

MANDATORY FLOWDOWN CLAUSES FOR SUBCONTRACTS AND PROCUREMENT

CLAUSES INCORPORATED BY REFERENCE

The clauses set forth below are incorporated herein by reference and shall have the same force and effect as if printed in full text. Wherever necessary to make the context of the clauses applicable to this Contract, whether incorporated by reference or in full text, the term "Contract" shall mean this "Contract," and the terms "Government", "Contracting Officer" and equivalent phrases shall mean "Buyer," and "Buyer's Contract Administrator," respectively. Upon request Company will make the full text of the clauses available. The Contracting Officer may at any time without advance notification make changes in the prime contract. Any changes to the prime contract that requires an adjustment, the subcontractor must assert its right for adjustment under the Changes clause. Also, the full text of a clause may be accessed electronically at this email address: <http://farsite.hill.af.mil>

CLAUSE

<u>NUMBER</u>	<u>TITLE</u>
	<u>APPLICABLE TO ALL SUBCONTRACTS/PURCHASE ORDERS</u>
FAR 52.203-7	ANTI-KICKBACK PROCEDURES (MAY 2014)
FAR 52.203-15	WHISTLEBLOWER PROTECTIONS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (MAR 2009) (JUN 2010)
FAR 52.204-9	PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (JAN 2011)
FAR 2.204-11	AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA) REPORTING REQUIREMENTS (MAR 2009)
FAR 52.204-14	SERVICE CONTRACT REPORTING REQUIREMENTS (JAN 2014)
FAR 52.204-15	SERVICE CONTRACT REPORTING REQUIREMENTS FOR INDEFINITE-DELIVERY CONTRACTS (JAN 2014)
FAR 52.204-23	PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED OR PROVIDED BY KASPERSKY LAB AND OTHER COVERED FACILITIES (JUL 2018)
FAR 52.204-25	PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (AUG 2019)
FAR 52.204-27	PROHIBITION ON BYTEDANCE COVERED APPLICATION (JUN 2023)
FAR 52.215-2	AUDIT & RECORDS – NEGOTIATION (OCT 2010)
FAR 52.215-15	PENSION ADJUSTMENTS AND ASSET REVERSIONS (OCT 2010)
FAR 52.215-18	REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (JUL 2005)
FAR 52.222-4	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION (MAY 2014)
FAR 52.222-11	SUBCONTRACTS (LABOR STANDARDS) (MAY 2014)
FAR 52.222-12	CONTRACT TERMINATION-DEBARMENT (MAY 2014)
FAR 52.222-50	COMBATING TRAFFICKING IN PERSONS (MAR 2015)
FAR 52.223-3	HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997) – ALTERNATE I (JUL 1995)

FAR .223-6	DRUG-FREE WORKPLACE (MAY 2001)
FAR 52.223-7	NOTICE OF RADIOACTIVE MATERIALS (JAN 1997)
FAR 52.223-11	OZONE-DEPLETING SUBSTANCES (MAY 2001)
FAR 52.223-15	ENERGY EFFICIENCY IN ENERGY CONSUMING PRODUCTS (DEC 2007)
FAR 52.224-2	PRIVACY ACT (APR 1984)
FAR 52.225-11	BUY AMERICAN – CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (MAY 2014)
FAR 52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008)
FAR 52.227-3	PATENT INDEMNITY (APR 1984)
FAR 52.228-5	INSURANCE-WORK ON A GOVERNMENT INSTALLATION (JAN 1997)
FAR 52.232-40	PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (DEC 2013)
FAR 52.236-3	SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK (APR 1984)
FAR 52.236-13	ACCIDENT PREVENTION (NOV 1991) – ALTERNATE I (NOV 1991)
FAR 52.244-6	SUBCONTRACTS FOR COMMERCIAL ITEMS (FEB 2009)
FAR 52.245-1	GOVERNMENT PROPERTY (JUN 2007)
FAR 52.252-2	CLAUSES INCORPORATED BY REFERENCE (FEB 1998)
DEAR 952.203-70	WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000)
DEAR 952.204-2	SECURITY (DEVIATION) (MAR 2013)
DEAR 952.204-70	CLASSIFICATION/DECLASSIFICATION (SEP 1997)
DEAR 952.204-77	COMPUTER SECURITY (AUG 2006)
DEAR 952.208-70	PRINTING (APR 1984)
DEAR 952.209-72	ORGANIZATIONAL CONFLICTS OF INTEREST (AUG 2009) ALTERNATE I (FEB 2011)
DEAR 952.223-78	SUSTAINABLE ACQUISITION PROGRAM (OCT 2010); ALT 1 (OCT 2010)
DEAR 952.227-11	PATENT RIGHTS – RETENTION BY THE CONTRACTOR (SHORT FORM) (FEB 1995)
DEAR 952.227-13	PATENT RIGHTS – ACQUISITION BY THE GOVERNMENT (SEP 1997)
DEAR 952.250-70	NUCLEAR HAZARDS INDEMNITY AGREEMENT (JUN 1996)
DEAR 970.5204-2	LAWS, REGULATIONS, AND DOE DIRECTIVES (DEC 2000)
DEAR 970.5204-3	ACCESS TO AND OWNERSHIP OF RECORDS (OCT 2014)

