)(4), and (b)(1)(E)(iii) to the Contracting Officer.
  - (H) The Contractor shall respond to any comments provided by the Contracting Officer under this subparagraph (b)(1) within two days of receipt of the comments, or the period of time specified by the Contracting Officer.
- (2) After the Contract Transition Period and throughout the remaining period of performance of the Contract, the Contractor shall provide the following information promptly to the Contracting Officer upon the request of the Contracting Officer:
- (A) Documents relating to benefit plans offered to Contractor Employees, including but not limited to Summary Plan Descriptions, all Plan documents, applicable amendments, and other documents that describe benefits provided to employees of the Contractor who perform work on this Contract, and
  - (B) Any and all other documents pertaining to implementation of and compliance with implementation of the compensation and benefit programs identified in Section H clause, Employee Compensation: Pay and Benefits.

#### **H.40 DEFINITIONS**

For purposes of the Section H clauses entitled, Workforce Transition and Hiring Preferences, and Workforce Transition and Benefits Transition: Plans and Timeframes, the following definitions are applicable, unless otherwise specified:

- (1) "Contract Award Date" means the date the contract is signed by the Contracting Officer, noted in Block 28 of the SF 33, Block 20C of the SF 26, or other authorized official written notice.

- (2) “Contract Effective Date” means the date noted in Block 3 of the SF 26, or as otherwise stated in the Contract or Contract Award Document.
- (3) “Contract Transition Period” means the 120-day period as defined in Section F of this Contract.
- (4) “Incumbent Contractor” means Savannah River Nuclear Solutions, LLC under contract DE-AC09-08SR22470. This definition is not applicable to FAR 52.222-17 and the right of first refusal for service employees under Section H clause entitled, Workforce Transition and Hiring Preferences.
- (5) “Incumbent Employees” means the Savannah River National Laboratory employees who hold regular appointments (Full Service, Fixed Term and Limited Service Employees working at least 20 hours per week) of the Incumbent Contractor as of the NTP.
- (6) “Non-Incumbent Employees” means new hires, i.e., employees other than Incumbent Employees who are hired by the Contractor after the NTP.
- (7) “Notice to Proceed (NTP)” means the authorization issued by the Contracting Officer to start performance on this Contract or as otherwise defined in this Contract.

#### **H.41 DOE-H-7037 MANAGEMENT AND OPERATING CONTRACTOR (M&O) SUBCONTRACT REPORTING (NOV 2017)**

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

“First-tier subcontract” means a subcontract awarded directly by the Contractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the Contractor’s supplier agreements with vendors, such as long-term arrangements for materials or supplies that would benefit multiple contracts and/or the costs of which are normally applied to a Contractor’s general and administrative expenses or indirect costs.

“Management and Operating Contractor Subcontract Reporting Capability (MOSRC)” means a DOE system and associated processes to collect key information about Management and Operating Contractor first-tier subcontracts for reporting to the Small Business Administration.

“Transaction” means any contract, order, other agreement or modification thereof (other than one involving an employer-employee relationship) entered into by the Contractor acquiring supplies or services (including construction) required solely for performance of the prime contract.

- (b) Reporting. The Contractor shall collect and report data via MOSRC necessary for DOE to meet its agency reporting requirements, as determined by the Small Business Administration, in accordance with the most recent reporting instructions at <https://energy.gov/management/downloads/mosrc-reporting-instructions>. The Contractor shall

report first-tier subcontract data in MOSRC. Classified subcontracts shall not be reported. Subcontracts with Controlled Unclassified Information marking shall not be reported if restricted by its category. Contact your Contracting Officer if uncertain of information reporting requirements. The MOSRC reporting requirement does not replace any other reporting requirements (e.g. the Electronic Subcontracting Reporting System or the FFATA Subcontracting Reporting System).

#### **H.42 DOE-H-2002 NO THIRD-PARTY BENEFICIARIES (OCT 2014)**

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

#### **H.43 DOE-H-2075 PROHIBITION ON FUNDING FOR CERTAIN NONDISCLOSURE AGREEMENTS (OCT 2014)**

The Contractor agrees that:

- (a) No cost associated with implementation or enforcement of nondisclosure policies, forms or agreements shall be allowable under this contract if such policies, forms or agreements do not contain the following provisions: "These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling."
- (b) The limitation above shall not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.
- (c) Notwithstanding the provisions of paragraph (a), a nondisclosure or confidentiality policy form or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure or confidentiality forms shall also make it clear that they do not bar disclosures to Congress,

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

#### **H.44 DOE-H-2013 CONSECUTIVE NUMBERING (OCT 2014)**

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

#### **H.45 DOE-H-2021 WORK STOPPAGE AND SHUTDOWN AUTHORIZATION (OCT 2014) (REVISED)**

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

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

#### **H.46 DOE-H-2033 ALTERNATIVE DISPUTE RESOLUTION (OCT 2014)**

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

#### **H.47 DOE-H-2034 CONTRACTOR INTERFACE WITH OTHER CONTRACTORS AND/OR GOVERNMENT EMPLOYEES (OCT 2014) (REVISED)**

The Government may award contracts to other contractors for work to be performed at a DOE-owned, -leased, or -controlled site or facility. The Contractor shall cooperate fully with all other on-site DOE contractors and Government employees. The Contractor shall coordinate its own work with such other work as may be directed by the Contracting Officer or a duly authorized representative. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by a Government employee.

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

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

The Contractor is not authorized to direct and/or to provide oversight to any other SRS contractor, except as specified elsewhere in this contract or as directed by the CO. The CO has the authority to direct the Contractor to cease interference in the activities of other DOE contractors, and DOE retains oversight and approval authority for all SRS contracts. This includes Service Level Agreements between SRS contractors, which are subject to written consent to subcontract by the Contracting Officer per FAR 52.244-2(d), Subcontracts, as well as FAR cost principles including but not limited to FAR 31.205-26(e), Material costs.

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

#### **H.48 DOE-H-2035 ORGANIZATIONAL CONFLICT OF INTEREST MANAGEMENT PLAN (OCT 2014) (REVISED)**

Within 15 calendar days of the initiation of the transition period, the Contractor shall submit to the Contracting Officer for approval an Organizational Conflict of Interest (OCI) Management Plan (Plan). The Plan shall describe the Contractor's program to identify, avoid, neutralize, or mitigate potential or actual conflicts of interest that exist or may arise during contract performance and otherwise comply with the requirements of the clause at DEAR 952.209-72, Organizational

Conflicts of Interest. The Plan shall be periodically updated as required during the term of the contract. The Plan shall include, as a minimum, the following:

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

#### **H.49 DOE-H-2044 SAFETY DATA SHEET AVAILABILITY (OCT 2014) (REVISED)**

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

#### **H.50 DOE-H-2045 CONTRACTOR COMMUNITY COMMITMENT (OCT 2014)**

- (a) The Contractor, in fulfilling its commitments pursuant to the clause at DEAR 970.5226-3, Community Commitment, shall submit to DOE an annual plan for community commitment activities and report on program progress semi-annually.
- (b) The Contractor's annual plan for community commitment activities will identify those meaningful actions and activities that it intends to implement within the surrounding counties and local municipalities. The Contractor may engage in any community actions or

activities it determines meets the objectives of DOE's community commitment policy. Actions and activities in the areas listed below are representative of the areas in which the Contractor may choose to perform. However, the list is not all inclusive and is not intended to preclude the Contractor from initiating and performing other constructive community activities nor involvement in charitable endeavors it deems worthwhile.

- (1) Regional educational outreach programs. The objectives of these programs include teacher enhancement, student support, curriculum enhancement, educational technology, public understanding, and providing the services of contractor employees to schools, colleges, and universities. Regional educational outreach programs could involve providing contractor employees the opportunity to improve their employment skills and opportunities by an educational assistance allowance, provision for outside training programs either during or outside regular work hours, or executive training programs for nonexecutive employees. This could also involve participating in activities that foster relationships with regional educational institutions and other institutions of higher learning or encouraging students to pursue science, engineering, and technology careers.
- (2) Regional purchasing programs. The Contractor may conduct business alliances with regional vendors. These alliances may include training and mentoring programs to enable regional vendors to compete effectively for subcontracts and purchase orders and/or assistance with the development of business systems (accounting, budget, payroll, property, etc.) to enable regional vendors to meet the audit and reporting requirements of the Contractor and DOE. These alliances may also serve to encourage the formation of regional trade associations which will better enable regional businesses to satisfy the Contractor's needs.

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

- (3) Community support. The Contractor may directly sponsor specific local community activities or sponsor individual employees to work with a specific local community activity. The Contractor may provide support and assistance to community service organizations. The Contractor may support strategic partnerships with professional and scientific organizations to enhance recruitment into all levels of its organization.
- (c) The Contractor may use fee dollars to pay for its community commitment actions as it deems appropriate. All costs to be incurred by the Contractor for community commitment actions and activities are unallowable and non-reimbursable under the contract.
  - (d) The Contractor shall encourage its subcontractors, at all tiers, to participate in these activities.

### **H.51 DOE-H-2048 PUBLIC AFFAIRS – CONTRACTOR RELEASES OF INFORMATION (OCT 2014)**

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

### **H.52 DOE-H-2052 REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF THE OFFEROR (REVISED)**

The Contractor's Representations, Certifications, and Other Statements, dated July 30, 2020 made in response to Solicitation No. 89303320REM000063 are hereby incorporated into the Contract.

