

SOLICITATION, OFFER AND AWARD		1. This Contract is a Rated Order under the Defense Priorities and Allocations System (DPAS) - Code of Federal Regulations - at 15 CFR 700.	RATING	PAGE OF PAGES 1 226	
2. CONTRACT NUMBER 89243525CCR000073		3. SOLICITATION NUMBER 89243523RCR000002	4. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) INVITATION FOR BID <input checked="" type="checkbox"/> NEGOTIATED (RFP) REQUEST FOR PROPOSAL	5. DATE ISSUED 01/04/2024	6. REQUISITION/PURCHASE NUMBER 25CR000224
7. ISSUED BY Strategic Petroleum Reserve Project SPRO U.S. Department of Energy 900 Commerce Road East US 492 New Orleans LA 70123		CODE 892435	8. ADDRESS OFFER TO (If other than Item 7)		

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".

SOLICITATION

9. Sealed offers in original and _____ copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if hand carried, in the depository located in _____ until _____ (Hour) local time _____ (Date)

CAUTION: LATE Submissions, Modifications, and Withdrawals: See Section L, Provision No. 52.214-7 or 52.215-1. All offers are subject to all terms and conditions contained in this solicitation.

10. FOR INFORMATION CALL:	A. NAME Mary C. Roark	B. TELEPHONE (NO COLLECT CALLS)			C. E-MAIL ADDRESS mary.roark@spr.doe.gov
		AREA CODE 504	NUMBER 734-4195	EXT.	

11. TABLE OF CONTENTS

(X)	SEC.	DESCRIPTION	PAGE(S)	(X)	SEC.	DESCRIPTION	PAGE(S)
PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES			
<input checked="" type="checkbox"/>	A	SOLICITATION/CONTRACT FORM	2	<input checked="" type="checkbox"/>	I	CONTRACT CLAUSES	58
<input checked="" type="checkbox"/>	B	SUPPLIES OR SERVICES AND PRICES/COSTS	7	PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS			
<input checked="" type="checkbox"/>	C	DESCRIPTION/SPECIFICATIONS/WORK STATEMENT	17	<input checked="" type="checkbox"/>	J	LIST OF ATTACHMENTS	21
<input checked="" type="checkbox"/>	D	PACKAGING AND MARKING	3	PART IV - REPRESENTATIONS AND INSTRUCTIONS			
<input checked="" type="checkbox"/>	E	INSPECTION AND ACCEPTANCE	4	<input checked="" type="checkbox"/>	K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	1
<input checked="" type="checkbox"/>	F	DELIVERIES OR PERFORMANCE	5	<input type="checkbox"/>	L	INSTRUCTIONS, CONDITIONS, AND NOTICES TO OFFERORS	
<input checked="" type="checkbox"/>	G	CONTRACT ADMINISTRATION DATA	8	<input type="checkbox"/>	M	EVALUATION FACTORS FOR AWARD	
<input checked="" type="checkbox"/>	H	SPECIAL CONTRACT REQUIREMENTS	100				

OFFER (Must be fully completed by offeror)

NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.

12. In compliance with the above, the undersigned agrees, if this offer is accepted within _____ calendar days (60 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

13. DISCOUNT FOR PROMPT PAYMENT <i>(See Section I, Clause No. 52.232.8)</i>	10 CALENDAR DAYS (%) NET 30	20 CALENDAR DAYS (%)	30 CALENDAR DAYS (%)	CALENDAR DAYS (%)
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14. ACKNOWLEDGEMENT OF AMENDMENTS <i>(The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated):</i>	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE

15A. NAME AND ADDRESS OF OFFEROR	CODE SJ65WKNH1WA4	FACILITY	16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER <i>(Type or print)</i>
STRATEGIC STORAGE PARTNERS, LLC. Attn: Niki Heflin 1200 BRICKYARD LN STE 202 BATON ROUGE LA 708028084			

15B. TELEPHONE NUMBER	15C. CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS IN SCHEDULE.	17. SIGNATURE	18. OFFER DATE
AREA CODE NUMBER EXTENSION	<input type="checkbox"/>		

AWARD (To be completed by government)

ALL 19. ACCEPTED AS TO ITEMS NUMBERED	20. AMOUNT \$2,802,714,522.00	21. ACCOUNTING AND APPROPRIATION \$499,992.00
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22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION UNDER THE UNITED STATES CODE AT: <input type="checkbox"/> 10 U.S.C. 3204 (a) () <input type="checkbox"/> 41 U.S.C. 3304 (a) ()	23. SUBMIT INVOICES TO ADDRESS SHOWN IN <i>(4 copies unless otherwise specified)</i>
	ITEM N/A

24. ADMINISTERED BY (If other than Item 7) See Schedule G	CODE 01601	25. PAYMENT WILL BE MADE BY CODE
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26. NAME OF CONTRACTING OFFICER (Type or print) Paul S. Oosterling Head of Contracting Activity	27. UNITED STATES OF AMERICA PAUL OOSTERLING Digitally signed by PAUL OOSTERLING Date: 2025.04.03 11:01:38 -05'00' <i>(Signature of Contracting Officer)</i>	28. AWARD DATE 4/3/2025
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CONTINUATION SHEET

REFERENCE NO. OF DOCUMENT BEING CONTINUED
89243525CCR000073

PAGE 2 OF 226

NAME OF OFFEROR OR CONTRACTOR
STRATEGIC STORAGE PARTNERS, LLC.

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
	UEI: SJ65WNKH1WA4 Management and Operation of the Strategic Petroleum Reserve Payment: Period of Performance: 04/15/2025 to 06/14/2030				

PART I -THE SCHEDULE

SECTION B

SUPPLIES OR SERVICES AND PRICES/COSTS

PART I -THE SCHEDULE

SECTION B

SUPPLIES OR SERVICES AND PRICES/COSTS

Table of Contents

B.1	DOE-B-7001 SERVICE BEING ACQUIRED (SEP 2017)	B-1
B.2	DOE-B-7002 OBLIGATION OF FUNDS AND FINANCIAL LIMITATIONS (SEP 2017)	B-1
B.3	DOE-B-2002 COST-PLUS-AWARD-FEE CONTRACT: TOTAL ESTIMATED COST AND AWARD FEE (OCT 2014)	B-1
B.4	DOE-B-2014 OPTION TO EXTEND THE TERM OF THE CONTRACT: ESTIMATED COST, FEE AND PERIOD OF PERFORMANCE (OCT 2014)	B-2
B.5	DOE-B-7004 TOTAL AVAILABLE FEE (SEP 2017) (REVISED).....	B-2
B.6	DOE-B-7005 ALLOWABILITY OF SUBCONTRACTOR FEE (SEP 2017)	B-4
B.7	DOE-B-7006 PROVISIONAL PAYMENT OF PERFORMANCE FEE (SEP 2017)	B-5

SECTION B

SUPPLIES OR SERVICES AND PRICES/COSTS

B.1 DOE-B-7001 SERVICE BEING ACQUIRED (SEP 2017)

The Contractor shall provide the personnel, facilities, equipment, materials, supplies, and services (except when such facilities, equipment, materials, supplies and services as are furnished by the Government) necessary to perform the requirements and work set forth in this contract and shall perform such requirements and work in a quality, timely, and cost-effective manner.

(End of Clause)

B.2 DOE-B-7002 OBLIGATION OF FUNDS AND FINANCIAL LIMITATIONS (SEP 2017)

The amount presently obligated by the Government with respect to this contract is specified in the Section I Clause entitled “DEAR 970.5232-4 – Obligation of Funds”. Other financial limitations are also specified in the Section I Clause entitled “DEAR 970.5232-4 – Obligation of Funds.”

(End of Clause)

B.3 DOE-B-2002 COST-PLUS-AWARD-FEE CONTRACT: TOTAL ESTIMATED COST AND AWARD FEE (OCT 2014)

(a) This is a Cost-Plus-Award-Fee type of contract. The total estimated cost and award fee are as follows:

(The tables will be adjusted after award to reflect the change in Period of Performance.)

Fiscal Year	Estimated Costs	Available Award Fee	TOTAL
Transition Period (60 days - dates TBD)	\$499,992	\$0	\$499,992
FY 2024 (partial)	\$36,542,502	\$927,066	\$37,469,568
FY 2025	\$394,250,874	\$10,385,664	\$404,636,538
FY 2026	\$218,652,253	\$9,288,326	\$227,940,579
FY 2027	\$223,396,549	\$9,422,373	\$232,818,922
FY 2028	\$233,747,478	\$9,632,950	\$243,380,428
FY 2029 (partial)	\$224,038,066	\$8,947,224	\$232,985,290
TOTAL Base Period Contract Value	\$1,331,127,714	\$48,603,603	\$1,379,731,317

Fiscal Year	Estimated Costs	Available Award Fee	TOTAL
FY 2029 (partial)	\$20,367,097	\$813,384	\$21,180,481
FY 2030	\$254,181,370	\$9,881,890	\$264,063,260
FY 2031	\$264,348,624	\$10,008,023	\$274,356,647
FY 2032	\$274,922,569	\$10,139,202	\$285,061,771
FY 2033	\$285,919,472	\$10,275,627	\$296,195,099
FY 2034 (partial)	\$272,576,563	\$9,549,384	\$282,125,947
TOTAL Option Period Contract Value	\$1,372,315,695	\$50,667,510	\$1,422,983,205

¹ Fiscal Year Total reflects actual costs and earned award fee.

(b) Payment of fee will be made in accordance with DEAR 970.5215-1 – Total Available Fee: Base Fee Amount and Performance Fee Amount.

(End of Clause)

B.4 DOE-B-2014 OPTION TO EXTEND THE TERM OF THE CONTRACT: ESTIMATED COST, FEE AND PERIOD OF PERFORMANCE (OCT 2014)

- (a) In accordance with the clause at FAR 52.217-9, Option to Extend the Term of the Contract, the Government may unilaterally extend the contract period of performance (as set forth in Section F, Deliveries) to require the Contractor to perform the work set out by Section C, Description/Specs/Work Statement of the contract. In the event that the Government elects to exercise its unilateral right to extend the term of the contract pursuant to this clause and FAR 52.217-9, all terms and conditions of the contract will remain in full force and effect.
- (b) The Contracting Officer will consider factors set forth in FAR 17.207, Exercise of Options, in determining whether to exercise an option to extend the term of the contract. The Government is concerned with ensuring that the Contractor’s performance meets, or exceeds, the performance requirements of the contract in a cost-effective manner. Accordingly, the Contracting Officer will consider the Contractor’s performance as part of the determination to exercise any option to extend the contract term.
- (c) The Estimated Cost, Fee, and Period of Performance of each option to extend the term of the contract are set forth above in B.3.

(End of Clause)

B.5 DOE-B-7004 TOTAL AVAILABLE FEE (SEP 2017) (REVISED)

- (a) The transition activities shall be performed on a cost-reimbursement basis up to the amount specified in the Section H Clause entitled “Activities During Contract Transition”, and no fee shall be paid for these activities. The estimated transition costs are **\$499,992**.

(b) The annual fee base is estimated in accordance with DEAR 970.1504-1, including estimated exclusions, adjustments, and classification factors. In the event the annual fee base deviates by more than plus or minus 10% for any fiscal year from the annual fee base set forth in Column B of the chart below, a new total available award fee for the fiscal year will be calculated by multiplying the maximum available fee for the revised annual fee base by the percentage set forth in Column D below.

(c) All fee for this contract is performance based. There is no base fee for this contract. The Available Award Fee will be negotiated annually (or any other period as may be mutually agreed to between the parties) between the Contractor and the Government. The Available Award Fee will be equal to or less than the Total Available Award Fee offered set forth in Column E. The Available Award Fee shall be established considering the level of complexity, difficulty, cost effectiveness, and risk associated with specific objectives/incentives defined in the Performance Evaluation and Measurement Plan (PEMP). Higher or lower levels of complexity, difficulty, cost effectiveness, and risk will correspondingly allow a higher or lower available award fee. In the event the parties are unable to reach agreement on the Available Award Fee amount, the Government reserves the right to unilaterally establish the Available Award Fee amount.

The total available award fee for the base period of the contract and the option period, if exercised, are shown below. (The tables will be adjusted after award to reflect the change in Period of Performance.)

Base Contract Period:

A	B	C	D	E
Fiscal Year	Annual Fee Base	Maximum Available Fee	Fee Percent	Total Available Award Fee
FY2024 (partial)	\$35,635,083.00	\$1,158,832.00	80.0%	\$927,066
FY2025	\$376,122,190.00	\$12,982,080.00	80.0%	\$10,385,664
FY2026	\$211,483,670.00	\$11,610,408.00	80.0%	\$9,288,326
FY2027	\$215,751,950.00	\$11,777,966.00	80.0%	\$9,422,373
FY2028	\$226,556,341.00	\$12,041,188.00	80.0%	\$9,632,950
FY2029 (partial)	\$216,714,977.00	\$11,184,030.00	80.0%	\$8,947,224

Option Contract Period:

A	B	C	D	E
Fiscal Year	Annual Fee Base	Maximum Available Fee	Fee Percent	Total Available Award Fee
FY2029 (partial)	\$19,701,362.00	\$1,016,730.00	80.0%	\$813,384
FY2030	\$245,872,993.00	\$12,352,363.00	80.0%	\$9,881,890
FY2031	\$255,707,912.00	\$12,510,029.00	80.0%	\$10,008,023
FY2032	\$265,936,229.00	\$12,674,002.00	80.0%	\$10,139,202
FY2033	\$276,573,678.00	\$12,844,534.00	80.0%	\$10,275,627
FY2034 (partial)	\$263,666,906.00	\$11,936,730.00	80.0%	\$9,549,384

(d) The Total Available Fee that may be earned by the Contractor in each period for any additional extensions of the period of performance beyond the ten (10) years listed in the tables above shall be subject to negotiation between the Parties consistent with the Department of Energy Acquisition Regulation (DEAR) in effect at the time the fee is negotiated

(e) At the end of each fiscal year, there shall be no adjustment in the amount of the maximum available award fee based on differences between any estimate of cost for performance of the work and the actual cost for performance of the work. Fee is subject to adjustment only –

1) Under the provisions of Section I Clause entitled “DEAR 970.5243-1 – Changes”, or other contract provisions; or

2) For a +/- 10 percent change in the estimated fee base as indicated in Column B above.

(f) Any adjustment in the amount of the total available award fees under the provisions of paragraph (e) for the fees specified in paragraph (b) and (c) above, or negotiation of fee under paragraph (d) above, will be in accordance with the fee policy then in effect, utilizing the adjusted estimated fee base and maintaining the same fee ratio proposed (i.e., proposed vs. maximum) by the Contractor during the contract competition and reflected in the current contract.

(End of Clause)

B.6 DOE-B-7005 ALLOWABILITY OF SUBCONTRACTOR FEE (SEP 2017)

If the Contractor is part of a consortium, joint venture, and/or other teaming arrangement, the team shall share in this contract fee structure and separate additional subcontractor fee for teaming partners shall not be considered an allowable cost under the contract. If a subcontractor, supplier, or lower-tier subcontractor is a wholly owned, majority owned, or affiliate of any team member, any fee or profit earned by such entity shall not be considered an allowable cost under this contract unless otherwise approved by the Contracting Officer.

(End of Clause)

The subcontractor fee restriction in the paragraph above does not apply to members of the Contractor’s team that are: (1) small business(es); (2) protégé firms as part of an approved mentor-protégé relationship; (3) subcontractors under a competitively awarded firm-fixed-unit-price subcontract; or (4) subcontractors providing “commercial products” and/or “commercial services” as defined in FAR Subpart 2.101, Definitions, if the subcontract price is fair and reasonable.

B.7 DOE-B-7006 PROVISIONAL PAYMENT OF PERFORMANCE FEE (SEP 2017)

The Contractor may, subject to the approval of the Contracting Officer, be paid provisional performance fee payments consistent with the provisions of the Section I Clause entitled, "DEAR 970.5232-2 – Payments and Advances". The Contractor shall promptly refund to the Government any amount of provisional performance fee paid that exceeds the amount of performance fee earned.

(End of Clause)

PART I - THE SCHEDULE

SECTION C

DESCRIPTION/SPECIFICATIONS/STATEMENT OF WORK

PART I -THE SCHEDULE

SECTION C

DESCRIPTION/SPECIFICATIONS/STATEMENT OF WORK

Table of Contents

C.1	GENERAL INFORMATION.....	C-1
C.2	WORK REQUIREMENTS	C-3
C.3	DELIVERABLES.....	C-15
C.4	WORK STANDARDS.....	C-15

SECTION C

DESCRIPTION/SPECIFICATIONS/STATEMENT OF WORK

PERFORMANCE WORK STATEMENT

C.1 GENERAL INFORMATION

1.0 Introduction

This Performance-Based Management Contract (PBMC) is for the management and operation of the Strategic Petroleum Reserve (SPR), including operating and maintaining the facilities and related systems. It reflects the application of performance-based contracting approaches and techniques which emphasize results/outcomes and minimize “how to” performance descriptions. The Contractor has the responsibility for total performance under the Contract, including determining the specific methods for accomplishing the work effort, performing quality control, and assuming accountability for accomplishing the work under the contract. Accordingly, this PBMC provides flexibility, within the terms and conditions of the contract, to the Contractor in the performance of this contract.

Under this PBMC, it is the Contractor’s responsibility to develop and implement innovative approaches and adopt practices that foster continuous improvement in accomplishing the mission of the SPR. The Department of Energy (DOE) expects the Contractor to produce effective and efficient management structures, systems, and operations that maintain high levels of quality and safety in accomplishing the work required under this contract. The Contractor shall conduct all work in a manner that optimizes productivity, minimizes waste, and fully complies with all applicable laws, regulations, and terms and conditions of the contract.

2.0 Background

The SPR is a large crude oil stockpile under the control of the President of the United States. The SPR is mandated by the Energy Policy and Conservation Act, as amended, and by the comprehensive energy plans of all Administrations since 1975 in recognition of the long-term dependence of the United States on imported crude oil and petroleum products.

The SPR mission is to store crude oil to reduce the adverse economic impact of a major supply interruption to the United States and to carry out obligations under the international energy program. The SPR vision is to be the premier national

strategic crude oil stockpile, to be a flexible operational tool to reduce the effects of global and national energy disruptions, and to ensure energy security for the nation.

The Director of Office of Cybersecurity, Energy Security, and Emergency Response (CESER), U. S. Department of Energy, has overall programmatic responsibility for achieving the goals and objectives of the SPR program. This responsibility has been delegated to the Deputy Director for Petroleum Reserves who is responsible for policy, program direction and budget for the SPR. That responsibility is exercised through the Office of Petroleum Reserves. The operational direction and day-to-day project activities, maintenance, and management of the SPR is completed through the SPR Project Management Office (SPR PMO) located in New Orleans, Louisiana. The SPR PMO is responsible for the award and administration of this contract.

The SPR Facilities Development Program is presently designed and constructed to provide a storage capacity of 713.5 million barrels and a drawdown/distribution capability of 4.2 million barrels per day. As of 8/25/2023, the SPR has a crude oil inventory of approximately 349.5 million barrels.

The DOE has four large underground crude oil storage facilities in salt domes along the Gulf Coast of Texas and Louisiana. The four storage sites are West Hackberry and Bayou Choctaw in Louisiana, and Bryan Mound and Big Hill in Texas. These storage sites are organized into three distribution systems-- Seaway, Texoma, and Capline--and are connected by DOE pipelines to commercial crude oil pipeline networks and to commercial and Government-owned marine terminal distribution facilities. The Government-owned SPR marine terminal is located in St. James, Louisiana and is currently leased to a third party.

The Department has implemented a commercialization program to outgrant by leasing underutilized SPR crude oil distribution facilities for commercial use. Currently, the St. James Terminal as well as the pipelines from the Bryan Mound site to Texas City and Jones Creek and Bayou Choctaw to St. James Terminal are also leased to commercial concerns. The Management and Operating Contractor has oversight responsibility for such leased assets.

3.0 Performance Work Statement

Under this PBMC, the Contractor shall furnish the necessary personnel, facilities, equipment, materials, supplies, and services (except those provided by the Government) to accomplish the Performance Work Statement (PWS). The PWS under this PBMC is comprehensive in that the Contractor is expected to perform all necessary technical, operational, and management functions to manage and operate the SPR sites/facilities and perform the DOE missions assigned to the SPR sites/facilities. This encompasses all ongoing objectives of the SPR

sites/facilities as well as those objectives that may be assigned during the term of the contract and include but is not limited to: expansion or programmatic reconfigurations of the SPR; all infrastructure management and maintenance; human resources management; environmental management; health, safety, and security; and purchasing, financial, and other administrative systems.

The overall performance objectives of this contract are:

The Contractor shall maintain the SPR inventory and storage capacity, assure operational readiness to draw down and distribute crude oil within 15 days of a Presidential direction, and maintain an operational posture that exercises and preserves SPR systems and processes to achieve performance criteria, cost control objectives, and the long-term capability to perform the mission.

Work under this contract shall be performed in a manner that will protect the environment, the facilities, and the safety and health of employees and the public. The Contractor shall utilize the best operational technology and management practices from both Government and commercial sources to continuously improve and achieve excellence in the conduct of operations at the SPR. The Contractor is expected to achieve effective, efficient, and economic use of resources to meet the requirements of the contract, including effective application of cost considerations in the decision-making process through such means as cost/benefit, life cycle cost, lease/purchase, and make-or-buy analyses.

C.2 WORK REQUIREMENTS

1.0 Introduction

The performance-based results/outcomes of this contract are broadly set out in this PWS and reflect the DOE's minimum needs and expectations for Contractor Performance. More particularly, established annually, or at other such intervals determined by DOE to be appropriate, will be specific performance work statements, performance standards (measures applied to results/outputs), acceptable performance levels (performance expectations), acceptable quality levels (permissible deviations from performance expectations), and related incentives. The related incentives may be monetary, or in cases where monetary incentives are not desirable or considered effective, the Contractor's performance may be used as a factor in the determination to extend contract performance, a factor which directly affects the past performance report card, or a factor in a decision to reduce or increase DOE oversight on Contractor reporting as appropriate.

DOE's Quality Assurance Surveillance Plan (QASP) will consist primarily of the Performance Evaluation Management Plan (PEMP). The QASP establishes the process DOE will use to ensure that the Contractor has performed in accordance with the performance standards and expectations. The QASP will summarize the

performance standards, expectations, and acceptable quality levels for each task; describe how performance will be monitored and measured; describe how the results will be evaluated; and state how the results will affect contract payment.

Specific work requirements under this contract, including performance metrics and deliverables, will be established annually by the Contracting Officer in accordance with the Section H clause entitled "Work Authorization." The Contracting Officer will issue Work Authorization Directives for each major work area to be accomplished in a given year. These directives will conform to the PWS of this contract and further affect the General Requirements specified in this section.

2.0 General Requirements

2.1. Operations

Perform management, planning, oversight, documentation, training, operational functions, energy management and crude oil activities associated with the operation of the SPR sites/facilities.

Manage, plan, and implement operational activities associated with fluid movements (crude oil, raw water, and brine); solution mining; receipt and storage of crude oil; pipeline and metering operations; drawdown/distribution readiness activities; cavern well operations, workover, geotechnical and monitoring; operation and maintenance of vapor pressure treatment facilities to minimize impacts to drawdown and inventory availability; crude oil quality monitoring and compliance with standards, quantity control; manage crude oil inventory system for accountability; manage crude oil quality and sampling system, operation and testing of brine disposal wells; and other activities as deemed appropriate.

2.1.1 Drawdown Readiness

The Contractor shall manage and execute the operational Drawdown Readiness program, including but not limited to planning, developing, researching, training, and conducting Systems Test Exercises (STEs)/Disaster Recovery Exercises. Maintain operations and management computer models and databases with respective programs supporting Drawdown Readiness (i.e., Personal Computer Operations Model (PCOM), Readiness and Capability (Report) RECAP, SPR Exchange Capabilities Report (SPREX), etc.) functions. Perform analyses and studies of areas affecting systems capabilities for improving system enhancements of DOE-owned distribution systems. Manage planning, analysis, and implementation of the Vapor

Pressure mitigation program. On STE/Disaster Recovery test exercises, interface with other federal, state, and local agencies to ensure that policy and goals are achieved.

2.1.2 Cavern Integrity and Workovers

The Contractor shall manage and operate the SPR cavern integrity, cavern remediation, and workover program in a safe, effective, efficient, timely, and environmentally compliant manner consistent with DOE objectives and requirements ensuring compliance with current DOE Conduct of Operations regulations, and Occurrence Reporting and Processing System requirements.

Manage geotechnical controls, monitor and analyze caverns to ensure drawdown capability. Assure that proper permits and reports for caverns, cavern wells, brine disposal wells, workovers, etc. are filed with appropriate regulatory agencies. Develop workover procedures and schedules with assurance that workover materials and subcontracts are ordered and ready when needed to support rig operations without impact. Initiate all work orders necessary to support the approved workover schedule.

Develop and recommend engineering solutions to down-hole and wellhead problems in cavern and brine disposal wells. Provide periodic reports on Cavern Integrity and Workover activities as required by Work Authorization Directives.

2.1.3 Petroleum Acquisition and Transportation

Manage the logistics functions for crude oil movements, crude oil accountability, crude oil quality control, fill and drawdown activities, planning and control, and support of Foreign Trade Zone operations. The Contractor is responsible for maintaining the official cargo and oil contract files.

In support of oil movements (fill and drawdown, including sales and exchanges), the Contractor will develop a crude oil fill plan and schedule, and coordinate oil movements with its subcontracted third-party inspectors, commercial terminals and pipelines, and the SPR storage sites. The Contractor will coordinate oil movements and manage SPR deliveries in compliance with the Cargo Preference Act and the Jones Act and commercial pipeline rules and regulations.

Perform those tasks necessary to support the administration of crude oil activities such as crude oil acquisitions, sales, and

exchanges. In support of negotiations and execution of any SPR contracts, the Contactor will conduct Oil Price Analysis, market evaluations, and analyze Oil Trading/Hedging alternatives to support price determinations and price indexing.

The Contractor shall institute and manage a crude oil quality program that encompasses the oversight responsibility of sampling, analysis, technical review and documentation of SPR crude oil in accordance with SPRPMO Orders.

Manage and operate SPR site crude oil laboratories, crude oil sample storage facility, including the calibration of analytical equipment. Operate and maintain the metering and sampling equipment located at the SPR sites, including the calibration of instrumentation devices used for generating measurements.

Manage the crude oil quality database and cavern sampling program. Maintain the necessary controls for measurement, sampling, and analyses, in accordance with DOE requirements.

Manage the crude oil inventory systems and maintain supporting documentation in accordance with SPRPMO Orders. Update crude oil inventory systems and resource documents as required. Comply with all inventory reporting requirements as required by DOE/SPRPMO Orders. Maintain current Superfund and Oil Spill Liability Trust Fund inventory records.

The Contractor shall support terminalling distribution agreements and coordinate readiness assessments as required. The Contractor shall support evaluations of DOE-leased assets.

2.2 Maintenance

Manage and perform preventive, corrective, predictive, and general maintenance on Government-owned equipment and facilities, including caverns, and wells. Maintain the Government-owned facilities in a manner that will detect and correct defects that could cause potential failures. Provide all the integrated resources necessary to maintain, update, and improve the Integrated Logistics Support program.

2.3 Major Maintenance

Develop long-term plans and, as assigned, perform major maintenance projects and related construction management involving engineering, procurement, construction, fabrication, installation, and testing, or combinations thereof, which: 1) maintains a building, structure, or

physical system in an efficient operating condition, or 2) materially adds to the value of or prolongs the life of a building, structure, or physical system.

2.4 Utility Operations (Power)

The Contractor shall manage electric power usage and other SPR utilities programs tied to drawdown/fill readiness for ensuring their cost effectiveness, including hotel loads, and equipment testing. The Contractor shall manage Energy Management programs and implement state-of-the-art processes for energy efficiency, and support the acquisition of public utility contractual agreements. The Contractor will analyze power data and provide recommendations to DOE on power usage, savings, alternatives, and contract status.

The Contractor will provide a Management and Operating Contractor Energy Manager to manage all aspects of SPR energy management to meet Federal, DOE, Executive Order, and SPR energy management requirements and objectives.

2.5 Environmental

Develop, implement, and maintain a comprehensive Environmental Management System, which shall include all activities necessary to ensure that SPR operations do not adversely impact the environment and meet the environmental protection guidance and requirements of the DOE, federal executive orders, and federal, state, and local regulatory agencies. Program elements include environmental monitoring; environmental impact assessment and reports; regulatory agency reporting; permitting; oil spill response; environmental inspection; pollution abatement; waste minimization; records maintenance; laboratory operation; audits, documentation, reports, and coordination of all site programs addressing environmental and sustainability activities. The Environmental Management System shall meet the requirements set forth in applicable International Standards Organization (ISO) 14001 and be capable of certification by a Registrar accredited by ANSI-ASQ National Accreditation Board within the first year of operation or such other reasonable period of time.

The Contractor must establish and implement a Site Sustainability Plan (SSP). The Contractor must develop or support development and commitments to identify their respective contribution toward meeting the DOE Department's sustainability goals. Contractor must integrate their SSP with their operational plans.

2.6 Security

Develop, implement, and maintain a Security Program to protect personnel, Government property, and classified information from theft, sabotage, espionage, or other acts that may cause adverse impacts on national security or the health and safety of the public. Elements of the program include general topical programs as follows: Program Management, Protective Force, Physical Security, Information Protection, Cyber Security, Personnel Security, Unclassified Visits and Assignment Programs. Security initiatives include plans and procedures; lock and key control programs; classified document control program; operation security program; communication security program; tempest program; security awareness/crime prevention program; cyber security programs; personnel security programs; canine programs; audits; inspection; investigation; vulnerability and risk assessments; lighting systems, assessment and intrusion detection alarm systems; national security clearance requests and investigations; emergency and contingency planning; test/exercise programs; information classification program; and management of subcontracted security and protection force services.

2.7 Technical Support and Management

2.7.1 Engineering

Perform special studies, analyses, design, design reviews, and documentation in support of the operation, maintenance, and repair of facilities, systems, and equipment. Primary functions involve technical disciplines associated with the flow of high volume of raw water, brine, and crude oil in the solution-mining of underground storage caverns and crude oil drawdown. Engineering disciplines cover areas required for problem solving and associated analysis. Perform Title I Services (Preliminary Design), Title II Services (Definitive Design) and Title III Services (Post Approved for Construction) services, as required. Additional functional responsibilities include systems engineering; vapor pressure analyses; cavern and well engineering; pipeline assurance; configuration management; and Reliability, Availability, and Maintainability (RAM) program management. The Contractor shall fulfill the acquisition of treatment facilities intended to remediate increased vapor pressure of inventory.

2.7.2 Quality Assurance

Develop, implement, and maintain a comprehensive Quality Assurance Program, which shall include all activities necessary to ensure that risks and environmental impacts are minimized and

that safety, reliability, performance, and mission are accomplished through the application of management systems commensurate with the risks posed by the facilities and their operation.

The Quality Assurance Program shall meet the requirements of the applicable DOE Order(s) and as set forth in ISO 9001 and be capable of registration by a Registrar Accreditation Board and shall maintain the certification for the term of the contract.

The Contractor shall establish a Contractor Assurance System (CAS) program in accordance with DOE requirements and shall include a process to ensure contract requirements are being met.

The Contractor shall perform self-assessments on management programs and utilize the SPR's Assessment Tracking System (ATS) for tracking all deficiencies and associated corrective actions.

2.7.3 Project Management

Provide overall management of contract performance, legal services, project planning and control, public affairs, graphics, records management, self-assessments, and miscellaneous support services. This includes integrating activities between multiple SPR DOE prime contracts as well as acting as the project integrator on large capital projects.

2.7.4 Information Systems and Knowledge Management

The Contractor shall utilize the best appropriate technology and management practices to efficiently manage, operate, and maintain a SPR enterprise-wide computer and information system. This includes a central network control server facility in New Orleans, LA. with wide area connections to the 4 remote SPR storage sites and the disaster recovery environment in Irving, TX, cloud services, computer workstations, area networks, office automation, software and management information system development and maintenance, data communication, and directly related support activities, including cyber security. The Contractor shall orient all planning and implementation towards deploying forward-looking technologies which maximize overall operating efficiencies and best business practices from enterprise resource planning and knowledge management perspectives. This includes digital document and records management, data warehousing and mining, utilizing web-centric applications and creating efficiencies from flexible work place and workspace environments. Also included

are the management, operation, and maintenance of telecommunication, video conferencing, radio, and satellite communication services, facilities, and equipment during normal and emergency situations for all SPR sites/facilities.

2.7.5. Financial Management

Develop, implement, and maintain a Financial Management program, including an accounting system suitable to accumulate, record, and report all financial activities; formulate short and long-range budgets which identify all resource requirements needed to accomplish projected workloads; and develop, implement, and maintain effective controls of all budgets through the use of approved funding programs and cost resource analysis.