DEAR 970.5223-1 INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (DEC 2000)

DEAR 970.5223-2 AFFIRMATIVE PROCUREMENT PROGRAM (APR 2008)
DEAR 970.5223-4 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2010)

DEAR 970.5227-1 RIGHTS IN DATA-FACILITIES (DEC 2000)

APPLICABLE TO SUBCONTRACTS/PURCHASE ORDERS EXCEEDING \$2.500

FAR 52.222-41 SERVICE CONTRACT LABOR STANDARDS (MAY 2014)

APPLICABLE TO SUBCONTRACTS/PURCHASE ORDERS EXCEEDING \$3.500

FAR 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (AUG 2013)

APPLICABLE TO SUBCONTRACTS/PURCHASE ORDERS EXCEEDING THE FAR MICRO-PURCHASE THRESHOLD (FAR PART 2.101)

FAR 52.223-18 ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (AUG 2011)

APPLICABLE TO SUBCONTRACTS/PURCHASE ORDERS EXCEEDING \$10,000

FAR 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (APR 2015)

FAR 52.222-26 EQUAL OPPORTUNITY (APR 2015)

FAR 52.222-27 AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (APR 2015)

FAR 52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEC 2010)

APPLICABLE TO SUBCONTRACTS/PURCHASE ORDERS EXCEEDING \$15,000

FAR 52.222-36 EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (JUL 2014)

APPLICABLE TO SUBCONTRACTS/PURCHASE ORDERS EXCEEDING \$30,000

FAR 52.204-10 REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS (JUL 2013)

FAR 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTOR'S DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (AUG 2013)

APPLICABLE TO SUBCONTRACTS/PURCHASE ORDERS EXCEEDING \$150,000

FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (OCT 2010)

- FAR 52.216-7 ALLOWABLE COST AND PAYMENT
- FAR 52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (JUL 2014)
- FAR 52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (JUL 2014)
- FAR 52.223-14 TOXIC CHEMICAL RELEASE REPORTING (AUG 2003)

APPLICABLE TO SUBCONTRACTS/PURCHASE ORDERS EXCEEDING THE FAR SIMPLIFIED ACQUISITION THRESHOLD (FAR Part 2.101)

- FAR 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEP 2006)
- FAR 52.203-17 CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (APR 2014)
- FAR 52.215-14 INTEGRITY OF UNIT PRICES (OCT 2010)
- FAR 52.215-23 LIMITATIONS ON PASS-THROUGH CHARGES (OCT 2009)
- FAR 52.222-39 NOTIFICATION OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES (DEC 2004)
- FAR 52.227-1 AUTHORIZATION AND CONSENT (DEC 2007)
- FAR 52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2007)
- FAR 52.248-1 VALUE ENGINEERING (FEB 2000)
- DEAR 970.5223-7 SUSTAINABLE ACQUISITION PROGRAM (OCT 2010)

APPLICABLE TO SUBCONTRACTS/PURCHASE ORDERS EXCEEDING \$500,000

- DEAR 952.226-74 DISPLACED EMPLOYEE HIRING PREFERENCE (JUN 1997)
- DEAR 970.5226-2 WORKFORCE RESTRUCTURING UNDER SECTION 3161 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1993 (DEC 2000)

APPLICABLE TO SUBCONTRACTS/PURCHASE ORDERS EXCEEDING \$650,000

- FAR 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (OCT 2014) ALTERNATE II (OCT 2001)
- FAR 52.219-9-DEV SMALL BUSINESS SUBCONTRACTING PLAN (DEVIATION 2013-00014) (AUG 2013)

APPLICABLE TO SUBCONTRACTS/PURCHASE ORDERS EXCEEDING \$2 MILLION BUT LESS THAN \$50 MILLION

- FAR 52.230-2 COST ACCOUNTING STANDARDS (MAY 2014)