### **H.53 DOE-H-2053 WORKER SAFETY AND HEALTH PROGRAM IN ACCORDANCE WITH 10 CFR 851 (OCT 2014)**

- (a) The Contractor shall comply with all applicable safety and health requirements set forth in 10 CFR 851, Worker Safety and Health Program, and any applicable DOE Directives incorporated into the contract. The Contractor shall develop, implement, and maintain a written Worker Safety and Health Program (WSHP) which shall describe the Contractor's method for complying with and implementing the applicable requirements of 10 CFR 851. The WSHP shall be submitted to and approved by DOE. The approved WSHP must be implemented prior to the start of work. In performance of the work, the Contractor shall provide a safe and healthful workplace and must comply with its approved WSHP and all applicable federal and state environment, health, and safety regulations.
- (b) The Contractor shall take all reasonable precautions to protect the environment, health, and safety of its employees, DOE personnel, and members of the public. When more than one contractor works in a shared workplace, the Contractor shall coordinate with the other contractors to ensure roles, responsibilities, and worker safety and health provisions are clearly delineated. The Contractor shall participate in all emergency response drills and exercises related to the Contractor's work and interface with other DOE contractors.
- (c) The Contractor shall take all necessary and reasonable steps to minimize the impact of its work on DOE functions and employees, and immediately report all job-related injuries and/or illnesses which occur in any DOE facility to the Contracting Officer Representative (COR). Upon request, the Contractor shall provide to the COR a copy of occupational safety and health self-assessments and/or inspections of work sites for job hazards for work performed at DOE facilities.

- (d) The Contracting Officer may notify the Contractor, in writing, of any noncompliance with the terms of this clause, and the corrective action(s) to be taken. After receipt of such notice, the Contractor shall immediately take such corrective action(s).
- (e) In the event that the Contractor fails to comply with the terms and conditions of this clause, the Contracting Officer may, without prejudice to any other legal or contractual rights, issue a stop-work order halting all or any part of the work. Thereafter, the Contracting Officer may, at his or her discretion, cancel the stop-work order so that the performance of work may be resumed. The Contractor shall not be entitled to an equitable adjustment of the contract amount or extension of the performance schedule due to any stop-work order issued under this clause.
- (f) The Contractor shall flow down the requirements of this clause to all subcontracts at any tier.
- (g) In the event of a conflict between the requirements of this clause and 10 CFR 851, the requirements of 10 CFR 851 shall take precedence.

#### **H.54 DOE-H-2055 GOVERNMENT FURNISHED PROPERTY (OCT 2014)**

In accordance with the clauses “FAR 52.245-1 Government Property” and “DEAR 970.5245-1 Property”, the Government will provide the property listed in Section J, Attachment J-10 List of Real Property.

#### **H.55 DOE-H-2059 PRESERVATION OF ANTIQUITIES, WILDLIFE AND LAND AREAS (OCT 2014) (REVISED)**

- (a) DOE Policy 141.1 Department of Energy Management of Cultural Resources and Federal Law provides for the protection of antiquities located on land owned or controlled by the Government. Antiquities include Indian graves or campsites, relics and artifacts. The Contractor shall control the movements of its personnel and its subcontractor's personnel at the job site to ensure that any existing antiquities discovered thereon will not be disturbed or destroyed by such personnel. It shall be the duty of the Contractor to report to the Contracting Officer the existence of any antiquities so discovered.
- (b) The Contractor shall also preserve all vegetation (including wetlands) except where such vegetation must be removed for survey or construction purposes. Any removal of vegetation shall be in accordance with the terms of applicable habitat mitigation plans and permits. Furthermore, all wildlife must be protected consistent with programs approved by the Contracting Officer.
- (c) Except as required by or specifically provided for in other provisions of this contract, the Contractor shall not perform any excavations, earth borrow, preparation of borrow areas, or otherwise disturb the surface soils within the job site without the prior approval of DOE or its designee.

- (d) The Contractor shall implement an historic preservation program in accordance with the National Historic Preservation Act of 1996 (as amended) and the SR Cultural Resources Management Plan.

**H.56 DOE-H-2064 USE OF INFORMATION TECHNOLOGY EQUIPMENT, SOFTWARE, AND THIRD PARTY SERVICES – ALTERNATE II (OCT 2014)**

- (a) Acquisition of Information Technology. The Government may provide information technology equipment, existing computer software (as described in 48 CFR 27.405), and third party services for the Contractor's use in the performance of the contract; and the Contracting Officer may provide guidance to the Contractor regarding usage of such equipment, software, and third party services. The Contractor is not authorized to acquire (lease or purchase) information technology equipment, existing computer software, or third party services at the Government's direct expense without prior written approval of the Contracting Officer. Should the Contractor propose to acquire information technology equipment, existing computer software, or third party services, the Contractor shall provide to the Contracting Officer justification for the need, including a complete description of the equipment, software or third party service to be acquired, and a lease versus purchase analysis if appropriate.
- (b) The Contractor shall immediately provide written notice to the Contracting Officer's Representative when an employee of the Contractor no longer requires access to the Government information technology systems.
- (c) The Contractor shall not violate any software licensing agreement, or cause the Government to violate any licensing agreement.
- (d) The Contractor agrees that its employees will not use, copy, disclose, modify, or reverse engineer existing computer software provided to it by the Government except as permitted by the license agreement or any other terms and conditions under which the software is made available to the Contractor.
- (e) If at any time during the performance of this contract the Contractor has reason to believe that its utilization of Government furnished existing computer software may involve or result in a violation of the software licensing agreement, the Contractor shall promptly notify the Contracting Officer, in writing, of the pertinent facts and circumstances. Pending direction from the Contracting Officer, the Contractor shall continue performance of the work required under this contract without utilizing the software.
- (f) The Contractor agrees to include the requirements of this clause in all subcontracts at any tier.
- (g) The Contractor shall comply with the requirements of those DOE directives, or parts thereof, identified elsewhere in the contract Section J, Attachment J-5 List of Applicable Laws and Regulations (List A)/DOE Directives (List B).

**H.57 DOE-H-2066 SAFEGUARDS AND SECURITY PROGRAM – ALTERNATE 1 (OCT 2014)**

- (a) Pursuant to the clause at DEAR 952.204-2, Security, the Contractor agrees to comply with all security regulations and contract requirements as incorporated into the contract.
- (b) The Contractor shall comply with the requirements of those DOE directives, or parts thereof, identified elsewhere in the contract pursuant to the clause at DEAR 970.5204-2, Laws, Regulations and DOE Directives.

**H.58 DOE-H-2070 KEY PERSONNEL – ALTERNATE I (OCT 2014) (REVISED)**

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

**Table H-1. Key Personnel**

<b>Name</b>	<b>Position</b>
Vahid Majidi, Ph.D.	Laboratory Director
Sharon Marra	Deputy Director, Operations
Sue Clark, Ph.D.	Deputy Director, Science & Technology
Connie Herman	Associate Laboratory Director, Environmental and Legacy Management
Paul Cloessner, Ph.D.	Associate Laboratory Director, Weapons Production Technology
Tammy Taylor, Ph.D.	Associate Laboratory Director, Global Security
Dave Sivils, Ph.D.	Program Director, Plutonium Processing Program

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

- (1) Key personnel team requirements. The CO and designated COR(s) shall have direct access to the key personnel assigned to the contract. All key personnel shall be assigned full-time to their respective positions and their permanent duty station is located at the SRNL or within the local area. The Contractor shall notify the CO and request approval in writing at least 60 days in advance of any changes to key personnel.
- (2) No key personnel position shall remain vacant for a period more than 30 days following CO approval of a change in key personnel or Contractor will be subject to

reduction of fee according to (c)(1) or (c)(2) below respective to the key position vacated

- (3) Approval of changes to key personnel is at the unilateral discretion of the CO.
- (b) Definitions. In addition to the definitions contained in the clause DEAR 952.215-70, the following shall apply:
  - (1) Key personnel are considered “managerial personnel” under the clause DEAR 952.231-71 entitled, *Insurance – Litigation and Claims*.
  - (2) For the purposes of this Clause, “Changes to Key Personnel,” is defined as: (i) any change to the position assignment of a current key person under the Contract, except for a person who acts for short periods of time, in the place of a key person during his or her absence, the total time of which shall not exceed 30 working days during any given year (ii) utilizing the services of a new substitute key person for assignment to the Contract beyond 30 working days; or (iii) assigning a current key person for work outside the Contract.
  - (3) For the purposes of this Clause, “Beyond the Contractor’s Control,” is defined as an event for which the Contractor lacked legal authority or ability to prevent “Changes to Key Personnel.”
- (c) Contract fee reductions for changes to Key Personnel.

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

- (1) Notwithstanding the approval by the CO, any time the Laboratory Director is removed, replaced, or diverted within three years of being placed in the position, the earned fee under the Contract may be reduced by \$500,000 for each and every such occurrence. A change to a key person “Beyond the Contractor’s Control” shall not result in a permanent reduction of fee under this subsection.
- (2) Notwithstanding the approval by the CO, any time a key person other than the Laboratory Director is removed, replaced, or diverted within two years of being placed in the position, the earned fee may be reduced by \$250,000 for each and every such occurrence. A change to a key person, other than the Laboratory Director, “Beyond the Contractor’s Control” shall not result in a permanent reduction of fee under this subsection.
- (3) The Contractor may request in writing that the CO consider waiving all or part of a reduction in earned fee. Such written request shall include the Contractor’s basis for the removal, replacement, or diversion of any key personnel. The CO shall have the unilateral discretion to make the determination to waive all or part of the reduction in earned fee.