2.7.6 Procurement/Contracts

Develop, implement, and maintain a DOE-approved procurement system the objective of which is to deliver to its customers on a timely basis those products and services necessary to accomplish the purposes of the Government's contract. The purchasing system shall be well defined, consistently applied, and shall follow purchasing practices appropriate for the requirement and dollar value of the purchase. Contractor purchases are subject to certain Federal laws, Executive Orders, and regulations as required by statute, regulation, or contract terms and conditions. The purchasing system shall identify and apply the best in commercial purchasing practices and procedures to achieve system objectives. Where specific requirements do not otherwise apply, the Contractor purchasing system shall provide for appropriate measures to ensure:

- (1) Acquisition of quality products and services at fair and reasonable prices;
- (2) Acquisitions that employ sustainable principles and practices to the maximum extent practicable;
- (3) Use of capable and reliable subcontractors;
- (4) Minimization of acquisition lead-time and administrative costs of purchasing;
- (5) Use of effective competitive techniques;

- (6) Reduction of performance risks associated with subcontractors, and facilitation of quality relationships which can include techniques such as partnering agreements, ombudsmen, and alternative disputes procedures;
- (7) Use of self-assessment and benchmarking techniques to support continuous improvement in purchasing;
- (8) Maintenance of the highest professional and ethical standards;
- (9) Maintenance of file documentation appropriate to the value of the purchase and which is adequate to establish the propriety of the transaction and the price paid; and
- (10) Maximization of opportunities for small business, HUBZone small business, small disadvantaged business, service disabled veteran owned small business, veteran owned small business, and woman-owned small business concerns to participate in contract performance.

2.7.7 Property Management

Develop, implement, and maintain a DOE-approved personal property management system that provides adequate protection, maintenance, utilization, and disposition of personal property, and reasonable assurance that the DOE's personal property is safeguarded against waste, loss, unauthorized use, or misappropriation, in accordance with applicable statutes, regulations, contract terms and conditions, programmatic needs, and good business practices.

2.7.8 Human Resource Management

Develop, implement, and maintain a Human Resource System, including employment functions such as recruiting, interviewing, testing, diversity management, wage and salary administration, position classification, personnel records, benefits administration, employee fitness programs, service recognition programs, industrial relations, collective bargaining, administration of employee welfare programs, performance appraisal, training and development, and other miscellaneous personnel services.

2.7.9 Safety and Health

Develop, implement, and maintain a comprehensive Integrated Safety and Health Management Program which shall include all activities necessary to ensure the health and safety of the work force and the public and shall meet the requirements of DOE Orders, American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Values, and federal, state, and local codes. Program elements include safety and health inspections; hazard identification analysis and abatement; accident investigations; records maintenance; industrial hygiene; and coordination of all programs addressing safety and health activities. The Contractor shall commit to Occupational Safety and Health Administration (OSHA) Voluntary Protection Program (VPP) criteria plus achieve and maintain VPP status at each SPR operating site.

2.7.10 Fire Protection and Emergency Management

Develop, implement, and maintain comprehensive programs in the areas of Fire Protection and Emergency Management.

The Fire Protection Program shall include all activities necessary to protect the SPR from the perils of fire and shall comply with requirements of the National Fire Codes, Factory Mutual Loss Prevention Data Sheets, American Petroleum Institute recommended practices, and DOE Orders and guidance. Program elements include inspection, monitoring and reviewing, maintenance and repair, and risk assessment.

The Emergency Management Program shall include all activities necessary to ensure readiness to respond to emergencies and shall comply with DOE Orders, federal, state and local regulations. Readiness shall be attained by maintenance of current documentation delineating roles and responsibilities, and by exercises and training.

Continuity preparedness and the execution of the Continuity of Operation Plan (COOP) shall be consistent with Presidential, FEMA Direction and DOE Continuity Operations Order. The contractor shall maintain adequate facilities, communication, transportation assets, as well as internal expertise, for the SPR to maintain its Mission Essential Function (MEF).

2.7.11 Internal Audit

Conduct internal audit operations satisfactory to DOE, which at a minimum would: be organizationally independent; be of sufficient size and include appropriately trained professionals to meet standards of the Institute of Internal Auditors (IIA); perform both financial and performance audits meeting either Government Auditing Standards or IIA standards, including sufficient testing of “internal controls” over cost and sufficient transaction testing of costs incurred by the Contractor to ensure reasonableness, allowability, and allocability. Establish an audit resolution and follow-up system to track internal audit findings and recommendations and effectively participate in coordination with the Office of Inspector General’s (OIG’s) audit plan.

2.8 Life Extension 2

DOE is currently in the construction phase of a Major Project, Life Extension 2 (LE2), as defined by DOE Order 413.3b Program and Project Management for the Acquisition of Capital Assets. The LE2 Project will extend SPR facility and infrastructure capabilities for an additional 25 years and ensure the ability to meet the SPR Mission by validating the Key Performance Parameters are met after project completion. LE2 is focused on the repair and replacement of outdated and aging infrastructure, such as upgrades to process piping, meter skid actuators and valves, fire water distribution piping, raw water intake structure, rotating equipment, physical protection, and replacement of offsite pipelines.

The SPR LE 2 Project is divided into three sub-projects, with one at each site location for baseline development, field execution, and project completion. At present, active construction is in progress at the Bryan Mound (BM), Big Hill (BH), and Bayou Choctaw (BC) storage sites by 3 large General Subcontracts. At BM, construction is in progress with the refurbishment of the site brine tank, BMT-1 and conversion of crude oil tank, BMT-4 to an external floating roof. Also at BM, crude oil upgrades, replacement of meter skid actuators and valves, replacement of the fire water distribution piping as well as Raw Water intake structure upgrades are in progress. BM site outage began in April 2023 and is scheduled to conclude February 28, 2024. At Big Hill, the physical protection upgrades construction phase is in progress. Upgrades to the Raw Water, Crude Oil, Brine Disposal system and electrical upgrades are dependent on a site outage which is scheduled to begin in March 2024. Construction work areas that are independent of the site outage will begin in July 2023. Off-site crude oil and raw water pipeline upgrades are scheduled for January 2025 but have yet to be procured. At BC, the site outage began February 1, 2023, and is scheduled to conclude by late February 28,

2024. Also at BC, demolition is nearly complete by the general construction contractor. Replacement of the Fire Water and upgrades to the Raw Water Injection pumps along with replacement of Raw Water and Crude Oil header piping and upgrades to the site electrical system are scheduled to occur by the current general construction contract in progress. Two micro seismic monitoring wells are scheduled to be installed at Bayou Choctaw and Bryan Mound, drilling contracts have yet to be awarded.

The M&O Contractor will be responsible for:

1. Meeting the requirements of DOE Order 413.3B Program and Project Management for the Acquisition of Capital Assets
2. Project execution and performance
3. Completion of Critical Decision 4 (CD4) milestones
4. Responsibility, accountability, and authority to execute the work
5. Competitive procurement and award of construction contracts
6. Purchase orders for Government Furnished Property (GFP)
7. Providing governance and oversight of LE2
8. Performing construction supervision, procurement/subcontract administration, project controls, safety and quality oversight
9. Ensuring consistency across all four sites, to maintain a focus on meeting the project's overall objectives, and to ensure an effective ES&H culture is established and maintained
10. Meeting project safety, quality, cost, and schedule objectives Title III Engineering Services (RFI resolution, field changes, technical evaluations, maintenance of as-builts, etc.)
11. Performing construction supervision, procurement/subcontract administration, project controls, safety and quality oversight
12. Commissioning and startup

13. SPR's Readiness Review Board (RRB) process
14. Tracks earned value, reports variances. Please note: EVMS certification not required
15. Communications and integration of project activities with site operations
16. Cost, Schedule, Risk, and Project Controls

C.3 DELIVERABLES

Deliverables required under this contract will be set forth in the Work Authorization Directives issued by the Contracting Officer. In addition, the Contractor shall satisfy the reporting requirements contained in Section J of this contract and contract provision H.67 Reporting Requirements. To ensure that effective and efficient management systems exist for the management and operations of the SPR, this contract also requires the delivery of certain documents, plans, and reports for the Contracting Officer's review and approval. These requirements are specified elsewhere in this contract.

C.4 WORK STANDARDS

In performing this contract, the Contractor shall comply with applicable federal, state, and local laws and regulations; and shall be responsible for obtaining such licenses, permits, and other authorization that may be necessary for the performance of the work.

Pursuant to the Section I Contract Clause DEAR 970.5204-2 entitled "Laws, Regulations, DOE Directives" the Contractor shall conform to the requirements of all applicable DOE Orders and Directives, which may establish management, technical, procedural or other standards, and specifications for Contractor work activities. The Orders and Directives applicable to this contract are identified in the DOE/SPRPMO Directives contained in Section J of this contract.

All work under this contract shall conform to the requirements set forth in the following documents:

SPR Level I Technical and Performance Criteria (October 2004).

SPR Level II Performance Criteria (August 2008).

SPR Level III Design Criteria (February 2022).

PART I – THE SCHEDULE

SECTION D

PACKAGING AND MARKING

PART I – THE SCHEDULE

SECTION D

PACKAGING AND MARKING

Table of Contents

D.1	DOE-D-2001 PACKAGING AND MARKING (OCT 2014).....	D-1
D.2	SECURITY REQUIREMENTS	D-1

SECTION D

PACKAGING AND MARKING

D.1 DOE-D-2001 PACKAGING AND MARKING (OCT 2014)

(a) Preservation, packaging and packing for shipment or mailing of all work delivered hereunder shall be in accordance with good commercial practice and adequate to ensure acceptance by common carrier and safe transportation at the most economical rate(s), including electronic means.

(b) Each package, report or other deliverable shall be accompanied by a letter or other document which -

- (1) Identifies the contract by number pursuant to which the item is being delivered.
- (2) Identifies the deliverable item number or report requirement which requires the delivered item; and
- (3) Indicates whether the Contractor considers the delivered item to be a partial or full satisfaction of the requirement.

(c) For any package, report, or other deliverable being delivered to a party other than the Contracting Officer, a copy of the document required by paragraph (b) shall be simultaneously delivered to the office administering this contract, as identified in Section G of the contract, or if none, to the Contracting Officer.

(End of Clause)

D.2 SECURITY REQUIREMENTS

The Contractor shall comply with the security requirements for packaging, marking, mailing, and shipping classified materials (if any) as prescribed by applicable U.S. Department of Energy (DOE) safeguards and security directives.

PART I – THE SCHEDULE
SECTION E
INSPECTION AND ACCEPTANCE

PART I – THE SCHEDULE

SECTION E

INSPECTION AND ACCEPTANCE

Table of Contents

E.1	FAR 52.246-5 INSPECTION OF SERVICES – COST REIMBURSEMENT (APR 1984).....	E-1
E.2	DOE-E-2001 INSPECTION AND ACCEPTANCE (OCT 2014)	E-2

SECTION E

INSPECTION AND ACCEPTANCE

E.1 52.246-5 INSPECTION OF SERVICES - COST-REIMBURSEMENT (APR 1984)

- (a) *Definition.* Services, as used in this clause, include services performed, workmanship, and material furnished or used in performing services.
- (b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.
- (c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all places and times during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If any of the services performed do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, for no additional fee. When the defects in services cannot be corrected by re-performance, the Government may -
 - (1) Require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and
 - (2) Reduce any fee payable under the contract to reflect the reduced value of the services performed.
- (e) If the Contractor fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with contract requirements, the Government may –
 - (1) By contract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances; or
 - (2) Terminate the contract for default.

(End of Clause)

E.2 DOE-E-2001 INSPECTION AND ACCEPTANCE (OCT 2014)

Inspection and acceptance of all items under this Contract shall be accomplished by the Contracting Officer in accordance with the clauses listed in this Section. If the Contracting Officer assigns this responsibility to the Contracting Officer's Representative or another representative of the Government, the Contracting Officer shall notify the Contractor in writing.

(End of Clause)

PART I – THE SCHEDULE
SECTION F
DELIVERIES OR PERFORMANCE

PART I – THE SCHEDULE

SECTION F

DELIVERIES OR PERFORMANCE

Table of Contents

F.1 DOE-F-7001 PERIOD OF PERFORMANCE (SEP 2017) (REVISED) F-1

F.2 DOE-F-7004 PRINCIPAL PLACE OF PERFORMANCE (SEP 2017) F-1

F.3 STOP-WORK ORDER (FAR 52.242-15) (AUG 1989) (ALTERNATE I)
(APR 1984) F-2

F.4 DOE-F-7003 STOP WORK AND SHUTDOWN AUTHORITY (SEP 2017) F-3

SECTION F

DELIVERIES OR PERFORMANCE

F.1 DOE-F-7001 PERIOD OF PERFORMANCE (SEP 2017) (REVISED)

- (a) This contract shall be effective as specified in Block No. 28 – Award Date, of Standard Form 33, and shall continue for a period of five (5) years from the beginning of the Period of Performance, up to and including June 14, 2030, unless sooner terminated according to its terms. The contract may be extended for a period of five (5) years in accordance with Section I FAR 52.217-9 “Option to Extend the Term of the Contract.”
- (b) The transition period is 60 days from the written notice to proceed or as extended by the Contracting Officer. If the transition period is extended, the Contracting Officer shall provide written notification of the date the Contractor assumes full responsibility for the PWS in accordance with the clause in Section H entitled “Activities During Contract Transition.”
- (c) The contract’s maximum period of performance, excluding the transition period, shall not exceed ten (10) years.

(End of Clause)

F.2 DOE-F-7004 PRINCIPAL PLACE OF PERFORMANCE (SEP 2017)

The principal place of contract performance is at the site of the Strategic Petroleum Reserve Elmwood Office Complex, Harahan, Louisiana, Jefferson Parish.

The services specified by this contract shall also be performed at the following Strategic Petroleum Reserve facilities:

- Bayou Choctaw, Plaquemine, Louisiana, Iberville Parish
- West Hackberry, Hackberry, Louisiana, Cameron Parish
- Big Hill, Winnie, Texas, Jefferson County
- Bryan Mound, Freeport, Texas, Brazoria County
- Stennis Warehouse, Stennis Space Facility, Kiln, Mississippi, Hancock County.

(End of Clause)

F.3 STOP-WORK ORDER (FAR 52.242-15) (AUG 1989) (ALTERNATE I) (APR 1984)

- (a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either-
- (1) Cancel the stop-work order; or
 - (2) Terminate the work covered by the order as provided in the Termination Clause of this contract.
- (b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule, the estimated cost, the fee or combination thereof, and in any other terms of the contract that may be affected, and the contract shall be modified, in writing, accordingly, if-
- (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
 - (2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.
- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable

adjustment or otherwise, reasonable costs resulting from the stop-work order.

(End of Clause)

F.4 DOE-F-7003 STOP WORK AND SHUTDOWN AUTHORITY (SEP 2017)

“FAR 52.242-15 – Stop Work Order (Alternate I)”, allows only the Contracting Officer to stop work or shutdown facilities for reasons other than harm or imminent danger to the environment or health and safety of employees and the public.

Due to the immediate need to stop work due to situations where the Contractor’s acts or failures to act cause substantial harm or present an imminent danger to the environment or health and safety of employees or the public, any DOE employee may exercise the stop work authority contemplated in Section I Clause entitled “DEAR 970.5223-1 – Integration of Environment, Safety, and Health Into Work Planning and Execution”.

(End of Clause)

PART I – THE SCHEDULE

SECTION G

CONTRACT ADMINISTRATION DATA

PART I – THE SCHEDULE

SECTION G

CONTRACT ADMINISTRATION DATA

Table of Contents

G.1	DOE-G-2001 CONTRACTING OFFICER AUTHORITY (OCT 2014).....	G-1
G.2	DOE-G-2002 CONTRACTING OFFICER’S REPRESENTATIVE (OCT 2014).....	G-1
G.3	DOE-G-2003 CONTRACTOR’S PROGRAM MANAGER (OCT 2014)	G-1
G.4	DOE-G-2004 CONTRACT ADMINISTRATION (OCT 2014) (REVISED)	G-2
G.5	DOE PROPERTY ADMINISTRATOR.....	G-4
G.6	DOE-G-2007 CONTRACTOR PERFORMANCE ASSESSMENT REPORTING (NOV 2021)	G-5
G.7	DOE-G-2008 NON-SUPERVISION OF CONTRACTOR EMPLOYEES (OCT 2014)	G-5
G.8	DOE-G-7001 CORRESPONDENCE (SEP 2017)	G-6
G.9	INVOICING FOR TRANSITION COSTS	G-6

SECTION G

CONTRACT ADMINISTRATION DATA

G.1 DOE-G-2001 CONTRACTING OFFICER AUTHORITY (OCT 2014)

The Contracting Officer is responsible for administration of the contract. The Contracting Officer may appoint a Contracting Officer's Representative (COR), in accordance with the clause entitled, Contracting Officer's Representative, to perform specifically delegated functions. The Contracting Officer is the only individual who has the authority on behalf of the Government, among other things, to take the following actions under the contract:

- (a) Assign additional work within the general scope of the contract.
- (b) Issue a change in accordance with the clause entitled, Changes.
- (c) Change the cost or price of the contract.
- (d) Change any of the terms, conditions, specifications, or services required by the contract.
- (e) Accept non-conforming work.
- (f) Waive any requirement of the contract.

(End of Clause)

G.2 DOE-G-2002 CONTRACTING OFFICER'S REPRESENTATIVE (OCT 2014)

Pursuant to the clause at DEAR 952.242-70 entitled, Technical Direction, the Contracting Officer shall designate in writing a Contracting Officer's Representative (COR) for this contract, and provide a copy of such designation to the Contractor, including the delegated responsibilities and functions. The COR does not have authority to perform those functions reserved exclusively for the Contracting Officer.

(End of Clause)

G.3 DOE-G-2003 CONTRACTOR'S PROGRAM MANAGER (OCT 2014)

- (a) The Contractor shall designate a Program Manager who will be the Contractor's authorized supervisor for technical and administrative performance of all work hereunder. The Program Manager shall be the primary point of contact between the Contractor and the Contracting Officer's Representative (COR) under this contract.
- (b) The Program Manager shall receive and execute, on behalf of the Contractor, such

technical directions as the COR may issue within the terms and conditions of the contract.

(End of Clause)

G.4 DOE-G-2004 CONTRACT ADMINISTRATION (OCT 2014) (REVISED)

To promote timely and effective administration, correspondence submitted by the contractor under this contract shall be subject to the following procedures:

- (a) Technical and Administrative Correspondence/Matters. Technical and administrative correspondence (as used herein, excludes other correspondence described in Paragraph (b)) concerning performance of this contract shall be addressed to the DOE Contracting Officer's Representative (COR)/Head of Contracting Activity (HCA) with an information copy of the correspondence to the DOE Contracting Officer and the DOE Contract Specialist.
- (b) Other Correspondence. All other correspondence, including patent or technical data issues, waivers, deviations, or modifications to the requirements, terms, or conditions of this contract, shall be addressed to the Contracting Officer (CO), with information copies of the correspondence to the DOE Contract Specialist or DOE Patent Counsel (where patent or technical data issues are involved).
- (c) Contracting Officer's address:

Kelly M. Gele
Contracting Officer
U.S. Department of Energy
Strategic Petroleum Reserve Project Management Office
900 Commerce Road East
New Orleans, LA 70123
Telephone No. 504-734-4343
Email address: kelly.gele@spr.doe.gov

- (d) COR/HCA addresses:

Paul Oosterling
Contracting Officer's Representative/Head of Contracting Activity
U.S. Department of Energy
Strategic Petroleum Reserve Project Management Office
900 Commerce Road East
New Orleans, LA 70123
Telephone No. 504-734-4339

Email address: paul.oosterling@spr.doe.gov

Site Level COR addresses:

Damon Bruno
Contracting Officer's Representative
U.S. Department of Energy
Bayou Choctaw Storage Facility
Strategic Petroleum Reserve
60825 Highway 1148
Plaquemine, LA 70764
Telephone No. 225-692-6201
Email address: damon.bruno@spr.doe.gov

Hernaldo Carpio
Contracting Officer's Representative
U.S. Department of Energy
Big Hill Storage Facility
Strategic Petroleum Reserve
24784 Big Hill Road
Winnie, TX 77665
Telephone No. 409-981-8203
Email address: hernaldo.carpio@spr.doe.gov

Chase Caruthers
Contracting Officer's Representative
U.S. Department of Energy
Bryan Mound Storage Facility
Strategic Petroleum Reserve
242 County Road
Freeport, TX 77541
Telephone No. 979-230-2201
Email address: chase.caruthers@spr.doe.gov

Ashley Thomas
Contracting Officer's Representative
U.S. Department of Energy
West Hackberry Storage Facility
Strategic Petroleum Reserve
1450 Black Lake Road
Hackberry, LA 70645
Telephone No. 337-558-3201
Email address: ashley.thomas@spr.doe.gov

(e) Life Extension 2 Federal Project Director:

Claudia LeCompte-Johnson
ACTING Federal Project Director (FPD)
U.S. Department of Energy
Strategic Petroleum Reserve Project Management Office
900 Commerce Road East
New Orleans, LA 70123
Telephone No. 504-734-4335
Email address: claudia.lecompte-johnson@spr.doe.gov

(f) Contract Specialist's address:

Brad M. Diggs
Contract Specialist
U.S. Department of Energy
Strategic Petroleum Reserve Project Management Office
900 Commerce Road East
New Orleans, LA 70123
Telephone No. 540-734-4707
Email address: brad.diggs@spr.doe.gov

G.5 DOE PROPERTY ADMINISTRATOR

The Contractor may use the DOE Property Administrator as a point of contact for guidance and assistance involving property requirements. The CO shall be contacted for any matter which involves a change in any of the expressed terms and conditions of the contract. Correspondence being sent regarding the Property Administrator should be addressed to:

Michele Greco
Property Administrator
U.S. Department of Energy
Strategic Petroleum Reserve Project Management Office
900 Commerce Road East
New Orleans, LA 70123
Telephone No. 504-734-4235
Email address: michele.greco@spr.doe.gov

G. 6 DOE-G-2007 CONTRACTOR PERFORMANCE ASSESSMENT REPORTING (NOV 2021)

(a) The Contracting Officer will document the Contractor's performance under this contract (including any task orders placed against it, if applicable) by using the Contractor Performance Assessment Reporting System (CPARS). CPARS information is handled as "Source Selection Information," available to authorized Government personnel seeking past performance information when evaluating proposals for award.

(b) Contractor performance will be evaluated at least annually at the contract or task-order level, as determined by the Contracting Officer. Evaluation categories may include any or all of the following at the Government's discretion: (1) technical/quality, (2) cost control, (3) schedule, (4) management or business relations, and (5) small business subcontracting. Past performance information is available at <https://www.cpars.gov>. It is recommended that the Contractor take the overview training found on the CPARS website. The Contractor shall acknowledge receipt of the Government's request for comments on CPARS assessments at the time it is received and shall respond to such requests within fourteen (14) calendar days of the request.

(c) Joint Ventures. Performance assessments shall be prepared on contracts with joint ventures. When the joint venture has a unique Commercial and Government Entity (CAGE) code and unique entity identifier, a single assessment will be prepared for the joint venture using its CAGE code and unique entity identifier. If the joint venture does not have a unique CAGE code and unique entity identifier, separate assessments, containing identical narrative, will be prepared for each participating contractor and will state that the evaluation is based on performance under a joint venture and will identify the contractors that were part of the joint venture.

(d) In addition to the performance assessments addressed above, the Government will perform other performance assessments necessary for administration of the contract in accordance with other applicable clauses in this contract.

(End of Clause)

G.7 DOE-G-2008 NON-SUPERVISION OF CONTRACTOR EMPLOYEES (OCT 2014)

The Government shall not exercise any supervision or control over Contractor employees performing services under this Contract. The Contractor's employees shall be held accountable solely to the Contractor's management, who in turn is responsible for contract performance to the Government.

(End of Clause)

G.8 DOE-G-7001 CORRESPONDENCE (SEP 2017)

The contract will be administered by:

U.S. Department of Energy
Strategic Petroleum Reserve Project Management Office
900 Commerce Road East
New Orleans, LA 70123

Written communications regarding the contract shall be mailed to the above address.

(End of Clause)

G.9 INVOICING FOR TRANSITION COSTS

a. The Contractor shall submit vouchers electronically through the Oak Ridge Financial Service Center's Vendor Inquiry Payment Electronic Reporting System (VIPERS) for reimbursement for work performed during the Transition Period. VIPERS allows vendors to check the payment status of any voucher submitted to the DOE. To obtain access to and use VIPERS, please visit the web page at <https://vipers.doe.gov/>. The Contractor shall contact the Contracting Officer if the Contractor is unable to submit invoices electronically to resolve any issue(s).

b. The Contractor shall invoice for work performed in accordance with DOE-H-7035, "Activities During Contract Transition," of this contract and as directed by the Contracting Officer following the procedures identified above. All work completed during the Transition Period shall be billed within 60 days after the end of Transition Period. Allowable cost for this Transition Period is not expected to exceed \$499,992. There will be no fee paid for performance of the Transition Period.

PART I – THE SCHEDULE

SECTION H

SPECIAL CONTRACT REQUIREMENTS

PART I – THE SCHEDULE

SECTION H

SPECIAL CONTRACT REQUIREMENTS

Table of Contents

H.1 DOE-H-2001 EMPLOYEE COMPENSATION: PAY AND BENEFITS (JUN 2022) (REVISED)..... H-1

H.2 DOE-H-2002 NO THIRD-PARTY BENEFICIARIES (OCT 2014).....H-14

H.3 DOE-H-2005 ADVANCE UNDERSTANDING(S) (OCT 2014)..... H-14

H.4 DOE-H-2011 SUSTAINABLE ACQUISITIONS UNDER CONTRACTS FOR ELECTRONIC PRODUCTS (JUL 2018).....H-15

H.5 DOE-H-2013 CONSECUTIVE NUMBERING (OCT 2014)H-15

H.6 DOE-H-2019 DISPOSITION OF INTELLECTUAL PROPERTY – FAILURE TO COMPLETE CONTRACT PERFORMANCE (JUL 2018).....H-15

H.7 DOE-H-2021 WORK STOPPAGE AND SHUTDOWN AUTHORIZATION (OCT 2014).....H-16

H.8 DOE-H-2022 CONTRACTOR BUSINESS SYSTEMS (OCT 2014).....H-17

H.9 DOE-H-2023 COST ESTIMATING SYSTEM REQUIREMENTS (OCT 2014).....H-22

H.10 DOE-H-2024 EARNED VALUE MANAGEMENT SYSTEM (MAR 2019).....H-27

H.11 DOE-H-2025 ACCOUNTING SYSTEM ADMINISTRATION (OCT 2014).....H-31

H.12 DOE-H-2026 CONTRACTOR PURCHASING SYSTEM ADMINISTRATION (OCT 2014)H-34

H.13 DOE-H-2027 CONTRACTOR PROPERTY MANAGEMENT SYSTEM ADMINISTRATION (OCT 2014).....H-38

H.14 DOE-H-2033 ALTERNATIVE DISPUTE RESOLUTION (OCT 2014).....H-40

H.15 DOE-H-2034 CONTRACTOR INTERFACE WITH OTHER CONTRACTORS AND/OR GOVERNMENT EMPLOYEES (OCT 2014).....H-41

H.16 DOE-H-2035 ORGANIZATIONAL CONFLICT OF INTEREST MANAGEMENT PLAN (OCT 2014).....H-41

H.17 DOE-H-2041 SUSTAINABLE ACQUISITION UNDER DOE SERVICE CONTRACTS (OCT 2014).....H-42

H.18 DOE-H-2043 ASSIGNMENT AND TRANSFER OF PRIME CONTRACTS AND SUBCONTRACTS (OCT 2014).....H-43

H.19 DOE-H-2044 MATERIAL SAFETY DATA SHEET AVAILABILITY (OCT 2014).....H-44

H.20 DOE-H-2048 PUBLIC AFFAIRS –CONTRACTOR RELEASES OF INFORMATION (OCT 2014)H-44

H.21 DOE-H-2050 INCORPORATION OF SMALL BUSINESS SUBCONTRACTING PLAN (OCT 2014).....H-45

H.22 DOE-H-2053 WORKER SAFETY AND HEALTH PROGRAM IN ACCORDANCE WITH 10 CFR 851 (OCT 2014).....H-45

H.23 DOE-H-2059 PRESERVATION OF ANTIQUITIES, WILDLIFE AND LAND AREAS (OCT 2014).....H-46

H.24 DOE-H-2062 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (OCT 2014) - ALTERNATE I (OCT 2014).....H-47

H.25 DOE-H-2063 CONFIDENTIALITY OF INFORMATION (FEB 2022) (REVISED).....H-47

H.26 DOE-H-2064 USE OF INFORMATION TECHNOLOGY EQUIPMENT, SOFTWARE, AND THIRD-PARTY SERVICES (OCT 2014) - ALTERNATE II (OCT 2014).....H-48

H.27 DOE-H-2065 REPORTING OF FRAUD, WASTE, ABUSE, CORRUPTION, OR MISMANAGEMENT (OCT 2014).....H-49

H.28 DOE-H-2066 SAFEGUARDS AND SECURITY PROGRAM (OCT 2014) - ALTERNATE I (OCT 2014).....H-51

H.29 DOE-H-2069 PAYMENTS FOR DOMESTIC EXTENDED PERSONNEL ASSIGNMENTS (OCT 2014).....H-51

H.30 DOE-H-2070 KEY PERSONNEL (OCT 2014) - ALTERNATE I (OCT 2014).....H-52

H.31 DOE-H-2071 DEPARTMENT OF ENERGY DIRECTIVES (OCT 2014).....H-53

H.32 DOE-H-2072 USE OF GOVERNMENT VEHICLES BY CONTRACTOR EMPLOYEES (OCT 2014).....H-54

H.33 DOE-H-2073 RISK MANAGEMENT AND INSURANCE PROGRAMS (DEC 2014) (REVISED).....H-55

H.34 DOE-H-2075 PROHIBITION ON FUNDING FOR CERTAIN NONDISCLOSURE AGREEMENTS (OCT 2014).....H-59

H.35 DOE-H-2077 DEPARTMENT OF ENERGY TRAINING INSTITUTE – OCCUPATIONAL HEALTH, SAFETY, AND EMERGENCY RESPONSE (JAN 2017).....H-60

H.36 DOE-H-2078 MULTIFACTOR AUTHENTICATION FOR INFORMATION SYSTEMS (OCT 2014).....H-61

H.37 DOE-H-7001 FACILITIES (SEP 2017)..... H-61

H.38 DOE-H-7003 CONTRACTOR ASSURANCE SYSTEM (SEP 2017).....H-62

H.39 DOE-H-7004 DEFENSE AND INDEMNIFICATION OF EMPLOYEES (SEP 2017).....H-63

H.40 DOE-H-7005 ADVANCED UNDERSTANDINGS REGARDING ADDITIONAL ITEMS OF ALLOWABLE AND UNALLOWABLE COSTS AND OTHER MATTERS (SEP 2017) (REVISED).....H-64

H.41 DOE-H-7006 ADMINISTRATION OF SUBCONTRACTS (SEP 2017) (REVISED).....H-65

H.42 DOE-H-7008 PRIVACY ACT RECORDS (SEP 2017) (REVISED).....H-66

H.43 DOE-H-7009 ADDITIONAL DEFINITIONS (SEP 2017) (REVISED).....H-67

H.44 DOE-H-7010 SERVICE CONTRACT LABOR STANDARDS (SEP 2017) (REVISED).....H-69

H.45 DOE-H-7011 CONTRACTS FOR MATERIALS, SUPPLIES, ARTICLES, AND EQUIPMENT EXCEEDING \$15,000 (SEP 2017)..... H-69

H.46 DOE-H-7014 STANDARDS OF CONTRACTOR PERFORMANCE EVALUATION (SEP 2017) (REVISED)..... H-69

H.47 DOE-H-7015 CAP ON LIABILITY (SEP 2017)H-71

H.48 DOE-H-7016 NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS – SENSE OF CONGRESS (SEP 2017).....H-72

H.49 DOE-H-7018 EXTERNAL REGULATION (SEP 2017) (REVISED).....H-72

H.50 DOE-H-7019 SEPARATE ENTITY AND CORPORATE GUARANTEE (SEP 2017).....H-73

H.51 DOE-H-7020 RESPONSIBLE CORPORATE OFFICIAL (SEP 2017).....H-73

H.52 DOE-H-7021 POST CONTRACT RESPONSIBILITIES FOR PENSION
AND OTHER BENEFIT PLANS (SEP 2017).....H-74

H.53 DOE-H-7022 CONTRACTOR ACCEPTANCE OF NOTICES OF
VIOLATIONS OR ALLEGED VIOLATIONS, FINES, AND
PENALTIES (SEP 2017).....H-75

H.54 DOE-H-7023 ALLOCATION OF RESPONSIBILITIES FOR
CONTRACTOR (SEP 2017).....H-76

H.55 DOE-H-7024 WORKERS’ COMPENSATION INSURANCE (SEP 2017).....H-77

H.56 DOE-H-7025 LABOR RELATIONS (SEP 2017).....H-77

H.57 DOE-H-7027 DOE MENTOR-PROTÉGÉ PROGRAM (SEP 2017).....H-78

H.58 DOE-H-7028 LOBBYING RESTRICTIONS (SEP 2017).....H-78

H.59 DOE-H-7030 CONFERENCE SPENDING (MANAGEMENT AND
OPERATING CONTRACTS) (SEP 2017).....H-78

H.60 DOE-H-7031 INFORMATION TECHNOLOGY ACQUISITIONS
(SEP 2017) (REVISED).....H-79

H.61 DOE-H-7033 SPECIAL FINANCIAL INSTITUTION ACCOUNT
AGREEMENT (SEP 2017) (REVISED).....H-80

H.62 DOE-H-7035 ACTIVITIES DURING CONTRACT TRANSITION
(SEP 2017) (REVISED).....H-80

H.63 DOE-H-7036 WORKFORCE TRANSITION (SEP 2017) (REVISED).....H-82

H.64 DOE-H-7037 MANAGEMENT AND OPERATING CONTRACTOR
(M&O) SUBCONTRACT REPORTING (SEP 2017).....H-84

H.65 INFORMATION TECHNOLOGY AND CYBER SECURITY
REQUIREMENTS.....H-84

H.66 PROJECT CONTROL SYSTEM.....H-86

H.67 REPORTING REQUIREMENTS.....H-87

H.68 WORK AUTHORIZATION.....H-89

H.69 WITHDRAWAL OF WORK.....H-91

H.70 PERFORMANCE CRITERIA, MEASURES, OUTPUT TARGETS,
AND INCENTIVES.....H-92

H.71 EMPLOYEE CONCERNS PROGRAM.....H-92

H.72 ENVIRONMENT, SAFETY, AND HEALTH (ES&H).....H-93

H.73 ENVIRONMENTAL PERMITS AND APPLICATIONS.....H-93

H.74 PROHIBITION OF CONTRACTS WITH PERSONS FALSELY
LABELING PRODUCTS AS MADE IN AMERICA.....H-93

H.75 GOVERNMENT-OWNED PROPERTY AND EQUIPMENT.....H-94

H.76 TRAVEL RESTRICTIONS.....H-94

H.77 SERVICES.....H-94

H.78 LITIGATION MANAGEMENT PROCEDURES.....H-95

H.79 PROVISIONAL PAYMENT OF AWARD FEEH-95

SECTION H

SPECIAL CONTRACT REQUIREMENTS

**H.1 DOE-H-2001 EMPLOYEE COMPENSATION: PAY AND BENEFITS (JUN 2022)
(REVISED)**

(a) Contractor Employee Compensation Plan

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

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

(b) Total Compensation System

The Contractor shall develop, implement, and maintain formal policies, practices, and procedures to be used in the administration of its compensation system consistent with 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:

- (1) An Annual Contractor Salary-Wage Increase Expenditure Report to include, at a minimum, breakouts for merit, promotion, variable pay, special adjustments, and structure movements for each pay structure showing actual against approved amounts, and planned distribution of funds for the following year.
 - (2) A list of the top five most highly compensated executives as defined in FAR 31.205-6(p)(2)(ii) and their total cash compensation at the time of Contract award, and at the time of any subsequent change to their total cash compensation no later than March 1st of each year. Section 702 of the Bipartisan Budget Act of 2013 (BBA; Pub. L. 113-67, December 26, 2013) establishes a cap on the reimbursement of compensation costs for contractor employees, adjusted annually to reflect the change in the Employment Cost Index for all workers as calculated by the Bureau of Labor Statistics (BLS).
 - (3) An Annual Compensation and Benefits Report no later than March 15th 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 are regular employees of the incumbent contractor.
 - (A) Pay. Subject to the Workforce Transition Clause, the Contractor shall provide equivalent base pay to Incumbent Employees as compared to pay provided by Fluor Federal Petroleum Operations (FFPO) 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 comparable to that provided by FFPO. Comparability of the total benefit package shall be determined by the CO 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 following 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 Department 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:

(1) The Merit Increase fund does not exceed the mean percent increase included in the annual Departmental guidance providing the World at Work Salary Budget Survey's salary increase projected for the CIP year. The Promotion/Adjustment fund does not exceed 3.5% in total.