APPLICABLE TO SUBCONTRACTS/PURCHASE ORDERS EXCEEDING \$2 MILLION

FAR 52.215-13	SUBCONTRACTOR COST OR PRICING DATA-MODIFICATIONS (OCT 2010)
FAR 52.215-19	NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997)
FAR 52.230-6	ADMINISTRATION OF COST ACCOUNTING STANDARDS (JUN 2010)

APPLICABLE TO SUBCONTRACTS/PURCHASE ORDERS EXCEEDING \$5,000,000

FAR 52.203-13	CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (APR 2010)
FAR 52.203-14	¹ DISPLAY OF HOTLINE POSTER(S) (DEC 2007)

CLAUSES INCORPORATED IN FULL TEXT

APPLICABLE TO ALL SUBCONTRACTS/PURCHASE ORDERS

FAR 52.203-15, WHISTLEBLOWER PROTECTIONS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (JUN 2010)

- (a) The Contractor shall post notice of employees rights and remedies for whistleblower protections provided under section 1553 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5).
- (b) The Contractor shall include the substance of this clause including this paragraph (b) in all subcontracts that are funded in whole or in part with Recover Act funds.

(End of Clause)

FAR 52.204-11 AMERICAN RECOVERY AND REINVESTMENT ACT – REPORTING REQUIREMENTS (MAR 2009)

(a) *Definitions.* As used in this clause—
 “Contract,” as defined in FAR 2.101, means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301, *et seq.* For discussion of various types of contracts, see FAR Part 16.

“*First-tier subcontract*” means a subcontract awarded directly by a Federal Government prime contractor whose contract is funded by the Recovery Act.

“*Jobs created*” means an estimate of those new positions created and filled, or previously existing unfilled positions that are filled, as a result of funding by the American Recovery and Reinvestment Act of 2009 (Recovery Act). This definition covers only prime contractor positions established in the United States and outlying areas (see definition in FAR 2.101). The number shall be expressed as “full-time equivalent” (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.

“*Jobs retained*” means an estimate of those previously existing filled positions that are retained as a result of funding by the American Recovery and Reinvestment Act of 2009 (Recovery Act). This definition covers only prime contractor positions established in the United States and outlying areas (see definition in FAR 2.101). The number shall be expressed as “full-time equivalent” (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.

“*Total compensation*” means the cash and noncash dollar value earned by the executive during the contractor’s past fiscal year of the following (for more information see 17 CFR 229.402(c)(2)):

¹ Fill-In Information (see FAR 52.104(d)) – (b)(3) DOE IG Hotline Poster:
http://energy.gov/sites/prod/files/igprod/documents/Hotline_poster/pdf

- (1) Salary and bonus.
- (2) Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- (3) Earnings for services under non-equity incentive plans. Does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- (4) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- (5) Above-market earnings on deferred compensation which is not tax-qualified.
- (6) Other compensation. For example, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property if the value for the executive exceeds \$10,000.

(b) This contract requires the contractor to provide products and/or services that are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act). Section 1512(c) of the Recovery Act requires each contractor to report on its use of Recovery Act funds under this contract. These reports will be made available to the public. Reports from contractors for all work funded, in whole or in part, by the Recovery Act, and for which an invoice is submitted prior to June 30, 2009, are due no later than July 10, 2009. Thereafter, reports shall be submitted no later than the 10th day after the end of each calendar quarter.

(c) The Contractor shall report the following information, using the online reporting tool available at <http://www.FederalReporting.gov>.

- (1) The Government contract and order number, as applicable.
- (2) The amount of Recovery Act funds invoiced by the contractor for the reporting period. A cumulative amount from all the reports submitted for this action will be maintained by the government's on-line reporting tool.
- (3) A list of all significant services performed or supplies delivered, including construction, for which the contractor invoiced in this calendar quarter. (4) Program or project title, if any.
- (5) A description of the overall purpose and expected outcomes or results of the contract, including significant deliverables and, if appropriate, associated units of measure.
- (6) An assessment of the contractor's progress towards the completion of the overall purpose and expected outcomes or results of the contract (i.e., not started, less than 50 percent completed, completed 50 percent or more, or fully completed). This covers the contract (or portion thereof) funded by the Recovery Act.
- (7) A narrative description of the employment impact of work funded by the Recovery Act. This narrative should be cumulative for each calendar quarter and only address the impact on the contractor's workforce. At a minimum, the contractor shall provide—
 - (i) A brief description of the types of jobs created and jobs retained in the United States and outlying areas (see definition in FAR 2.101). This description may rely on job titles, broader labor categories, or the contractor's existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work; and
 - (ii) An estimate of the number of jobs created and jobs retained by the prime contractor, in the United States and outlying areas. A job cannot be reported as both created and retained.
- (8) Names and total compensation of each of the five most highly compensated officers of the Contractor for the calendar year in which the contract is awarded if—
 - (i) In the Contractor's preceding fiscal year, the Contractor received —
 - (A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and
 - (B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(ii) The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