**H.59 DOE-H-2072 USE OF GOVERNMENT VEHICLES BY CONTRACTOR EMPLOYEES (OCT 2014)**

- (a) The Government may provide Government-owned and/or –leased motor vehicles for the Contractor’s use in performance of this contract in accordance with the clause FAR 52.251-2, Interagency Fleet Management System (IFMS) Vehicles and Related Services, as applicable.
- (b) The Contractor shall ensure that its employees use and operate Government-owned and/or – leased motor vehicles in a responsible and safe manner to include the following requirements:
  - (1) Use vehicles only for official purposes and solely in the performance of the contract.
  - (2) Do not use vehicles for transportation between an employee’s residence and place of employment unless authorized by the Contracting Officer.
  - (3) Comply with Federal, State and local laws and regulations for the operation of motor vehicles.
  - (4) Possess a valid State, District of Columbia, or commonwealth’s operator license or permit for the type of vehicle to be operated.
  - (5) Operate vehicles in accordance with the operator’s packet furnished with each vehicle.
  - (6) Use seat belts while operating or riding in a Government vehicle.
  - (7) Do not use tobacco products while operating or riding in a Government vehicle.
  - (8) Do not provide transportation to strangers or hitchhikers.
  - (9) Do not engage in “text messaging” while operating a Government vehicle, which includes those activities defined in the clause at FAR 52.233-18, Encouraging Contractor Policies to Ban Text Messaging While Driving.
  - (10) In the event of an accident, provide information as may be required by State, county or municipal authorities and as directed by the Contracting Officer.
- (c) The Contractor shall -
  - (1) Establish and enforce suitable penalties against employees who use, or authorize the use of Government vehicles for unofficial purposes or for other than in the performance of the contract; and
  - (2) Pay any expenses or cost, without Government reimbursement, for using Government vehicles other than in the performance of the contract.

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

## **H.60 DOE-H-2073 RISK MANAGEMENT AND INSURANCE PROGRAMS (DEC 2014)**

- (1) Contractor officials shall ensure that the requirements set forth below are applied in the establishment and administration of DOE-funded prime cost reimbursement contracts for management and operation of DOE facilities and other designated long-lived onsite contracts for which the contractor has established separate operating business units. The Contractor shall:
- (a) Maintain commercial insurance or a self-insured program, (i.e., any insurance policy or coverage that protects the contractor from the risk of legal liability for adverse actions associated with its operation, including malpractice, injury, or negligence) as required by the terms of the contract. Types of insurance include automobile, general liability, and other third- party liability insurance. Reimbursable costs include administrative charges based on utilization under the program and SRNL-specific claims. Other forms of coverage for which the Contractor seeks reimbursement must be justified as necessary in the operation of the Department facility and/or the performance of the Contract, and approved by the DOE in advance of acquiring such insurance.
  - (b) Contractors shall not purchase insurance to cover public liability for nuclear incidents without DOE authorization (see DEAR 970.5070 entitled, Indemnification, and DEAR 950.70 entitled, Nuclear Indemnification of DOE Contractors).
  - (c) Demonstrate that insurance programs and costs comply with the cost limitations and exclusions at FAR 28.307 entitled, Insurance Under Cost Reimbursement Contracts, FAR 31.205-19 entitled, Insurance and Indemnification, DEAR 952.231-71 entitled, Insurance - Litigation and Claims, and DEAR 970.5228-1, Insurance-Litigation and Claims.
  - (d) Demonstrate that the insurance program is being conducted in the Government's best interest and at reasonable cost.
  - (e) The Contractor shall submit copies of all insurance policies or insurance arrangements to the Contracting Officer no later than 30 days after the purchase date.
  - (f) When purchasing commercial insurance, the Contractor shall use a competitive process to ensure costs are reasonable.
  - (g) Ensure self-insurance programs include the following elements:
    - (i) Compliance with criteria set forth in FAR 28.308 entitled, *Self-Insurance*. Approval of self-insurance is predicated upon submission of verifiable proof that the self-insurance charge does not exceed the cost of purchased insurance. This includes hybrid plans (i.e., commercially purchased insurance with self-insured retention [SIR], such as large deductible, matching deductible, retrospective rating cash flow plans, and other plans where insurance reserves are under the control of the insured). The SIR components of such plans are self-insurance, and are subject to the approval and submission requirements of FAR 28.308, as applicable.

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

(3) TERMINATING OPERATIONS. The Contractor shall:

- (a) ensure protection of the government's interest through proper recording of cancellation credits due to policy terminations and/or experience rating.
- (b) identify and provide continuing insurance policy administration and management requirements to a successor, other DOE contractor, or as specified by the Contracting Officer.
- (c) reach agreement with DOE on the handling and settlement of self insurance claims incurred but not reported at the time of contract termination; otherwise, the contractor shall retain this liability.

(4) SUCCESSOR CONTRACTOR OR INSURANCE POLICY CANCELLATION.

The Contractor shall:

- (a) obtain the written approval of the Contracting Officer for any change in program direction; and
- (b) ensure insurance coverage replacement is maintained as required and/or approved by the Contracting Officer.

**H.61 DOE-H-2027 CONTRACTOR PROPERTY MANAGEMENT SYSTEM ADMINISTRATION (OCT 2014) (REVISED)**

(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 notice to proceed. 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 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.

## **H.62 DOE-H-2047 FEDERAL HOLIDAYS AND OTHER CLOSURES (OCT 2014) (REVISED)**

- (A) Designated Federal holidays. Federal employees observe the following Federal holidays:
  - (1) New Year's Day
  - (2) Birthday of Martin Luther King, Jr.
  - (3) Washington's Birthday

- (4) Memorial Day
- (5) Independence Day
- (6) Labor Day
- (7) Columbus Day
- (8) Veterans Day
- (9) Thanksgiving Day
- (10) Christmas Day

Generally, Federal holidays that fall on Saturday are observed on the preceding Friday; and holidays that fall on Sunday are observed on the following Monday. The exact calendar day and/or date on which any of the listed holidays are observed may change year to year.

- (B) Other Federal Holidays. In addition to the holidays specified above in paragraph (a), Federal employees may observe other holidays designated by Federal Statute, Executive Order, or Presidential Proclamation as a one-time, day-off such as Inauguration Day for the President of the United States.
- (C) Unscheduled closures. Occasionally, an individual Federally-owned or -controlled site or facility will be closed or have an early closure on a normal work day for other reasons such as inclement weather or facility conditions. If an unplanned closure occurs, the Contractor will be notified as soon as possible after the determination that the Federally-owned or -controlled site or facility will be closed. If the Contractor determines it is necessary to work on a SRS non-work day, the Contractor shall obtain written approval and be responsible for the safety of its personnel including storm warning, occupational medicine, HazMat, etc., and listing work on the SRS plan of the day with Emergency Operations Center (EOC).
- (D) The Contractor shall provide the services required by the contract at Federally owned or – controlled sites or facilities on all regularly scheduled Federal work days and other days as may be required by the contract. The Contractor shall not provide the services required by the contract on those days, or portions thereof, specified in paragraphs (a), (b) and (c), except as required under paragraph (e). Accordingly, the Contractor’s employees, whose regular duty station in performance of this contract is a Federally-owned or controlled site or facility, shall not be granted access to the facility during those times specified in paragraphs (a), (b) and (c), unless required by paragraph (e) below.
- (E) There may be times that the Contractor is required to perform the services required by the contract on a Federal holiday or other closure times. In the event that such performance is required, the Contracting Officer will notify the Contractor, in writing, and specify the extent to which performance of the contract will be required. The Contractor shall provide sufficient personnel to perform the contractually-required work on those days, as directed by the Contracting Officer.
- (F) In accordance with the payment and other applicable clauses of the contract, the Government will not pay the Contractor for its employees’ regularly scheduled work hours not actually provided directly in performance of the contract due to an unscheduled closure as contemplated in paragraphs (b) and (c) above.

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

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

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

### **H.64 DOE-H-2050 INCORPORATION OF SMALL BUSINESS SUBCONTRACTING PLAN (OCT 2014)**

In accordance with the clause at FAR 52.219-9, Small Business Subcontracting Plan, the subcontracting plan contained in Section J, Attachment J-4, Individual Small Business Subcontracting Plan is hereby incorporated into and made a part of this contract.

### **H.65 FACILITIES CAPITAL COST OF MONEY**

The request for proposal for this contract did not require a cost proposal in which facilities capital cost of money would apply. Therefore, the Section I clause entitled, FAR 52.215-17 “Waiver of Facilities Capital Cost of Money”, is included in the contract. However, if during the performance of the contract the Contractor elects to claim facilities capital cost of money as an allowable cost, the Contractor shall submit, for approval of the Contracting Officer, a proposal for each specific project, including Form CASB-CMF which shows the calculation of the proposed amount (see FAR 31.205-10).

### **H.66 WITHDRAWAL OF WORK**

- (a) The CO reserves the right to have any of the work contemplated by Section C, Statement of Work, of this contract performed by either another Government contractor or to have the work performed by Government employees.
- (b) DOE reserves the right to direct the Contractor to assign to the DOE, or another Contractor, any subcontract awarded under this contract.
- (c) The DOE reserves the right to identify specific work activities in Section C “Description/Specifications/Work Statement” to be removed (de-scoped) from the contract in order to contract directly for the specific work activities.