(2) 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.

(3) Salary structure adjustments do not exceed the mean World at Work structure adjustments projected for the CIP year and communicated through the annual Department CIP guidance.

(4) 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 allow

ability will exist for employee job classes that exceed market position.

- (iv) If a Contractor does not meet the criteria included in (iii) above, a CIP must be submitted to the Contracting Officer for an advance determination of cost allowability, unless the Contracting Officer, in accordance with subparagraph (n) obtains an audit of the Contractor's compensation and benefits system and of its incurred costs from either DCAA, or an independent public accounting firm under the DOE contract for DCAA for such services. Otherwise, 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) Individual compensation actions for the top Contractor official (e.g., project 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., project manager or equivalent) and Key Personnel as stated in (d)(3)(A)(v) above. The base salary reimbursement level for the top Contractor official establishes the maximum allowable base salary reimbursement under the contract. Unusual circumstances may require a deviation for an individual on a case-by-case basis. Any such deviations must be approved by the Contracting Officer.
- (C) Severance Pay is not payable to an employee under this Contract if the employee:
- (i) Voluntarily separates, resigns, or retires from employment,
 - (ii) Is offered employment with a successor/replacement Contractor,
 - (iii) Is offered employment with a parent or affiliated company, or
 - (iv) Is discharged for a 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, and the Contractor has not provided the Contracting Officer the opportunity to review the

allowability of the changes prior to implementation. The Contractor shall submit for prior approval benefit changes that result in increases to the Department's long-term pension and other actuarial liabilities that are reported in the Department's financial statement and increases in other benefits such as paid time off, insurance, and employer contributions for defined contribution pension plans. Examples of benefits changes that increase the Department's long-term liabilities include defined benefit pension plan changes and postretirement benefits other than pensions. Any changes made by the Contractor shall be in accordance with and pursuant to the terms and conditions of the contract. Advance notification, rather than approval, is required for changes that do not increase costs and are not contrary to Departmental policy or written instruction.

- (2) The "Employee Benefits Value Study" and an "Employee Benefits Cost Survey Comparison" as described below, are methodologies designed to assist the Contracting Officer in contract administration and oversight. As an alternative to Employee Benefits Cost Survey Comparison, the Contracting Officer may obtain an audit of the Contractor's compensation and benefits system and of its incurred costs from either DCAA, or from DOE's independent public accounting firm (under contract with DOE), in accordance with subparagraph (n) to assist in determining whether costs are reasonable, allowable, allocable, and in accordance with the terms of the contract.
- (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. Alternatively, in accordance with subparagraph (n) the Contracting Officer may obtain an audit of the Contractor's compensation and benefits system and of its incurred costs from either DCAA or from DOE's independent public accounting firm (under contract with DOE), and not require the submission of an Employee Benefits Cost Study.

- (4) When the net benefit value exceeds the comparator group by more than the percentage threshold established by the Head of the Contracting Activity the Contractor shall submit a corrective action plan to the Contracting Officer for approval, when and if requested in writing by the Contracting Officer.
- (5) When the benefit costs as a percent of payroll exceeds the comparator group by more than the percentage threshold established by the Head of the Contracting Activity, the Contractor shall submit a corrective action plan to the Contracting Officer for approval, when and if requested in writing 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 quarterly 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 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
- (h) 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, with responsibility for management and administration of the plans. The Contractor shall be responsible for maintaining the qualified status of those plans consistent with the requirements of ERISA and the Internal Revenue Code (IRC). The Contractor shall carry over the length of service credit and leave balances accrued as of the date of the Contractor's assumption of Contract performance.
 - (2) 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.
- (i) Reimbursement of Contractors for Contributions to Defined Benefit Pension Plans
- (1) Contractors that sponsor single employer or multiple employer defined benefit pension plans will be reimbursed for the annual required minimum contributions under the 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.

(j) 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:

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

(k) Changes to Pension Plan and PRB Plans

No presumption of allowability will exist when the Contractor makes changes to existing pension plans or PRB plans, and the Contractor has not provided the Contracting Officer the opportunity to review the allowability of the changes prior to implementation. The Contractor shall submit for prior approval changes that result in increases to the Department's long-term pension and PRB liabilities that are reported in the Department's financial statement. Examples of changes that increase the Department's long-term liabilities include defined benefit pension plan changes and PRB plan changes. 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 that increase the Department's long-term liabilities as part of a determination as to whether the costs are deemed allowable pursuant to FAR 31.205-6, as supplemented by DEAR 970.3102-05-6.

- (1) For proposed changes to pension plans and pension plan funding, the Contractor shall provide the following to the Contracting Officer:
 - (A) a copy of the current plan document (as conformed to show all prior plan amendments), with the proposed new amendment indicated in redline/strikeout;
 - (B) an analysis of the impact of any proposed changes on actuarial accrued liabilities and costs;
 - (C) 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;
 - (D) the Summary Plan Description; and,
 - (E) 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. The justification must:
 - (A) demonstrate the effect of the plan changes on the contract net benefit value or percent of payroll benefit costs,
 - (B) provide the dollar estimate of savings or costs, and
 - (C) provide the basis of determining the estimated savings or cost.

(l) 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.

(m) Terminating Plans

- (1) DOE contractors shall not terminate any pension plan (Commingled or site specific) without notifying the Department 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.

(n) 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.

(o) Alternate Contractor Human Resource Requirements

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

(A) Compensation Increase Plan; and/or

(B) Employee Benefits Cost Study.

(p) Definitions

- (1) **Commingled Plans.** Cover employees from the Contractor's private operations and its DOE contract work.
- (2) **Current Liability.** The sum of all plan liabilities to employees and their beneficiaries. Current liability includes only benefits accrued to the date of valuation. This liability is commonly expressed as a present value.
- (3) **Defined Benefit Pension Plan.** Provides a specific benefit at retirement that is determined pursuant to the formula in the pension plan document.
- (4) **Defined Contribution Pension Plan.** Provides benefits to each participant based on the amount held in the participant's account. Funds in the account may be comprised of employer contributions, employee contributions, investment returns on behalf of that plan participant and/or other amounts credited to the participant's account.
- (5) **Designated Contract.** For purposes of this clause, a contract (other than a prime cost reimbursement contract for management and operation of a DOE facility) for which the Head of the Departmental Contracting Activity determines that advance pension understandings are necessary or where there is a continuing Departmental obligation to the pension plan.
- (6) **Pension Fund.** The portfolio of investments and cash provided by employer and employee contributions and investment returns. A pension fund exists to defray pension plan benefit outlays and (at the option of the plan sponsor) the administrative expenses of the plan.

- (7) Separate Accounting. Account records established and maintained within a commingled plan for assets and liabilities attributable to DOE contract service. NOTE: The assets so represented are not for the exclusive benefit of any one group of plan participants.
- (8) Separate Plan. Must satisfy IRC Sec. 414(l) definition of a single plan, designate assets for the exclusive benefit of employees under DOE contract, exist under a separate plan document (having its own Department of Labor plan number) that is distinct from corporate plan documents and identify the Contractor as the plan sponsor.
- (9) Spun-off Plan. A new plan which satisfies IRC Reg. 1.414(l)-1 requirements for a single plan and which is created by separating assets and liabilities from a larger original plan. The funding level of each individual participant's benefits shall be no less than before the event, when calculated on a "plan termination basis."

(End of clause)

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

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

(End of Clause)

H.3 DOE-H-2005 ADVANCE UNDERSTANDING(S) (OCT 2014)

The following Advance Understanding(s) is (are) made a part of this contract:

TBD

(End of Clause)

H.4 DOE-H-2011 SUSTAINABLE ACQUISITIONS UNDER CONTRACTS FOR ELECTRONIC PRODUCTS (JUL 2018)

- (a) Definition. Electronic products, as used in this clause, means products that are dependent on electric currents or electromagnetic fields in order to work properly.
- (b) The contractor, when supplying electronic products in performance of, or delivery under the contract, shall ensure that the equipment is EPEAT-registered at the highest level (Bronze, Silver or Gold) available on the marketplace, which meets technical specifications.

(End of Clause)

H.5 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.

(End of Clause)

H.6 DOE-H-2019 DISPOSITION OF INTELLECTUAL PROPERTY – FAILURE TO COMPLETE CONTRACT PERFORMANCE (JUL 2018)

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

- (a) The Government may take possession of and use all technical data, including limited rights data, restricted computer software, and data and software obtained from subcontractors, licensors, and licensees, necessary to complete the work in conformance with this contract, including the right to use the data in any Government solicitations for the completion of the work contemplated under this contract. Technical data includes, but is not limited to, specifications, designs, drawings, operational manuals, flowcharts, software, databases and any other information necessary for of the completion of the work under this contract. Limited rights data and restricted computer software will be protected in accordance with the provisions of the Section I clause DEAR 970.5227-1 Rights in Data — Facilities. The Contractor shall ensure that its subcontractors and licensors make similar rights available to the Government and its contractors.
- (b) The Contractor agrees to and does hereby grant to the Government an irrevocable, non-exclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice by the Contractor, and any other intellectual property, including technical data, which are owned or controlled by the

Contractor, at any time through completion of this contract and which are incorporated or embodied in the construction of the facilities or which are utilized in the operation or remediation of the facilities or which cover articles, materials or products manufactured at a facility: (1) to practice or to have practiced by or for the Government at the facility; and (2) to transfer such license with the transfer of that facility. The acceptance or exercise by the Government of the aforesaid rights and license shall not prevent the Government at any time from contesting the enforceability, validity or scope of, or title to, any rights or patents or other intellectual property herein licensed.

- (c) In addition, the Contractor will take all necessary steps to assign permits, authorizations, leases, and licenses in any third-party intellectual property to the Government, or such other third party as the Government may designate, that are necessary for the completion of the work contemplated under this Contract.

(End of Clause)

H.7 DOE-H-2021 WORK STOPPAGE AND SHUTDOWN AUTHORIZATION (OCT 2014)

- (a) Imminent Health and Safety Hazard is a given condition or situation which, if not immediately corrected, could result in a serious injury or death, including 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, 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 (i.e., by directing the operator/implementer of the activity or process causing the imminent hazard to stop-work, or by initiating emergency response actions or other actions) to protect the health and safety of the workers and the public, and to protect U.S. Department of Energy (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 should subsequently be coordinated with the DOE and Contractor management. The suspension or stop-work order should be promptly confirmed in writing by the Contracting Officer.
- (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 Contracting Officer, pursuant to the Clause entitled, "FAR 52.242-15, Stop-Work Order."

- (d) Facility Representatives. DOE personnel designated as Facility Representatives provide the technical/safety oversight of operations. The Facility Representative has the authority to "stop-work," which applies to the shutdown of an entire plant, activity, or job. This stop-work authority will be used for an operation of a facility which is performing work the Facility Representative believes:
- (1) Poses an imminent danger to health and safety of workers or the public if allowed to continue;
 - (2) Could adversely affect the safe operation of, or could cause serious damage to the facility if allowed to continue; or
 - (3) Could result in the release of radiological or chemical hazards to the environment in excess of regulatory limits.
- (e) This clause flows down to all subcontractors at all tiers. Therefore, the Contractor shall insert a clause, modified appropriately to substitute "Contractor Representatives" for "the Contracting Officer" in all subcontracts.

(End of Clause)

H.8 DOE-H-2022 CONTRACTOR BUSINESS SYSTEMS (OCT 2014)

Note that this clause is inoperative if award is made to a small business in instances where the solicitation is otherwise unrestricted.

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

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

Contractor business systems means—

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

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

- (c) General. The Contractor shall establish and maintain acceptable business systems in accordance with the terms and conditions of this contract. If the Contractor plans to adopt any existing business system from the previous Contractor, the Contractor is responsible for the system and shall comply with the system requirements and criteria required in that specific business system clause.
- (d) Significant deficiencies.
 - (1) The Contractor shall respond, in writing, within 30 days to an initial determination that there are one or more significant deficiencies in one or more of the Contractor’s business systems.
 - (2) The Contracting Officer will evaluate the Contractor’s response and notify the Contractor, in writing, of the final determination as to whether the Contractor’s business system contains significant deficiencies. If the Contracting Officer determines that the Contractor’s business system contains significant deficiencies, the final determination will include a notice to withhold payments.

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

(e) Withholding payments

- (1) If the Contracting Officer issues the final determination with a notice to withhold payments for significant deficiencies in a contractor business system required under this contract, the Contracting Officer will direct the Contractor, in writing, to withhold five percent from its invoices until the Contracting Officer has determined that the Contractor has corrected all significant deficiencies as directed by the Contracting Officer's final determination. The Contractor shall, within 45 days of receipt of the notice, either—
 - (A) Correct the deficiencies; or
 - (B) Submit an acceptable corrective action plan showing milestones and actions to eliminate the deficiencies. The plan shall contain—
 - (i) Root cause(s) identification of the problem(s);
 - (ii) The proposed corrective action(s) to address the root cause(s);
 - (iii) A schedule for implementation; and
 - (iv) The name of the person responsible for the implementation.
- (2) If the Contractor submits an acceptable corrective action plan within 45 days of receipt of a notice of the Contracting Officer's intent to withhold payments, and the Contracting Officer, in consultation with the auditor or functional specialist, determines that the Contractor is effectively implementing such plan, the Contracting Officer will direct the Contractor, in writing, to reduce the percentage withheld on invoices to two percent until the Contracting Officer determines the Contractor has corrected all significant deficiencies as directed by the Contracting Officer's final determination. However, if at any time, the Contracting Officer determines that the Contractor has failed to follow the accepted corrective action plan, the Contracting Officer will increase withholding and direct the Contractor, in writing, to increase the percentage withheld on invoices to the percentage initially withheld, until the Contracting Officer determines that the

Contractor has corrected all significant deficiencies as directed by the Contracting Officer's final determination.

- (3) Payment withhold percentage limits.
 - (A) The total percentage of payments withheld on amounts due on this contract shall not exceed—
 - (i) Five percent for one or more significant deficiencies in any single contractor business system; and
 - (ii) Ten percent for significant deficiencies in multiple contractor business systems.
 - (B) If this contract contains pre-existing withholds, and the application of any subsequent payment withholds will cause withholding under this clause to exceed the payment withhold percentage limits in paragraph (e)(3)(i) of this clause, the Contracting Officer will reduce the payment withhold percentage in the final determination to an amount that will not exceed the payment withhold percentage limits.
- (4) For the purpose of this clause, payment means invoicing for any of the following payments authorized under this contract:
 - (A) Interim payments under—
 - (i) Cost-reimbursement contracts;
 - (ii) Incentive type contracts;
 - (iii) Time-and-materials contracts; or
 - (iv) Labor-hour contracts.
 - (B) Progress payments to include fixed-price contracts.
 - (C) Performance-based payments to include fixed-price contracts.
- (5) Payment withholding shall not apply to payments on fixed-price line items where performance is complete and the items were accepted by the Government.
- (6) The withholding of any amount or subsequent payment to the Contractor shall not be construed as a waiver of any rights or remedies the Government has under this contract.

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

Officer's final determination, and authorize the Contractor to bill for any monies previously withheld.

(D) If, within 90 days of receipt of the Contractor notification that the Contractor has corrected the significant deficiencies, the Contracting Officer has not made a determination in accordance with paragraphs (f)(2)(i), (ii), or (iii) of this clause, the Contracting Officer will direct the Contractor, in writing, to reduce the payment withholding from invoices directly related to the significant deficiencies identified in the Contractor notification by a specified percentage that is at least 50 percent, but not authorize the Contractor to bill for any monies previously withheld until the Contracting Officer makes a determination in accordance with paragraphs (f)(2)(i), (ii), or (iii) of this clause.

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

(End of Clause)

H.9 DOE-H-2023 COST ESTIMATING SYSTEM REQUIREMENTS (OCT 2014)

Note that this clause is inoperative if award is made to a small business in instances where the solicitation is otherwise unrestricted.

(a) Definitions.

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

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

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

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

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

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

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

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

- (2) The Contractor was notified, in writing, by the Contracting Officer that paragraphs (d) and (e) of this clause apply.

(d) System requirements.

- (1) The Contractor shall disclose its estimating system to the Contracting Officer, in writing. If the Contractor wishes the Government to protect the information as privileged or confidential, the Contractor must mark the documents with the appropriate legends before submission. If the Contractor plans to adopt the existing system from the previous Contractor, the Contractor is responsible for the system and shall comply with the system requirements required in this clause.
- (2) An estimating system disclosure is acceptable when the Contractor has provided the Contracting Officer with documentation no later than 60 days after contract award that—
- (A) Accurately describes those policies, procedures, and practices that the Contractor currently uses in preparing cost proposals; and
 - (B) Provides sufficient detail for the Government to reasonably make an informed judgment regarding the acceptability of the Contractor's estimating practices.
- (3) The Contractor shall—
- (A) Comply with its disclosed estimating system; and
 - (B) Disclose significant changes to the cost estimating system to the Contracting Officer on a timely basis.
- (4) The Contractor's estimating system shall provide for the use of appropriate source data, utilize sound estimating techniques and good judgment, maintain a consistent approach, and adhere to established policies and procedures. An acceptable estimating system shall accomplish the following functions:
- (A) Establish clear responsibility for preparation, review, and approval of cost estimates and budgets.
 - (B) Provide a written description of the organization and duties of the personnel responsible for preparing, reviewing, and approving cost estimates and budgets.
 - (C) Ensure that relevant personnel have sufficient training, experience, and guidance to perform estimating and budgeting tasks in accordance with the Contractor's established procedures.

- (D) Identify and document the sources of data and the estimating methods and rationale used in developing cost estimates and budgets.
 - (E) Provide for adequate supervision throughout the estimating and budgeting process.
 - (F) Provide for consistent application of estimating and budgeting techniques.
 - (G) Provide for detection and timely correction of errors.
 - (H) Protect against cost duplication and omissions.
 - (I) Provide for the use of historical experience, including historical vendor pricing information, where appropriate.
 - (J) Require use of appropriate analytical methods.
 - (K) Integrate information available from other management systems.
 - (L) Require management review, including verification of compliance with the company's estimating and budgeting policies, procedures, and practices.
 - (M) Provide for internal review of, and accountability for, the acceptability of the estimating system, including the budgetary data supporting indirect cost estimates and comparisons of projected results to actual results, and an analysis of any differences.
 - (N) Provide procedures to update cost estimates and notify the Contracting Officer in a timely manner.
 - (O) Provide procedures that ensure subcontract prices are reasonable based on a documented review and analysis provided with the prime proposal, when practicable.
 - (P) Provide estimating and budgeting practices that consistently generate sound proposals that are compliant with the provisions of the solicitation and are adequate to serve as a basis to reach a fair and reasonable price.
 - (Q) Have an adequate system description, including policies, procedures, and estimating and budgeting practices, that comply with the Federal Acquisition Regulation (48 CFR chapter 1) and Department of Energy Acquisition Regulation (48 CFR chapter 9).
- (e) Significant deficiencies.

- (1) The Contracting Officer will provide an initial determination to the Contractor, in writing, of any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.
- (2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's estimating system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing. In the event the Contractor did not respond in writing to the initial determination within the response time, this lack of response shall indicate that the Contractor agrees with the initial determination.
- (3) The Contracting Officer will evaluate the Contractor's response or the Contractor's lack of response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—
 - (A) Remaining significant deficiencies;
 - (B) The adequacy of any proposed or completed corrective action; and
 - (C) System disapproval, if the Contracting Officer determines that one or more significant deficiencies remain.
- (f) Significant deficiencies. If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the significant deficiencies.
- (g) Withholding payments. If the Contracting Officer makes a final determination to disapprove the Contractor's estimating system, and the contract includes the Section H clause Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

(End of Clause)

H.10 DOE-H-2024 EARNED VALUE MANAGEMENT SYSTEM (MAR 2019)

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

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

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

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

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

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

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

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

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

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

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

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

and budgeting, performance measurement and analysis, change management, materials and subcontract management, cost estimating, accounting, and risk management.

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

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

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

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

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

(b) EVMS certification.

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

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

(c) Changes to the EVMS. The Contractor shall submit notification of all proposed changes to the EVMS procedures and the impact of those changes to the Contracting

- Officer. If the contractor has one or more contracts in support of DOE capital asset projects that are valued at \$100M or more, unless a waiver is granted by DOE, any EVMS changes proposed by the contractor require approval of DOE prior to implementation. DOE will advise the contractor of the acceptability of such changes as soon as practicable (generally within 30 calendar days) after receipt of the contractor's notice of proposed changes. If DOE waives the advance approval requirements, the Contractor shall disclose EVMS changes to DOE at least 14 calendar days prior to the effective date of implementation.
- (d) Integrated baseline reviews. DOE will conduct an Integrated Baseline Review (IBR) not later than 180 calendar days after contract award, the exercise of significant contract options, and the incorporation of major modifications. DOE and the contractor will use the IBR process described in the NDIA IBR Guide (or current version). During IBRs, the project baseline will be jointly scrutinized by the Government and the contractor to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.
 - (e) Access to records. The Contractor shall provide access to all pertinent records and data requested by the Contracting Officer or duly authorized representative to permit surveillance to ensure that the EVMS continues to comply with the criteria referenced in paragraph (a) of this clause.
 - (f) Restructuring actions. In the event that the contractor concludes the performance baseline no longer represents a realistic plan, the contractor may determine that an over-target schedule or over-target baseline restructuring action is necessary. The contractor shall obtain approval of the Contracting Officer prior to implementing such restructuring actions. The request should also include detailed implementation procedures as well as a timeframe in accordance with the System Description. DOE will acknowledge receipt of the request in a timely manner (generally within 30 calendar days).
 - (g) Significant deficiencies.
 - (1) The Contracting Officer will provide a determination to the contractor, in writing, on any significant EVMS deficiencies. The determination will describe the deficiency in sufficient detail to allow the contractor to understand the deficiency.
 - (2) The contractor shall respond within 30 working days to a written determination from the Contracting Officer that identifies significant deficiencies in the contractor's EVMS. If the contractor disagrees with the determination, the contractor shall state, in writing, its rationale for disagreeing. In the event the contractor does not respond in writing to the determination within the response time, this shall indicate that the Contractor agrees with the determination.

- (3) The Contracting Officer will evaluate the contractor's response or lack of response and notify the contractor, in writing, of the Contracting Officer's final determination concerning—
 - (A) Remaining significant deficiencies;
 - (B) The adequacy of any proposed or completed corrective action;
 - (C) System noncompliance, when the contractor's existing EVMS fails to comply with the EVMS guidelines in EIA-748; and
 - (D) System disapproval, if corrections to the contractor's EVMS are not successfully completed within the timeframe set forth by the Contracting Officer. When the Contracting Officer determines that the existing EVMS contains one or more significant deficiencies, the Contracting Officer will use discretion to disapprove the EVMS based on input received from the DOE Office of Project Management.
- (4) When the contractor receives the Contracting Officer's determination of significant deficiencies, the contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the significant deficiencies.
- (h) Withholding payments. In the event that the contractor's EVMS is disapproved in accordance with subparagraph (g)(3)(iv), the Contracting Officer will withhold payments until which time the contractor has resolved all EVMS deficiencies.
- (i) Flow down requirements. With the exception of paragraphs (g) and (h) of this clause, for contracts supporting projects requiring EVMS, the contractor shall flow down appropriate EVMS requirements to its subcontractors.
 - (1) The EVMS certification requirement applies to subcontractors meeting the criteria in paragraph (b) of this clause. In this event, the cognizant Federal agency, working through the prime contractor, will assess whether the subcontractor's system satisfies the EVMS guidelines contained in EIA-748.
 - (2) The prime contractor is responsible for reviewing and assuring the validity of all subcontractor reports. Cost and schedule reporting requirements are not to be confused with EVMS certification, as described in paragraph (i)(1) above.

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

TBD

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

TBD

- (j) Extending a previous contractor's certified EVMS. If a contractor plans to adopt the existing system from the previous contractor or DOE site, the contractor is responsible for the system and shall comply with the system requirements required in this clause. The existing system shall utilize the same DOE-approved processes and procedures as the previous system. The contractor shall—
- (1) Identify the corporate entity that owns the certified EVMS and provide the certification documentation;
 - (2) Obtain prior approval from the Contracting Officer, who will be advised by the Office of Project Management, for proposed EVMS and surveillance changes;
 - (3) Be responsible for full compliance with paragraph (a) of this clause; and
 - (4) Be responsible for correcting any significant deficiencies previously identified to the previous contractor by the Contracting Officer in accordance with paragraph (g) of this clause. Within 45 days after receiving a copy of the previous contractor's final determination, the contractor shall either correct any significant deficiencies or submit an acceptable corrective action plan. The Contracting Officer, working jointly with the Office of Project Management, will provide a written final determination—to potentially include an implementation review—before extending the certification.

(End of Clause)

H.11 DOE-H-2025 ACCOUNTING SYSTEM ADMINISTRATION (OCT 2014)

Note that this clause is inoperative if award is made to a small business in instances where the solicitation is otherwise unrestricted.

- (a) Definitions. As used in this clause—
- (1) Acceptable accounting system means a system that complies with the system criteria in Paragraph (c) of this clause to provide reasonable assurance that—

- (A) Applicable laws and regulations are complied with;
 - (B) The accounting system and cost data are reliable;
 - (C) Risk of misallocations and mischarges are minimized; and
 - (D) Contract allocations and charges are consistent with billing procedures.
- (2) Accounting system means the Contractor's system or systems for accounting methods, procedures, and controls established to gather, record, classify, analyze, summarize, interpret, and present accurate and timely financial data for reporting in compliance with applicable laws, regulations, and management decisions, and may include subsystems for specific areas such as indirect and other direct costs, compensation, billing, labor, and general information technology.
- (3) Significant deficiency means a shortcoming in the system that materially affects the ability of officials of the Department of Energy to rely upon information produced by the system that is needed for management purposes.
- (b) General. The Contractor shall establish and maintain an acceptable accounting system. If the Contractor plans to adopt the existing system from the previous Contractor, the Contractor is responsible for the system and shall comply with the system criteria required in this clause. The Contractor shall provide in writing to the Contracting Officer documentation that its accounting system meets the system criteria in paragraph (c) of this clause no later than 60 days after contract award. Failure to maintain an acceptable accounting system, as defined in this clause, shall result in the withholding of payments if the contract includes the Section H clause Contractor Business Systems, and also may result in disapproval of the system.
- (c) System criteria. The Contractor's accounting system shall provide for—
- (1) A sound internal control environment, accounting framework, and organizational structure;
 - (2) Proper segregation of direct costs from indirect costs;
 - (3) Identification and accumulation of direct costs by contract;
 - (4) A logical and consistent method for the accumulation and allocation of indirect costs to intermediate and final cost objectives;
 - (5) Accumulation of costs under general ledger control;

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

(d) Significant deficiencies.

- (1) The Contracting Officer will provide an initial determination to the Contractor, in writing, on any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.
- (2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's accounting system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing. In the event the Contractor did not respond in writing to the initial determination within the response time, this lack of response shall indicate that the Contractor agrees with the initial determination.
- (3) The Contracting Officer will evaluate the Contractor's response or the Contractor's lack of response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—
 - (A) Remaining significant deficiencies;
 - (B) The adequacy of any proposed or completed corrective action; and
 - (C) System disapproval, if the Contracting Officer determines that one or more significant deficiencies remain.
- (e) If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the significant deficiencies.
- (f) Withholding payments. If the Contracting Officer makes a final determination to disapprove the Contractor's accounting system, and the contract includes the Section H clause Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

(End of Clause)

**H.12 DOE-H-2026 CONTRACTOR PURCHASING SYSTEM ADMINISTRATION
(OCT 2014)**

Note that this clause is inoperative if award is made to a small business in instances where the solicitation is otherwise unrestricted.

(a) Definitions. As used in this clause—

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

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

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

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

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

- (1) Have an adequate system description including policies, procedures, and purchasing practices that comply with the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) and the Department of Energy Acquisition Regulation (48 CFR Chapter 9);
- (2) Ensure that all applicable purchase orders and subcontracts contain all flowdown clauses, including terms and conditions and any other clauses needed to carry out the requirements of the prime contract;
- (3) Maintain an organization plan that establishes clear lines of authority and responsibility;
- (4) Ensure all purchase orders are based on authorized requisitions and include a complete and accurate history of purchase transactions to support vendor selected, price paid, and document the subcontract/purchase order files which are subject to Government review;

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

- (18) Perform internal audits or management reviews, training, and maintain policies and procedures for the purchasing department to ensure the integrity of the purchasing system;
 - (19) Establish and maintain policies and procedures to ensure purchase orders and subcontracts contain mandatory and applicable flowdown clauses, as required by the 48 CFR chapter 1, including terms and conditions required by the prime contract and any clauses required to carry out the requirements of the prime contract;
 - (20) Provide for an organizational and administrative structure that ensures effective and efficient procurement of required quality materials and parts at the best value from responsible and reliable sources;
 - (21) Establish and maintain selection processes to ensure the most responsive and responsible sources for furnishing required quality parts and materials and to promote competitive sourcing among dependable suppliers so that purchases are reasonably priced and from sources that meet contractor quality requirements;
 - (22) Establish and maintain procedures to ensure performance of adequate price or cost analysis on purchase actions;
 - (23) Establish and maintain procedures to ensure that proper types of subcontracts are selected, and that there are controls over subcontracting, including oversight and surveillance of subcontracted effort; and
 - (24) Establish and maintain procedures to timely notify the Contracting Officer, in writing, if-
 - (A) The Contractor changes the amount of subcontract effort after award such that it exceeds 70 percent of the total cost of the work to be performed under the contract, task order, or delivery order. The notification shall identify the revised cost of the subcontract effort and shall include verification that the Contractor will provide added value; or
 - (B) Any subcontractor changes the amount of lower-tier subcontractor effort after award such that it exceeds 70 percent of the total cost of the work to be performed under its subcontract. The notification shall identify the revised cost of the subcontract effort and shall include verification that the subcontractor will provide added value as related to the work to be performed by the lower-tier subcontractor(s).
- (d) Significant deficiencies.