(9) For subcontracts valued at less than \$25,000 or any subcontracts awarded to an individual, or subcontracts awarded to a subcontractor that in the previous tax year had gross income under \$300,000, the Contractor shall only report the aggregate number of such first tier subcontracts awarded in the quarter and their aggregate total dollar amount.

(10) For any first-tier subcontract funded in whole or in part under the Recovery Act, that is over \$25,000 and not subject to reporting under paragraph 9, the contractor shall require the subcontractor to provide the information described in (i), (ix), (x), and (xi) below to the contractor for the purposes of the quarterly report. The contractor shall advise the subcontractor that the information will be made available to the public as required by section 1512 of the Recovery Act. The contractor shall provide detailed information on these first-tier subcontracts as follows:

- (i) Unique identifier (DUNS Number) for the subcontractor receiving the award and for the subcontractor's parent company, if the subcontractor has a parent company.
- (ii) Name of the subcontractor.
- (iii) Amount of the subcontract award.
- (iv) Date of the subcontract award.
- (v) The applicable North American Industry Classification System (NAICS) code.
- (vi) Funding agency.
- (vii) A description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract.
- (viii) Subcontract number (the contract number assigned by the prime contractor).
- (ix) Subcontractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable.
- (x) Subcontract primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable.
- (xi) Names and total compensation of each of the subcontractor's five most highly compensated officers, for the calendar year in which the subcontract is awarded if—
 - (A) In the subcontractor's preceding fiscal year, the subcontractor received—
 - (1) 80 percent or more of its annual gross revenues in Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and
 - (2) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and
 - (B) The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

(End of Clause)

FAR 52.223-11 OZONE-DEPLETING SUBSTANCES (MAY 2001)

- (a) Definition. "Ozone-depleting substance," as used in this clause, means any substance the Environmental Protection Agency designates in 40 CFR Part 82 as—
 - (1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or
 - (2) Class II, including, but not limited to, hydrochlorofluorocarbons.
- (b) The Contractor shall label products which contain or are manufactured with ozone depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b),

(c), and (d) and 40 CFR Part 82, Subpart E, as follows:

WARNING: Contains (or manufactured with, if applicable) *
 _____, a substance(s) which harm(s) public health and environment
 by destroying ozone in the upper atmosphere.

* The Contractor shall insert the name of the substance(s).

(End of Clause)

FAR 52.225-11, BUY AMERICAN ACT—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (MAY 2014)

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

Caribbean Basin country construction material means a construction material that—

- (1) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

“Commercially available off-the-shelf (COTS) item” means—

(a) Any item of supply (including construction material) that is

- (1) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);
- (2) Solid in substantial quantities in the commercial marketplace; and
- (3) Offered to the Government, under a contractor or subcontract at any tier, without the modification, in the same form in which it is sold in the commercial marketplace; and

(b) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products.

“Component” means an article, material, or supply incorporated directly into a construction material.

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

“Cost of components” means—

- (c) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (d) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

“Designated country” means any of the following countries:

(e) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, or United Kingdom);

(f) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Dominican Republic, El Salvador,

Guatemala, Honduras, Mexico, Morocco, Nicaragua, or Singapore);

(g) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(h) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, or Trinidad and Tobago).

“Designated country construction material” means a construction material that is a WTO GPA country construction material, an FTA country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

“Domestic construction material” means—

(i) An unmanufactured construction material mined or produced in the United States; or

(j) A construction material manufactured in the United States, if –

(1) the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or

(2) The construction material is a COTS item.

“Foreign construction material” means a construction material other than a domestic construction material.

“Free Trade Agreement country construction material” means a construction material that—

(k) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or

(l) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a FTA country into a new and different construction material distinct from the materials from which it was transformed.

“Least developed country construction material” means a construction material that—

(m) Is wholly the growth, product, or manufacture of a least developed country; or

(n) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“WTO GPA country construction material” means a construction material that—

(o) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(p) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(B) Construction materials.