- (d) If withdrawn work has been authorized under an annual work authorization directive, the work shall be terminated in accordance with the procedures in the clause in Section I entitled, FAR 52.249-6 "Termination." If work has not been authorized under a work authorization directive and there is no impact on the Contractor's staffing, the fee amount set forth in the Schedule shall be equitably adjusted, under the clause in Section I entitled DEAR 970.5243-1, "Changes." If the Contractor's staffing is impacted, the work shall be terminated in accordance with the procedures in the clause in Section I entitled, FAR 52.249-6 "Termination."
- (e) If any work is withdrawn by the CO, the Contractor agrees to fully cooperate with the new entity performing the work and to provide whatever support is required pursuant to the clause in Section I entitled, DEAR 952.242-70 "Technical Direction."

#### **H.67 DOE-H-2062 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL - ALTERNATE I (OCT 2014)**

- (a) Pursuant to the clause at FAR 52.204-9, Personal Identity Verification of Contractor Personnel, the Contractor shall comply with applicable DOE regulations, policies and directives regarding identification, credential and access management for its personnel who have routine physical access to DOE-owned or -controlled sites or facilities or routine access to DOE information systems.
- (b) The Contractor shall comply with the requirements of those DOE directives, or parts thereof, identified elsewhere in the contract pursuant to the clause at DEAR 970.5204-2, Laws, Regulations and DOE Directives.

#### **H.68 DOE-H-2063 – CONFIDENTIALITY OF INFORMATION (OCT 2014)**

- (a) Performance of work under this contract may result in the Contractor having access to confidential information via written or electronic documents, or by virtue of having access to DOE's electronic or other systems. Such confidential information includes personally identifiable information (such as social security account numbers) or proprietary business, technical, or financial information belonging to the Government or other companies or organizations. The Contractor shall treat this information as confidential and agrees not to use this information for its own purposes, or to disclose the information to third parties, unless specifically authorized to do so in writing by the Contracting Officer.
- (b) The restrictions set out in paragraph (a) above, however, do not apply to –
  - (1) Information which, at the time of receipt by the Contractor, is in the public domain;
  - (2) Information which, subsequent to receipt by the Contractor, becomes part of the public domain through no fault or action of the Contractor;

- (3) Information which the Contractor can demonstrate was previously in its possession and was not acquired directly or indirectly as a result of access obtained by performing work under this contract;
  - (4) Information which the Contractor can demonstrate was received from a third party who did not require the Contractor to hold it in confidence; or
  - (5) Information which is subject to release under applicable law.
- (c) The Contractor shall obtain a written agreement from each of its employees who are granted access to, or furnished with, confidential information, whereby the employee agrees that he or she will not discuss, divulge, or disclose any such information to any person or entity except those persons within the Contractor's organization directly concerned with the performance of the contract. The agreement shall be in a form satisfactory to the Contracting Officer.
  - (d) Upon request of the Contracting Officer, the Contractor agrees to execute an agreement with any party which provides confidential information to the Contractor pursuant to this contract, or whose facilities the Contractor is given access to that restrict use and disclosure of confidential information obtained by the Contractor. A copy of the agreement, which shall include all material aspects of this clause, shall be provided to the Contracting Officer for approval.
  - (e) Upon request of the Contracting Officer, the Contractor shall supply the Government with reports itemizing the confidential or proprietary information it receives under this contract and identify the source (company, companies or other organizations) of the information.
  - (f) The Contractor agrees to flow down this clause to all subcontracts issued under this contract.

**H.69 DOE-H-2069 PAYMENTS FOR DOMESTIC EXTENDED PERSONNEL ASSIGNMENTS (OCT 2014) (REVISED)**

- (a) Definition. For purposes of this clause, "domestic extended personnel assignments" are defined as any assignment of contractor personnel to a domestic location different than (and more than 50 miles from) their permanent duty station for a period expected to exceed 30 consecutive calendar days.
- (b) For domestic extended personnel assignments, the Contractor shall be reimbursed the lesser of temporary relocation costs (Temporary Change of Station allowances as described in the Federal Travel Regulation at §302-3.400 - §302-3.429) or a reduced per diem (Extended Travel Duty) in accordance with the allowable cost provisions of the contract and the following:
  - (1) When a reduced per diem method (Extended Travel Duty) is utilized, the allowances are as follows:
    - (i) Lodging. For the first 60 days and last 30 days of the assignment, the Government will reimburse costs associated with lodging at the lesser of actual cost or 100% of the

Federal per diem rate at the assignment location. The intervening days' lodging will be reimbursed at the lesser of actual cost or 55% of Federal per diem.

- (ii) Meals and Incidental Expenses. For the first 30 days and last 30 days of the assignment, the Government will reimburse costs associated with meals and incidental expenses (M&IE) at a rate not to exceed 100% of the Federal per diem rate at the assignment location. The intervening days M&IE will be reimbursed at a reduced rate, not to exceed 55% of Federal per diem.
  - (iii) Receipts are required to substantiate all lodging expenses and any other authorized expense greater than \$75.
- (2) The Government will not reimburse any costs associated with per diem (except for en route travel) unless the contractor employee maintains a residence at the permanent duty station.
  - (3) The Government will not reimburse costs associated with salary premiums, per diem, lodging, or other subsidies for contractor employees on domestic extended personnel assignments after three (3) years (except for the reimbursements described above during the last 30 days of the assignment).
  - (4) If an assignment has breaks within a three-year period, the calculation of the total length of the assignment will be as follows: If the break between assignments is less than 12 months, the Government will consider the assignment continuous for purposes of the three-year clock. For instance, if a contractor employee completes a two-year assignment at location A and returns to his/her permanent duty station for 12 months, a subsequent new two-year assignment back to location A will restart the three-year clock. The assignments will be considered two separate two-year assignments. On the other hand, if in the previous example the employee's return to his/her permanent duty station was for six months, the Government would consider the second assignment to be a continuation of the first for purposes of the three-year rule.
  - (5) The Government will not reimburse costs associated with salary premiums that exceed 10% of base salary.
  - (6) The Contractor shall include the substance of this clause in all subcontracts in which travel will be reimbursed at cost.

## **H.70 SUBCONTRACTOR SELECTION**

The Contractor shall establish in its purchasing system, developed as required by the clause in Section I entitled, DEAR 970.5244-1 "Contractor Purchasing System," procedures for evaluating the ES&H records of companies submitting offers/bids/proposals for performing subcontract work in Government-owned or leased facilities under this contract. The procedures shall provide for evaluation of ES&H indicators (e.g., workers' compensation costs, injury/illness incidence rates, lost workday incidence rates, property damage, fire loss rates, experience modification rate, etc.), as appropriate, for the work to be performed and identify the threshold(s) for selection.

## **H.71 SUBCONTRACTS**

Prior to the placement of subcontracts and in accordance with the clause in Section I entitled, DEAR 970.5244-1 “Contractor Purchasing System,” the Contractor shall ensure that any required prior notice and description of the subcontract is given to the CO and any required consent is received. Except as may be expressly set forth therein, any consent by the CO to the placement of subcontracts shall not be construed to constitute approval of the Subcontractor or any subcontract terms or conditions, determination of the allowability of any cost, revision of this contract or any of the respective obligations of the parties thereunder, or creation of any Subcontractor privity of contract with the Government.

## **H.72 ORGANIZATIONAL CONFLICT OF INTEREST – AFFILIATES(S)**

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

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

## **H.73 REAL PROPERTY ASSET MANAGEMENT**

The Contractor shall provide services and information to DOE under this Contract related to real property asset planning, real estate maintenance, disposition planning, long-term stewardship (LTS), and value engineering (VE). The Contractor must balance acquisition, sustainment, recapitalization and disposal to ensure that real property assets are available, utilized, and in a suitable condition to accomplish DOE’s missions. The Contractor is expected to tailor their business processes, management practices, and use of standard industry practices regarding real property management. The Contractor is responsible for flowing down the requirements of this clause to subcontracts at any tier to the extent necessary to ensure the Contractor’s compliance with the requirements. The Contractor is to do so in a manner that is cost effective to the government.

1. **PLANNING.** Based on DOE-furnished program planning guidance, the Contractor shall assess the current real property assets against program mission projections, (b) identify the specific real

property asset projects and activities required to meet program mission projections, and (c) propose a five-year planning horizon through the development of a Five-Year Laboratory Plan.

2. DOCUMENTATION. The Contractor shall document its real property management activities, including (a) the Laboratory's plan to meet program missions, (b) budgets and planning estimates, and (c) performance outcomes.
3. FACILITIES INFORMATION MANAGEMENT SYSTEM. The Contractor shall support the SRS M&O contractor in the maintenance of the SRS Facilities Information Management System (FIMS) data and records. (FIMS is DOE's corporate real property inventory database for all lands, buildings, trailers, and other structures and facilities. FIMS data must be current and is verified annually.)
4. REAL ESTATE. The Contractor shall:
  - a. Submit all real estate actions to acquire, utilize, and dispose of real property assets to DOE for review and approval.
  - b. Maintain, in a complete and current condition, all real estate records identified by DOE.
  - c. Utilize the land-use planning and management process established and executed by the SRS M&O contractor.
5. MAINTENANCE. The Contractor shall maintain real property assets in a manner that promotes operational safety, worker health, environmental compliance, property preservation and cost-effectiveness while meeting the program missions. This requires a balanced approach that not only sustains the assets, but also provides for their recapitalization and includes the following as a minimum:
  - a. A maintenance management program that includes a condition assessment of the real property assets, a work control system, management of deferred maintenance, a method to prioritize, and systems to budget and track maintenance expenditures.
  - b. Identification of 5-year maintenance and repair requirements (sustainment) and funding for deferred maintenance reduction.
  - c. Identification of 5-year recapitalization requirements to replace or modernize existing facilities.
  - d. Condition assessments must be performed on real property assets at least once within every five-year period, and may be required more frequently for mission essential facilities and infrastructure. The condition assessment program shall utilize a tailored approach based on facility status, mission and importance and the magnitude of the hazards associated with facilities and infrastructure. Inspection methodology shall be consistent with industry practice and shall include identification of safety and health hazards. Deferred maintenance estimates will be based on nationally recognized cost estimating systems or the DOE Condition Assessment Information System (CAIS). The condition assessment program will support the reporting requirements of FIMS.
6. DISPOSITION AND LONG-TERM STEWARDSHIP. When DOE identifies that a program mission is no longer required, the Contractor shall initiate preparation of affected real property

assets for disposition, including potential reuse for other missions. Disposition and LTS activities must be consistent with the guiding principles and core functions of the Department's facility disposition policies. To prepare for disposition, the Contractor shall do the following:

- a. Identify real property assets that are likely to be declared as excess in a 10-year planning horizon and the anticipated year of excess and incorporate the information in the Five-Year Laboratory Plan.
  - b. Provide the information to the SRS M&O contractor, owner of site disposition responsibilities, for inclusion in disposition planning and for inclusion in FIMS. The information must include the following:
    - i. Identification and characterization of hazardous and radioactive materials, waste, and hazardous conditions of the real property asset.
    - ii. Surveillance and maintenance requirements needed to ensure the real property asset, including its systems, and stored hazardous materials and waste remain in a stable and known condition and that adequate protection is provided to the workers, the public, and the environment pending disposition.
    - iii. Assessment and adjustment of the facility Safety Basis Documents, as necessary, to reflect conditions and activities pending disposition.
7. VALUE ENGINEERING. The Contractor shall use VE techniques in a tailored manner to reduce DOE's real property asset ownership costs (e.g., acquisition, operations, maintenance, and disposal) while maintaining the necessary level of performance and safety. For real property asset acquisition, disposition, demolition, repair, and recapitalization projects where the total value for a single item of purchase or contract is expected to be greater than \$5 million, a VE assessment shall be performed. Real estate acquisitions are excluded from VE.

#### **H.74 AGREEMENTS FOR COMMERCIALIZING TECHNOLOGY**

This H-clause authorizes the use of the mechanism: Agreements for Commercializing Technology (ACT). In accordance with the requirements specified in this H-clause, the Contractor may conduct third party-sponsored research at the Contractor's risk. While the Department believes ACT has the potential to greatly assist in the commercialization of technologies, it also specifically recognizes that ACT can be used for other engagements with outside entities that are not necessarily aimed at commercialization (e.g., technical assistance, training, studies), but which facilitate access to DOE facilities. In performing ACT work, the Contractor may use staff and other resources associated with this Contract for the purposes of conducting technical services<sup>1</sup>, training, studies, performing research and development, and/or furthering the technology transfer mission of the Department, only when such work does not interfere with DOE-funded activities conducted as authorized by other parts of this Contract. The resources that may be used include Government-owned or leased facilities, equipment, or other property that is either in the Contractor's custody or available to the Contractor under this Contract (unless specifically excluded by the Contracting Officer). For Contractor activities conducted under authority of this H-clause, the Contractor shall provide full-

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<sup>1</sup> Services that are routinely performed for DOE and multiple sponsors with little to no variance in the scope of work e.g., calibration services

cost recovery, assume indemnification and liability as provided in paragraph 9 below, and may assume other risks normally borne by private parties sponsoring research at the DOE national laboratories and production plants. In exchange for accepting such risks, or for other private consideration provided by the Contractor, the Contractor is authorized to negotiate separate ACT agreements with the sponsoring third parties. Under ACT agreements, the Contractor may charge those parties additional compensation beyond the full costs of the work at the facility.

The following applies to all work conducted under the ACT mechanism regardless of the source of funding:

1. *Authority to Perform work under this H-clause.* Pursuant to the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.) and other applicable authorities, the Contractor may perform work for non-Federal entities, in accordance with the requirements of this H-clause.
2. *Contractor's Implementation.* For ACT work conducted under the contract, the Contractor must draft, implement, and maintain formal policies, practices, and procedures in accordance with this H-clause, which must be approved by the Contracting Officer, and such approval shall not be unreasonably withheld.
3. *Conditions for Participation in ACT.* The Contractor:
  - a. Must not perform ACT activities that would place it in direct competition with the private sector;
  - b. May only conduct work under this H-clause if the work does not interfere with or adversely affect projects and programs the Contractor conducts on behalf of the DOE under this contract, and complies with the terms and conditions of the prime contract. If the Government determines that an activity conducted under this H-clause interferes with the Department's work under the Contract, or that termination/stay/suspension of work under an ACT agreement is in the best interest of the Government, the Contractor must stop the interfering ACT work immediately to the extent necessary to resolve the interference. At any time, the Contracting Officer may require the use of specified Government-owned or leased property and facilities for the exclusive use of the DOE mission by providing a written notice excluding said property from the Contractor's activities under this H-clause. Any cost incurred as a result of Contracting Officer decisions identified in this subparagraph shall be borne by the Contractor. The Contracting Officer shall provide to the Contractor in writing its decision, identifying the issues and reasons for the decisions. The Contractor shall be provided with a reasonable opportunity to address and resolve the issues identified by the Contracting Officer;
  - c. Except as otherwise excluded in this H-clause, must perform all ACT activities in accordance with the standards, policies, and procedures that apply to performance under this Contract, including but not limited to environmental, safety and health,

- security, safeguards and classification procedures, and human and animal research regulations;
- d. Must maintain and provide when requested by the DOE Contracting Officer, a summary of project information for each active ACT project, consisting of: sponsor name; total estimated costs; project title and description; project point of contact; and estimated start and completion dates;
  - e. Is responsible for addressing the following items in ACT agreements as appropriate: disposition of property acquired under the agreement; export control; notice of intellectual property infringement; and a statement that the Government and/or the Contractor shall have the right to perform similar services in the Statement of Work for other Parties as otherwise authorized by this Contract subject to applicable data restrictions;
  - f. Must include a standard legal disclaimer notice on all publications generated under ACT activities. Each DOE M&O contractor has its own pre-approved publications statement, and this should be included; and
  - g. Must insert the following disclaimer in each agreement under ACT, which must be conspicuous (e.g. bold type, all capital letters, or large font) in all Agreements under ACT so as to meet the standards of due notice.

#### **DISCLAIMER**

THIS AGREEMENT IS SOLELY BETWEEN BATTELLE SAVANNAH RIVER ALLIANCE, LLC ACTING IN A PRIVATE CAPACITY AND [THE OTHER IDENTIFIED PARTY(IES)]. THE UNITED STATES GOVERNMENT IS **NOT** A PARTY TO THIS AGREEMENT, THIS AGREEMENT DOES NOT CREATE ANY OBLIGATIONS OR LIABILITY ON BEHALF OF THE GOVERNMENT AND THE GOVERNMENT MAKES NO EXPRESS OR IMPLIED WARRANTY AS TO THE CONDITIONS OF THE RESEARCH OR ANY INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DEVELOPED UNDER THIS AGREEMENT, OR THE OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE RESEARCH OR RESULTING PRODUCT; THAT THE GOODS, SERVICES, MATERIALS, PRODUCTS, PROCESSES, INFORMATION, OR DATA TO BE FURNISHED HEREUNDER WILL ACCOMPLISH INTENDED RESULTS OR ARE SAFE FOR ANY PURPOSE INCLUDING THE INTENDED PURPOSE; OR THAT ANY OF THE ABOVE WILL NOT INTERFERE WITH PRIVATELY OWNED RIGHTS OF OTHERS. THE GOVERNMENT SHALL NOT BE LIABLE FOR SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES ATTRIBUTED TO SUCH RESEARCH OR RESULTING PRODUCT, INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DELIVERED UNDER THIS AGREEMENT. THIS DISCLAIMER DOES NOT AFFECT ANY RIGHTS THE GOVERNMENT

MAY HAVE AGAINST THIRD PARTIES ARISING FROM WORK  
CONDUCTED IN CONNECTION WITH THIS AGREEMENT.

4. *Contracting Authority.*

- a. Subject to DOE approval as described in this paragraph, the Contractor is hereby authorized to negotiate terms and conditions between the Contractor and third parties when entering into ACT agreements. The Contractor will have no authority to bind the Government in any way with such terms and conditions. The Government will have no obligation to the Contractor due to such terms and conditions.
- b. The Contractor shall submit an ACT proposal package (Package) to the Contracting Officer for approval prior to beginning work under an ACT agreement.
  - i. A complete Package will include at a minimum: the identity of the parties to the ACT agreement; the principal place of performance; any foreign ownership or control of the ACT agreement parties; a Statement of Work; an estimate of costs incurred under the Contract; an anticipated schedule; identification of key Government equipment and facilities that will be used under the ACT agreement; a list of expected deliverables; identification of the Intellectual Property (IP) lead and proposed selection of IP rights, as defined in DOE Class Waiver W(C)-2011-013; a signed certification by the private party(ies) that the Contractor offered the option to use CRADA and SPP alternatives (see paragraph 7a) sufficiently such that the private parties are aware of the relative costs and other differences between the ACT agreement and the CRADA and SPP alternatives; source of funds, including a statement that no Federal funds, including pass-through funds received as a subcontractor or partner, are being utilized to fund the agreement except as authorized under the FedACT pilot (see paragraph 14 below); applicable ES&H and NEPA documentation; a statement of consideration, summarizing the risk and/or consideration offered the ACT participants in exchange for charging beyond full cost recovery or for other compensation provided by the participants; and when multiple third parties are parties to the ACT agreement, or as otherwise requested by the Contracting Officer, an IP Management Plan that sets forth the proposed disposition of IP rights, and income and royalty sharing, among the parties to an ACT agreement.
  - ii. If the Contractor, the Contractor's parent, member, subsidiary, or other entity in which the Contractor, the Contractor's parent, member or subsidiary has an equity interest, is a party to the ACT agreement, the Contractor shall include as necessary a project-specific addendum to the Master OCI Plan in the Package to address special circumstances not fully anticipated in the prior approved Master OCI Plan (see paragraph 7).