- (1) The Contracting Officer will provide notification of initial determination to the Contractor, in writing, of any significant deficiencies. The initial determination will describe the in sufficient detail to allow the Contractor to understand the deficiency.
- (2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's purchasing system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing. In the event the Contractor did not respond in writing to the initial determination within the response time, this lack of response shall indicate that the Contractor agrees with the initial determination.
- (3) The Contracting Officer will evaluate the Contractor's response or the Contractor's lack of response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—
 - (A) Remaining significant deficiencies;
 - (B) the adequacy of any proposed or completed corrective action; and
 - (C) System disapproval, if the Contracting Officer determines that one or more significant deficiencies remain.
- (e) If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the deficiencies.
- (f) Withholding payments. If the Contracting Officer makes a final determination to disapprove the Contractor's purchasing system, and the contract includes the Section H clause Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

(End of Clause)

H.13 DOE-H-2027 CONTRACTOR PROPERTY MANAGEMENT SYSTEM ADMINISTRATION (OCT 2014)

Note that this clause is inoperative if award is made to a small business in instances where the solicitation is otherwise unrestricted.

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

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

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

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

- (b) General. The Contractor shall establish and maintain an acceptable property management system. If the Contractor plans to adopt the existing system from the previous Contractor, the Contractor is responsible for the system and shall comply with the system criteria required in this clause. The Contractor shall provide in writing to the Contracting Officer documentation that its property management system meets the system criteria in paragraph (c) of this clause no later than 60 days after contract award. Failure to maintain an acceptable property management system, as defined in this clause, may result in disapproval of the system by the Contracting Officer and/or withholding of payments.
- (c) System criteria. The Contractor's property management system shall be in accordance with paragraph (f) of the contract clause at 48 CFR 52.245-1.
- (d) Significant deficiencies.
 - (1) The Contracting Officer will provide an initial determination to the Contractor, in writing, of any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.
 - (2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's property management system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing. In the event the Contractor did not respond in writing to the initial determination within the response time, this lack of response shall indicate that the Contractor agrees with the initial determination.
 - (3) The Contracting Officer will evaluate the Contractor's response or the Contractor's lack of response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—
 - (A) Remaining significant deficiencies;

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

(End of Clause)

H.14 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 entitled, *Disputes*. The ADR process may involve mediation, facilitation, fact-finding, group conflict management, and conflict coaching by a neutral party. The neutral party may be an individual, a board comprised of independent experts, or a company with specific expertise in conflict resolution or expertise in the specific area of controversy. The neutral party will not render a binding decision but will assist the parties in reaching a mutually satisfactory agreement. Any opinions of the neutral party shall not be admissible as evidence in any subsequent litigation proceedings.
- (c) Either party may request that the ADR process be used. The Contractor shall make a written request to the CO, and the CO shall make a written request to the appropriate official of the Contractor. A voluntary election by both parties is required to participate in the ADR process. The parties must agree on the procedures and terms of the process,

and officials of both parties who have the authority to resolve the issue must participate in the agreed-upon process.

- (d) ADR procedures may be used at any time that the CO has the authority to resolve the issue in controversy. If a claim has been submitted by the Contractor, ADR procedures may be applied to all or a portion of the claim. If ADR procedures are used subsequent to issuance of a CO's final decision under the clause at FAR 52.233-1 entitled, *Disputes*, their use does not alter any of the time limitations or procedural requirements for filing an appeal of the CO's final decision and does not constitute reconsideration of the final decision.
- (e) If the CO rejects the Contractor's request for ADR proceedings, the CO shall provide the Contractor with a written explanation of the specific reasons the ADR process is not appropriate for the resolution of the dispute. If the Contractor rejects the CO's request to use ADR procedures, the Contractor shall provide the CO with the reasons for rejecting the request.

(End of Clause)

H.15 DOE-H-2034 CONTRACTOR INTERFACE WITH OTHER CONTRACTORS AND/OR GOVERNMENT EMPLOYEES (OCT 2014) (REVISED)

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

(End of Clause)

H.16 DOE-H-2035 ORGANIZATIONAL CONFLICT OF INTEREST MANAGEMENT PLAN (OCT 2014)

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

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

(End of Clause)

H.17 DOE-H-2041 SUSTAINABLE ACQUISITION UNDER DOE SERVICE CONTRACTS (OCT 2014)

- (a) Pursuant to Executive Orders 13423, Strengthening Federal Environmental, Energy and Transportation Management, and 13514, Federal Leadership in Environmental, Energy, and Economic Performance, the Department of Energy is committed to managing its facilities in a manner that will promote the natural environment and protect the health and wellbeing of its Federal employees and contractor service providers. As a service provider at a DOE facility the Contractor is urged to assist us in our efforts. Sustainable acquisition or environmentally preferable contracting has several interacting initiatives. Among the initiatives are the following:
 - (1) Alternative Fueled Vehicles and Alternative Fuels;
 - (2) Biobased Content Products (USDA Designated Products);

- (3) Energy Efficient Products;
 - (4) Non-Ozone Depleting Alternative Products;
 - (5) Recycled Content Products (EPA Designated Products); and
 - (6) Water Efficient Products (EPA Water Sense Labeled Products).
- (b) The Contractor should be familiar with these information resources:
- (1) Recycled Products are described at <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
 - (2) Biobased Products are described at <https://www.biopreferred.gov/BioPreferred/>.
 - (3) Energy efficient products are described at <https://www.energystar.gov/products> for Energy Star products.
 - (4) FEMP designated products are described at <https://www.energy.gov/eere/femp/energy-efficient-products-and-energy-saving-technologies>.
 - (5) Environmentally Preferable Computers are described at <https://www.epeat.net>.
 - (6) Non-Ozone Depleting Alternative Products are described at <https://www.epa.gov/ozone-layer-protection>.
 - (7) Water efficient plumbing fixtures are described at <https://epa.gov/watersense>.
- (c) If, in the course of providing services at the DOE site, the Contractor's services necessitate the acquisition of any of the above types of products, it is expected that the Contractor will acquire the sustainable, environmentally preferable models unless the product is not available competitively within a reasonable time, at a reasonable price, is not life cycle cost efficient in the case of energy consuming products or does not meet reasonable performance standards. While there is no formal reporting, DOE prepares a sustainable acquisition annual report, and the Contractor may be asked by the Contracting Officer to provide information in support of DOE's report.

(End of Clause)

H.18 DOE-H-2043 ASSIGNMENT AND TRANSFER OF PRIME CONTRACTS AND SUBCONTRACTS (OCT 2014)

- (a) Assignment of DOE Prime Contracts. During the period of performance of this contract, it may become necessary for the U.S. Department of Energy (DOE) to

transfer and assign existing or future DOE prime contracts supporting site work to this contract. The Contractor shall accept the transfers and assignments of such contracts. Any recommendations and/or suggestions regarding individual transfers directed by DOE shall be submitted in writing to the Contracting Officer prior to the transfer or assignment.

- (b) Transfer of Subcontracts. As the successor contractor, the Contractor agrees to accept the transfer of existing subcontracts as determined necessary by DOE for continuity of operations. The Contractor shall use its best efforts to negotiate changes to the assigned subcontracts incorporating mandatory flow-down provisions at no cost. If the subcontractor refuses to accept the changes or requests price adjustments, the Contractor will notify the Contracting Officer in writing. DOE reserves the right to direct the Contractor to transfer to DOE or another Contractor any subcontract awarded under this contract.

(End of Clause)

H.19 DOE-H-2044 MATERIAL SAFETY DATA SHEET AVAILABILITY (OCT 2014)

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 Material Safety Data Sheet (MSDS) 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 MSDS shall conform to the requirements of 29 CFR 1910.1200(g).

(End of Clause)

H.20 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 ten (10) 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.

(End of Clause)

H.21 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 D, is hereby incorporated into and made a part of this contract.

(End of Clause)

H.22 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.

(End of Clause)

H.23 DOE-H-2059 PRESERVATION OF ANTIQUITIES, WILDLIFE AND LAND AREAS (OCT 2014)

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

(End of Clause)

H.24 DOE-H-2062 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (OCT 2014) — 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.

(End of Clause)

H.25 DOE-H-2063 CONFIDENTIALITY OF INFORMATION (FEB 2022) (REVISED)

- (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 public domain;
 - (2) Information which, subsequent to receipt by the Contractor, becomes part of the public domain through no fault or action of the Contractor;
 - (3) Information which the Contractor can demonstrate was previously in its possession and was not acquired directly or indirectly as a result of access obtained by performing work under this contract;
 - (4) Information which the Contractor can demonstrate was received from a third party who did not require the Contractor to hold it in confidence; or
 - (5) Information which is subject to release under applicable law.
- (c) These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General or the Office of Special Counsel of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions,

and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.

- (d) The Contractor shall obtain a written agreement from each of its employees who are granted access to, or furnished with, confidential information, whereby the employee agrees that he or she will not discuss, divulge, or disclose any such information to any person or entity except those persons within the Contractor's organization directly concerned with the performance of the contract. The agreement shall be in a form satisfactory to the Contracting Officer.
- (e) 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.
- (f) 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.
- (g) The Contractor agrees to flow down this clause to all subcontracts issued under this contract.
- (h) Technical data is addressed in DEAR 970.5227-1.

(End of Clause)

H.26 DOE-H-2064 USE OF INFORMATION TECHNOLOGY EQUIPMENT, SOFTWARE, AND THIRD PARTY SERVICES (OCT 2014) — 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 pursuant to the clause at DEAR 970.5204-2, Laws, Regulations and DOE Directives.

(End of Clause)

H.27 DOE-H-2065 REPORTING OF FRAUD, WASTE, ABUSE, CORRUPTION, OR MISMANAGEMENT (OCT 2014)

The Contractor shall comply with the following:

- (a) Notify employees annually of their duty to report allegations of fraud, waste, abuse, misuse, corruption, criminal acts, or mismanagement relating to DOE programs, operations, facilities, contracts, or information technology systems to an appropriate authority (e.g., OIG, other law enforcement, supervisor, employee concerns office, security officials). Examples of violations to be reported include, but are not limited to, allegations of false statements; false claims; bribery; kickbacks; fraud; DOE environment, safety, and health violations; theft; computer crimes; contractor mischarging; conflicts of interest; and conspiracy to commit any of these acts. Contractors must also ensure that their employees are aware that they may always report incidents or information directly to the Office of Inspector General (OIG).

- (b) Display the OIG hotline telephone number in buildings and common areas such as cafeterias, public telephone areas, official bulletin boards, reception rooms, and building lobbies.
- (c) Publish the OIG hotline telephone number in telephone books and newsletters under the Contractor's cognizance.
- (d) Ensure that its employees report to the OIG within a reasonable period of time, but not later than 24 hours after discovery, all alleged violations of law, regulations, or policy, including incidents of fraud, waste, abuse, misuse, corruption, criminal acts, or mismanagement, that have been referred to Federal, State, or local law enforcement entities.
- (e) Ensure that its employees report to the OIG any allegations of reprisals taken against employees who have reported to the OIG fraud, waste, abuse, misuse, corruption, criminal acts, or mismanagement.
- (f) Ensure that its managers do not retaliate against DOE contractor employees who report fraud, waste, abuse, misuse, corruption, criminal acts, or mismanagement.
- (g) Ensure that all their employees understand that they must –
 - (1) Comply with requests for interviews and briefings and must provide affidavits or sworn statements, if so requested by an employee of the OIG so designated to take affidavits or sworn statements;
 - (2) Not impede or hinder another employee's cooperation with the OIG; and
 - (3) Not take reprisals against DOE contractor employees who cooperate with or disclose information to the OIG or other lawful appropriate authority.
 - (4) Seek more specific guidance concerning reporting of fraud, waste, abuse, corruption, or mismanagement, and cooperation with the Inspector General, in DOE directives.

(End of Clause)

**H.28 DOE-H-2066 SAFEGUARDS AND SECURITY PROGRAM (OCT 2014) —
ALTERNATE I (OCT 2014)**

- (a) Pursuant to the clause at DEAR 952.204-2, Security Requirements, 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.

(End of Clause)

H.29 DOE-H-2069 PAYMENTS FOR DOMESTIC EXTENDED PERSONNEL ASSIGNMENTS (OCT 2014)

- (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 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:
 - (A) 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.
 - (B) 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 the lesser of actual cost or 100% of the Federal per diem rate at the assignment location. The intervening days M&IE will be reimbursed at the lesser of actual cost or 55% of Federal per diem.
 - (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 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 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%.
- (6) The Contractor shall include the substance of this clause in all subcontracts in which travel will be reimbursed at cost.

(End of Clause)

H.30 DOE-H-2070 KEY PERSONNEL (OCT 2014) — ALTERNATE I (OCT 2014)

- (a) Pursuant to the clause at DEAR 952.215-70, Key Personnel, the key personnel for this contract are listed in Section J, Attachment G.

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

- (b) Key personnel team requirements. The Contracting Officer and designated Contracting Officer's Representative(s) shall have direct access to the key personnel assigned to the contract. All key personnel shall be permanently assigned to their respective positions.
- (c) Definitions. In addition to the definitions contained in the clause at DEAR 952.215-70, the following shall apply:
 - (1) The term "reasonably in advance" is defined as 60 calendar days.

- (2) Key personnel are considered “managerial personnel” under the clause at DEAR 970.5245-1, “Property.”
- (d) Contract fee reductions for changes to key personnel.
- (1) Notwithstanding the approval by the Contracting Officer, any time the Project Manager is removed, replaced, or diverted within two (2) years of being placed in the position, the earned fee under the contract maybe permanently reduced by **\$600,000** for each and every such occurrence.
- (2) Notwithstanding the approval by the Contracting Officer, any time a key person other than the Project Manager is removed, replaced, or diverted within two (2) years of being placed in the position, the earned fee may be permanently reduced by **\$600,000** for each and every such occurrence.
- (3) The Contractor may request in writing that the Contracting Officer 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 Contracting Officer shall have the unilateral discretion to make the determination to waive all or part of the reduction in earned fee.

(End of Clause)

H.31 DOE-H-2071 DEPARTMENT OF ENERGY DIRECTIVES (OCT 2014)

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

- (c) Notwithstanding the process described in paragraph(b), the Contracting Officer may direct the Contractor to immediately begin compliance with the requirements of any directive.
- (d) The Contractor and the Contracting Officer shall identify and, if appropriate, agree to any changes to other contract terms and conditions, including cost and schedule, associated with the revision pursuant to the clause of this contract at FAR 52.243-2, “Changes – Cost Reimbursement.”
- (e) Regardless of the performer of the work, the Contractor is responsible for compliance with the requirements of this clause. The Contractor shall include this clause in all subcontracts to the extent necessary to ensure the Contractor’s compliance with these requirements.

(End of Clause)

H.32 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.
- (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 52.223-18, 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.

(End of Clause)

**H.33 DOE-H-2073 RISK MANAGEMENT AND INSURANCE PROGRAMS (DEC 2014)
(REVISED)**

- (a) 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.
- (1) Basic Requirements
- (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. Other forms of coverage must be justified as necessary in the operation of the Department facility and/or the performance of the contract and approved by the DOE.

- (B) Contractors shall not purchase insurance to cover public liability for nuclear incidents without DOE authorization (See DEAR 970.5070, Indemnification, and DEAR 950.70, 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*; and FAR 31.205-19 entitled, *Insurance and Indemnification*, DEAR 931.205-19 entitled, *Insurance and Indemnification*, DEAR 970.3102-05-19 entitled, *Insurance and Indemnification*, DEAR 952.231-71, entitled, *Insurance-Litigation and Claims*, and DEAR 970.5228-1, entitled, *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, 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. (iii) Annual accounting and justification as to the reasonableness of the claims reserve submitted for Contracting Officer's review.
 - d. (iv) Claim reserves, not payable within the year the loss occurred, are discounted to present value based on the prevailing Treasury rate.
- (H) Separately identify and account for interest cost on a Letter of Credit used to guarantee self-insured retention, as an unallowable cost and omitted from charges to the DOE contract.
- (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:

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:

- (A) The amount paid for each claim.
- (B) The amount reserved for each claim.
- (C) The direct expenses related to each claim.
- (D) A summary for the year showing total number of claims.
- (E) A total amount for claims paid.
- (F) A total amount reserved for claims.
- (G) The total amount of direct expenses.

- (H) provide the Contracting Officer with an annual report of insurance costs and/or self-insurance charges. When applicable, separately identify total policy expenses (e.g., commissions, premiums, and costs for claims servicing) and major claims during the year, including those expected to become major claims (e.g., those claims valued at \$100,000 or greater).
- (I) 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

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.

(End of Clause)

H.34 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.

(End of Clause)

H.35 DOE-H-2077 DEPARTMENT OF ENERGY TRAINING INSTITUTE – OCCUPATIONAL HEALTH, SAFETY, AND EMERGENCY RESPONSE (JAN 2017)

- (a) The Contractor shall utilize the Department of Energy (DOE) Training Institute (DTI) resources to the maximum extent practical for occupational, health, safety, and emergency response training. The Contractor, as applicable, shall use DTI by utilizing the reciprocity program, instructor-certification, mobile training teams, and use of common core curriculum as applicable.
- (1) Reciprocity: The DTI Training Reciprocity program evaluates and certifies training programs and core content against DOE requirements, establishing a basis for consistent training. Reciprocity reduces redundant training to improve

employee mobility and project mobilization, saving time and resources.
Reference DOE Policy 364.1.

- (2) Common Core Curriculum: Courses in the Common Core Training Program are developed and maintained by DTI instructional designers and subject matter experts. These courses are available enterprise-wide for delivery by DTI-certified instructors. Common Core Training eliminates duplicative course development and maintenance activities while providing maximum flexibility for delivery.
 - (3) Instructor-Certification: The DTI Instructor Certification Program recognizes subject matter experts and experienced trainers who are qualified to deliver common core courses across the DOE enterprise. The Contractor selects instructors to be certified by DTI.
 - (4) Mobile Training Teams: Mobile Training Teams are available to DOE locations who do not maintain the capability to deliver a specific course. Courses are delivered by certified DTI instructors who are subject matter experts in the topical area.
- (b) DTI course offerings, information on becoming a certified DTI trainer, enrollment, and contact information can be found on <https://ntc.doe.gov/>.
 - (c) DTI training shall be considered common core fundamental material. Contractors are expected to provide gap training needed to address site specifics identified through their approved Integrated Safety Management (ISM) Program and associated program plans required by existing DOE requirements. Gap training shall not repeat fundamental training core content.
 - (d) DTI training is funded by DOE with no cost to the Contractors.
 - (e) The Contractor shall first consider DTI for all applicable training needs and only obtain such training outside of DTI after written approval of the Contracting Officer (CO) following the Contractor's written request containing the following:
 - (1) rationale describing in detail why DTI provided material, including contractor supplemented site specific material, is insufficient,
 - (2) rationale supporting the increased cost, scope, and schedule of maintaining a local course and capability for training instruction proposed in place of DTI training, and
 - (3) rationale as to why the loss of standardization DOE is seeking by using alternative materials is of value to the DOE. Prior to requesting CO approval, the contractor shall complete the course request form at <https://ntc.doe.gov/>. DTI will respond within 10 working days on the availability of DTI course materials that might provide the course or assist in the development of the Contractor course.

- (f) This contract clause shall be flowed down to all subcontractors, and the Contractor is responsible for compliance by its employees and subcontractors.

(End of Clause)

H.36 DOE-H-2078 MULTIFACTOR AUTHENTICATION FOR INFORMATION SYSTEMS (OCT 2014)

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

(End of Clause)

H.37 DOE-H-7001 FACILITIES (SEP 2017)

- (a) 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:
- (1) The Government-owned or leased land, buildings, utilities, equipment and other facilities situated at or near the Strategic Petroleum Reserve Project Management Office at 900 Commerce Road East, New Orleans, LA 70123;
 - (2) Government-owned or leased facilities at such other locations as may be approved by DOE for use under this contract; and
 - (3) Subject to mutual agreement, other facilities may be used in the performance of the work under this contract.
- (b) 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.

(End of Clause)

H.38 DOE-H-7003 CONTRACTOR ASSURANCE SYSTEM (SEP 2017)

- (a) The Contractor shall develop a contractor assurance system that is executed 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.
 - (A) Continuous feedback and performance improvement.
 - (B) An implementation plan (if needed) that considers and mitigates risks.
 - (C) Timely and appropriate communication to the Contracting Officer, including electronic access, of assurance related information.
- (8) The initial contractor assurance system description shall be approved by the Contracting Officer.
- (9) 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.

(End of Clause)

H.39 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.

(End of Clause)

H.40 DOE-H-7005 ADVANCED UNDERSTANDINGS REGARDING ADDITIONAL ITEMS OF ALLOWABLE AND UNALLOWABLE COSTS AND OTHER MATTERS (SEP 2017) (REVISED)

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.

(b) Items of unallowable costs:

- (1) 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.

(2) 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.

(End of Clause)

H.41 DOE-H-7006 ADMINISTRATION OF SUBCONTRACTS (SEP 2017) (REVISED)

- (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/Specifications/Statement of Work” 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 annual fee base. 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.

(End of Clause)

H.42 DOE-H-7008 PRIVACY ACT RECORDS (SEP 2017) (REVISED)

- (a) 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:
- (1) "Personnel Medical Records" (DOE-33) (Excepting Contractor Employees).
 - (2) "Firearms Qualifications Records" (DOE-31) respecting security guards authorized by DOE to carry firearms.
 - (3) "Employee and Visitor Access Control Records" (DOE-51).
 - (4) "Access Control Records of International Visits, Assignments, and Employment at DOE Facilities and Contractor Sites" (DOE-52).
 - (5) "Physical Fitness Test Records" (DOE-77).
- (b) 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.

- (c) 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.

(End of Clause)

H.43 DOE-H-7009 ADDITIONAL DEFINITIONS (SEP 2017) (REVISED)

- (a) “SPRPMO” means the Strategic Petroleum Reserve Project Management Office.
“SPR” means the Strategic Petroleum Reserve.
- (b) “Contractor” means “the Offeror” as specified in Block 15A of Standard Form 33, Section A entitled “Solicitation, Offer and Award” of the contract.
- (c) The term “DOE” means the Department of Energy, “NNSA” means the National Nuclear Security Administration.
- (d) 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.
- (e) “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.
- (f) “Head of Contracting Activity” for the SPRPMO means the Project Manager.
- (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 Management; and
 - (2) National Nuclear Security Administration – Associate Administrator for Acquisition and Project Management.

(End of Clause)

**H.44 DOE-H-7010 SERVICE CONTRACT LABOR STANDARDS (SEP 2017)
(REVISED)**

- (a) 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. Service Contract Labor Standards Wage Determinations are included in Section J, Attachment E.

(End of Clause)

H.45 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.”

(End of Clause)

H.46 DOE-H-7014 STANDARDS OF CONTRACTOR PERFORMANCE EVALUATION (SEP 2017) (REVISED)

- (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 Management & Operation of the SPR. 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 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 & Operation of the SPR. The Parties agree to utilize the process described within Section J, Attachment J entitled "Performance Evaluation and Measurement Plan" (PEMP) to evaluate performance. The Parties further agree that the evaluation process described in Section J, Attachment J 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.
 - (2) The Parties agree that the Contractor will conduct an ongoing self-assessment process as the principal means of determining its compliance with the contract Performance Work Statement and performance indicators identified within Section J, Attachment J. To assist the DOE in accomplishing the appropriate level of oversight, the Contractor shall work in partnership and cooperation with DOE and other external organizations, 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.
 - (3) The Contractor shall provide periodic updates, as requested by the DOE, on the performance against Section J, Attachment J.
 - (4) 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 Strategic Petroleum Reserve's Office of the Project Manager has the lead responsibility for oversight of the programs and activities conducted by the Contractor.
 - (5) The Contracting Officer shall annually provide a written assessment of the Contractor's performance which shall be based upon the process described in Section J, Attachment J. 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 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 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 does not eliminate the Contractor's obligation to comply with all applicable terms and conditions as set forth elsewhere within the contract. In the event the Contracting Officer decides to exercise the rights set forth in paragraphs (a)(1), (a)(5) 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.

(End of Clause)

H.47 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 Clause entitled “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 Clause entitled “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.

(End of Clause)

H.48 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.

(End of Clause)

H.49 DOE-H-7018 EXTERNAL REGULATION (SEP 2017) (REVISED)

The Parties commit to full cooperation with regard to complying with any statutory mandate regarding external regulation of Strategic Petroleum Reserve facilities, whether by 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.

(End of Clause)

H.50 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 I entitled "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.

(End of Clause)

H.51 DOE-H-7020 RESPONSIBLE CORPORATE OFFICIAL (SEP 2017)

- (a) 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:

Responsible Corporate Official:

Name: Mark Fallon

Position: Chairman, Board of Managers

Company/Organization: Strategic Storage Partners, LLC

Address: 1200 Brickyard Lane, Suite 202, Baton Rouge, LA 70802

Phone: 303-741-7162

Facsimile: 202-261-1947

Email: Mark.Fallon@APTIM.com

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.

(End of Clause)

H.52 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 the SPR (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.

(End of Clause)

H.53 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 NOV/NOAVs and fines and penalties.

(End of Clause)

H.54 DOE-H-7023 ALLOCATION OF RESPONSIBILITIES FOR CONTRACTOR (SEP 2017)

- (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.

(End of Clause)

H.55 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 \$100,000. Settlement claims above the \$100,000 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.

(End of Clause)

H.56 DOE-H-7025 LABOR RELATIONS (SEP 2017)

- (a) The Contractor shall respect the right of employees to organize and to form, join, or assist labor organizations, to bargain collectively through their chosen labor representatives, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of these activities.

- (b) The Contractor shall meet with the Contracting Officer or designee(s) for the purpose of reviewing the Contractor's bargaining objectives prior to negotiations of any collective bargaining agreement or revision thereto and shall consult with and obtain the approval of the Contracting Officer regarding appropriate economic bargaining parameters, including those for pension and medical benefit costs, prior to the Contractor entering into the collective bargaining process. During the collective bargaining process, the Contractor shall notify the Contracting Officer before submitting or agreeing to any collective bargaining proposal which can be calculated to affect allowable costs under this contract or which could involve other items of special interest to the Government. During the collective bargaining process, the Contractor shall obtain the approval of the Contracting Officer before proposing or agreeing to changes in any pension or other benefit plans.
- (c) The Contractor will seek to maintain harmonious bargaining relationships that reflect a judicious expenditure of public funds, equitable resolution of disputes and effective and efficient bargaining relationships consistent with the requirements of FAR 22.1 and DEAR 970.2201 and all applicable Federal and State Labor Relations laws.
- (d) The Contractor will notify the Contracting Officer or designee in a timely fashion of all labor relations issues and matters of local interest including organizing initiatives, unfair labor practice, work stoppages, picketing, labor arbitrations, and settlement agreements (to be reported in iBenefits) and will furnish such additional information as may be required from time to time by the Contracting Officer.

(End of Clause)

H.57 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.

(End of Clause)

H.58 DOE-H-7028 LOBBYING RESTRICTIONS (SEP 2017)

- (a) 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.

(End of Clause)

H.59 DOE-H-7030 CONFERENCE SPENDING (MANAGEMENT AND OPERATING CONTRACTS) (SEP 2017)

The Contractor agrees that:

- (a) No cost associated with conference activities shall be allowable under this contract unless the conference is directly and programmatically related to the purpose of the contract and the specific work authorization/order/task directing the conference activities.
- (b) The Contractor shall follow the most current guidance issued by DOE concerning reporting of conference related activities and spending. The Contractor shall request, obtain approval (if \$100,000 or greater), and report all conference activities through the Conference Management Reporting and Approval Tool on the DOE iPortal at <https://iportal.doe.gov>.
- (c) While a conference may be approved by DOE based on estimated cost and attendance to ensure federal funds are used for purposes that are appropriate, cost effective, and important to the core mission, only the Contracting Officer has authority to determine if the costs incurred by the Contractor are allowable, allocable, and reasonable.
- (d) The Contractor and its employees, its sponsors, hosts and attendees shall aggressively seek to limit costs associated with a conference. Conference expenditures shall be kept to the minimum necessary to carry out the Department's mission and consistent with applicable portions of the Federal Travel Regulation, and 48 CFR Chapter 1, the Federal Acquisition Regulation.
- (e) The Contractor shall ensure its conference attendees conduct themselves with the highest level of professionalism and ethical behavior consistent with that expected of DOE employees.
- (f) The Contracting Officer will ensure conference activities are included in the Contractor's annual audit plan.

(End of Clause)

**H.60 DOE-H-7031 INFORMATION TECHNOLOGY ACQUISITIONS (SEP 2017)
(REVISED)**

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 <https://nvd.nist.gov/ncp/repository> commensurate with the mission of the contract. This requirement shall be included in all subcontracts which are for information technology acquisitions; and the Contractor's CIO shall annually certify to the Contracting Officer that this requirement is being incorporated into information technology acquisitions.

(End of Clause)

H.61 DOE-H-7033 SPECIAL FINANCIAL INSTITUTION ACCOUNT AGREEMENT (SEP 2017) (REVISED)

The contractor shall use a Special Financial Institution Account Agreement that is in accordance with DOE requirements (Financial Management Handbook, Chapter 6) and appended to the contract in Section J, Attachment C entitled "Special Financial Institution Account Agreement for Use with the Payments Cleared Financing Agreement."

(End of Clause)

H.62 DOE-H-7035 ACTIVITIES DURING CONTRACT TRANSITION (SEP 2017) (REVISED)

(a) The Contractor will commence Transition Activities as soon as possible after the award of the contract and complete the following activities (to the extent identified in the Contractor's proposal) within 60 days after contract award, except as otherwise authorized by the Contracting Officer. It is currently estimated that transition activities will be completed by June 14, 2025. 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 contract. Upon receipt of written notification from the Contracting Officer that the Transition Activities are considered complete, the Contractor shall assume full responsibility for the contract, effective 12:01 A.M., June 15, 2025.

- (1) Management Systems. Analyze and initiate enhancements, if needed, to the existing management systems {e.g., Finance, Property, Procurement, Human Resources, Information Management, Life Cycle Asset Management, Integrated Safety Management System (including the Environmental Management System)} to assure system adequacy.
- (2) 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.

- (3) 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” and “DEAR 970.5245-1(i)(2)(ii) – Property”, in accordance with overall guidance provided by the Contracting Officer.
- (4) 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 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.
- (5) Human Resources
 - (A) The Contractor will transition the workforce without break in service as operations cease under Contract No. DE-FE0011020.
 - (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 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 Fluor Federal Petroleum Operations, LLC. 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, Chapter 70.5, which can be located on the internet at <https://www.energy.gov/management/articles/department-energy-acquisition-guide>.
 - (H) Initiate the change in sponsorship of benefit programs, as applicable.
 - (I) Initiate analysis of workers’ compensation program relative to Strategic Petroleum Reserve liabilities.
- (b) Contractor agrees to perform the activities set forth in paragraph (a) above at an allowable cost not to exceed \$499,992.00 (as provided by Offeror). 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, Contractor agrees that it will be solely responsible for costs greater than said amount.
- (c) Under the prior contract for the management and operation of Strategic Petroleum Reserve, 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.

(End of Clause)

H.63 DOE-H-7036 WORKFORCE TRANSITION (SEP 2017) (REVISED)

- (a) Hiring Preference. Subject to the availability of funds, the Contractor shall offer employment to all Incumbent Employees in “Regular” or “Term” appointments, as defined in (c), below, who, as of the date the Contractor assumes responsibility for the contract, are in good standing and are engaged in performance of work within the scope of work under this contract. Nothing in this paragraph shall preclude the Contractor

from separating employees when in its judgment it is appropriate to do so based on the employee's performance or conduct.

- (b) Discretionary Incumbent Management Employees Excepted. It is the Contractor's prerogative to establish its own management structure. Therefore, the hiring preference set forth in paragraph (a) above is not applicable to Discretionary Incumbent Management Employees. Discretionary Incumbent Management Employees are individuals permanently assigned to the positions listed below in addition to those assigned to Key Personnel positions as listed in Contract Number DE-FE0011020, in Section J, Attachment G entitled "Key Personnel" as of the date of release of the RFP, including any subsequent changes of these personnel after release. The Contractor may offer employment to said employees, in either their current positions or other positions, at the Contractor's sole discretion. For those Key Personnel positions listed in Contract No. DE-FE0011020 any changes in job positions or classifications shall be accompanied by a commensurate alteration in compensation.

Discretionary Incumbent Management:

Site Director, West Hackberry
Site Director, Bayou Choctaw
Site Director, Bryan Mound
Site Director, Big Hill
Director, Cavern Integrity
Director, Data Systems
Director, Security and Emergency Preparedness
Director, Human Resources and Development
Manager, Energy and Sustainment
General Counsel

- (c) Incumbent Employees.

- (1) "Regular": An employee within this classification has no specified limitation on job duration.
- (2) "Term": An employee within this classification is appointed for a specified period of time exceeding 6 months. Term appointments expiration dates vary. Reappointment at the expiration of the maximum term is made only by grant of tenure or, when appropriate, by a continuing appointment.
- (3) "Temporary": An employee within this classification is appointed for a specified period of time not exceeding 6 months and is not eligible for hiring preference or benefits.
- (4) "Regular" and "Term" full-time employees are eligible for all benefits offered by the incumbent contractor, Fluor Federal Petroleum Operations Company, subject

to the terms, conditions, and limitations of each benefit program. Regular and Term eligible part-time employees' benefits are prorated according to official work schedule. Regular and Term eligible part-time employees are eligible for all benefits available to full-time employees with the exception of payment for time not worked for doctor/dentist visits.

(End of Clause)

H.64 DOE-H-7037 MANAGEMENT AND OPERATING CONTRACTOR (M&O) SUBCONTRACT REPORTING (SEP 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://www.energy.gov/sites/prod/files/2018/07/f53/MOSRC%20Guide%20for%20MO%20Contractors%20v1.6.pdf>. 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).