(1) This clause implements the Buy American Act (41 U.S.C. 10a-10d) by providing a preference for domestic construction material. In accordance with 41 U.S. C. 431, the component test of the Buy American Act is waived for construction material that is a COTS item (See Far 12.505(a)(2)). In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements (FTAs) apply to this acquisition.

Therefore, the Buy American Act restrictions are waived for designated country construction materials.

(2) The Contractor shall use only domestic or designated country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows:

- (a) None
- (4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that—
 - (a) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;
 - (b) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or
 - (c) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.
- (C) Request for determination of inapplicability of the Buy American Act.
 - (1) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including—

- (a) A description of the foreign and domestic construction materials;
- (b) Unit of measure;
- (c) Quantity;
- (d) Price;
- (e) Time of delivery or availability;
- (f) Location of the construction project;
- (g) Name and address of the proposed supplier; and
- (h) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(2) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(3) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(4) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(5) If the Government determines after contract award that an exception to the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(6) Unless the Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.

(D) *Data*. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison

Construction Material				
Description	Unit of Measure	Quantity	Price	(Dollars)*
Item 1:				
Foreign construction material				
Domestic construction material				
Item 2:				
Foreign construction material				
Domestic construction material				

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

* Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).

(End of Clause)

FAR 52.223-99 ENSURING ADEQUATE COVID-19 SAFETY PROTOCOLS FOR FEDERAL CONTRACTORS (OCT 2021) (DEVIATION)

- (a) Definition. As used in this clause - United States or its outlying areas means—
 - (1) The fifty States;
 - (2) The District of Columbia;
 - (3) The commonwealths of Puerto Rico and the Northern Mariana Islands;
 - (4) The territories of American Samoa, Guam, and the United States Virgin Islands; and

- (5) The minor outlying islands of Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Palmyra Atoll, and Wake Atoll.
- (b) Authority. This clause implements Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors, dated September 9, 2021 (published in the Federal Register on September 14, 2021, 86 FR 50985).
- (c) Compliance. The Contractor shall comply with all guidance, including guidance conveyed through Frequently Asked Questions, as amended during the performance of this contract, for contractor or subcontractor workplace locations published by the Safer Federal Workforce Task Force (Task Force Guidance) at <https://www.saferfederalworkforce.gov/contractors/>
- (d) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts at any tier that exceed the simplified acquisition threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award, and are for services, including construction, performed in whole or in part within the United States or its outlying areas.

(End of Clause)

DEAR 952.204-2 SECURITY REQUIREMENTS (OCTOBER 2013) DEVIATION

- (A) *Responsibility*. It is the Contractor's duty to protect all classified information, special nuclear material, and other DOE property. The Contractor shall, in accordance with DOE security regulations and requirements, be responsible for protecting all classified information and all classified matter (including documents, material, and special nuclear material) which are in the Contractor's possession in connection with the performance of work under this contract against sabotage, espionage, loss, or theft. Except as otherwise expressly provided in this contract, the Contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter or special nuclear material in the possession of the Contractor or any person under the Contractor's control in connection with performance of this contract. If retention by the Contractor of any classified matter is required after the completion or termination of the contract, the Contractor shall identify the items and classification levels and categories of matter proposed for retention, the reasons for the retention, and the proposed period of retention. If the retention is approved by the Contracting Officer, the security provisions of the contract shall continue to be applicable to the classified matter retained. Special nuclear material shall not be retained after the completion or termination of the contract.
- (B) *Regulations*. The Contractor agrees to comply with all security regulations and contract requirements of DOE as incorporated into the contract.
- (C) *Definition of Classified Information*. The term *Classified Information* means information that is classified as Restricted Data or Formerly Restricted Data under the Atomic Energy Act of 1954, or information determined to require protection against unauthorized disclosure under Executive Order 12958, *Classified National Security Information*, as amended or prior executive orders, which is identified as *National Security Information*.
- (D) *Definition of Restricted Data*. The term *Restricted Data* means all data concerning design, manufacture, or utilization of atomic weapons; production of special nuclear material; or use of special nuclear material in the production of energy, but excluding data declassified or removed from the Restricted Data category pursuant to 42 U.S.C. 2162 [Section 142, as amended, of the Atomic Energy Act of 1954].
- (E) *Definition of Formerly Restricted Data*. The term "*Formerly Restricted Data*" means information removed from the Restricted Data category based on a joint determination by DOE or its predecessor agencies and the Department of Defense that the information-- (1) relates primarily to the military utilization of atomic weapons; and (2) can be adequately protected as National Security Information. However, such information is subject to the same restrictions on transmission to other countries or regional defense organizations that apply to Restricted Data.
- (F) *Definition of National Security Information*. The term "*National Security Information*" means information that has been determined, pursuant to Executive Order 12958, *Classified National Security Information*, as amended, or any predecessor order, to require protection against unauthorized disclosure, and that is marked to indicate its classified status when in documentary form.
- (G) *Definition of Special Nuclear Material*. The term "*special nuclear material*" means-- (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which, pursuant to 42 U.S.C. 2071 [section 51 as amended, of the Atomic Energy Act of 1954] has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.
- (H) *Access authorizations of personnel*.