- iii. If the ACT agreement includes a foreign entity as a party or the statement of work includes the use of human subjects, animal subjects, classified or sensitive subject matter or describes a work scope involving high risks or hazards including environmental issues, the Contractor shall include additional information as necessary or as requested by the Contracting Officer.
  - c. The Contracting Officer shall use reasonable best efforts to review each complete Package submitted by the Contractor under subparagraph 4.b. of this H-clause within ten (10) business days of receiving the Package and provide the Contractor with approval or non-approval of the Package. The review of the complete Package by the Contracting Officer shall include a determination that the proposed work: (1) is consistent with or complementary to DOE missions and the contract statement of work; (2) will not adversely impact programs under the contract scope of work; (3) will not place the contractor in direct competition with the domestic private sector; and (4) will not create a detrimental future burden on DOE resources.
  - d. Except as conditionally allowed under subparagraph i. below, the Contracting Officer must approve the Package before the Contractor may begin work under the proposed ACT agreement. If the Contracting Officer rejects the Package then the Contracting Officer must provide said rejection to the Contractor in writing including the reasons for the rejection. Upon receipt of the Contracting Officer's written rejection, the Contractor agrees to not further pursue the work described in the package or incur additional costs under the Contract for the work described in the Package.
    - i. The Contractor may request a preliminary determination that the proposed scope of work is consistent with the contract statement of work and the Contracting Officer will use his/her best efforts to provide such a determination within three (3) business days. Upon such a determination from the Contracting Officer, the Contractor may begin work under the ACT agreement at the Contractor's risk pending final approval of the complete Package. The Contractor must submit a complete Package, as identified in subparagraph 4.b. above, within (10) business days of the preliminary determination. All costs associated with the performance of work under a preliminary determination are the responsibility of the Contractor, as no Federal funds will be used to fund any work conducted under this H-clause.
    - ii. If the Contractor, the Contractor's parent, member, subsidiary, or other entity in which the Contractor, the Contractor's parent, member or subsidiary has an equity interest, is a party sponsoring work in connection with the ACT agreement, work may not commence until approval of the complete Package by the Contracting Officer.
5. *Advance Payment for ACT Projects.* The Contractor shall be responsible for providing adequate advance payment for ACT work conducted under this H-clause consistent with

procedures defined in the Department's Financial Management Handbook. The Contractor shall be solely responsible for collecting payments from third parties for any work conducted under this H-clause and such collections shall be independent of providing advance payment. For such payments and for any costs, obligations, or liabilities arising due to the Contractor's work under this H-clause, the Contractor is entirely at risk and the Government shall have no risk.

6. *Costs.* All direct costs associated with the Contractor's work conducted under this H-clause shall be directly charged to separate and identifiable accounts in accordance with the requirements of the Department's Financial Management Handbook. An allocable portion of indirect costs normally applied to equivalent work under this Contract shall also be applied to work conducted under this H-clause in accordance with the requirements of the Financial Management Handbook. As required by the Financial Management Handbook, changes to the Handbook will be incorporated into this H-clause by a unilateral administrative modification to the contract. In addition, all work must be performed at full costs which would include Federal Administrative Charge (FAC).
  - a. Work conducted under this H-clause shall be excluded from the Contract award fee calculations and such fee shall not be allocable to work conducted under this H-clause.
  - b. Federal funds will not be used to fund work conducted under this H-clause except as authorized under the FedACT pilot (see paragraph 14 below).
7. *Organizational Conflict of Interest.* The Contractor shall conduct work under this H-clause in a manner that minimizes the appearance of conflicts of interest and avoids or mitigates actual conflicts of interest with the Contractor's functions under this Contract. Accordingly, the Contractor shall develop an Organizational Conflict of Interest Mitigation Plan (OCI Plan). The OCI Plan should address OCI issues that arise as a result of the Contractor taking a financial interest in ACT projects, especially in those cases where the Contractor retains rights in ACT IP. Said OCI Plan shall be provided to the Contracting Officer for review and approval as soon as practicable after execution of the contract modification incorporating this H-clause into the Contract. Unless provided otherwise by the Contracting Officer, no work on ACT agreements may commence before Contracting Officer approval of the OCI Plan. In addition to those elements expressly stated in the OCI Plan, the Department may condition any ACT transaction on such other mitigating conditions it determines are appropriate. The OCI Plan shall, at a minimum, include elements that address the following:
  - a. *Full Disclosure.* Before work can begin under an ACT transaction, all parties to ACT agreements must sign a DOE-approved certification that they have been fully informed about the availability of SPP agreements and CRADAs in addition to ACT. The certification at a minimum shall briefly describe SPP agreements, CRADAs and ACT, and will include the relative disposition of IP rights and the costs (including identification of any additional costs e.g. insurance, and other compensation to the Contractor under ACT) for each type of agreement for the scope of work being proposed.

- b. *Priority of Work.* The Contractor shall not give work under ACT any special attention or priority over other work under the contract. Work under ACT shall be approved by the Contracting Officer and assigned the same priority relative to other work under the Contract that it would normally have if performed under a non-Federal SPP agreement. The Contracting Officer has discretion to determine the agency's priority of work, considering the Contractor's input.
  - c. *Participation by Contractor-related Entity:* Where the Contractor, the Contractor's parent, member, subsidiary, or other entity in which the Contractor, the Contractor's parent, member or subsidiary has an equity interest, is a party to the ACT agreement, the Contractor shall include as necessary an addendum to the OCI Plan to address special circumstances not fully anticipated in the OCI Plan.
  - d. *Right of Inquiry for ACT IP Designation.* DOE Patent Counsel may inquire into the Contractor's designation of any invention or data as arising under an ACT transaction. The Contractor is responsible for curing any defect identified in such inquiry, and if the Contractor cannot adequately justify the designation or cure the defect, then the parties to the ACT agreement may receive modified rights in the IP to the degree necessary to resolve the issues identified by the inquiry.
8. *Intellectual Property.* Disposition of intellectual property (IP) arising from work conducted under this H-clause shall be governed by Class Waiver W(C)-2011-013 (ACT Class Waiver) which is incorporated herein by reference.
- a. All Contractor ACT inventions shall be reported to DOE pursuant to the requirements of the DEAR 970.5227-10 clause of this contract.
  - b. In reporting ACT inventions, the Contractor shall identify the ACT agreement under which the invention was made and specify the rights reserved by the Government pursuant to the ACT Class Waiver.
  - c. All technical data identified by the ACT client as Protected ACT Information shall also be marked to identify the ACT agreement under which the data was generated.
  - d. The Contractor shall ensure that all rights and obligations concerning ACT IP, including the appropriate IP provisions authorized in the ACT Class Waiver, are clearly provided in ACT agreements, and that all parties granted any rights in ACT IP are informed of the terms of the waived rights, including the rights reserved by the Government.
  - e. Where the Contractor receives ownership or license rights to ACT IP, the Contractor may elect to commercialize the ACT IP consistent with the Technology Transfer Mission clause of this Contract.
  - f. As an alternative to subparagraph e., if the Contractor has an authorized Private Funded Technology Transfer (PFTT) program, the Contractor may elect to retain private ownership of the ACT IP and commercialize the IP under its applicable

PFTT clause, using its private funds, where no costs for developing, patenting, and marketing will be allowable under this Contract. The Contractor will share royalties collected on ACT IP with inventors in accordance with paragraph (h) of the Technology Transfer Mission clause of this Contract.

- g. For ACT projects in which the terms of the Agreement provide that the Government reserves the right to use generated data after the particular project expires, the Contractor must provide to OSTI computer software produced under the Agreement in both source and executable object code format.
- h. Where terms and conditions governing Data and Subject Inventions under this Contract are inconsistent with the terms of the ACT Class Waiver, the ACT Class Waiver will control.

9. *Contractor Liability and Indemnification.*

a. *General Indemnity.*

- i. The Contractor agrees to indemnify and hold harmless the Government, the Department, and persons acting on their behalf from all liability, including costs and expenses incurred, to any person, including the ACT participants, for injury to or death of persons or other living things or injury to or destruction of property arising out of the performance of an ACT transaction by the Government, the Department, the Contractor, or persons acting on their behalf, or arising out of the use of the services performed, materials supplied, or information given hereunder by any person including the Contractor, and not directly resulting from the fault or negligence of the Government, the Department, or persons (other than the Contractor) acting on their behalf.
- ii. Subject to Contracting Officer approval, the General Indemnity set forth in (i) above may be modified or waived where: (1) ACT participants are not providing material or equipment to the Contractor to be used in the performance of the Statement of Work under the ACT transaction; and (2) ACT participants are not sending their employees to the M&O facilities as part of the Statement of Work; and (3) the specific activities performed under the ACT transaction are normally performed by the Contractor under the Contract.
- iii. Notwithstanding the provisions in a (i) and a (ii) above, the Contractor shall indemnify and hold harmless the Government, the Department, and persons acting on their behalf for loss, damage, or destruction of Government property resulting from the fault or negligence of the Contractor. Such indemnification shall be subject to a liability limit of \$2,000,000 (two million dollars) per year, or such greater liability limit approved by the cognizant DOE/NNSA Contracting Officer under the Contract. Above the applicable liability limit, the Contractor's responsibility to the Government

for such loss, damage or destruction, shall be as set forth in the "Property" clause of this Contract.