(End of Clause)

H.65 INFORMATION TECHNOLOGY AND CYBER SECURITY REQUIREMENTS

- (a) General Computing System Use Policies. DOE policies as well as the Information Technology (IT) policies defined at the SPR are intended to protect computer hardware, software, and data from unauthorized access, intentional compromise or destruction, and inadvertent damage. All users including contractor staff are responsible for the protection of computer resources located in their work areas and those computer resources assigned by the SPR to the user. The following computer security requirements apply to all computer users at the SPR.
- (b) Computer Access Request (Including Foreign National Special Requirements). Before any request can be processed the individual needs to have a DOE ID badge or PIV (Personal Identification Verification) card. In order to be assigned a user ID and be allowed access to the SPR computers and network, the person's manager must submit a computer access request or by using the SPR User Management System. The person must also complete the SPRPMO User Certification For Protection of DOE Sensitive Information. If the individual is a foreign national they must fill out a "Foreign National Request" through the Security Department and be properly vetted before being granted access to SPR information systems or data.
- (c) Password. Your assigned login ID and password are for your use only. Your password is not to be disclosed to anyone. You are responsible for all computer work processed under your assigned logon ID and password in accordance with DOE policy.
- (d) User Responsibilities and Prohibited Use. Users must comply with End-User Rules of Behavior defined in Appendix E of the applicable System Security Plan (SSP) for the SPR system being accessed. Users must attend annual computer security awareness briefings.
- (e) Personally Identifiable Information (PII). Protected PII shall not be stored or transmitted on portable/mobile devices or on removable media, or remotely access Protected PII on DOE systems without specific approval of the Designated Approval Official.
- (f) Remote Access. Users shall only do remote access to SPRPMO systems using two-factor authentication with SPRPMO supplied credentials. Remote access to protected PII on government systems must be approved in writing by the Designated Approval Authority. Remote access is any access to an organizational information system by a user (or an information system) communicating through an external, non-organization-controlled network (e.g., the Internet).
- (g) Restriction on the Use of Portable/Removable Media. SPRPMO policy is to restrict the use of portable and removable media to access, collect, create, process, transmit, disseminate, or store SPR information within and outside SPR security areas. Use of portable and removable media to store or transfer SPR electronic information will be considered the exception rather than the normal operating procedure. Only SPR-issued portable and removable media are allowed to be connected to SPR

information systems or networks. Use of Personally Owned Devices (PODs) are not allowed on SPR information systems without prior written approval of the ISSM (Information System Security Manager) or the SPR Designated Approval Official.

- (h) Restriction on the Use of Cellular Technology. SPRPMO policy is to restrict the use of cellular wireless communications technology to access SPR information system assets or data. Cellular technology must be incapacitated or disabled before connecting to any SPR information system or network.

Additionally, in the performance of the information technology and cyber security requirements of this Contract, the Contractor is responsible for compliance with the following items. Consistent with Section I, DEAR 970.5204-2, *Laws, Regulations, and DOE Directives*, omission of any applicable law or regulation from this list does not affect the obligation of the Contractor to comply with such law or regulation.

(End of Clause)

H.66 PROJECT CONTROL SYSTEM

- (a) In the performance of this Contract, the Contractor shall establish, maintain and use a system for the management and control of projects, which meets the requirements set forth in the Contract. The systems shall be cost-effective and of a level of detail commensurate with management principles necessary for management and control of the project. Specific project control systems guideline requirements and time frames for implementation of these requirements shall be transmitted to the Contractor by the Contracting Officer. The systems shall be reviewed by the Contracting Officer, or duly authorized representative(s), for adequacy in meeting the designated requirements. As part of the review procedure, the Contractor shall furnish the Government a description of the project control system applicable to each project as required by the Contracting Officer. The Contractor agrees to provide access to all pertinent records, data and plans as requested by representatives of the Government for the conduct of this review.
- (b) The description of the project control systems accepted by the Contracting Officer shall be maintained and used by the Contractor in the performance of this Contract.
- (c) Contractor changes to the reviewed systems shall be submitted for review and approval as required by the Contracting Officer. When Contracting Officer approval is required, the Contracting Officer shall advise the Contractor of the acceptability of such changes within sixty (60) calendar days after receipt from the Contractor. When systems existing at the time of contract award do not comply with the designated guidelines, adjustments necessary to assure compliance will be made at no change in contract price or fee.

- (d) The Contractor agrees to provide access to all pertinent records and data requested by the Contracting Officer, or duly authorized representative(s), for the purpose of permitting Government surveillance to insure continuing application of the accepted systems to the project or group of projects under this Contract.
- (e) The Contractor shall require that each selected subcontractor, as determined by the Contracting Officer, meet specific guidelines for the project control systems as set forth in subcontract and shall incorporate in all such subcontracts adequate provisions for review and surveillance of subcontractor's systems to be carried out by the prime Contractor, or by the Government when requested by either the Government, prime or subcontractor.

(End of Clause)

H.67 REPORTING REQUIREMENTS

- (a) Work Breakdown Structure. Except as provided for elsewhere in the contract, the Work Breakdown Structure (WBS), as approved by the Contracting Officer, shall provide the basis for all reports required under this contract. The WBS shall be derived from the PWS described in this contract and shall also conform to any implementation guidance which may be provided by the Contracting Officer.
- (b) Periodic Plans and Reports. The Contractor shall submit periodic cost, schedule, and technical performance plans and reports, in such form and substance as required by the Contracting Officer. These periodic plans and reports shall be submitted at the interval, and to the addresses and in the quantities as specified by the Contracting Officer. Where specific forms are required for individual plans and reports, the Contracting Officer shall provide such forms to the Contractor. The plans and reports expected to be submitted by the Contractor are described generally as follows:

General Management Reports narratively summarize schedule, labor, and cost plans and status, and provide explanations of status variances from plans.

Schedule/Labor Cost Reports provide information on schedule, labor and cost plans and status.

Performance Measurement Reports provide information regarding the actual cost of work performed relative to the budgeted cost for work performed relative to the budgeted cost for work scheduled and provide for reporting data on performance measurement baseline maintenance and estimates at completion.

Technical Reports are the means by which scientific, technical, and engineering information acquired in the performance of the work is disseminated. Plans and reports shall be prepared by the Contractor in such a manner as to provide for—

- (1) Consistency with the contract PWS, the Work Authorization Directives (WADs), and the approved WBS.
 - (2) Correlation of data among the various plans and reports.
- (c) Changes in Work Effort. The reporting system established and maintained by the Contractor pursuant to this subsection shall recognize changes in work effort directed by the Contracting Officer, as provided for in the Work Control System. During performance of this contract, the Contractor shall update and/or change, as appropriate, the WBS (including any diagrams, supporting work descriptions, and WBS dictionary) to reflect changes in the PWS or discrete WADs. The Contractor's reporting system shall be able to provide for the following at the WAD level, or such lower level, as specified by the Contracting Officer:
- (1) Incorporate contractual changes affecting estimated cost and schedule in a timely manner.
 - (2) Reconcile estimated cost for those elements of the WBS identified in the contract as either priced line items or discrete WADs, and for those elements at the lowest level of the project summary WBS with current performance measurement budgets in terms of:
 - (3) Changes to the authorized work; and
 - (4) Internal replanning in the detail needed by management for effective control.
 - (5) Prohibit retroactive changes to records pertaining to work performed that will change previously reported costs except for correction of errors and routine accounting adjustments.
 - (6) Prevent revisions to the contract estimated costs except for Government-directed changes to the contractual effort.
 - (7) Document, internal changes to the performance measurement baseline and, on a timely basis, notify the Contracting Officer of such changes.
- (d) The Contractor agrees to provide the Contracting Officer, or designated authorized representatives, access to any and all information and documents comprising the Contractor's reporting system.
- (e) The Contractor shall include the requirements of this clause in all subcontracts that are cost-reimbursement type of contracts when—
- (1) The value of the subcontract is greater than \$2 million, unless specifically waived by the Contracting Officer, and,

- (2) The Contracting Officer determines that the contract/subcontract effort is, or involves, a critical task related to the contract.

(End of Clause)

H.68 WORK AUTHORIZATION

- (a) Prior to the start of each fiscal year, the DOE shall provide the Contractor program execution guidance in sufficient detail to develop estimated costs, scope, and schedule for the performance thereof. The Contractor shall submit to the Contracting Officer or other designated authorized representative, a detailed PWS consistent with Section C, "Performance Work Statement," a budget of estimated costs and corresponding schedule of performance for work to be performed during the next fiscal year. The level of work activities, estimated cost, and schedule shall be a task level 2 of the Work Breakdown Structure (WBS), consistent with the PWS or other level as specified by the Contracting Officer.
- (b) Budget Negotiations: Prior to the authorization to proceed with the performance of any work under this contract, the Contractor and the DOE shall mutually establish a budget of estimated costs, a detailed PWS, and schedule of performance for each task at level 2 of the WBS or as otherwise specified by the Contracting Officer for that fiscal year. The established estimated costs, detailed PWS, and schedule of performance shall be incorporated into the contract's Section J, Attachment B entitled "Work Authorization Directives (WADs)," and by modification. If agreement cannot be reached on the scope, schedule, and/or estimated cost for the WADs, the Contracting Officer shall issue a unilateral modification establishing the estimated cost and issue the WAD pursuant to this subsection authorizing Contractor performance, which shall not be subject to the Contract Clause entitled "Disputes - Alternate I."
- (c) No activities shall be authorized and no costs incurred until either the Contracting Officer has issued direction concerning continuation of activities.
- (d) Work Authorization Directives: The WADs authorizing the Contractor to proceed with performance of the annual PWS, shall be provided in writing to the Contractor by the Contracting Officer. Each WAD so issued will include the following:
 - (1) Authorization number and work initiation date.
 - (2) Description of Work.
 - (3) Revision Number.
 - (4) The total estimated cost for the work to be performed under this authorization and current period estimated cost if the WAD performance schedule exceeds the current fiscal year.

- (5) Appropriate schedule and milestone dates.
 - (6) Cost, schedule, and all other reporting requirements.
 - (7) Performance, objectives, measures, and targets.
 - (8) Date of issue.
 - (9) Responsible DOE Designated Official signature.
 - (10) Contracting Officer signature.
- (e) Performance Direction: Government direction of the performance of all work authorized for performance under this contract shall be in accordance with the Contract Clause entitled “Technical Direction.”
- (f) Modification: The Contracting Officer may at any time and without notice issue WADs within the PWS of this contract requiring additional work, or directing the omission of, or changes to the PWS of this contract. A proposal for adjustment in the budget of estimated costs and schedule of performance of work established in accordance with paragraph (g) of this subsection shall be submitted by the Contractor as mutually agreed upon with the Contracting Officer.
- (g) Expenditure of Funds and Incurrence of Cost: The performance of work and the incurrence of cost in the execution of the PWS of this contract shall be initiated only when authorized in accordance with the provisions of this subsection. The expenditure of monies by the Contractor in the performance of all authorized work shall also be governed by the provisions of the Contract Clause entitled “Obligation of Funds.” The Contractor shall notify the Contracting Officer whenever it anticipates under-running a WAD by more than 10% or over-running a WAD in any amount as identified in the Financial Plan and in accordance with the WAD ceilings.
- (h) Remuneration: An annual fee shall be negotiated in accordance with the contract clause entitled “Total Available Fee: Base Fee Amount and Performance Fee Amount” for the performance of work authorized pursuant to this subsection. In accordance with the Contract Clause entitled “Changes,” when a WAD results in a material change in the negotiated budget of total estimated cost or character of the PWS, an equitable adjustment of the fee shall be made in accordance with the agreement of the parties and the contract shall be modified in writing.
- (i) Order of Precedence: This subsection is of lesser order of precedence than the Contract Clauses entitled “Obligation of Funds,” and “Payments and Advances.” The Contractor is not authorized to incur costs on any WAD which are not in compliance with the other terms and conditions of this contract.

- (j) Conflicts: In the event there is a conflict between the requirements of this subsection and Section J, Attachment F entitled “List of Applicable Directives,” as amended, the Contractor shall obtain guidance from the Contracting Officer.
- (k) Reporting: Reporting shall be in accordance with the Special Contract Requirement entitled “Reporting Requirements.”
- (l) Responsibility to Achieve Environmental, Safety and Health Compliance:
Notwithstanding the provisions of this subsection, the Contractor has, in the event of an emergency, authority to authorize corrective actions as may be necessary to sustain operations in a manner consistent with applicable environmental, safety and health statutes, regulations, and procedures. In the event that the Contractor takes such an action, the Contractor shall notify the Contracting Officer within 24 hours after such action was initiated and, with 30 days after such action has been initiated, submit a proposal for adjustment in the estimated costs and schedule of performance of work established in accordance with paragraphs (a) and (b) of this subsection.

(End of Clause)

H.69 WITHDRAWAL OF WORK

- (a) The Contracting Officer reserves the right to have any of the work contemplated by Section C, Performance Work Statement, of this contract performed by either another contractor or Government employees.
- (b) Work may be withdrawn:
 - (1) In order for the Government to conduct pilot programs;
 - (2) If the Contractor’s estimated cost of the work is considered unreasonable;
 - (3) For less than satisfactory performance by the Contractor; or
 - (4) For any other reason deemed by the Contracting Officer to be in the best interest of the Government.
- (c) If any work is withdrawn by the Contracting Officer, the Contractor agrees to fully cooperate with the new performing entity and to provide whatever support is required.
- (d) The contract will be modified to reduce the estimated costs and fee for any work withdrawn by the Contracting Officer.

(End of Clause)

H.70 PERFORMANCE CRITERIA, MEASURES, OUTPUT TARGETS, AND INCENTIVES

The Government will develop performance criteria, measures and output targets for the coming fiscal year which will be set forth in the Work Authorization Directives developed and issued pursuant to the Section H Provision entitled “Work Authorization.” The Contractor may also propose additional performance measures, which will be negotiated prior to placement in the Work Authorization Directives. The evaluation areas and individual requirements that will be subject to incentivization will be included in the Performance Evaluation and Measurement Plan developed and issued pursuant to the Clause in Section I entitled, “Total Available Fee: Base Fee Amount and Performance Fee Amount.” The evaluation of performance against measures will be a consideration in (1) development of fee awards, if any, (2) the DOE decision whether to exercise the option to extend the contract and (3) terminating the contract for default.

NOTE – COST REDUCTION INCENTIVE: The Department of Energy (DOE) expects the contractor to manage and operate the Strategic Petroleum Reserve in an efficient and effective manner. To this end, the contractor will be provided an incentive to achieve significant cost reduction without adversely affecting the level of performance required by the contract. Details implementing this incentive will be set forth in the annual Performance Evaluation and Measurement Plan issued pursuant to Section I Clause entitled “Total Available Fee: Base Fee Amount and Performance Fee Amount” of this contract. DOE anticipates that up to 25 percent of annual available fee will be assigned to this evaluation area in the Performance Evaluation and Measurement Plan incorporated in the contract in Section J, Attachment J.

The baseline for the measurement of the contractor’s performance will be the contractor’s approved Annual Operating Plan established each fiscal year. Reductions resulting from schedule delays, direction given by the DOE or changes in the mission, work scope, or routine reorganization of the contractor due to changes in the budget do not qualify for this incentive.

(End of Clause)

H.71 EMPLOYEE CONCERNS PROGRAM (ECP)

The Contractor shall submit an implementation plan to the Contracting Officer for approval within 90 days of contract award that describes an Employee Concerns Program (ECP) that implements all programmatic requirements of the applicable DOE Order 442.1B.

(End of Clause)

H.72 ENVIRONMENT, SAFETY, AND HEALTH (ES&H)

- (a) The Contractor shall comply with existing system description document in accordance with the Section I Clause DEAR 970.5223-1 entitled, "Integration of ES&H Into Work Planning and Execution." The Contractor shall submit an update to the existing Integrated Safety Management System (ISMS) Description Document within 60 days of contract award and thereafter in accordance with the Work Authorization Directive. Any changes to the ISMS Description Document after the Contracting Officer's or designee's initial approval, shall be approved by the Contracting Officer or designee.
- (b) The initial update of the ISMS Description Document shall include any revisions to ES&H Plans/Programs and include interfaces with other equivalent plans/program approved by DOE as required by the Contract Clause in Section I entitled "Laws, Regulations, and DOE Directives."
- (c) This contract establishes the agreed-upon safety requirements and other operating parameters for the site-wide operations covered by the contract.

(End of Clause)

H.73 ENVIRONMENTAL PERMITS AND APPLICATIONS

Except as otherwise directed by the Contracting Officer, the Contractor is required to prepare all necessary Federal, State, and local permit applications. If any agency or agencies, which regulate the permits, require the signature of an operator on the permit, the Contractor, in recognition of its operator responsibilities, shall sign the permit as required by the regulators. In the event of termination or expiration of this Contract, DOE will require the new Contractor to accept transfer of all environmental permits executed by the Contractor.

(End of Clause)

H.74 PROHIBITION OF CONTRACTS WITH PERSONS FALSELY LABELING PRODUCTS AS MADE IN AMERICA

Pursuant to FAR 9.405(b), awards shall not be made to entities that are included on the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

Any possible violation of the prohibition against falsely labeling products as made in America, and the entity is not on the List of Parties Excluded from Federal Procurement and Non-procurement Programs, should be promptly reported through the Contracting Officer. The DOE Contracting Officer is responsible for reporting of an entity in violation of the prohibition against falsely labeling products as American-Made to the Office of Management Systems, Office of Procurement and Assistance Management, for potential debarment of the entity pursuant to FAR 9.406-2(a)(4) and 9.406-2(b)(1)(iii).

(End of Clause)

H.75 GOVERNMENT-OWNED PROPERTY AND EQUIPMENT

On June 15, 2025, the Contractor shall accept the transfer of and accountability for Government-owned property and equipment from Contract DE-FE0011020.

(End of Clause)

H.76 TRAVEL RESTRICTIONS

(a) Costs incurred for lodging, meals, and incidental expenses are considered reasonable and allowable to the extent that they do not exceed the maximum per diem rates in effect at the time of travel as set forth in:

- (1) Federal Travel Regulations (FTR) for travel within the 48 states;
- (2) Joint Travel Regulations (JTR) for travel in Alaska, Hawaii, the Commonwealth of Puerto Rico, and territories and possession of the United States; or
- (3) Standardized Regulations (SR) for travel allowances in foreign areas.

The definitions of lodging, meals, and incidental expenses, and special or unusual situations of the above regulations are applicable to Contractor travel.

(b) Airfare costs in excess of the lowest customary standard, coach, or equivalent airfare offered during normal business hours are unallowable except when such accommodations require circuitous routing, require travel during unreasonable hours, excessively prolong travel, result in increased cost that would offset transportation savings, are not reasonably adequate for physical or medial needs of the traveler, or are not reasonably available to meet mission requirements. However, in order for airfare costs in excess of the above standard airfare to be allowable, the applicable condition(s) set forth above must be documented and justified.

(End of Clause)

H.77 SERVICES

Services acquired by the Contractor for the Strategic Petroleum Reserve are acquired for the benefit of the Department of Energy and are immediately resold to the Government as a resale of services in accordance with Texas and Louisiana sales tax provisions.

(End of Clause)

H.78 LITIGATION MANAGEMENT PROCEDURES

- (a) The Contractor shall prepare a Management of Litigation Procedure(s) compliant with Code of Federal Regulations Title 10 Subpart 719, which shall be submitted to the Contracting Officer within 60 days after the effective date of the contract and shall be updated thereafter as required.
- (b) The SPR Chief Counsel is the authorized designee of the Contracting Officer for approval of this Procedure.
- (c) Reasonable litigation and other legal expenses are allowable when incurred in accordance with the DOE-approved Contractor legal management procedures (including cost guidelines) as such procedures may be revised from time to time, and if not otherwise made unallowable by law or the provisions of this contract.

(End of Clause)

H.79 PROVISIONAL PAYMENT OF AWARD FEE

Monthly provisional payments of award fee in the amount of **\$TBD** shall be made to the Contractor. In the event that overpayment results from the payment of fee on a provisional basis, the Contractor shall reimburse the Government upon demand, payable with interest in accordance with contract clause in Section I entitled "Interest."

(End of Clause)

PART II – CONTRACT CLAUSES

SECTION I

CONTRACT CLAUSES

PART II – CONTRACT CLAUSES**SECTION I****CONTRACT CLAUSES****Table of Contents**

Application of FAR and DEAR Clauses incorporated by reference is explained in FAR 52.252-2. Additional information required by certain clauses is provided on the following pages.

I.1	FAR 52.252-2	CLAUSES INCORPORATED BY REFERENCE (FEB 1998)	Full Text
I.2	FAR 52.202-1 DEAR 952.202-1	DEFINITIONS (JUN 2020) (AS MODIFIED BY DEAR DEFINITIONS FEB 2011)	By Reference
I.3	FAR 52.203-3	GRATUITIES (APR 1984)	By Reference
I.4	FAR 52.203-5	COVENANT AGAINST CONTINGENT FEES (MAY 2014)	By Reference
I.5	FAR 52.203-6	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUN 2020)	By Reference
I.6	FAR 52.203-7	ANTI-KICKBACK PROCEDURES (JUN 2020)	By Reference
I.7	FAR 52.203-8	CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (MAY 2014)	By Reference
I.8	FAR 52.203-10	PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (MAY 2014)	By Reference
I.9	FAR 52.203-12	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 2020)	By Reference
I.10	FAR 52.203-13	CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (NOV 2021)	By Reference

I.11	FAR 52.203-14	DISPLAY OF HOTLINE POSTER(S) (NOV 2021)	Full Text
I.12	FAR 52.203-17	CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (NOV 2023)	By Reference
I.13	FAR 52.203-19	PROHIBITION ON REQUIRING CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS – STATEMENTS (JAN 2017)	By Reference
I.14	FAR 52.304-2	SECURITY REQUIREMENTS (MAR 2021)	By Reference
I.15	FAR 52.204-4	PRINTED OR COPIED DOUBLE-SIDED ON POSTCONSUMER FIBER CONTENT PAPER (MAY 2011)	By Reference
I.16	FAR 52.204-9	PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (JAN 2011)	By Reference
I.17	FAR 52.204-10	REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS (JUN 2020)	By Reference
I.18	FAR 52.204-13	SYSTEM FOR AWARD MANAGEMENT MAINTENANCE (OCT 2018)	By Reference
I.19	FAR 52.204-14	SERVICE CONTRACT REPORTING REQUIREMENTS (OCT 2016)	By Reference
I.20	FAR 52.204-18	COMMERCIAL AND GOVERNMENT ENTITY CODE MAINTENANCE (AUG 2020)	By Reference
I.21	FAR 52.204-19	INCORPORATION BY REFERENCE OF REPRESENTATIONS AND CERTIFICATIONS (DEC 2014)	By Reference
I.22	FAR 52.204-21	BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS (NOV 2021)	By Reference

I.23	FAR 52.204-23	PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED OR PROVIDED BY KASPERSKY LAB AND OTHER COVERED ENTITIES (DEC 2023)	By Reference
I.24	FAR 52.204-25	PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (NOV 2021)	By Reference
I.25	FAR 52.204-27	PROHIBITION ON A BYTEDANCE COVERED APPLICATION (JUN 2023)	By Reference
I.26	FAR 52.209-6	PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (NOV 2021)	By Reference
I.27	FAR 52.209-9	UPDATE OF PUBLICLY AVAILABLE INFORMATION REGARDING RESPONSIBILITY MATTERS (OCT 2018)	By Reference
I.28	FAR 52.209-10	PROHIBITION ON CONTRACTING WITH INVERTED DOMESTIC CORPORATIONS (NOV 2015)	By Reference
I.29	FAR 52.210-1	MARKET RESEARCH (NOV 2021)	By Reference
I.30	FAR 52.211-5	MATERIAL REQUIREMENTS (AUG 2000)	By Reference
I.31	FAR 52.215-8	ORDER OF PRECEDENCE – UNIFORM CONTRACT FORMAT (OCT 1997)	By Reference
I.32	FAR 52.215-14	INTEGRITY OF UNIT PRICES (NOV 2021)	By Reference
I.33	FAR 52.215-15	PENSION ADJUSTMENTS AND ASSET REVERSIONS (OCT 2010)	By Reference
I.34	FAR 52.215-17	WAIVER OF FACILITIES CAPITAL COST OF MONEY (OCT 1997)	By Reference

I.35	FAR 52.215-23	LIMITATIONS ON PASS-THROUGH CHARGES (JUN 2020)	By Reference
I.36	FAR 52.217-8	OPTION TO EXTEND SERVICES (NOV 1999)	Full Text
I.37	FAR 52.217-9	OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)	Full Text
I.38	FAR 52.219-4	NOTICE OF PRICE EVALUATION PREFERENCE FOR HUBZONE SMALL BUSINESS CONCERNS (OCT 2022)	By Reference
I.39	FAR 52.219-8	UTILIZATION OF SMALL BUSINESS CONCERNS (SEP 2023)	By Reference
I.40	FAR 52.219-9	SMALL BUSINESS SUBCONTRACTING PLAN (SEP 2023)	By Reference
I.41	FAR 52.219-16	LIQUIDATED DAMAGES- SUBCONTRACTING PLAN (SEP 2021)	By Reference
I.42	FAR 52.219-28	POST-AWARD SMALL BUSINESS PROGRAM REREPRESENTATION (SEP 2023)	By Reference
I.43	FAR 52.222-1	NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)	By Reference
I.44	FAR 52.222-2	PAYMENT FOR OVERTIME PREMIUMS (JULY 1990)	Full Text
I.45	FAR 52.222-3	CONVICT LABOR (JUNE 2003)	By Reference
I.46	FAR 52.222-4	CONTRACT WORK HOURS AND SAFETY STANDARDS - OVERTIME COMPENSATION (MAY 2018)	By Reference
I.47	FAR 52.222-6	CONSTRUCTION WAGE RATE REQUIREMENTS (AUG 2018)	By Reference
I.48	FAR 52.222-7	WITHHOLDING OF FUNDS (MAY 2014)	By Reference
I.49	FAR 52.222-8	PAYROLLS AND BASIC RECORDS (JUL 2021)	By Reference

I.50	FAR 52.222-9	APPRENTICES AND TRAINEES (JULY 2005)	By Reference
I.51	FAR 52.222-10	COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)	By Reference
I.52	FAR 52.222-11	SUBCONTRACTS (LABOR STANDARDS) (MAY 2014)	By Reference
I.53	FAR 52.222-12	CONTRACT TERMINATION-DEBARMENT (MAY 2014)	By Reference
I.54	FAR 52.222-13	COMPLIANCE WITH CONSTRUCTION WAGE RATE REQUIREMENTS AND RELATED REGULATIONS (MAY 2014)	By Reference
I.55	FAR 52.222-14	DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)	By Reference
I.56	FAR 52.222-15	CERTIFICATION OF ELIGIBILITY (MAY 2014)	By Reference
I.57	FAR 52.222-16	APPROVAL OF WAGE RATES (MAY 2014)	By Reference
I.58	FAR 52.222-20	CONTRACTS FOR MATERIALS, SUPPLIES, ARTICLES, AND EQUIPMENT (JUN 2020)	By Reference
I.59	FAR 52.222-21	PROHIBITION OF SEGREGATED FACILITIES (APRIL 2015)	By Reference
I.60	FAR 52.222-26	EQUAL OPPORTUNITY (SEP 2016)	By Reference
I.61	FAR 52.222-35	EQUAL OPPORTUNITY FOR VETERANS (JUN 2020)	By Reference
I.62	FAR 52.222-36	EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (JUN 2020)	By Reference
I.63	FAR 52.222-37	EMPLOYMENT REPORTS ON VETERANS (JUN 2020)	By Reference
I.64	FAR 52.222-38	COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING REQUIREMENTS (FEB 2016)	By Reference

I.65	FAR 52.222-40	NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEC 2010)	By Reference
I.66	FAR 52.222-41	SERVICE CONTRACT LABOR STANDARDS (AUG 2018)	By Reference
I.67	FAR 52.222-50	COMBATING TRAFFICKING IN PERSONS (NOV 2021)	By Reference
I.68	FAR 52.222-54	EMPLOYMENT ELIGIBILITY VERIFICATION (MAY 2022)	By Reference
I.69	FAR 52.222-55	MINIMUM WAGES UNDER EXECUTIVE ORDER 14026 (JAN 2022)	By Reference
I.70	FAR 52.222-62	PAID SICK LEAVE UNDER EXECUTIVE ORDER 13706 (JAN 2022)	By Reference
I.71	FAR 52.223-2	AFFIRMATIVE PROCUREMENT OF BIOBASED PRODUCTS UNDER SERVICE AND CONSTRUCTION CONTRACTS (SEP 2013)	By Reference
I.72	FAR 52.223-3	HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (FEB 2021) ALTERNATE I (JUL 1995)	Full Text
I.73	FAR 52.223-5	POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (MAY 2011)	By Reference
I.74	FAR 52.223-9	ESTIMATE OF PERCENTAGE OF RECOVERED MATERIAL CONTENT FOR EPA-DESIGNATED ITEMS (MAY 2008)	By Reference
I.75	FAR 52.223-10	WASTE REDUCTION PROGRAM (MAY 2011)	By Reference
I.76	FAR 52.223-11	OZONE-DEPLETING SUBSTANCES AND HIGH GLOBAL WARMING POTENTIAL HYDROFLUOROCARBONS (JUN 2016)	By Reference

I.77	FAR 52.223-12	MAINTENANCE, SERVICE, REPAIR, OR DISPOSAL OF REFRIGERATION EQUIPMENT AND AIR CONDITIONERS (JUNE 2016)	By Reference
I.78	FAR 52.223-13	ACQUISITION OF EPEAT®-REGISTERED IMAGING EQUIPMENT (JUNE 2014)	By Reference
I.79	FAR 52.223-14	ACQUISITION OF EPEAT®-REGISTERED TELEVISIONS (JUNE 2014)	By Reference
I.80	FAR 52.223-15	ENERGY EFFICIENCY IN ENERGY CONSUMING PRODUCTS (MAY 2020)	By Reference
I.81	FAR 52.223-16	ACQUISITION OF EPEAT®-REGISTERED PERSONAL COMPUTER PRODUCTS (OCT 2015)	By Reference
I.82	FAR 52.223-17	AFFIRMATIVE PROCUREMENT OF EPA-DESIGNATED ITEMS IN SERVICE AND CONSTRUCTION CONTRACTS (AUG 2018)	By Reference
I.83	FAR 52.223-18	ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (JUN 2020)	By Reference
I.84	FAR 52.223-19	COMPLIANCE WITH ENVIRONMENTAL MANAGEMENT SYSTEMS (MAY 2011)	By Reference
I.85	FAR 52.223-20	AEROSOLS (JUN 2016)	By Reference
I.86	FAR 52.223-21	FOAMS (JUN 2016)	By Reference
I.87	FAR 52.224-1	PRIVACY ACT NOTIFICATION (APR 1984)	By Reference
I.88	FAR 52.224-2	PRIVACY ACT (APR 1984)	By Reference
I.89	FAR 52.224-3	PRIVACY TRAINING (JAN 2017)	By Reference
I.90	FAR 52.225-1	BUY AMERICAN - SUPPLIES (OCT 2022)	By Reference

I.91	FAR 52.225-9	BUY AMERICAN – CONSTRUCTION MATERIALS (OCT 2022)	By Reference
I.92	FAR 52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (FEB 2021)	By Reference
I.93	FAR 52.227-23	RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUN 1987)	Full Text
I.94	FAR 52.230-2	COST ACCOUNTING STANDARDS (JUN 2020)	By Reference
I.95	FAR 52.230-6	ADMINISTRATION OF COST ACCOUNTING STANDARDS (JUN 2010)	By Reference
I.96	FAR 52.232-17	INTEREST (MAY 2014)	By Reference
I.97	FAR 52.232-23	ASSIGNMENT OF CLAIMS (MAY 2014)	By Reference
I.98	FAR 52.232-39	UNENFORCEABILITY OF UNAUTHORIZED OBLIGATIONS (JUN 2013)	By Reference
I.99	FAR 52.232-40	PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (MAR 2023)	By Reference
I.100	FAR 52.233-1	DISPUTES (MAY 2014) ALTERNATE I (DEC 1991)	By Reference
I.101	FAR 52.233-3	PROTEST AFTER AWARD (AUG 1996) ALTERNATE I (JUN 1985)	By Reference
I.102	FAR 52.233-4	APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (OCT 2004)	By Reference
I.103	FAR 52.237-2	PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984)	By Reference
I.104	FAR 52.237-3	CONTINUITY OF SERVICES (JAN 1991)	By Reference
I.105	FAR 52.239-1	PRIVACY OR SECURITY SAFEGUARDS (AUG 1996)	By Reference