- b. *Intellectual Property Indemnity.* The Contractor shall indemnify the Government, its agents, and employees against liability, including costs, for infringement of any United States patent, copyright, or other intellectual property arising out of any acts required or directed to be performed under the Statement of Work under an ACT transaction to the extent such acts are not already performed at the Contract facilities. Such indemnity shall not apply to a claimed infringement that is settled without the consent of the Contractor unless required by a court of competent jurisdiction.
- c. *Product Liability Indemnity.*
  - i. Except for any liability resulting from any negligent acts or omissions of the Government, the Contractor agrees to indemnify the Government for all damages, costs, and expenses, including attorney's fees, arising from personal injury or property damage occurring as a result of the making, using, or selling of a product, process, or service by or on behalf of the ACT participants or the Contractor, their assignees, or licensees, which was derived from the work performed under ACT transactions. With respect to this H-clause, neither the Government nor the Contractor shall be considered assignees or licensees as a result of reserved Government rights in ACT IP. The indemnity set forth in this paragraph shall apply only if the Contractor shall have been informed as soon and as completely as practical by the Government of the action alleging such claim and shall have been given an opportunity, to the maximum extent afforded by applicable laws, rules, or regulations, to participate in and control its defense, and the Government shall have provided all reasonably available information and reasonable assistance requested by the Contractor. No settlement for which the Contractor would be responsible shall be made without the Contractor's consent, unless required by final decree of a court of competent jurisdiction.
  - ii. Where the Contractor assigns the responsibility for indemnifying the Government under subparagraph c(i) above to other ACT participants, the Contractor agrees to seek such indemnification from the other ACT participants.
- d. *Claims and Liabilities.* Claims and liabilities resulting from the Contractor's performance of work under an ACT transaction authorized pursuant to this H-clause shall not be subject to the contract clause entitled "Insurance - Litigation and Claims." In no event shall the Contractor be reimbursed under the Contract for liabilities (and expenses incidental to such liabilities, including litigation costs, counsel fees, and judgment and settlements) incurred as a result of third party claims related to the Contractor's performance under this H-clause.

- e. *Government Obligations.* The Contractor shall not include any guarantee or requirement that will obligate the Government to pay or incur any costs or create any liability on behalf of the Government in any ACT agreement or commitment the Contractor executes under authority of this H-clause. The Contractor agrees if the Contractor does include such a guarantee or requirement, it will have no effect on the Government, such that, the Contractor will be responsible for any costs or liability due to such a guarantee or requirement.
  - f. *Insurance.* Any cost of insurance to cover risks of the Contractor associated with ACT agreements is unallowable under this Contract.
10. *ACT Records.* All records associated with the Contractor's activities conducted under the authority of this H-clause, with the exception of information required under paragraphs 3e, 4.b.i, and 13 shall be treated as contractor-owned records under the provisions of the Access to and Ownership of Records clause of this Contract. The Government or its designees shall use such records in accordance with applicable Federal laws (including the Privacy Act), as appropriate.
11. *Termination.* The Government or the Contractor may terminate ACT authority under this contract by providing written notification of termination to the other party (Contracting Officer or the Contractor) as appropriate, no less than 60 days prior to the requested termination date. In such cases, the Contractor shall provide DOE a comprehensive list of active ACT projects. DOE anticipates work commitments under these agreements will be completed regardless of termination. All costs associated with early termination of any ACT agreements prior to the completion shall be the responsibility of the Contractor.
12. *Successor Contractor.* To minimize the potential for negative Government programmatic impact and to facilitate seamless transition of work to a successor contractor, ACT agreement(s) executed under this H-clause and any contractual instruments associated therewith may be novated to the successor contractor with the mutual consent of the Contractor, the successor contractor, and the parties to the affected ACT agreement(s). If the ACT agreement(s) cannot be novated, then the Contractor as a private sponsor shall be permitted to enter into a Non-Federal SPP agreement with the successor contractor that will enable completion of the statement of work. Such agreements shall be entered into pursuant to DOE SPP policies. DOE shall make good faith efforts to incorporate the terms of the applicable ACT agreement.
13. *Minimum Reporting requirements.* The Contractor shall maintain records of its activities related to ACT in a manner and to the extent satisfactory to DOE and specifically including, but not limited to the number of ACT agreements, the amount of funds reimbursed to DOE for work under ACT and aggregate funding received beyond costs in the performance of ACT, the number of third party entities engaged through ACT that had not previously sponsored projects under the Contract and the number that had not previously sponsored projects under any DOE/NNSA M&O contract, the amount of funds reimbursed to DOE by newly engaged entities, the number of parties and types of entities engaged in each individual ACT agreement, and the number of invention disclosures, licenses and start-ups arising from ACT. The Contractor shall establish

performance metric(s) to measure the time required to negotiate ACT agreements in a manner consistent with the time required to negotiate CRADAs and SPPs. The Contractor shall obtain from each entity engaged in ACT the entity's reason(s) for selecting ACT for performance of work under the Contract. Also, the Contractor shall report the above identified data annually to the DOE Contracting Officer and in such a format which will serve to adequately inform DOE of the Contractor's activities under ACT while protecting any data not subject to disclosure under this Contract. Such records shall be made available in accordance with the clauses of this Contract pertaining to inspection, audit and examination of records.

14. *FedACT Pilot*. Under this paragraph the DOE is authorizing a 3-year pilot program for Federally funded ACT (FedACT). FedACT contracts are ACT agreements between the Contractor and a non-Federal third party partner, where a portion of the project funding originates from a Federal agency (i.e., Federal appropriations). In most cases, the industry partner's original source of funds will have been as a result of a contract or financial assistance award from the Federal agency. Any agreement that includes Federal funds must be performed under the FedACT pilot. Federal funds used to support a FedACT project must solely be used to carry out the purposes of the Federal award. FedACT does not include agreements directly funded from another Federal agency. DOE and the Contractor recognize that FedACT is a new mechanism and subject to modifications as more data and experience are realized. During the FedACT pilot either party may suggest changes to the program based on the experiences gained. Furthermore, the Contractor recognizes that the Department may decide to end the FedACT pilot at any time and that termination of the FedACT pilot by the Department will be in accordance with this paragraph. During the FedACT pilot the Contractor is permitted to negotiate and execute such agreements, subject to DOE approval, as described in paragraph 4 above and as set forth herein. The following additional requirements apply.

- a. The Contractor agrees, prior to executing such agreements, to submit to DOE for approval a modified ACT procedure for implementing the execution of FedACT.
- b. If the Contractor is charging the third party additional compensation beyond the full costs of the work performed under the contract, the ACT agreement will not be approved unless DOE or the Contractor obtains a written certification from the Federal agency funding the third party that such additional compensation using Federal funds is permissible under the Federal award. In order to maximize the transparency of the transaction to the funding agency, the written certification shall be in the form of a standard template approved by DOE. Such template shall include at a minimum:
  - i. The amount of and explanation for the cost difference between performing the work as an ACT agreement as compared with an SPP or CRADA; and
  - ii. A detailed description of the risk and/or consideration offered the participant by the Contractor in exchange for charging beyond full cost recovery. This information shall also be included in the statement of consideration

contained in the ACT proposal package submitted to the Contracting Officer.

- c. The Contractor may not agree to any terms and conditions of the Federal award that conflict with this Contract.
- d. Notwithstanding any other provision in this H-clause, rights to ACT inventions and copyrights arising from work conducted under this paragraph made by the Contractor shall be governed by the terms of the Patent and Data Rights clauses of this Contract, as well as any applicable PFTT clause. The ACT Class Waiver does not apply to any ACT agreement funded with Federal funds.
- e. DOE's approval to negotiate and execute a FedACT agreement under this paragraph is for the sole purpose of evaluating and considering the Contractor's and DOE's processes and procedures for implementing such FedACT agreements and does not in any way provide the Contractor authority beyond the scope of this paragraph or imply that permanent authority shall be forthcoming.
- f. Advance payment requirements in Section 5 equally apply to FedACT agreements.
- g. All work must be performed at full costs which includes a Federal Administrative Charge (FAC).
- h. Termination. The FedACT Pilot implemented by this H-clause will terminate three years from the date AL 2018-06 is issued, unless renewed by the Contracting Officer. The Government may provide the Contractor with written notice to terminate the Contractor's authority to conduct FedACT work under this H-clause at any time. If the Contractor's authority to conduct FedACT work under this H-clause has expired or been terminated, the Contractor will be permitted, subject to any other provisions of this H-clause, to complete any FedACT work that had been approved by DOE prior to this H-clause being terminated by the Government.

## **H.75 SUBCONTRACTED WORK**

The Contractor shall subcontract (in accordance with the definition at FAR Subpart 44.1) at least \$12 million on an annual basis to small businesses. The Contractor's subcontracted work shall be in compliance with the approved Section J, Attachment J-4 entitled, *Individual Small Business Subcontracting Plan*. Unless otherwise approved in advance by the CO, work to be performed by subcontractors selected after contract award shall be acquired through competitive procurements, to the extent required, with an emphasis on fixed-price subcontracts to the extent practicable. The use of cost-reimbursement, time-and-materials, and labor-hour subcontracts shall be minimized.