I.106	FAR 52.242-1	NOTICE OF INTENT TO DISALLOW COSTS (APR 1984)	By Reference
I.107	FAR 52.242-3	PENALTIES FOR UNALLOWABLE COSTS (DEC 2022)	By Reference
I.108	FAR 52.242-5	PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (JAN 2017)	By Reference
I.109	FAR 52.242-13	BANKRUPTCY (JUL 1995)	By Reference
I.110	FAR 52.243-2	CHANGES – COST REIMBURSEMENT (AUG 1987) ALTERNATE II (APR 1984)	By Reference
I.111	FAR 52.244-5	COMPETITION IN SUBCONTRACTING (DEC 1996)	By Reference
I.112	FAR 52.244-6	SUBCONTRACTS FOR COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (NOV 2023)	By Reference
I.113	FAR 52.246-26	REPORTING NONCONFORMING ITEMS (NOV 2021)	By Reference
I.114	FAR 52.247-63	PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JUNE 2003)	By Reference
I.115	FAR 52.247-64	PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (NOV 2021)	By Reference
I.116	FAR 52.249-6	TERMINATION (COST REIMBURSEMENT) (MAY 2004); MODIFIED BY DEAR 970.4905-1 (DEC 2000)	Full Text
I.117	FAR 52.249-14	EXCUSABLE DELAYS (APR 1984)	By Reference
I.118	FAR 52.251-1	GOVERNMENT SUPPLY SOURCES (APR 2012)	By Reference
I.119	FAR 52.251-2	INTERAGENCY FLEET MANAGEMENT SYSTEM VEHICLES AND RELATED SERVICES (JAN 1991)	By Reference
I.120	FAR 52.252-6	AUTHORIZED DEVIATIONS IN CLAUSES (NOV 2020)	Full Text

I.121	FAR 52.253-1	COMPUTER GENERATED FORMS (JAN 1991)	By Reference
I.122	DEAR 952.203-70	WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000)	By Reference
I.123	DEAR 952.204-2	SECURITY REQUIREMENTS (AUG 2016)	By Reference
I.124	DEAR 952.204-70	CLASSIFICATION/ DECLASSIFICATION (SEP 1997)	By Reference
I.125	DEAR 952.204-75	PUBLIC AFFAIRS (DEC 2000)	By Reference
I.126	DEAR 952.204-77	COMPUTER SECURITY (AUG 2006)	By Reference
I.127	DEAR 952.208-7	TAGGING OF LEASED VEHICLES (APR 1984)	By Reference
I.128	DEAR 952.209-72	ORGANIZATIONAL CONFLICTS OF INTEREST (AUG 2009) ALTERNATE I (FEB 2011)	Full Text
I.129	DEAR 952.215-70	KEY PERSONNEL (DEC 2000)	Full Text
I.130	DEAR 952.217-70	ACQUISITION OF REAL PROPERTY (MAR 2011)	By Reference
I.131	DEAR 952.226-74	DISPLACED EMPLOYEE HIRING PREFERENCE (JUNE 1997)	By Reference
I.132	DEAR 952.242-70	TECHNICAL DIRECTION (DEC 2000)	By Reference
I.133	DEAR 952.247-70	FOREIGN TRAVEL (JUNE 2010)	By Reference
I.134	DEAR 952.251-70	CONTRACTOR EMPLOYEE TRAVEL DISCOUNTS (AUG 2009)	By Reference
I.135	DEAR 970.5203-1	MANAGEMENT CONTROLS (JUNE 2007)	By Reference
I.136	DEAR 970.5203-2	PERFORMANCE IMPROVEMENT AND COLLABORATION (MAY 2006)	By Reference
I.137	DEAR 970.5203-3	CONTRACTOR'S ORGANIZATION (DEC 2000)	By Reference

I.138	DEAR 970.5204-1	COUNTERINTELLIGENCE (DEC 2010) (DEVIATION)	By Reference
I.139	DEAR 970.5204-2	LAWS, REGULATIONS, AND DOE DIRECTIVES (DEC 2000)	By Reference
I.140	DEAR 970.5204-3	ACCESS TO AND OWNERSHIP OF RECORDS (OCT 2014) (DEVIATION MAY 2015)	Full Text
I.141	DEAR 970.5208-1	PRINTING (DEC 2000)	By Reference
I.142	DEAR 970.5211-1	WORK AUTHORIZATION (MAY 2007)	By Reference
I.143	DEAR 970.5215-1	TOTAL AVAILABLE FEE: BASE FEE AMOUNT AND PERFORMANCE FEE AMOUNT (DEC 2000), ALTERNATE II (DEC 2000) AND ALTERNATE IV (DEC 2000)	Full Text
I.144	DEAR 970.5215-3	CONDITIONAL PAYMENT OF FEE, PROFIT, AND OTHER INCENTIVES – FACILITY MANAGEMENT CONTRACTS (AUG 2009), ALTERNATE II (AUG 2009)	Full Text
I.145	DEAR 970.5215-4	COST REDUCTION (AUG 2009)	By Reference
I.146	DEAR 970.5216-7	ALLOWABLE COST AND PAYMENT (OCT 2021) (DEVIATION)	Full Text
I.147	DEAR 970.5222-1	COLLECTIVE BARGAINING AGREEMENTS-MANAGEMENT AND OPERATING CONTRACTS (DEC 2000)	By Reference
I.148	DEAR 970.5222-2	OVERTIME MANAGEMENT (DEC 2000)	By Reference
I.149	DEAR 970.5223-1	INTEGRATION OF ENVIRONMENT, SAFETY AND HEALTH INTO WORK PLANNING AND EXECUTION (DEC 2000)	By Reference
I.150	DEAR 970.5223-4	WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2010)	By Reference

I.151	DEAR 970.5223-6	EXECUTIVE ORDER 13423, STRENGTHENING FEDERAL, ENVIRONMENTAL, ENERGY, AND TRANSPORTATION MANAGEMENT (OCT 2010)	By Reference
I.152	DEAR 970.5223-7	SUSTAINABLE ACQUISITION PROGRAM (OCT 2010)	By Reference
I.153	DEAR 970.5225-1	COMPLIANCE WITH EXPORT CONTROL LAWS AND REGULATIONS (NOV 2015)	By Reference
I.154	DEAR 970.5226-1	DIVERSITY PLAN (DEC 2000)	By Reference
I.155	DEAR 970.5226-3	COMMUNITY COMMITMENT (DEC 2000)	By Reference
I.156	DEAR 970.5227-1	RIGHTS IN DATA—FACILITIES (DEC 2000)	By Reference
I.157	DEAR 970.5227-4	AUTHORIZATION AND CONSENT (AUG 2002)	By Reference
I.158	DEAR 970.5227-5	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2000)	By Reference
I.159	DEAR 970.5227-6	PATENT INDEMNITY SUBCONTRACTS (DEC 2000)	By Reference
I.160	DEAR 970.5227-8	REFUND OF ROYALTIES (AUG 2002)	By Reference
I.161	DEAR 970.5227-11	PATENT RIGHTS - MANAGEMENT AND OPERATING CONTRACTS, FOR PROFIT CONTRACTOR, NON- TECHNOLOGY TRANSFER (DEC 2000)	By Reference
I.162	DEAR 970.5228-1	INSURANCE-LITIGATION AND CLAIMS (JULY 2013)	By Reference
I.163	DEAR 970.5229-1	STATE AND LOCAL TAXES (DEC 2000)	By Reference
I.164	DEAR 970.5231-4	PREEXISTING CONDITIONS (DEC 2000) ALTERNATE II (DEC 2000)	Full Text

I.165	DEAR 970.5232-1	REDUCTION OR SUSPENSION OF ADVANCE, PARTIAL, OR PROGRESS PAYMENTS UPON FINDING OF SUBSTANTIAL EVIDENCE OF FRAUD (DEC 2000)	By Reference
I.166	DEAR 970.5232-2	PAYMENTS AND ADVANCES (DEC 2000) ALTERNATE II (DEC 2000), ALTERNATE III (DEC 2000)	Full Text
I.167	DEAR 970.5232-3	ACCOUNTS, RECORDS, AND INSPECTION (DEC 2010)	By Reference
I.168	DEAR 970.5232-4	OBLIGATION OF FUNDS (DEC 2000)	Full Text
I.169	DEAR 970.5232-5	LIABILITY WITH RESPECT TO COST ACCOUNTING STANDARDS (DEC 2000)	By Reference
I.170	DEAR 970.5232-6	STRATEGIC PARTNERSHIP PROJECTS FUNDING AUTHORIZATION (APRIL 2015)	By Reference
I.171	DEAR 970.5232-7	FINANCIAL MANAGEMENT SYSTEM (DEC 2000)	By Reference
I.172	DEAR 970.5232-8	INTEGRATED ACCOUNTING (DEC 2000)	By Reference
I.173	DEAR 970.5236-1	GOVERNMENT FACILITY SUB-CONTRACT APPROVAL (DEC 2000)	By Reference
I.174	DEAR 970.5242-1	PENALTIES FOR UNALLOWABLE COSTS (AUG 2009)	By Reference
I.175	DEAR 970.5243-1	CHANGES (DEC 2000)	By Reference
I.176	DEAR 970.5244-1	CONTRACTOR PURCHASING SYSTEM (AUG 2016) (DEVIATION)	Full Text
I.177	DEAR 970.5245-1	PROPERTY (AUG 2016)	By Reference
I.178	DOE-I-2001	PERFORMANCE GUARANTEE AND RESPONSIBLE CORPORATE OFFICIAL (OCT 2015)	Full Text

I.1 FAR 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

<https://www.acquisition.gov/browse/index/far>

<https://www.acquisition.gov/dears>

<http://energy.gov/sites/prod/files/maprod/documents/EDEARMarch142011-OPAM-Policy.pdf>

I.11 FAR 52.203-14 DISPLAY OF HOTLINE POSTER(S) (NOV 2021); MODIFIED BY DEAR 903.1004

(a) Definition.

United States, as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) Display of fraud hotline poster(s). Except as provided in paragraph (c)—

(1) During contract performance in the United States, the Contractor shall prominently display in common work areas within business segments performing work under this contract and at contract work sites-

(i) Any agency fraud hotline poster or Department of Homeland Security (DHS) fraud hotline poster identified in paragraph (b)(3) of this clause; and

(ii) Any DHS fraud hotline poster subsequently identified by the Contracting Officer.

(2) Additionally, if the Contractor maintains a company website as a method of providing information to employees, the Contractor shall display an electronic version of the poster(s) at the website.

(3) Any required posters may be obtained as follows:

DOE Hotline Poster: Obtain from <http://energy.gov/ig/downloads/office-inspector-general-hotline-poster>

(c) If the Contractor has implemented a business ethics and conduct awareness program, including a reporting mechanism, such as a hotline poster, then the Contractor need not display any agency fraud hotline posters as required in paragraph (b) of this clause, other than any required DHS posters.

(d) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts that exceed the threshold specified in Federal Acquisition Regulation 3.1004(b)(1) on the date of subcontract award, except when the subcontract—

- (1) Is for the acquisition of a commercial product or commercial service; or
- (2) Is performed entirely outside the United States.

I.33 52.217-8 OPTION TO EXTEND SERVICES (NOV 1999)

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within 30 calendar days of contract expiration.

I.34 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)

(a) The Government may extend the term of this contract by written notice to the Contractor within 180 days of the expiration of the base contract; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 12 months before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 10 years.

I.41 52.222-2 PAYMENT FOR OVERTIME PREMIUMS (JUL 1990)

(a) The use of overtime is authorized under this contract if the overtime premium does not exceed [*] or the overtime premium is paid for work –

- (1) Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;

- (2) By indirect-labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;
 - (3) To perform tests, industrial processes, laboratory procedures, loading or unloading of transportation conveyances, and operations in flight or afloat that are continuous in nature and cannot reasonably be interrupted or completed otherwise; or
 - (4) That will result in lower overall costs to the Government.
- (b) Any request for estimated overtime premiums that exceeds the amount specified above shall include all estimated overtime for contract completion and shall –
- (1) Identify the work unit; *e.g.*, department or section in which the requested overtime will be used, together with present workload, staffing, and other data of the affected unit sufficient to permit the Contracting Officer to evaluate the necessity for the overtime;
 - (2) Demonstrate the effect that denial of the request will have on the contract delivery or performance schedule;
 - (3) Identify the extent to which approval of overtime would affect the performance or payments in connection with other Government contracts, together with identification of each affected contract; and
 - (4) Provide reasons why the required work cannot be performed by using multishift operations or by employing additional personnel.

** Overtime premium established annually by modification.*

I.69 FAR 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (FEB 2021) ALTERNATE I (JUL 1995)

Material (If none, insert None)	Identification No.
_____	_____
_____	_____
_____	_____

(a) "Hazardous material," as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No.313 (including revisions adopted during the term of the contract).

(b) The offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

(c) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.

(d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No.313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No.313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.

(e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No.313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.

(f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.

(g) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(h) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:

(1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to-

(i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;

(ii) Obtain medical treatment for those affected by the material; and

(iii) Have others use, duplicate, and disclose the data for the Government for these purposes.

(2) To use, duplicate, and disclose data furnished under this clause, in accordance with paragraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.

(3) The Government is not precluded from using similar or identical data acquired from other sources.

(i) Except as provided in paragraph (i)(2), the Contractor shall prepare and submit a sufficient number of Material Safety Data Sheets (MSDS's), meeting the requirements of 29 CFR1910.1200(g) and the latest version of Federal Standard No.313, for all hazardous materials identified in paragraph (b) of this clause.

(1) For items shipped to consignees, the Contractor shall include a copy of the MSDS's with the packing list or other suitable shipping document which accompanies each shipment. Alternatively, the Contractor is permitted to transmit MSDS's to consignees in advance of receipt of shipments by consignees, if authorized in writing by the Contracting Officer.

(2) For items shipped to consignees identified by mailing address as agency depots, distribution centers or customer supply centers, the Contractor shall provide one copy of the MSDS's in or on each shipping container. If affixed to the outside of each container, the MSDS's must be placed in a weather resistant envelope.

I.90 FAR 52.227-23 RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUN 1987)

Except for data contained on pages **TBD**, it is agreed that as a condition of award of this contract and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the "Rights in Data—General" clause contained in this contract) in and to the technical data contained in the proposal dated **TBD**, upon which this contract is based.

I.111 FAR 52.249-6 TERMINATION (COST REIMBURSEMENT) (MAY 2004)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part, if-

- (1) The Contracting Officer determines that a termination is in the Government's interest; or
- (2) The Contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the Contracting Officer) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.

- (b) The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying whether termination is for default of the Contractor or for convenience of the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Contractor was not in default or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Government.
- (c) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
- (1) Stop work as specified in the notice.
 - (2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.
 - (3) Terminate all subcontracts to the extent they relate to the work terminated.
 - (4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
 - (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this contract; approval or ratification will be final for purposes of this clause.
 - (6) Transfer title (if not already transferred) and as directed by the Contracting Officer, deliver to the Government-
 - (i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated;
 - (ii) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government; and

- (iii) The jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this contract, the cost of which the Contractor has been or will be reimbursed under this contract.
- (7) Complete performance of the work not terminated.
- (8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.
- (9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in paragraph (c)(6) of this clause; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.
- (d) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.
- (e) After expiration of the plant clearance period as defined in Subpart 49.001 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept the items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
- (f) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information

available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

- (g) Subject to paragraph (f) of this clause, the Contractor and the Contracting Officer may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The contract shall be amended, and the Contractor paid the agreed amount.
- (h) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor, and shall pay that amount, which shall include the following:
 - (1) All costs reimbursable under this contract, not previously paid, for the performance of this contract before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue those costs as rapidly as practicable.
 - (2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in paragraph (h)(1) of this clause.
 - (3) The reasonable costs of settlement of the work terminated, including-
 - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the Contractor's termination settlement proposal may be included.
 - (4) A portion of the fee payable under the contract, determined as follows:
 - (i) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination proposals, less previous payments for fee.

- (ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by the Government is to the total number of articles (or amount of services) of a like kind required by the contract.
- (5) If the settlement includes only fee, it will be determined under paragraph (h)(4) of this clause.
 - (i) The cost principles and procedures in Part 31 of the Federal Acquisition Regulation in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.
- (j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (f), (h), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (f) and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (f), (h) or (l) of this clause, the Government shall pay the Contractor-
 - (1) The amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken; or
 - (2) The amount finally determined on an appeal.
- (k) In arriving at the amount due the Contractor under this clause, there shall be deducted-
 - (1) All unliquidated advance or other payments to the Contractor, under the terminated portion of this contract;
 - (2) Any claim which the Government has against the Contractor under this contract; and
 - (3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under this clause and not recovered by or credited to the Government.
- (l) The Contractor and Contracting Officer must agree to any equitable adjustment in fee for the continued portion of the contract when there is a partial termination. The Contracting Officer shall amend the contract to reflect the agreement.
- (m) (1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for

the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

- (2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.
- (n) The provisions of this clause relating to fee are inapplicable if this contract does not include a fee.

I.115 FAR 52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (NOV 2020)

- (a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.
- (b) The use in this solicitation or contract of any Department of Energy Regulation (48 CFR 9) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

I.122 DEAR 952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST (AUG 2009) ALTERNATE I (FEB 2011)

- (a) Purpose. The purpose of this clause is to ensure that the Contractor (1) is not biased because of its financial, contractual, organizational, or other interests which relate to the work under this contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.
- (b) Scope. The restrictions described herein shall apply to performance or participation by the Contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "Contractor") in the activities covered by this clause as a prime Contractor, subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity. 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.

(1) Use of Contractor's Work Product.

- (i) The Contractor shall be ineligible to participate in any capacity in Department contracts, subcontracts, or proposals therefore (solicited and unsolicited) which stem directly from the Contractor's performance of work under this contract for a period of three (3) years after the completion of this contract. Furthermore, unless so directed in writing by the Contracting Officer, the Contractor shall not perform any advisory and assistance services work under this contract on any of its products or services or the products or services of another firm if the Contractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the Contractor from competing for follow-on contracts for advisory and assistance services.
- (ii) If, under this contract, the Contractor prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the Contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The Contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the Contracting Officer, in which case the restriction in this subparagraph shall not apply.
- (iii) Nothing in this paragraph shall preclude the Contractor from offering or selling its standard and commercial items to the Government.

(2) Access to and use of information.

- (i) If the Contractor, in the performance of this contract, obtains access to information, such as Department plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data which has not been released or otherwise made available to the public, the Contractor agrees that without prior written approval of the Contracting Officer it shall not-
 - (A) Use such information for any private purpose unless the information has been released or otherwise made available to the public;
 - (B) Compete for work for the Department based on such information for a period of six (6) months after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first;

- (C) Submit an unsolicited proposal to the Government which is based on such information until one year after such information is released or otherwise made available to the public; and
 - (D) Release such information unless such information has previously been released or otherwise made available to the public by the Department.
 - (ii) In addition, the Contractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business, or financial information under this contract, it shall treat such information in accordance with any restrictions imposed on such information.
 - (iii) The Contractor may use technical data it first produces under this contract for its private purposes consistent with paragraphs (b)(2)(i)(A) and (D) of this clause and the patent, rights in data, and security provisions of this contract.
- (c) Disclosure after award.
- (1) The Contractor agrees that, if changes, including additions, to the facts disclosed by it prior to award of this contract, occur during the performance of this contract, it shall make an immediate and full disclosure of such changes in writing to the Contracting Officer. Such disclosure may include a description of any action which the Contractor has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. The Department may, however, terminate the contract for convenience if it deems such termination to be in the best interest of the Government.
 - (2) In the event that the Contractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to the Contracting Officer, DOE may terminate this contract for default.
- (d) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this contract, including the existence of an actual or potential organizational conflict of interest at the time of or after award, the Government may terminate the contract for default, disqualify the Contractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this contract.

- (e) Waiver. Requests for waiver under this clause shall be directed in writing to the Contracting Officer and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the Government, the Contracting Officer may grant such a waiver in writing.
- (f) Subcontracts.
 - (1) The Contractor shall include a clause, substantially similar to this clause, including this paragraph (f), in subcontracts expected to exceed the simplified acquisition threshold determined in accordance with 48 CFR part 13 and involving the performance of advisory and assistance services as that term is defined at 48 CFR 2.101. The terms “contract,” “Contractor,” and “Contracting Officer” shall be appropriately modified to preserve the Government’s rights.
 - (2) Prior to the award under this contract of any such subcontracts for advisory and assistance services, the Contractor shall obtain from the proposed subcontractor or consultant the disclosure required by 48 CFR 909.507-1 and shall determine in writing whether the interests disclosed present an actual or significant potential for an organizational conflict of interest. Where an actual or significant potential organizational conflict of interest is identified, the Contractor shall take actions to avoid, neutralize, or mitigate the organizational conflict to the satisfaction of the Contractor. If the conflict cannot be avoided or neutralized, the Contractor must obtain the approval of the DOE Contracting Officer prior to entering into the subcontract.

I.123 DEAR 952.215-70 KEY PERSONNEL (DEC 2000)

- (a) The personnel listed in Section J, Attachment G, are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel, the Contractor must:
 - (1) Notify the Contracting Officer reasonably in advance; (2) submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract; and (3) obtain the Contracting Officer’s written approval. Notwithstanding the foregoing, if the Contractor deems immediate removal or suspension of any member of its management team is necessary to fulfill its obligation to maintain satisfactory standards of employee competency, conduct, and integrity under the clause at 48 CFR 970.5203-3, Contractor’s Organization, the Contractor may remove or suspend such person at once, although the Contractor must notify Contracting Officer prior to or concurrently with such action.
- (b) The list of personnel may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel.

**I.134 DEAR 970.5204-3 ACCESS TO AND OWNERSHIP OF RECORDS (OCT 2014)
(DEVIATION MAY 2015)**

- (a) Government-owned records. Except as provided in paragraph (b) of this clause, all records acquired or generated by the Contractor in its performance of this contract, including records series described within the contract as Privacy Act systems of records shall be the property of the Government and shall be maintained in accordance with 36 Code of Federal Regulations (CFR), Chapter XII, -- Subchapter B, "Records Management." The contractor shall ensure records classified as Privacy Act system of records are maintained in accordance with FAR 52.224-2 "Privacy Act."
- (b) Contractor-owned records. The following records are considered the property of the Contractor and are not within the scope of paragraph (a) of this clause.
- (1) Employment-related records (such as worker's compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns; records generated during the course of responding to allegations of research misconduct; records generated during other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/health-related records and similar files), and non-employee patient medical/health-related records, except those records described by the contract as being operated and maintained by the Contractor in Privacy Act systems of records.
 - (2) Confidential contractor financial information, internal corporate governance records and correspondence between the Contractor and other segments of the Contractor located away from the DOE facility (i.e., the Contractor's corporate headquarters);
 - (3) Records relating to any procurement action by the Contractor, except for records that under 48 CFR 970.5232-3 are described as the property of the Government; and
 - (4) Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges; and
 - (5) The following categories of records maintained pursuant to the technology transfer clause of this contract:
 - (i) Executed license agreements, including exhibits or appendices containing information on royalties, royalty rates, other financial

information, or commercialization plans, and all related documents, notes and correspondence.

- (ii) The Contractor's protected Cooperative Research and Development Agreement (CRADA) information and appendices to a CRADA that contain licensing terms and conditions, or royalty or royalty rate information.
 - (iii) Patent, copyright, mask work, and trademark application files and related contractor invention disclosures, documents and correspondence, where the Contractor has elected rights or has permission to assert rights and has not relinquished such rights or turned such rights over to the Government.
- (c) Contract completion or termination. Upon contract completion or termination, the Contractor shall ensure final disposition of all Government-owned records to a Federal Record Center, the National Archives and Records Administration, to a successor contractor, its designee, or other destinations, as directed by the Contracting Officer.
- (d) Inspection, copying, and audit of records. All records acquired or generated by the Contractor under this contract in the possession of the Contractor, including those described at paragraph (b) of this clause, shall be subject to inspection, copying, and audit by the Government or its designees at all reasonable times, and the Contractor shall afford the Government or its designees reasonable facilities for such inspection, copying, and audit; provided, however, that upon request by the Contracting Officer, the Contractor shall deliver such records to a location specified by the Contracting Officer for inspection, copying, and audit. The Government or its designees shall use such records in accordance with applicable federal laws (including the Privacy Act), as appropriate.
- (e) Applicability. This clause applies to all records created, received and maintained by the Contractor without regard to the date or origination of such records including all records acquired from a predecessor contractor.
- (f) Records maintenance and retention. Contractor shall create, maintain, safeguard, and disposition records in accordance with 36 Code of Federal Regulations (CFR), Chapter XII, -- Subchapter B, "Records Management" and the National Archives and Records Administration (NARA)-approved Records Disposition Schedules. Records retention standards are applicable for all classes of records, whether or not the records are owned by the Government or the Contractor. The Government may waive application of the NARA-approved Records Disposition Schedules, if, upon termination or completion of the contract, the Government exercises its right under paragraph (c) of this clause to obtain copies of records described in paragraph (b) and delivery of records in paragraph (a) of this clause.

(g) Subcontracts.

- (1) The Contractor shall include the requirements of this clause in all subcontracts that contain the *Radiation Protection and Nuclear Criticality* clause at 952.223-72, or whenever an on-site subcontract scope of work (i) could result in potential exposure to: A) radioactive materials; B) beryllium; or C) asbestos or (ii) involves a risk associated with chronic or acute exposure to toxic chemicals or substances or other hazardous materials that can cause adverse health impacts, in accordance with 10 CFR part 851. In determining its flow-down responsibilities, the Contractor shall include the requirements of this clause in all on-site subcontracts where the scope of work is performed in: (A) Radiological Areas and/or Radioactive Materials Areas (as defined at 10 CFR 835.2); (B) areas where beryllium concentrations exceed or can reasonably be expected to exceed action levels specified in 10 CFR 850; (C) an Asbestos Regulated area (as defined at 29 CFR 1926.1101 or 29 CFR 1910.1001); or (D) a workplace where hazard prevention and abatement processes are implemented in compliance with 10 CFR 851.21 to specifically control potential exposure to toxic chemicals or substances or other hazardous materials that can cause long term health impacts.
- (2) The Contractor may elect to take on the obligations of the provisions of this clause in lieu of the subcontractor and maintain records that would otherwise be maintained by the subcontractor.

I.137 DEAR 970.5215-1 TOTAL AVAILABLE FEE: BASE FEE AMOUNT AND PERFORMANCE FEE AMOUNT (DEC 2000), ALTERNATE II (DEC 2000), ALTERNATE IV (DEC 2000)

- (a) Total available fee. Total available fee, consisting of a base fee amount (which may be zero) and a performance fee amount (consisting of an incentive fee component for objective performance requirements, an award fee component for subjective performance requirements, or both) determined in accordance with the provisions of this clause, is available for payment in accordance with the clause of this contract entitled, "Payments and advances."
- (b) Fee Negotiations. Prior to the beginning of each fiscal year under this contract, or other appropriate period as mutually agreed upon and, if exceeding one year, approved by the Senior Procurement Executive, or designee, the Contracting Officer and Contractor shall enter into negotiation of the requirements for the year or appropriate period, including the evaluation areas and individual requirements subject to incentives, the total available fee, and the allocation of fee. The Contracting Officer shall modify this contract at the conclusion of each negotiation to reflect the negotiated requirements, evaluation areas and individual requirements subject to incentives, the total available fee, and the allocation of fee. In the event the parties fail to agree on the requirements, the evaluation areas and individual

requirements subject to incentives, the total available fee, or the allocation of fee, a unilateral determination will be made by the Contracting Officer. The total available fee amount shall be allocated to a twelve month cycle composed of one or more evaluation periods, or such longer period as may be mutually agreed to between the parties and approved by the Senior Procurement Executive, or designee.

- (c) Determination of Total Available Fee Amount Earned.
 - (1) The Government shall, at the conclusion of each specified evaluation period, evaluate the Contractor's performance of all requirements, including performance based incentives completed during the period, and determine the total available fee amount earned. At the Contracting Officer's discretion, evaluation of incentivized performance may occur at the scheduled completion of specific incentivized requirements.
 - (2) The DOE Operations/Field Office Manager, or designee, will be the Deputy Director for the Office of Petroleum Reserves in the Office of Cybersecurity, Energy Security, and Emergency Response. The Contractor agrees that the determination as to the total available fee earned is a unilateral determination made by the DOE Operations/Field Office Manager, or designee.
 - (3) The evaluation of Contractor performance shall be in accordance with the Performance Evaluation and Measurement Plan(s) described in subparagraph (d) of this clause unless otherwise set forth in the contract. The Contractor shall be promptly advised in writing of the fee determination, and the basis of the fee determination. In the event that the Contractor's performance is considered to be less than the level of performance set forth in the Statement of Work, as amended to include the current Work Authorization Directive or similar document, for any contract requirement, it will be considered by the DOE Operations/Field Office Manager, or designee, who may at his/her discretion adjust the fee determination to reflect such performance. Any such adjustment shall be in accordance with the clause entitled, "Conditional Payment of Fee, Profit, and Other Incentives-Facility Management Contracts" if contained in the contract.
 - (4) Award fee not earned during the evaluation period shall not be allocated to future evaluation periods.
- (d) Performance Evaluation and Measurement Plan(s). To the extent not set forth elsewhere in the contract:
 - (1) The Government shall establish a Performance Evaluation and Measurement Plan(s) upon which the determination of the total available fee amount

earned shall be based. The Performance Evaluation and Measurement Plan(s) will address all of the requirements of contract performance specified in the contract directly or by reference. A copy of the Performance Evaluation and Measurement Plan(s) shall be provided to the Contractor-

- (i) Prior to the start of an evaluation period if the requirements, evaluation areas, specific incentives, amount of fee, and allocation of fee to such evaluation areas and specific incentives have been mutually agreed to by the parties; or
 - (ii) Not later than thirty days prior to the scheduled start date of the evaluation period, if the requirements, evaluation areas, specific incentives, amount of fee, and allocation of fee to such evaluation areas and specific incentives have been unilaterally established by the Contracting Officer.
- (2) The Performance Evaluation and Measurement Plan(s) will set forth the criteria upon which the Contractor will be evaluated relating to any technical, schedule, management, and/or cost objectives selected for evaluation. Such criteria should be objective but may also include subjective criteria. The Plan(s) shall also set forth the method by which the total available fee amount will be allocated and the amount earned determined.
- (3) The Performance Evaluation and Measurement Plan(s) may, consistent with the contract statement of work, be revised during the period of performance. The Contracting Officer shall notify the contractor-
- (i) Of such unilateral changes at least ninety calendar days prior to the end of the affected evaluation period and at least thirty calendar days prior to the effective date of the change;
 - (ii) Of such bilateral changes at least sixty calendar days prior to the end of the affected evaluation period; or
 - (iii) If such change, whether unilateral or bilateral, is urgent and high priority, at least thirty calendar days prior to the end of the evaluation period.
- (e) Schedule for total available fee amount earned determinations. The DOE Operations/Field Office Manager, or designee, shall issue the final total available fee amount earned determination in accordance with the schedule set forth in the Performance Evaluation and Measurement Plan(s); or as otherwise set forth in this contract. However, a determination must be made within sixty calendar days after the receipt by the Contracting Officer of the Contractor's self-assessment, if one is

required or permitted by paragraph (f) of this clause, or seventy calendar days after the end of the evaluation period, whichever is later, or a longer period if the Contractor and Contracting Officer agree. If the Contracting Officer evaluates the Contractor's performance of specific requirements on their completion, the payment of any earned fee amount must be made within seventy calendar days (or such other time period as mutually agreed to between the Contracting Officer and the Contractor) after such completion. If the determination is delayed beyond that date, the Contractor shall be entitled to interest on the determined total available fee amount earned at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the payment date. This rate is referred to as the "Renegotiation Board Interest Rate," and is published in the Federal Register semiannually on or about January 1 and July 1. The interest on any late total available fee amount earned determination will accrue daily and be compounded in 30-day increments inclusive from the first day after the schedule determination date through the actual date the determination is issued. That is, interest accrued at the end of any 30-day period will be added to the determined amount of fee earned and be subject to interest if not paid in the succeeding 30-day period.

- (f) Contractor self-assessment. Following each evaluation period, the Contractor may submit a self-assessment, provided such assessment is submitted within five (5) workdays after the end of the period. This self-assessment shall address both the strengths and weaknesses of the Contractor's performance during the evaluation period. Where deficiencies in performance are noted, the Contractor shall describe the actions planned or taken to correct such deficiencies and avoid their recurrence. The DOE Operations/Field Office Manager, or designee, will review the Contractor's self-assessment, if submitted, as part of its independent evaluation of the Contractor's management during the period. A self-assessment, in and of itself may not be the only basis for the award fee determination.

I.138 DEAR 970.5215-3 - CONDITIONAL PAYMENT OF FEE, PROFIT, AND OTHER INCENTIVES — FACILITY MANAGEMENT CONTRACTS (AUG 2009) ALTERNATE II (AUG 2009)

- (a) General.
- (1) The payment of earned fee, fixed fee, profit, or share of cost savings under this contract is dependent upon –
- (i) The Contractor's or Contractor employees' compliance with the terms and conditions of this contract relating to environment, safety and health (ES&H), which includes worker safety and health (WS&H), including performance under an approved Integrated Safety Management System (ISMS); and

- (ii) The Contractor's or Contractor employees' compliance with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information.
 - (2) The ES&H performance requirements of this contract are set forth in its ES&H terms and conditions, including the DOE approved Contractor ISMS or similar document. Financial incentives for timely mission accomplishment or cost effectiveness shall never compromise or impede full and effective implementation of the ISMS and full ES&H compliance.
 - (3) The performance requirements of this contract relating to the safeguarding of Restricted Data and other classified information are set forth in the clauses of this contract entitled, "Security" and "Laws, Regulations, and DOE Directives," as well as in other terms and conditions.
 - (4) If the Contractor does not meet the performance requirements of this contract relating to ES&H or to the safeguarding of Restricted Data and other classified information during any performance evaluation period established under the contract pursuant to the clause of this contract entitled, "Total Available Fee: Base Fee Amount and Performance Fee Amount," otherwise earned fee, fixed fee, profit or share of cost savings may be unilaterally reduced by the Contracting Officer.
- (b) Reduction Amount.
- (1) The amount of earned fee, fixed fee, profit, or share of cost savings that may be unilaterally reduced will be determined by the severity of the performance failure pursuant to the degrees specified in paragraphs (c) and (d) of this clause.
 - (2) If a reduction of earned fee, fixed fee, profit, or share of cost savings is warranted, unless mitigating factors apply, such reduction shall not be less than 26% nor greater than 100% of the amount of earned fee, fixed fee, profit, or the Contractor's share of cost savings for a first degree performance failure, not less than 11% nor greater than 25% for a second degree performance failure, and up to 10% for a third degree performance failure.
 - (3) In determining the amount of the reduction and the applicability of mitigating factors, the Contracting Officer must consider the Contractor's overall performance in meeting the ES&H or security requirements of the contract. Such consideration must include performance against any site specific performance criteria/requirements that provide additional definition, guidance for the amount of reduction, or guidance for the applicability of mitigating factors. In all cases, the Contracting Officer must consider mitigating factors that may warrant a reduction below the applicable range

(see 48 CFR 970.1504-1-2). The mitigating factors include, but are not limited to, the following ((v), (vi), (vii) and (viii) apply to ES&H only).

- (i) Degree of control the Contractor had over the event or incident.
 - (ii) Efforts the Contractor had made to anticipate and mitigate the possibility of the event in advance.
 - (iii) Contractor self-identification and response to the event to mitigate impacts and recurrence.
 - (iv) General status (trend and absolute performance) of: ES&H and compliance in related areas; or of safeguarding Restricted Data and other classified information and compliance in related areas.
 - (v) Contractor demonstration to the Contracting Officer's satisfaction that the principles of industrial ES&H standards are routinely practiced (e.g., Voluntary Protection Program, ISO 14000).
 - (vi) Event caused by "Good Samaritan" act by the Contractor (e.g., offsite emergency response).
 - (vii) Contractor demonstration that a performance measurement system is routinely used to improve and maintain ES&H performance (including effective resource allocation) and to support DOE corporate decision-making (e.g., policy, ES&H programs).
 - (viii) Contractor demonstration that an Operating Experience and Feedback Program is functioning that demonstrably affects continuous improvement in ES&H by use of lessons-learned and best practices inter- and intra-DOE sites.
- (4)
- (i) The amount of fee, fixed fee, profit, or share of cost savings that is otherwise earned by a Contractor during an evaluation period may be reduced in accordance with this clause if it is determined that a performance failure warranting a reduction under this clause occurs within the evaluation period.
 - (ii) The amount of reduction under this clause, in combination with any reduction made under any other clause in the contract, shall not exceed the amount of fee, fixed fee, profit, or the Contractor's share of cost savings that is otherwise earned during the evaluation period.
 - (iii) For the purposes of this clause, earned fee, fixed fee, profit, or share of cost savings for the evaluation period shall mean the amount determined by the Contracting Officer or Fee Determination Official

as otherwise payable based on the Contractor's performance during the evaluation period. Where the contract provides for financial incentives that extend beyond a single evaluation period, this amount shall also include: any provisional amounts determined otherwise payable in the evaluation period; and, if provisional payments are not provided for, the allocable amount of any incentive determined otherwise payable at the conclusion of a subsequent evaluation period. The allocable amount shall be the total amount of the earned incentive divided by the number of evaluation periods over which it was earned.

- (iv) The Government will effect the reduction as soon as practicable after the end of the evaluation period in which the performance failure occurs. If the Government is not aware of the failure, it will effect the reduction as soon as practical after becoming aware. For any portion of the reduction requiring an allocation the Government will effect the reduction at the end of the evaluation period in which it determines the total amount earned under the incentive. If at any time a reduction causes the sum of the payments the Contractor has received for fee, fixed fee, profit, or share of cost savings to exceed the sum of fee, fixed fee, profit, or share of cost savings the Contractor has earned (provisionally or otherwise), the Contractor shall immediately return the excess to the Government. (What the Contractor "has earned" reflects any reduction made under this or any other clause of the contract.)
- (v) At the end of the contract –
 - (A) The Government will pay the Contractor the amount by which the sum of fee, fixed fee, profit, or share of cost savings the Contractor has earned exceeds the sum of the payments the Contractor has received; or
 - (B) The Contractor shall return to the Government the amount by which the sum of the payments the Contractor has received exceeds the sum of fee, fixed fee, profit, or share of cost savings the Contractor has earned. (What the Contractor "has earned" reflects any reduction made under this or any other clause of the contract.)
- (c) Environment, Safety and Health (ES&H). Performance failures occur if the Contractor does not comply with the contract's ES&H terms and conditions, including the DOE approved Contractor ISMS. The degrees of performance failure under which reductions of earned or fixed fee, profit, or share of cost savings will be determined are:

- (1) First Degree: Performance failures that are most adverse to ES&H. Failure to develop and obtain required DOE approval of an ISMS is considered first degree. The Government will perform necessary review of the ISMS in a timely manner and will not unreasonably withhold approval of the Contractor's ISMS. The following performance failures or performance failures of similar import will be considered first degree.
 - (i) Type A accident (defined in DOE Order 225.1A).
 - (ii) Two Second Degree performance failures during an evaluation period.

- (2) Second Degree: Performance failures that are significantly adverse to ES&H. They include failures to comply with an approved ISMS that result in an actual injury, exposure, or exceedance that occurred or nearly occurred but had minor practical long-term health consequences. They also include breakdowns of the Safety Management System. The following performance failures or performance failures of similar import will be considered second degree:
 - (i) Type B accident (defined in DOE Order 225.1A).
 - (ii) Non-compliance with an approved ISMS that results in a near miss of a Type A or B accident. A near miss is a situation in which an inappropriate action occurs, or a necessary action is omitted, but does not result in an adverse effect.
 - (iii) Failure to mitigate or notify DOE of an imminent danger situation after discovery, where such notification is a requirement of the contract.

- (3) Third Degree: Performance failures that reflect a lack of focus on improving ES&H. They include failures to comply with an approved ISMS that result in potential breakdown of the System. The following performance failures or performance failures of similar import will be considered third degree:
 - (i) Failure to implement effective corrective actions to address deficiencies/non-compliances documented through external (e.g., Federal) oversight and/or reported per DOE Order 231.1-2 requirements; or internal oversight of DOE Order 440.1A requirements.
 - (ii) Multiple similar non-compliances identified by external (e.g., Federal) oversight that in aggregate indicate a significant programmatic breakdown.

- (iii) Non-compliances that either have, or may have, significant negative impacts to the worker, the public, or the environment or that indicate a significant programmatic breakdown.
 - (iv) Failure to notify DOE upon discovery of events or conditions where notification is required by the terms and conditions of the contract.
- (d) Safeguarding Restricted Data and Other Classified Information. Performance failures occur if the Contractor does not comply with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information. The degrees of performance failure under which reductions of fee, profit, or share of cost savings will be determined are as follows:
 - (1) First Degree: Performance failures that have been determined, in accordance with applicable law, DOE regulation, or directive, to have resulted in, or that can reasonably be expected to result in, exceptionally grave damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered first degree:
 - (i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating a risk of, loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a Special Access Program (SAP), information identified as sensitive compartmented information (SCI), or high risk nuclear weapons-related data.
 - (ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.
 - (iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.
 - (iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

- (2) Second Degree: Performance failures that have been determined, in accordance with applicable law, DOE regulation, or directive, to have actually resulted in, or that can reasonably be expected to result in, serious damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered second degree:
- (i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.
 - (ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Secret Restricted Data, or other information classified as Secret.
 - (iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Restricted Data or other classified information regardless of classification (except for information covered by paragraph (d)(1)(iii) of this clause).
 - (iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Secret Restricted Data or other classified information classified as Secret.
- (3) Third Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, undue risk to the common defense and security. In addition, this category includes performance failures that result from a lack of Contractor management and/or employee attention to the proper safeguarding of Restricted Data and other classified information. These performance failures may be indicators of future, more severe performance failures and/or conditions, and if identified and corrected early would prevent serious incidents. The following are examples of performance failures or performance failures of similar import that will be considered third degree:
- (i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Restricted Data or other information classified as Confidential.

- (ii) Failure to promptly report alleged or suspected violations of laws, regulations, or directives pertaining to the safeguarding of Restricted Data or other classified information.
 - (iii) Failure to identify or timely execute corrective actions to mitigate or eliminate identified vulnerabilities and reduce residual risk relating to the protection of Restricted Data or other classified information in accordance with the Contractor's Safeguards and Security Plan or other security plan, as applicable.
 - (iv) Contractor actions that result in performance failures which unto themselves pose minor risk, but when viewed in the aggregate indicate degradation in the integrity of the Contractor's safeguards and security management system relating to the protection of Restricted Data and other classified information.
- (e) Minimum requirements for specified level of performance.
- (1) At a minimum the Contractor must perform the following:
 - (i) The requirements with specific incentives which do not require the achievement of cost efficiencies in order to be performed at the level of performance set forth in the Statement of Work, Work Authorization Directive, or similar document unless an otherwise minimum level of performance has been established in the specific incentive;
 - (ii) All of the performance requirements directly related to requirements specifically incentivized which do not require the achievement of cost efficiencies in order to be performed at a level of performance such that the overall performance of these related requirements is at an acceptable level; and
 - (iii) All other requirements at a level of performance such that the total performance of the contract is not jeopardized.
 - (2) The evaluation of the Contractor's achievement of the level of performance shall be unilaterally determined by the Government. To the extent that the Contractor fails to achieve the minimum performance levels specified in the Statement of Work, Work Authorization Directive, or similar document, during the performance evaluation period, the DOE Operations/Field Office Manager, or designee, may reduce any otherwise earned fee, fixed fee, profit, or shared net savings for the performance evaluation period. Such reduction shall not result in the total of earned fee, fixed fee, profit, or shared net savings being less than 25% of the total available fee amount. Such 25% shall include base fee, if any.

- (f) Minimum requirements for cost performance.
 - (1) Requirements incentivized by other than cost incentives must be performed within their specified cost constraint and must not adversely impact the costs of performing unrelated activities.
 - (2) The performance of requirements with a specific cost incentive must not adversely impact the costs of performing unrelated requirements.
 - (3) The Contractor's performance within the stipulated cost performance levels for the performance evaluation period shall be determined by the Government. To the extent the Contractor fails to achieve the stipulated cost performance levels, the DOE Operations/Field Office Manager, or designee, may reduce in whole or in part any otherwise earned fee, fixed fee, profit, or shared net savings for the performance evaluation period. Such reduction shall not result in the total of earned fee, fixed fee, profit, or shared net savings being less than 25% of the total available fee amount. Such 25% shall include base fee, if any.

I.140 DEAR 970.5216-7 ALLOWABLE COST AND PAYMENT (OCT 2021)
(DEVIATION) (DOE POLICY FLASH 2022-5)

(a) Invoicing.

- (1) The Government will make payments to the Contractor per DEAR 970.5232-2, "Payments and advances." The payments will only be for amounts determined to be allowable by the Contracting Officer in accordance with the: Federal Acquisition Regulation (FAR) subpart 31.2 in effect on the date of this contract; the Department of Energy Acquisition Regulation subpart 970.31 in effect on the date of this contract; and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

(b) Reimbursing costs.

- (1) The Government will make payments to the Contractor per DEAR 970.5232-2, "Payments and advances." The payments will only be for allowable costs. For the purpose of reimbursing allowable costs (except as provided in paragraph (b)(2) of this clause, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only—

- (i) Those recorded costs that, at the time of the request for reimbursement, the Contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;
- (ii) When the Contractor is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for-
 - (A) Supplies and services purchased directly for the contract and associated financing payments to subcontractors, provided payments determined due will be made—
 - (1) In accordance with the terms and conditions of a subcontract or invoice; and
 - (2) Ordinarily within 30 days of the submission of the Contractor’s payment request to the Government (the Government will make payments to the Contractor per DEAR 970.5232-2, “Payments and advances”);
 - (B) Materials issued from the Contractor’s inventory and placed in the production process for use on the contract;
 - (C) Direct labor;
 - (D) Direct travel;
 - (E) Other direct in-house costs; and
 - (F) Properly allocable and allowable indirect costs, as shown in the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and
- (iii) The amount of financing payments that have been paid by cash, check, or other forms of payment to subcontractors.
 - (2) Accrued costs of Contractor contributions under employee pension plans shall be excluded until actually paid unless-
 - (i) The Contractor’s practice is to make contributions to the retirement fund quarterly or more frequently; and
 - (ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Contractor’s indirect costs for payment purposes).

(3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) of this clause, allowable indirect costs under this contract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) of this clause.

(4) Any statements in specifications or other documents incorporated in this contract by reference designating performance of services or furnishing of materials at the Contractor's expense or at no cost to the Government shall be disregarded for purposes of cost-reimbursement under this clause.

(c) Small business concerns. The Government will make payments to the Contractor per DEAR 970.5232-2, "Payments and advances."

(d) Final indirect cost rates.

(1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with subpart 42.7 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.

(2)

(i) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Contractor and granted in writing by the Contracting Officer. The Contractor shall support its proposal with adequate supporting data.

(ii) The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.

(iii) An adequate indirect cost rate proposal shall include the following data unless otherwise specified by the cognizant Federal agency official:

(A) Summary of all claimed indirect expense rates, including pool, base, and calculated indirect rate.

(B) General and Administrative expenses (final indirect cost pool). Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts).

(C) Overhead expenses (final indirect cost pool). Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts) for each final indirect cost pool.

(D) Occupancy expenses (intermediate indirect cost pool). Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts) and expense reallocation to final indirect cost pools.

(E) Claimed allocation bases, by element of cost, used to distribute indirect costs.

(F) Facilities capital cost of money factors computation.

(G) Reconciliation of books of account (i.e., General Ledger) and claimed direct costs by major cost element.

(H) Schedule of direct costs by contract and subcontract and indirect expense applied at claimed rates, as well as a subsidiary schedule of Government participation percentages in each of the allocation base amounts.

(I) Schedule of cumulative direct and indirect costs claimed and billed by contract and subcontract.

(J) Subcontract information. Listing of subcontracts awarded to companies for which the contractor is the prime or upper-tier contractor (include prime and subcontract numbers; subcontract value and award type; amount claimed during the fiscal year; and the subcontractor name, address, and point of contact information).

(K) Summary of each time-and-materials and labor-hour contract information, including labor categories, labor rates, hours, and amounts; direct materials; other direct costs; and indirect expense applied at claimed rates.

(L) Reconciliation of total payroll per IRS form 941 to total labor costs distribution.

(M) Listing of decisions/agreements/approvals and description of accounting/organizational changes.

(N) Certificate of final indirect costs (see 52.242-4, Certification of Final Indirect Costs).

(O) Contract closing information for contracts physically completed in this fiscal year (include contract number, period of performance, contract ceiling amounts, contract fee computations, level of effort, and indicate if the contract is ready to close).

(iv) The following supplemental information is not required to determine if a proposal is adequate, but may be required during the audit process:

(A) Comparative analysis of indirect expense pools detailed by account to prior fiscal year and budgetary data.

(B) General organizational information and limitation on allowability of compensation for certain contractor personnel. See 31.205-6(p). Additional salary reference information

is available at <https://www.whitehouse.gov/wp-content/uploads/2017/11/ContractorCompensationCapContractsAwardedBeforeJune24.pdf> and <https://www.whitehouse.gov/wp-content/uploads/2017/11/ContractorCompensationCapContractsAwardedafterJune24.pdf>.

- (C) Identification of prime contracts under which the contractor performs as a subcontractor.
- (D) Description of accounting system (excludes contractors required to submit a CAS Disclosure Statement or contractors where the description of the accounting system has not changed from the previous year's submission).
- (E) Procedures for identifying and excluding unallowable costs from the costs claimed and billed (excludes contractors where the procedures have not changed from the previous year's submission).
- (F) Certified financial statements and other financial data (e.g., trial balance, compilation, review, etc.).
- (G) Management letter from outside CPAs concerning any internal control weaknesses.
- (H) Actions that have been and/or will be implemented to correct the weaknesses described in the management letter from subparagraph (G) of this section.
- (I) List of all internal audit reports issued since the last disclosure of internal audit reports to the Government.
- (J) Annual internal audit plan of scheduled audits to be performed in the fiscal year when the final indirect cost rate submission is made.
- (K) Federal and State income tax returns.
- (L) Securities and Exchange Commission 10-K annual report.
- (M) Minutes from board of directors meetings.
- (N) Listing of delay claims and termination claims submitted which contain costs relating to the subject fiscal year.
- (O) Contract briefings, which generally include a synopsis of all pertinent contract provisions, such as: contract type, contract amount, product or service(s) to be provided, contract performance period, rate ceilings, advance approval requirements, pre-contract cost allowability limitations, and billing limitations.
- (v) The Contractor shall update the billings on all contracts to reflect the final settled rates and update the schedule of cumulative direct and indirect costs claimed and billed, as required in paragraph (d)(2)(iii)(I) of this section, within 60 days after settlement of final indirect cost rates.

(3) The Contractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed- upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.

(4) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.

(5) Within 120 days (or longer period if approved in writing by the Contracting Officer) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates. The completion invoice or voucher shall include settled subcontract amounts and rates. The prime contractor is responsible for settling subcontractor amounts and rates included in the completion invoice or voucher and providing status of subcontractor audits to the contracting officer upon request.

(6)

(i) If the Contractor fails to submit a completion invoice or voucher within the time specified in paragraph (d)(5) of this clause, the Contracting Officer may-

(A) Determine the amounts due to the Contractor under the contract; and

(B) Record this determination in a unilateral modification to the contract.

(ii) This determination constitutes the final decision of the Contracting Officer in accordance with the Disputes clause.

(e) Billing rates. Until final annual indirect cost rates are established for any period, the Government shall reimburse the Contractor at billing rates established by the Contracting Officer or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates-

(1) Shall be the anticipated final rates; and

(2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

(f) Quick-closeout procedures. Quick-closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.

(g) Audit. At any time or times before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of cost audited. Any payment may be-

(1) Reduced by amounts found by the Contracting Officer not to constitute allowable costs; or

(2) Adjusted for prior overpayments or underpayments.

(h) Final payment.

The Government will make final payment to the Contractor per DEAR 970.5232-2, "Payments and advances."

I.159 DEAR 970.5231-4 PREEXISTING CONDITIONS (DEC 2000) -- ALTERNATE II (DEC 2000)

- (a) The Department of Energy agrees to reimburse the Contractor, and the Contractor shall not be held responsible, for any liability (including without limitation, a claim involving strict or absolute liability and any civil fine or penalty), expense, or remediation cost, but limited to those of a civil nature, which may be incurred by, imposed on, or asserted against the Contractor arising out of any condition, act, or failure to act which occurred before the Contractor assumed responsibility on September 1, 2024. To the extent the acts or omissions of the Contractor cause or add to any liability, expense or remediation cost resulting from conditions in existence prior to September 1, 2024, the Contractor shall be responsible in accordance with the terms and conditions of this contract.
- (b) The obligations of the Department of Energy under this clause are subject to the availability of appropriated funds.
- (c) The Contractor has the duty to inspect the facilities and sites and timely identify to the Contracting Officer those conditions which it believes could give rise to a liability, obligation, loss, damage, penalty, fine, claim, action, suit, cost, expense, or disbursement or areas of actual or potential noncompliance with the terms and conditions of this contract or applicable law or regulation. The Contractor has the responsibility to take corrective action, as directed by the Contracting Officer and as required elsewhere in this contract.

I.161 DEAR 970.5232-2 PAYMENTS AND ADVANCES (DEC 2000) -- ALTERNATE II (DEC 2000), ALTERNATE III (DEC 2000)

- (a) Payment of Total Available fee: Base Fee and Performance Fee. The base fee amount, if any, is payable in equal monthly installments. Total available fee amount earned is payable following the Government's Determination of Total Available Fee Amount Earned in accordance with the clause of this contract entitled "Total Available Fee: Base Fee Amount and Performance Fee Amount." Base fee

amount and total available fee amount earned payments shall be made by direct payment or withdrawn from funds advanced or available under this contract, as determined by the Contracting Officer. The Contracting Officer may offset against any such fee payment the amounts owed to the Government by the Contractor, including any amounts owed for disallowed costs under this contract. No base fee amount or total available fee amount earned payment may be withdrawn against the payments cleared financing arrangement without the prior written approval of the Contracting Officer.

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

- (e) Financial settlement. The Government shall promptly pay to the Contractor the unpaid balance of allowable costs (or other items specifically approved in writing by the Contracting Officer) and fee upon termination of the work, expiration of the term of the contract, or completion of the work and its acceptance by the Government after-
- (1) Compliance by the Contractor with DOE's patent clearance requirements; and
 - (2) The furnishing by the Contractor of-
 - (i) An assignment of the Contractor's rights to any refunds, rebates, allowances, accounts receivable, collections accruing to the Contractor in connection with the work under this contract, or other credits applicable to allowable costs under the contract;
 - (ii) A closing financial statement;
 - (iii) The accounting for Government-owned property required by the clause entitled "Property"; and
 - (iv) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract subject only to the following exceptions-
 - (A) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible to exact statement by the Contractor;
 - (B) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided that such claims are not known to the Contractor on the date of the execution of the release; and provided further that the Contractor gives notice of such claims in writing to the Contracting Officer promptly, but not more than one (1) year after the Contractor's right of action first accrues. In addition, the Contractor shall provide prompt notice to the Contracting Officer of all potential claims under this clause, whether in litigation or not (see also Contract Clause, 48 CFR 970.5228-1, "Insurance-Litigation and Claims");
 - (C) Claims for reimbursement of costs (other than expenses of the Contractor by reason of any indemnification of the Government against patent liability), including reasonable

expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents; and

- (D) Claims recognizable under the clause entitled, Nuclear Hazards Indemnity Agreement.
- (3) In arriving at the amount due the Contractor under this clause, there shall be deducted-
- (i) Any claim which the Government may have against the Contractor in connection with this contract; and
 - (ii) Deductions due under the terms of this contract and not otherwise recovered by or credited to the Government. The unliquidated balance of the special financial institution account may be applied to the amount due and any balance shall be returned to the Government forthwith.
- (f) Claims. Claims for credit against funds advanced for payment shall be accompanied by such supporting documents and justification as the Contracting Officer shall prescribe.
- (g) Discounts. The Contractor shall take and afford the Government the advantage of all known and available cash and trade discounts, rebates, allowances, credits, salvage, and commissions unless the Contracting Officer finds that action is not in the best interest of the Government.
- (h) Collections. All collections accruing to the Contractor in connection with the work under this contract, except for the Contractor's fee and royalties or other income accruing to the Contractor from technology transfer activities in accordance with this contract, shall be Government property and shall be processed and accounted for in accordance with applicable requirements imposed by the Contracting Officer pursuant to the Laws, regulations, and DOE directives clause of this contract and, to the extent consistent with those requirements, shall be deposited in the special financial institution account or otherwise made available for payment of allowable costs under this contract, unless otherwise directed by the Contracting Officer.
- (i) Direct payment of charges. The Government reserves the right, upon ten days written notice from the Contracting Officer to the Contractor, to pay directly to the persons concerned, all amounts due which otherwise would be allowable under this contract. Any payment so made shall discharge the Government of all liability to the Contractor, therefore.
- (j) Determining allowable costs. The Contracting Officer shall determine allowable costs in accordance with the Federal Acquisition Regulation subpart 31.2 and the

Department of Energy Acquisition Regulation subpart 48 CFR 970.31 in effect on the date of this contract and other provisions of this contract.

- (k) Review and approval of costs incurred. The Contractor shall prepare and submit annually as of September 30, a "Statement of Costs Incurred and Claimed" (Cost Statement) for the total of net expenditures accrued (i.e., net costs incurred) for the period covered by the Cost Statement. The Contractor shall certify the Cost Statement subject to the penalty provisions for unallowable costs as stated in sections 306(b) and (i) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 256), as amended. DOE, after audit and appropriate adjustment, will approve such Cost Statement. This approval by DOE will constitute an acknowledgment by DOE that the net costs incurred are allowable under the contract and that they have been recorded in the accounts maintained by the Contractor in accordance with DOE accounting policies but will not relieve the Contractor of responsibility for DOE's assets in its care, for appropriate subsequent adjustments, or for errors later becoming known to DOE.

I.163 DEAR 970.5232-4 OBLIGATION OF FUNDS (DEC 2000)

- (a) Obligation of funds. The amount presently obligated by the Government with respect to this contract is **\$499,992.00**. Such amount may be increased unilaterally by DOE by written notice to the Contractor and may be increased or decreased by written agreement of the parties (whether or not by formal modification of this contract). Estimated collections from others for work and services to be performed under this contract are not included in the amount presently obligated. Such collections, to the extent actually received by the Contractor, shall be processed and accounted for in accordance with applicable requirements imposed by the Contracting Officer pursuant to the Laws, regulations, and DOE directives clause of this contract. Nothing in this paragraph is to be construed as authorizing the Contractor to exceed limitations stated in financial plans established by DOE and furnished to the Contractor from time to time under this contract.
- (b) Limitation on payment by the Government. Except as otherwise provided in this contract and except for costs which may be incurred by the Contractor pursuant to the Termination clause of this contract or costs of claims allowable under the contract occurring after completion or termination and not released by the Contractor at the time of financial settlement of the contract in accordance with the clause entitled "Payments and Advances," payment by the Government under this contract on account of allowable costs shall not, in the aggregate, exceed the amount obligated with respect to this contract, less the Contractor's fee and any negotiated fixed amount. Unless expressly negated in this contract, payment on account of those costs excepted in the preceding sentence which are in excess of the amount obligated with respect to this contract shall be subject to the availability of-

- (1) Collections accruing to the Contractor in connection with the work under this contract and processed and accounted for in accordance with applicable requirements imposed by the Contracting Officer pursuant to the Laws, regulations, and DOE directives clause of this contract; and
 - (2) Other funds which DOE may legally use for such purpose, provided DOE will use its best efforts to obtain the appropriation of funds for this purpose if not otherwise available.
- (c) Notices-Contractor excused from further performance. The Contractor shall notify DOE in writing whenever the unexpended balance of available funds (including collections available under paragraph (a) of this clause), plus the Contractor's best estimate of collections to be received and available during the 90 day period hereinafter specified, is in the Contractor's best judgment sufficient to continue contract operations at the programmed rate for only 90 days and to cover the Contractor's unpaid fee and any negotiated fixed amounts, and outstanding encumbrances and liabilities on account of costs allowable under the contract at the end of such period. Whenever the unexpended balance of available funds (including collections available under paragraph (a) of this clause), less the amount of the Contractor's fee then earned but not paid and any negotiated fixed amounts, is in the Contractor's best judgment sufficient only to liquidate outstanding encumbrances and liabilities on account of costs allowable under this contract, the Contractor shall immediately notify DOE and shall make no further encumbrances or expenditures (except to liquidate existing encumbrances and liabilities), and, unless the parties otherwise agree, the Contractor shall be excused from further performance (except such performance as may become necessary in connection with termination by the Government) and the performance of all work hereunder will be deemed to have been terminated for the convenience of the Government in accordance with the provisions of the Termination clause of this contract.
- (d) Financial plans; cost and encumbrance limitations. In addition to the limitations provided for elsewhere in this contract, DOE may, through financial plans, such as Approved Funding Programs, or other directives issued to the Contractor, establish controls on the costs to be incurred and encumbrances to be made in the performance of the contract work. Such plans and directives may be amended or supplemented from time to time by DOE. The contractor agrees-
- (1) To comply with the specific limitations (ceilings) on costs and encumbrances set forth in such plans and directives;
 - (2) To comply with other requirements of such plans and directives; and
 - (3) To notify DOE promptly, in writing, whenever it has reason to believe that any limitation on costs and encumbrances will be exceeded or substantially underrun.

- (e) Government's right to terminate not affected. The giving of any notice under this clause shall not be construed to waive or impair any right of the Government to terminate the contract under the provisions of the Termination clause of this contract.

**I. 171 DEAR 970.5244-1 CONTRACTOR PURCHASING SYSTEM (AUG 2016)
DEVIATION (DOE POLICY FLASHES 2013-64 AND 2015-17)**

- (a) *General.* The Contractor shall develop, implement, and maintain formal policies, practices, and procedures to be used in the award of subcontracts consistent with this clause and 48 CFR subpart 970.44. The Contractor's purchasing system and methods shall be fully documented, consistently applied, and acceptable to the Department of Energy (DOE) in accordance with 48 CFR 970.4401-1. The Contractor shall maintain file documentation which is appropriate to the value of the purchase and is adequate to establish the propriety of the transaction and the price paid. The Contractor's purchasing performance will be evaluated against such performance criteria and measures as may be set forth elsewhere in this contract. DOE reserves the right at any time to require that the Contractor submit for approval any or all purchases under this contract. The Contractor shall not purchase any item or service, the purchase of which is expressly prohibited by the written direction of DOE and shall use such special and directed sources as may be expressly required by the DOE Contracting Officer. DOE will conduct periodic appraisals of the Contractor's management of all facets of the purchasing function, including the Contractor's compliance with its approved system and methods. Such appraisals will be performed through the conduct of Contractor Purchasing System Reviews in accordance with 48 CFR subpart 44.3, or, when approved by the Contracting Officer, through the Contractor's participation in the conduct of the Balanced Scorecard performance measurement and performance management system. The Contractor's approved purchasing system and methods shall include the requirements set forth in paragraphs (b) through (y) of this clause.
- (b) *Acquisition of utility services.* Utility services shall be acquired in accordance with the requirements of 48 CFR subpart 970.41.
- (c) *Acquisition of real property.* Real property shall be acquired in accordance with 48 CFR subpart 917.74.
- (d) *Advance notice of proposed subcontract awards.* Advance notice shall be provided in accordance with 48 CFR 970.4401-3.
- (e) *Audit of subcontractors.*
- (1) The Contractor shall provide for-
- (i) Periodic post-award audit of cost-reimbursement subcontractors at all tiers; and

- (ii) Audits, where necessary, to provide a valid basis for pre-award or cost or price analysis.
 - (2) Responsibility for determining the costs allowable under each cost-reimbursement subcontract remains with the contractor or next higher-tier subcontractor. The Contractor shall provide, in appropriate cases, for the timely involvement of the Contractor and the DOE Contracting Officer in resolution of subcontract cost allowability.
 - (3) Where audits of subcontractors at any tier are required, arrangements may be made to have the cognizant Federal agency perform the audit of the subcontract. These arrangements shall be made administratively between DOE and the other agency involved and shall provide for the cognizant agency to audit in an appropriate manner in light of the magnitude and nature of the subcontract. In no case, however, shall these arrangements preclude determination by the DOE Contracting Officer of the allowability or unallowability of subcontractor costs claimed for reimbursement by the Contractor.
 - (4) Allowable costs for cost reimbursable subcontracts are to be determined in accordance with the cost principles of 48 CFR Part 31, appropriate for the type of organization to which the subcontract is to be awarded, as supplemented by 48 CFR part 931. Allowable costs in the purchase or transfer from contractor-affiliated sources shall be determined in accordance with 48 CFR 970.4402-3 and 48 CFR 31.205-26(e).
- (f) *Bonds and insurance.*
- (1) The Contractor shall require performance bonds in penal amounts as set forth in 48 CFR 28.102-2(a) for all fixed-priced and unit-priced construction subcontracts in excess of \$150,000. The Contractor shall consider the use of performance bonds in fixed-price non-construction subcontracts, where appropriate.
 - (2) For fixed-price, unit-priced and cost reimbursement construction subcontracts in excess of \$150,000, a payment bond shall be obtained on Standard Form 25A modified to name the Contractor as well as the United States of America as obligees. The penal amounts shall be determined in accordance with 48 CFR 28.102-2(b).
 - (3) For fixed-price, unit-priced and cost-reimbursement construction subcontracts greater than \$25,000, but not greater than \$100,000, the Contractor shall select two or more of the payment protections at 48 CFR 28.102-1(b), giving particular consideration to the inclusion of an irrevocable letter of credit as one of the selected alternatives.
 - (4) A subcontractor may have more than one acceptable surety in both construction and other subcontracts, provided that in no case will the liability of any one surety exceed the maximum penal sum for which it is qualified for

any one obligation. For subcontracts other than construction, a co-surety (two or more sureties together) may reinsure amounts in excess of their individual capacity, with each surety having the required underwriting capacity that appears on the list of acceptable corporate sureties.