The subcontracting goals shall identify timely, discrete, and meaningful scopes of work that can be awarded to small business concerns. Meaningful work is work that is important to the performance

of the technical and management approach defined by the prime contractor. It is characterized by strong technical content (e.g., discrete and distinct technical or programmatic scopes of work) and contributes to the successful achievement of DOE's goals. It should have a performance-based outcome that directly contributes to the overall contract outcome(s). Also, the Contractor shall respond to past performance inquiries for subcontractors upon request from DOE and other Federal agencies.

## **H.76 ANNUAL MANAGEMENT CONTROLS STATEMENT**

On an annual basis, the Contractor through an officer at a level above the Laboratory Director, shall submit an assurance to the Contracting Officer that the system of management controls, including all systems revised in accordance with the clause, entitled, "Application of DOE Contractor Requirements Documents", is adequate to assure that the objectives of the management system are being accomplished and that the system and controls are effective and efficient."

## **H.77 SITE SERVICES AND INTERFACE REQUIREMENTS MATRIX**

- (a) Controls. When services between SRS prime contractors are executed, DOE does not expect the requesting prime contractor to review or otherwise validate top-level cross-cutting quality control, health, safety and/or environmental protection requirements mandated by the performing contractor's contract. The requesting prime contractor may assume that such contract requirements, (e.g., Safeguards and Security Program/Plan, Quality Assurance Program/Plan) are acceptable to DOE. The performing contractor shall provide products or services in a manner that is consistent with the requirements of the performing prime contractor's contract and the task instructions provided by the requesting contractor. Special conditions required to meet the requesting contractor's requirements shall be documented through interface documents. At SRS, these documents consist of Memorandums of Agreement, Functional Service Agreements, Service Level Agreements, Work for Other Agreements, Interface Control Documents, Work Task Agreements and Financial Position Papers that are implemented in accordance with the "SRS Interface Management Plan".
- (b) Right of Access. SRS contractors shall, with coordination and adequate preparation, allow service-providing contractors access to facilities to perform the service.
- (c) Nuclear Safety. The Contractor shall establish a protocol with each SRS Site prime contractor identified in Section J, Attachment J-7. entitled, *Site Services and Interface Requirements Matrix*. This protocol shall establish the basis to perform contract work scope within a nuclear facility or perform work scope that affects the safety basis of a nuclear facility that is operated by the SRS contractor who has responsibility for the nuclear facility.

The protocol shall:

- Describe the general scope of work to be performed, flow down of nuclear safety requirements, and implementing processes and procedures prior to performing the work.
- Be signed by the SRNL Contractor and concurred with by the other affected contractor. Any new or future protocols or updates shall be processed in accordance with the “SRS Interface Management Plan”.

The SRNL Contractor shall:

- Comply with all facility safety authorization basis and nuclear safety requirements that are established by the SRS contractor responsible for the nuclear facility.
  - Flow down to each subcontractor (in accordance with the Section I clause DEAR 970.5223-1, entitled, *Integration of Environment, Safety and Health in to Work Planning and Execution*), the protocol to comply with all facility safety authorization basis and nuclear safety requirements that are established by the contractor responsible for the nuclear facility.
- (d) Payment for Services: Contractors shall pay for services from other site contractors in accordance with approved financial accounting systems and the SRS Interface Management Plan.
- (e) Responsibility for Delivery of Service. The Government makes no guarantees or warranties regarding the delivery of services, and services between contractors shall not constitute GFS/I. The Government shall not be held responsible for the delivery or non-delivery of services between SRS contractors. Contractors shall attempt to resolve any disputes regarding service interfaces and the provision of services among themselves. If contractors are unable to achieve a timely resolution of issues between themselves regarding interfaces or the appropriate delivery of services, contractors may seek direction from the DOE Contracting Officer (CO). DOE shall be the exclusive authority for resolving disputes associated with any interface issues that cannot be resolved between parties in a timely manner. To the extent contractors attempt to litigate disputes between themselves regarding interfaces or the appropriate delivery of services, all costs associated with such litigation shall be unallowable under this Contract.
- (f) SRS M&O contractor services provided as part of Essential Site Services, Landlord Services and Usage-Based Services are not commercial items. Likewise, services provided by other SRS contractors, including the SRNL Contractor are not commercial services. Unless specified otherwise by the CO, all “Essential Site Services”, “Landlord Services” and “Unit Billing System” services (see Section J, Attachment J-7) including all Information Technology and Management Services, are unique to SRS, and are not “commercial items” as defined by FAR 2.101. The Contractor shall not perform or arrange for the performance of these services by means of any process reserved for the acquisition of commercial items without first receiving written approval from the DOE CO expressly stating that a particular service to be acquired meets the FAR 2.101 definition of a “commercial item.”

## **H.78 CONTRACTOR RESOURCES, COMMITMENTS AND AGREEMENTS**

- (a) The resources, commitments and agreements (hereafter collectively referred to as “resources”) proposed by the Contractor and accepted by the Government are incorporated into the Contract as set forth in Section J Attachment J-14 *Contractor’s Resources*.
- (b) If the Contractor fails to provide any of the resources by the date(s) specified, the Government may exercise any of its rights and remedies under the Contract, including those contained in the provision of the Section I Clause entitled “DEAR 970.5215-3 – Conditional Payment of Fee, Profit, and Other Incentives – Facility Management Contracts”.
- (b) Any costs incurred by the Contractor in providing these resources are expressly unallowable under the Contract. Therefore, these resources shall be provided at no cost to the Government.

## **H.79 DOE-H-2016 Performance Guarantee Agreement (Oct 2014) (mod 94)**

The Contractor’s parent organization(s) or all member organizations if the Contractor is a joint venture, limited liability company, or other similar entity, shall guarantee performance of the contract as evidenced by the Performance Guarantee Agreement incorporated in the Contract in Section J, Attachment J 4. If the Contractor is a joint venture, limited liability company, or other similar entity where more than one organization is involved, the parent(s) or all member organizations shall assume joint and severable liability for the performance of the contract. In the event any of the signatories to the Performance Guarantee Agreement enters into proceedings related to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the CO.

## **H.80 DOE-H-2017 Responsible Corporate Official and Corporate Board of Directors (Oct 2014) (Revised) (mod 94)**

The Contractor has provided a guarantee of performance from its parent company(s) in the form set forth in Section J, Attachment J-4 entitled, Performance Guarantee Agreement. The individual signing the Performance Guarantee Agreement for the parent company(s) should be the Responsible Corporate Official. The Responsible Corporate Official is the person who has sole corporate (parent company(s)) authority and accountability for Contractor performance. DOE may contact, as necessary, the single Responsible Corporate Official identified below regarding Contract performance issues. The parent companies shall proactively support the Responsible Corporate Official to ensure adverse contract performance issues are avoided, identified, and/or resolved in a timely manner. The Responsible Corporate Official shall promptly notify the DOE Contracting Officer of the corrective actions (both taken and planned) to address the adverse contract performance.

Name: Dr. Mark Peters  
Position: Executive Vice President, National Laboratory Management & Operations  
Company/Organization: Battelle Memorial Institute  
Address: 505 King Ave., Columbus, OH 43201  
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Facsimile: 614-458-5200  
Email: [petersmt@battelle.org](mailto:petersmt@battelle.org)

Should the Responsible Corporate Official or their contact information change during the period of the Contract, the Contractor shall promptly notify the CO in writing of the change. Identified below is each member of the Corporate Board of Directors that will have corporate oversight. DOE may contact, as necessary, any member of the Corporate Board of Directors, who is accountable for corporate oversight of the Contractor organization and key personnel.

Corporate Board of Directors: [Offeror Fill-In]

Name: Aimee Kennedy  
Position: Senior Vice President, Human Resources  
Company/Organization: Battelle Memorial Institute  
Address: 505 King Ave., Columbus, OH 43201  
Phone: 614-424-4460  
Facsimile: 614-458-4460  
Email: [kennedya@battelle.org](mailto:kennedya@battelle.org)

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

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

### **H.81 Parent Organization Support (mod 94)**

(a) For onsite work, fee generally provides adequate compensation for parent organization expenses incurred in the general management of this Contract. The general construct of this Contract results in minimal parent organization investment (in terms of its own resources, such as labor, material, overhead, etc.) in the Contract work. DOE provides Government-owned facilities, property, and other needed resources. Accordingly, allocations of parent organization expenses are unallowable for the prime contractor, teaming subcontractors, and/or teaming partners, unless authorized by the CO in accordance with this Clause.

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

- (1) Monitor safety and performance in the execution of Contract requirements;
- (2) Ensure achievement of Contract environmental cleanup and closure commitments;
- (3) Sustain excellence of Contract key personnel;
- (4) Ensure effective internal processes and controls for disciplined Contract execution;
- (5) Assess Contract performance and apply parent organization problem-solving resources on problem areas; and

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

(c) The CO may, with unilateral discretion, authorize parent organization support, and the corresponding indirect or direct costs, if a direct-benefit relationship to DOE is demonstrated. All parent organization support shall be authorized in advance by the CO.

(d) If parent organization support is proposed by the Contractor or required by DOE, the Contractor shall submit for DOE review and approval, an annual Parent Organization Support Plan (POSP). The Contractor shall submit its initial POSP at least 30 days prior to:

- (1) The end of the Contract Transition Period; or
- (2) The commencement date of parent organization support proposed by the Contractor or required by the Government.

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

### **H.82 Organizational Conflict of Interest – Affiliate(s) (mod 94)**

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

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