- (g) *Buy American.* The Contractor shall comply with the provisions of the Buy American Act as reflected in 48 CFR 52.225-1 and 48 CFR 52.225-9. The Contractor shall forward determinations of non-availability of individual items to the DOE Contracting Officer for approval. Items in excess of \$500,000 require the prior concurrence of the Head of Contracting Activity. If, however, the Contractor has an approved purchasing system, the Head of the Contracting Activity may authorize the Contractor to make determinations of non-availability for individual items valued at \$500,000 or less.
- (h) *Construction and architect-engineer subcontracts.*
- (1) *Independent Estimates.* A detailed, independent estimate of costs shall be prepared for all construction work to be subcontracted.
 - (2) *Specifications.* Specifications for construction shall be prepared in accordance with the DOE publication entitled "General Design Criteria Manual."
 - (3) *Prevention of conflict of interest.*
 - (i) The Contractor shall not award a subcontract for construction to the architect-engineer firm or an affiliate that prepared the design. This prohibition does not preclude the award of a "turnkey" subcontract so long as the subcontractor assumes all liability for defects in design and construction and consequential damages.
 - (ii) The Contractor shall not award both a cost-reimbursement subcontract and a fixed-price subcontract for construction or architect-engineer services or any combination thereof to the same firm where those subcontracts will be performed at the same site.
 - (iii) The Contractor shall not employ the construction subcontractor or an affiliate to inspect the firm's work. The contractor shall assure that the working relationships of the construction subcontractor and the subcontractor inspecting its work and the authority of the inspector are clearly defined.
- (i) *Contractor-affiliated sources.* Equipment, materials, supplies, or services from a contractor-affiliated source shall be purchased or transferred in accordance with 48 CFR 970.4402-3.
- (j) *Contractor-subcontractor relationship.* The obligations of the Contractor under paragraph (a) of this clause, including the development of the purchasing system and methods, and purchases made pursuant thereto, shall not relieve the Contractor of any obligation under this contract (including, among other things, the obligation

to properly supervise, administer, and coordinate the work of subcontractors). Subcontracts shall be in the name of the Contractor and shall not bind or purport to bind the Government.

- (k) *Government Property.* The Contractor shall establish and maintain a property management system that complies with criteria in 48 CFR 970.5245-1, Property, and 48 CFR 52.245-1, Government Property.
- (l) *Indemnification.* Except for Price-Anderson Nuclear Hazards Indemnity, no subcontractor may be indemnified except with the prior approval of the Senior Procurement Executive.
- (m) *Leasing of motor vehicles.* Contractors shall comply with 48 CFR subpart 8.11 and 48 CFR subpart 908.11.
- (n) (Reserved)
- (o) *Management, acquisition and use of information resources.* Requirements for automatic data processing resources and telecommunications facilities, services, and equipment, shall be reviewed and approved in accordance with applicable DOE Orders and regulations regarding information resources.
- (p) *Priorities, allocations and allotments.* Priorities, allocations and allotments shall be extended to appropriate subcontracts in accordance with the clause or clauses of this contract dealing with priorities and allocations.
- (q) *Purchase of special items.* Purchase of the following items shall be in accordance with the following provisions of 48 CFR subpart 8.5, 48 CFR subpart 908.71, Federal Management Regulation 41 CFR part 102, and the Federal Property Management Regulation 41 CFR chapter 101:
 - (1) Motor vehicles-48 CFR 908.7101
 - (2) Aircraft-48 CFR 908.7102
 - (3) Security Cabinets-48 CFR 908.7106
 - (4) Alcohol-48 CFR 908.7107
 - (5) Helium-48 CFR subpart 8.5
 - (6) Fuels and packaged petroleum products-48 CFR 908.7109
 - (7) Coal-48 CFR 908.7110
 - (8) Arms and Ammunition-48 CFR 908.7111
 - (9) Heavy Water-48 CFR 908.7121(a)
 - (10) Precious Metals-48 CFR 908.7121(b)
 - (11) Lithium-48 CFR 908.7121(c)
 - (12) Products and services of the blind and severely handicapped-41 CFR 101-26.701

(13) Products made in Federal penal and correctional institutions-41 CFR 101-26.702.

- (r) *Purchase versus lease determinations.* Contractors shall determine whether required equipment and property should be purchased or leased and establish appropriate thresholds for application of lease versus purchase determinations. Such determinations shall be made-
 - (1) At time of original acquisition;
 - (2) When lease renewals are being considered; and
 - (3) At other times as circumstances warrant.
- (s) *Quality assurance.* Contractors shall provide no less protection for the Government in its subcontracts than is provided in the prime contract.
- (t) *Setoff of assigned subcontractor proceeds.* Where a subcontractor has been permitted to assign payments to a financial institution, the assignment shall treat any right of setoff in accordance with 48 CFR 932.803.
- (u) *Strategic and critical materials.* The Contractor may use strategic and critical materials in the National Defense Stockpile.
- (v) *Termination.* When subcontracts are terminated as a result of the termination of all or a portion of this contract, the Contractor shall settle with subcontractors in conformity with the policies and principles relating to settlement of prime contracts in 48 CFR subparts 49.1, 49.2 and 49.3. When subcontracts are terminated for reasons other than termination of this contract, the Contractor shall settle such subcontracts in general conformity with the policies and principles in 48 CFR subparts 49.1, 49.2, 49.3 and 49.4. Each such termination shall be documented and consistent with the terms of this contract. Terminations which require approval by the Government shall be supported by accounting data and other information as may be directed by the Contracting Officer.
- (w) *Unclassified controlled nuclear information.* Subcontracts involving unclassified uncontrolled nuclear information shall be treated in accordance with 10 CFR part 1017.
- (x) *Subcontract flowdown requirements.* In addition to terms and conditions that are included in the prime contract which direct application of such terms and conditions in appropriate subcontracts, the Contractor shall include the following clauses in subcontracts, as applicable:
 - (1) Davis-Bacon clauses prescribed in 48 CFR 22.407.
 - (2) Foreign Travel clause prescribed in 48 CFR 952.247-70.
 - (3) Counterintelligence clause prescribed in 48 CFR 970.0404-4(a).
 - (4) Service Contract Act clauses prescribed in 48 CFR 22.1006.

- (5) State and local taxes clause prescribed in 48 CFR 970.2904-1.
- (6) Cost or pricing data clauses prescribed in 48 CFR 970.1504-3-1(b).
- (7) Nondisplacement of Qualified Workers clause prescribed in 48 CFR 22.1207.
- (8) Service Contract Reporting clause prescribed in 48 CFR 4.1705.
- (9) Minimum Wages Under Executive Order 13658 clause prescribed in 48 CFR 22.1906.

(y) *Legal services.* Contractor purchases of litigation and other legal services are subject to the requirements in 10 CFR part 719 and the requirements of this clause.

I.173 DOE-I-2001 PERFORMANCE GUARANTEE AND RESPONSIBLE CORPORATE OFFICIAL (OCT 2015)

The Contractor shall provide a Guarantee of performance from its parent company in the form set forth in the Section J Attachment entitled, 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. 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. Notwithstanding the provisions of this Clause, the Government may contact, as necessary, the single responsible corporate official identified below, who is at a level above the Contractor and who is accountable for the Contractor regarding Contractor performance issues:

Name: Mark Fallon
Position: Chairman, Board of Managers
Company/Organization: Strategic Storage Partners, LLC
Address: 1200 Brickyard Lane, Suite 202, Baton Rouge, LA 70802
Phone: 303-741-7162
Email: Mark.Fallon@APTIM.com

Should the responsible corporate official change during the period of the Contract, the Contractor shall promptly notify the Contracting Officer in writing of the change.

(End of Clause)

PART III – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS

SECTION J

LIST OF ATTACHMENTS

PART III**SECTION J****LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS****LIST OF ATTACHMENTS**

Document	Number of Pages
Attachment A – Advance Understanding	1
Attachment B – Work Authorization Directives	1
Attachment C – Special Financial Institution Account Agreement for Use with the Payments Cleared Financing Agreement	7
Attachment D – Small Business Subcontracting Plan	1
Attachment E – Wage Determinations	1
Attachment F – List of Applicable Directives	3
Attachment G – Key Personnel	1
Attachment H – Reporting Requirements	2
Attachment I – Performance Guarantee Agreement	1
Attachment J – Performance Evaluation and Measurement Plan	1

PART III – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS

SECTION J
LIST OF ATTACHMENTS

ATTACHMENT A – ADVANCE UNDERSTANDING

In accordance with the Section H Clause entitled “Advance Understanding(s),” any advance understandings between DOE and the Contractor will be added as an attachment here.

PART III – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS

SECTION J
LIST OF ATTACHMENTS

ATTACHMENT B - WORK AUTHORIZATION DIRECTIVES

The Contracting Officer will issue all Work Authorization Directives under separate cover.

PART III – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS

SECTION J
LIST OF ATTACHMENTS

ATTACHMENT C

SPECIAL FINANCIAL INSTITUTION ACCOUNT AGREEMENT FOR USE WITH
THE PAYMENTS CLEARED FINANCING AGREEMENT

NOTE: THE OFFEROR SELECTED FOR AWARD WILL BE REQUIRED TO AWARD A COMPETITIVE SUBCONTRACT TO A FINANCIAL INSTITUTION DURING THE TRANSITION PERIOD

(Name of Contractor)
Contract Number XXXXXXXXXX
Department of Energy Account

Agreement entered into this, _____ day of _____, _____, between the UNITED STATES OF AMERICA, represented by the Department of Energy (hereinafter referred to as “DOE”), and _____, a corporation/legal entity existing under the laws of the State of _____ (hereinafter referred to as the Contractor) and the _____, a financial institution corporation existing under the laws of the State of _____, located at _____ (hereinafter referred to as the “Financial Institution”).

RECITALS

- (a) On the effective date of _____, _____, _____, DOE and the Contractor entered into Agreement(s) No. _____, or a Supplemental Agreement(s) thereto, providing for the transfer of funds on a payments-cleared basis.
- (b) DOE requires that amounts transferred to the Contractor thereunder be deposited in a special demand deposit account at a financial institution covered by Department of the Treasury-approved Government deposit insurance organizations that are identified in I TFM 6-9000 (See Figure IX-10).

These special demand deposits must be kept separate from the Contractor’s general or other funds, and the parties agreeable to so depositing said amounts with the Financial Institution.

- (c) The Special Bank Account shall be designated [Name of Contractor], [account title] Account.

PART III – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS

SECTION J
LIST OF ATTACHMENTS

COVENANTS

In consideration of the foregoing, and for other good and valuable considerations, it is agreed that-

- (1) The Government shall have title to the credit balance in said account to secure the repayment of all funds transferred to the Contractor and said title shall be superior to any lien, title, or claim of the Financial Institution with respect to such accounts.
- (2) The Financial Institution shall be bound by the provisions of said Agreement(s) between DOE and the Contractor relating to the transfer of funds into and withdrawal from the above special demand deposit account, which are hereby incorporated into this Agreement by reference, but the Financial Institution shall not be responsible for the application of funds withdrawn from the said Account. After receipt by the Financial Institution of directions from DOE, the Financial Institution shall act thereon and shall be under no liability to any party hereto for any action taken in accordance with the said written directions. Any written directions received by the Financial Institution from the Government upon DOE stationery and purporting to be signed by, or signed at the written direction of, the Government, may, insofar as the rights, duties and liabilities of the Financial Institution are concerned be considered as having been properly issued and filed with the Financial Institution by DOE.
- (3) DOE, or its authorized representatives, shall have access to financial records maintained by the Financial Institution with respect to such special demand deposit account at all reasonable times and for all reasonable purposes, including, but without limitation to, the inspection or copying of such financial records and any or all memoranda, checks, payment requests, correspondence, or documents pertaining thereto. Such financial records shall be preserved by the Financial Institution for a period of six (6) years after the final payment under the Agreement.
- (4) In the event of the services of any writ of attachment, levy of execution, or commencement of garnishment proceedings with respect to the special demand deposit account, the Financial Institution shall promptly notify DOE at-

U.S. Department of Energy
Project Management Office
Planning and Financial Management Division
900 Commerce Road East
New Orleans, LA 70123

PART III – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS**SECTION J**
LIST OF ATTACHMENTS

- (5) DOE shall authorize funds that shall remain available to the extent obligations have been incurred in good faith thereunder by the Contractor to the Financial Institution for the benefit of the special demand deposit account. The Financial Institution agrees to honor, upon presentation for payment, all payments issued by the Contractor and to restrict all withdrawals against the funds authorized to an amount sufficient to maintain the average daily balance in the special demand deposit account in a net positive and as close to zero as administratively possible. In addition, it is also agreed that the Financial Institution shall pay interest penalties on positive balances as follows:

The Financial Institution agrees to service the account in this manner based on the requirements and specifications contained in Solicitation No. DE-SOL-0003490 dated TBD. The Financial Institution agrees that per item costs, detailed in the form “Schedule of Financial Institution Processing Charges,” contained in the Financial Institution’s aforesaid bid will remain constant during the term of this Agreement. The Financial Institution shall calculate the monthly fees based on services rendered and invoice the contractor. The contractor shall issue a check or automated clearing house authorization transfer to the Financial Institution in payment thereof.

- (6) The Financial Institution shall post collateral in accordance with 31 CFR 202 with the Federal Reserve Bank in an amount equal to the net balances in all of the accounts included in this Agreement (including the noninterest-bearing time deposit account), less the Treasury-approved deposit insurance.
- (7) This Agreement, with all its provisions and covenants, shall be in effect for a term of _____ years, beginning on the ____ day of _____, _____ and ending on the _____ day of _____, _____.
- (8) DOE, the Contractor, or the Financial Institution may terminate this Agreement at any time within the Agreement period upon submitting written notification to the others parties ninety (90) days prior to the desired termination date. The specific provisions for operating the account during this 90-day period are contained in covenant (11).
- (9) DOE or the Contractor may terminate this Agreement at any time upon thirty (30) days’ written notice to the Financial Institution if DOE or the Contractor, or both parties, find that the Financial Institution has failed to substantially perform its obligations under this Agreement or that the Financial Institution is performing its obligations in a manner which precludes administering the program in an effective and efficient manner or that precludes the effective utilization of the Government’s cash resources.
- (10) Notwithstanding the provisions of Covenants 8 and 9, in the event the Agreement referenced in Recital (a), between DOE and the Contractor is not renewed or is terminated, this Agreement between DOE, the Contractor, and the Financial Institution shall be terminated automatically upon the delivery of written notice to the Financial Institution.

PART III – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS

SECTION J
LIST OF ATTACHMENTS

- (11) In the event of termination, the Financial Institution agrees to retain the Contractor’s special demand deposit account for an additional 90-day period to clear outstanding payment items. (For compensation by noninterest-bearing time deposit only.)

Within 7 days of the expiration of the Agreement term, an analysis of the special demand deposit account shall be made by DOE to determine whether an insufficient or excessive balance was maintained in the time deposit account to compensate the Financial Institution for service rendered up to the expiration date.

- (a) If the analysis indicates that the Financial Institution has been insufficiently compensated for services rendered up to the expiration of the Agreement, the Contractor shall-
1. Maintain on deposit, during this 90-day period, sufficient Federal funds to reimburse the Financial Institution for prior cumulative loss of earnings, and
 2. Maintain on deposit in the time deposit account sufficient Federal funds to compensate the Financial Institution for services rendered.
- (b) If the analysis indicates that the Financial Institution has been overcompensated for services rendered up to the expiration of the Agreement, DOE shall close out the time deposit account and secure from the Financial Institution a payment in an amount equal to the cumulative excess compensation less compensation for estimated services to be rendered during the 90-day period.
- (c) If cumulative excess compensation is not sufficient to compensate the Financial Institution for services rendered during the 90-day period, adjustments shall be made to the time deposit account to compensate the Financial Institution for the difference between the cost of services rendered during the 90-day period and the cumulative excess compensation.

This Agreement shall continue in effect for the 90-day additional period, with the exception of the following:

1. Term Agreement (Covenant 7)
2. Termination of Agreement (Covenants 8 and 9)

All terms and conditions of the aforesaid bid submitted by the Financial Institution that are not inconsistent with this 90-day additional term shall remain in effect for this period.

The Financial Institution has submitted the forms entitled “Technical Representations and Certifications,” “Schedule of Financial Institution Processing Charges,” and “Calculation of Time Account Balance Required.” These forms have been accepted by the Contractor and the Government and are incorporated herein with the document entitled, “Financial Institution’s Information on the Payments Cleared Arrangement” as an integral part of this Agreement.

PART III – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS

SECTION J
LIST OF ATTACHMENTS

IN WITNESS WHEREOF the parties hereto have caused this Agreement, which consists of _____ pages, to be executed as of the day and year first above written.

Date Signed

By: _____
(Typed Name of Contracting Officer)

(Signature of Contracting Officer)

WITNESS

(Typed Name of Witness)

(Typed Name of Contractor)

(Signature of Witness)

By: _____
(Name of Contractor’s Representative)

Note: In the case of a corporation, a witness is not required. Type or print names under all signatures.

(Signature of Contractor’s Representative)

(Title)

(Address)

(Date Signed)

(Name of Witness)

(Name of Financial Institution)

By: _____
(Name of Financial Institution Representative)

(Signature of Witness)

(Signature of Financial Institution Representative)

Note: In the case of a corporation, a witness is not required. Type or print names under all signatures.

(Title)

(Address)

(Date Signed)

PART III – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS

SECTION J
LIST OF ATTACHMENTS

NOTE

The Contractor, if a corporation, shall cause the following Certificate to be executed under its corporate seal, provided that the same officer shall not execute both the Agreement and the Certificate.

CERTIFICATE

I, _____, certify that I am the _____ of corporation named as Contractor herein; that _____, who signed this Agreement on behalf of the Contractor, was then _____ of said corporation; and that said Agreement was duly signed for in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

(Corporate Seal) (Signature)

NOTE

Financial Institution, if a corporation, shall cause the following Certificate to be executed under its corporate seal, provided that the same officer shall not execute both the Agreement and the Certificate.

CERTIFICATE

I, _____, certify that I am the _____ of corporation named as Financial Institution herein; that _____, who signed this Agreement on behalf of the Financial Institution, was then _____ of said corporation; and that said Agreement was duly signed for in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

(Corporate Seal) (Signature)

PART III – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS

SECTION J
LIST OF ATTACHMENTS

CERTIFICATE

I, _____, certify that I am the _____ of corporation named as Contractor herein; that _____, who signed this Special Bank Account Agreement on behalf of the Contractor, was then _____ of said corporation; and that said Special Bank Account Agreement was duly signed for in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

(Corporate Seal) (Signature)

CERTIFICATE

I, _____, certify that I am the _____ of the corporation named as Financial Institution herein; that _____, who signed this Agreement on behalf of the Financial Institution, was then _____ of said Bank; and that said Special Bank Account Agreement was duly signed for in behalf of said Bank by authority of its governing body and is within the scope of its corporate powers.

(Corporate Seal) (Signature)

PART III – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS

SECTION J
LIST OF ATTACHMENTS

ATTACHMENT D - SMALL BUSINESS SUBCONTRACTING PLAN

The Contractor's approved Small Business Subcontracting Plan will be placed here during transition.

Annual Plans for future fiscal years will be incorporated in the contract by modification.

PART III – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS

SECTION J
LIST OF ATTACHMENTS

ATTACHMENT E - SERVICE CONTRACT ACT (SCA) WAGE DETERMINATIONS

The Wage Determinations applicable to the Management and Operating contract for the period September 1, 2024, through August 31, 2025, are:

State(s)	Wage Determination No.
Louisiana: (Jefferson Parish - Harahan)	2015-5189 Revision No. 25 (07/13/23)
Louisiana: (Iberville Parish - Bayou Choctaw)	2015-5177 Revision No. 22 (06/29/23)
Louisiana: (Cameron Parish - West Hackberry)	2015-5185 Revision No. 23 (06/29/23)
Texas: (Jefferson County - Big Hill)	2015-5217 Revision No. 23 (07/17/23)
Texas: (Brazoria County - Bryan Mound)	2015-5233 Revision No. 25 (06/11/23)
Mississippi: (Hancock County - Stennis Warehouse)	2015-5147 Revision No. 21 (07/13/23)

These Wage Determinations are available at: <https://sam.gov/content/wage-determinations>.

Wage Determinations are incorporated annually by bilateral contract modification.

Revised Wage Determinations for Contract Year 1 will be incorporated during transition.

PART III – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS**SECTION J**
LIST OF ATTACHMENTS**ATTACHMENT F – LIST OF APPLICABLE DOE/SPRPMO DIRECTIVES**

Documents are available at:

DOE Directives at: <https://www.directives.doe.gov>.

SPRPMO Directives are available in the additional documents section of the M&O Contract

Recompetition Reading Room at: https://www.spr.doe.gov/doesec/MO_Recompete.htm

<u>DOE/SPRPMO DIRECTIVES</u>	<u>DATE</u>	<u>TITLE</u>
DOE O 130.1A	01/07/21	Budget Planning, Formulation, Execution and Departmental Performance Management
DOE O 142.3B Chg 1	03/02/22	Unclassified Foreign National Access Program
DOE O 150.1B	12/21/21	Continuity Programs
DOE O 151.1D Chg 1 (MinChg)	10/04/19	Comprehensive Emergency Management System
DOE O 200.1A Chg 2 (Ltd Chg)	08/11/23	Information Technology Management
DOE O 205.1C Chg 1 (LtdChg)	02/03/22	Department of Energy Cybersecurity Program
DOE O 206.1 Chg 1 (MinChg)	11/01/18	Department of Energy Privacy Program
DOE O 206.2 Chg 1 (LtdChg)	09/02/22	Identity, Credential and Access Management (ICAM)
DOE O 210.2A	04/08/11	DOE Corporate Operating Experience Program
DOE O 221.1B	09/27/16	Reporting Fraud, Waste, and Abuse to the Office of Inspector General
DOE O 221.2A	02/25/08	Cooperation with the Office of Inspector General
DOE O 225.1B	03/04/11	Accident Investigations
DOE O 226.1B Chg 1 (Admin Chg)	05/03/22	Implementation of Department of Energy Oversight Policy
DOE O 227.1A Chg 1 (AdminChg)	01/21/20	Independent Oversight Program
DOE O 231.1B Admin Chg 1	11/28/12	Environment, Safety and Health Reporting
DOE O 232.2A Chg 1 (MinChg)	10/04/19	Occurrence Reporting and Processing of Operations Information
DOE O 243.1C	02/07/22	Records Management Program
DOE O 252.1A Admin Chg 1	03/12/13	Technical Standards Program
DOE O 350.1 Chg 7 (LtdChg)	02/19/20	Contractor Human Resource Management Programs

PART III – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS**SECTION J**
LIST OF ATTACHMENTS

<u>DOE/SPRPMO DIRECTIVES</u>	<u>DATE</u>	<u>TITLE</u>
DOE O 413.3B Chg 7 (LtdChg)	06/21/23	Program and Project Management for the Acquisition of Capital Assets
DOE O 414.1D Chg 2 (LtdChg)	09/15/20	Quality Assurance
DOE O 415.1 Chg 2 (MinChg)	01/17/17	Information Technology Project Management
DOE O 420.1C Chg 3 (LtdChg)	10/14/19	Facility Safety
DOE O 422.1 Chg 4 (LtdChg)	02/03/22	Conduct of Operations
DOE O 436.1A	04/25/23	Departmental Sustainability
DOE O 440.2C Chg 3 (LtdChg)	03/21/23	Aviation Management and Safety
DOE O 442.1B	01/31/19	Department of Energy Employee Concerns Program
DOE O 442.2 Chg 1 (PgChg)	07/29/11 10/04/16	Differing Professional Opinions for Technical Issues Involving Environmental, Safety and Health Technical Concerns
DOE O 460.1D Chg 1 (LtdChg)	06/10/22	Hazardous Materials Packaging and Transportation Safety
DOE O 460.2B	06/10/22	Departmental Materials Transportation and Packaging Management
DOE O 470.3C Chg 1 (LtdChg)	09/09/20	Design Basis Threat (DBT) Order
DOE O 470.4B Chg 3 (LtdChg)	09/23/21	Safeguards and Security Program
DOE O 470.5	06/02/14	Insider Threat Program
DOE O 470.6 Chg 1 (MinChg)	01/11/17	Technical Security Program
DOE O 471.1B	03/01/10	Identification and Protection of Unclassified Controlled Nuclear Information
DOE O 471.6 Chg 4 (LtdChg)	08/22/23	Information Security
DOE O 472.2A	06/10/22	Personnel Security
DOE O 475.1	12/10/04	Counterintelligence Program
DOE O 475.2B	10/03/14	Identifying Classified Information
DOE O 520.1B Chg 1 (LtdChg)	11/11/22	Financial Management and Chief Financial Officer Responsibilities
DOE O 544.1 Chg 1 (AdminChg)	11/07/17	Priorities and Allocations Program
DOE 5639.8A	07/23/93	Security of Foreign Intelligence Information and Sensitive Compartmented Information Facilities
DOE 5670.1A	01/15/92	Management and Control of Foreign Intelligence
DOE G 580.1-1A Chg 1 (Ltd Chg)	12/08/21	Personal Property

PART III – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS**SECTION J**
LIST OF ATTACHMENTS

<u>DOE/SPRPMO DIRECTIVES</u>	<u>DATE</u>	<u>TITLE</u>
DOE M 441.1-1 Chg 1 (Admin Chg)	02/24/16	Nuclear Material Packaging
SPRPMO O 130.1C	07/16/15	Management and Operating Contractor's Annual Operating Plan Formulation and Execution
SPRPMO O 151.2D	07/17/14	Drawdown Readiness Program
SPRPMO O 200.2B	03/14/16	Information Management Council and Information Technology Planning Committee
SPRPMO O 200.3A	05/04/16	Information Technology Guidance Implementation Process
SPRPMO O 206.2	06/02/16	Multifactor Authentication
SPRPMO O 206.4B	07/18/22	Strategic Petroleum Reserve Project Management Office Background Reviews and Badging
SPRPMO O 210.1A	09/22/06	Milestone Control
SPRPMO O 210.2C	07/17/23	SPRPMO Performance Measurement Order
SPRPMO O 210.3	10/23/13	Strategic Petroleum Reserve Lessons Learned Program
SPRPMO O 220.1G	09/17/21	On-Site Management Appraisals
SPRPMO O 220.2E	09/12/13	SPRPMO Observation Reports
SPRPMO O 226.1D	09/30/21	SPRPMO Oversight Program
SPRPMO O 232.1A	01/22/15	Occurrence Reporting and Processing System
SPRPMO O 410	01/27/14	SPRPMO Configuration Management Program
SPRPMO O 413.2A	11/14/12	Program and Project Management for the Acquisition of Capital Assets
SPRPMO O 413.3B	08/02/21	Crude Oil Quality Program and Test Criteria
SPRPMO O 414.1D	06/08/15	Quality Assurance Program
SPRPMO O 416.1C	03/19/19	SPRPMO Petroleum Accountability Order
SPRPMO O 420.1E	11/25/19	Conduct of Operations Requirements for SPR
SPRPMO O 430.1C	02/16/16	SPRPMO Reliability, Availability and Maintainability Program
SPRPMO O 431.1A	07/25/11	SPR Design Criteria
SPRPMO O 432.1C	01/28/15	SPR Facilities/Equipment Turnover and Startup Procedure
SPRPMO O 433.1B Chg 1	12/20/11	Maintenance Management Program
SPRPMO O 434.1D	08/06/14	Recovery Program
SPRPMO O 436.1B	11/02/23	Site Sustainability
SPRPMO O 440.2C	02/19/20	Aviation Implementation Plan
SPRPMO O 440.4	08/16/07	Policy on Preventing Violence in the Workplace
SPRPMO O 451.1D	12/22/10	SPRPMO National Environmental Policy Act (NEPA) Implementation Plan
SPRPMO O 470.4B	10/09/19	Strategic Petroleum Reserve Project Management Office (SPRPMO) Security and Emergency Preparedness Order
SPRPMO O 471.2	01/08/14	Reporting Security Incidents (Including Cyber Security)
SPRPMO O 534.1B	08/24/15	Financial Accounting for the Strategic Petroleum Reserve Crude Oil Inventory
SPRPMO N 450.4A	06/15/20	Implementation of Environmental, Safety and Health and Fire Protection Contractor Requirements Documents

PART III – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS

SECTION J
LIST OF ATTACHMENTS

ATTACHMENT G - KEY PERSONNEL

Pursuant to the clause entitled “Key Personnel,” the following positions are considered to be essential to work being performed.

<u>Title</u>	<u>Name</u>
Project Manager	Alan Weakley
Director, Operations and Maintenance	Nick Schulist
Director, Engineering	Steve Schoeni
Director, Environment, Safety and Health	Tim Taulbee
Director, Finance/Chief Financial Officer	Gina Newman

PART III – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS

SECTION J
LIST OF ATTACHMENTS

ATTACHMENT H
REPORTING REQUIREMENTS CHECKLIST

The Reporting Requirements Checklist and specific guidance will be provided to the successful Offeror during the transition period.

REPORTING REQUIREMENTS CHECKLIST

<p>1. PROGRAM/PROJECT TITLE Management and Operation (M&O) Strategic Petroleum Reserve</p>	<p>2. IDENTIFICATION NUMBER TBD</p>									
<p>3. PARTICIPANT NAME AND ADDRESS TBD</p>										
<p>4. PLANNING AND REPORTING REQUIREMENTS</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; vertical-align: top;"> <p>A. General Management</p> <p><input type="checkbox"/> Management Plan <input type="checkbox"/> Status Report <input type="checkbox"/> Summary Report</p> <p>B. Schedule/Labor/Cost</p> <p><input type="checkbox"/> Milestone Schedule/Plan <input type="checkbox"/> Labor Plan <input type="checkbox"/> Facilities Capital Cost of Money Factors Computation <input type="checkbox"/> Contract Facilities Capital and Cost of Money <input type="checkbox"/> Cost Plan <input type="checkbox"/> Milestone Schedule/Status <input type="checkbox"/> Labor Management Report <input type="checkbox"/> Cost Management Report</p> <p>C. Exception Reports</p> <p><input type="checkbox"/> Conference Record <input type="checkbox"/> Hot Line Report</p> <p>D. Performance Measurement</p> <p><input type="checkbox"/> Management Control System Description <input type="checkbox"/> WBS Dictionary</p> <p style="padding-left: 20px;"><input type="checkbox"/> Index <input type="checkbox"/> Element Definition</p> <p><input type="checkbox"/> Cost Performance Reports</p> <p style="padding-left: 20px;"><input type="checkbox"/> Format 1 – WBS Lev. 4 <input type="checkbox"/> Format 2 - Function <input type="checkbox"/> Format 3 – Baseline</p> </td> <td style="width: 50%; vertical-align: top;"> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 50%;"></th> <th style="width: 50%; text-align: center;">Frequency</th> </tr> <tr> <td style="height: 400px;"></td> <td></td> </tr> </table> <p>E. 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Technical</p> <p><input type="checkbox"/> Notice of Energy RD&D Project (Required with any of the following)</p> <p><input type="checkbox"/> Technical Progress Report</p> <p style="padding-left: 20px;"><input type="checkbox"/> Draft for Review <input type="checkbox"/> Final for Approval</p> <p><input type="checkbox"/> Topical Report</p> <p><input type="checkbox"/> Final Technical Report</p> <p style="padding-left: 20px;"><input type="checkbox"/> Draft for Review <input type="checkbox"/> Final for Approval</p> <p><input type="checkbox"/> Software <input type="checkbox"/> Other (Specify) As Needed</p> </td> </tr> </table>		<p>A. General Management</p> <p><input type="checkbox"/> Management Plan <input type="checkbox"/> Status Report <input type="checkbox"/> Summary Report</p> <p>B. 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	Frequency									
<p>5. FREQUENCY CODES</p> <table style="width: 100%;"> <tr> <td style="width: 33%;">A – As Required</td> <td style="width: 33%;">M – Monthly</td> <td style="width: 33%;">S – Semi-Annually</td> </tr> <tr> <td>C – Change to Contractual Agreement</td> <td>O – Once After Award</td> <td>X – With Proposal/Bid/Application or with Significant Changes</td> </tr> <tr> <td>F – Final (end of effort)</td> <td>Q – Quarterly</td> <td>Y – Yearly or Upon Renewal of Contractual Agreement</td> </tr> </table>		A – As Required	M – Monthly	S – Semi-Annually	C – Change to Contractual Agreement	O – Once After Award	X – With Proposal/Bid/Application or with Significant Changes	F – Final (end of effort)	Q – Quarterly	Y – Yearly or Upon Renewal of Contractual Agreement
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F – Final (end of effort)	Q – Quarterly	Y – Yearly or Upon Renewal of Contractual Agreement								
<p>6. SPECIAL INSTRUCTIONS (ATTACHMENTS)</p> <table style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> <p><input type="checkbox"/> Report Distribution List/Addressees <input type="checkbox"/> Reporting Elements <input type="checkbox"/> Due Dates</p> </td> <td style="width: 50%; vertical-align: top;"> <p><input type="checkbox"/> Analysis Thresholds <input type="checkbox"/> Work Breakdown Structure <input type="checkbox"/> Other</p> </td> </tr> </table>		<p><input type="checkbox"/> Report Distribution List/Addressees <input type="checkbox"/> Reporting Elements <input type="checkbox"/> Due Dates</p>	<p><input type="checkbox"/> Analysis Thresholds <input type="checkbox"/> Work Breakdown Structure <input type="checkbox"/> Other</p>							
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<p>7. PREPARED BY (SIGNATURE AND DATE)</p>	<p>8. REVIEWED BY (SIGNATURE AND DATE)</p>									

PART III – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS

SECTION J
LIST OF ATTACHMENTS

ATTACHMENT I – PERFORMANCE GUARANTEE AGREEMENT

Performance Guarantee Agreements dated March 1, 2024, and April 2, 2024, are hereby incorporated by reference.

PART III – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS

SECTION J
LIST OF ATTACHMENTS

**ATTACHMENT J – PERFORMANCE EVALUATION AND
MEASUREMENT PLAN**

The Contracting Officer will issue the Performance Evaluation and Measurement Plan annually under separate cover.

PART IV – REPRESENTATIONS AND INSTRUCTIONS

SECTION K

**REPRESENTATIONS, CERTIFICATIONS, AND
OTHER STATEMENTS OF OFFERORS**

The Contractor's Representations and Certifications dated May 1, 2024, are hereby incorporated by reference.