- (1) The Contractor shall not permit any individual to have access to any classified information or special nuclear material, except in accordance with the Atomic Energy Act of 1954, and the DOE's regulations and contract requirements applicable to the particular level and category of classified information or particular category of special nuclear material to which access is required.
- (2) The Contractor must conduct a thorough review, as defined at 48 CFR 904.401, of an uncleared applicant or uncleared employee, and must test the individual for illegal drugs, prior to selecting the individual for a position requiring a DOE access authorization.
- (a) A review must-- verify an uncleared applicant's or uncleared employee's educational background, including any high school diploma obtained within the past five years, and degrees or diplomas granted by an institution of higher learning; contact listed employers for the last three years and listed personal references; conduct local law enforcement checks when such checks are not prohibited by state or local law or regulation and when the uncleared applicant or uncleared employee resides in the jurisdiction where the Contractor is located; and conduct a credit check and other checks as appropriate.
- (b) Contractor reviews are not required for an applicant for DOE access authorization who possesses a current access authorization from DOE or another Federal agency, or whose access authorization may be reapproved without a federal background investigation pursuant to Executive Order 12968, Access to Classified Information (August 4, 1995), Sections 3.3(c) and (d).
- (c) In collecting and using this information to make a determination as to whether it is appropriate to select an uncleared applicant or uncleared employee to a position requiring an access authorization, the Contractor must comply with all applicable laws, regulations, and Executive Orders, including those-- (A) governing the processing and privacy of an individual's information, such as the Fair Credit Reporting Act, Americans with Disabilities Act (ADA), and Health Insurance Portability and Accountability Act; and (B) prohibiting discrimination in employment, such as under the ADA, Title VII and the Age Discrimination in Employment Act, including with respect to pre- and post-offer of employment disability related questioning.
- (d) In addition to a review, each candidate for a DOE access authorization must be tested to demonstrate the absence of any illegal drug, as defined in 10 CFR 707.4. All positions requiring access authorizations are deemed *testing designated positions* in accordance with 10 CFR Part 707. All employees possessing access authorizations are subject to applicant, random or for cause testing for use of illegal drugs. DOE will not process candidates for a DOE access authorization unless their tests confirm the absence from their system of any illegal drug.
- (e) When an uncleared applicant or uncleared employee receives an offer of employment for a position that requires a DOE access authorization, the Contractor shall not place that individual in such a position prior to the individual's receipt of a DOE access authorization, unless an approval has been obtained from the head of the cognizant local security office. If the individual is hired and placed in the position prior to receiving an access authorization, the uncleared employee may not be afforded access to classified information or matter or special nuclear material (in categories requiring access authorization) until an access authorization has been granted.
- (f) The Contractor must maintain a record of information concerning each uncleared applicant or uncleared employee who is selected for a position requiring an access authorization. Upon request only, the following information will be furnished to the head of the cognizant local DOE Security Office:
- (1) The date(s) each Review was conducted;
 - (2) Each entity that provided information concerning the individual;
 - (3) A certification that the review was conducted in accordance with all applicable laws, regulations, and Executive Orders, including those governing the processing and privacy of an individual's information collected during the review;
 - (4) A certification that all information collected during the review was reviewed and evaluated in accordance with the Contractor's personnel policies; and
 - (5) The results of the test for illegal drugs.
- (l) *Criminal liability.* It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to protect any classified information, special nuclear material, or other Government property that may come to the Contractor or any person under the Contractor's control in connection with work under this contract, may subject the Contractor, its agents, employees, or Subcontractors to criminal liability under the laws of the United States (see the Atomic Energy Act of 1954, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794).

(J) *Foreign Ownership, Control, or Influence.*

(1) The Contractor shall immediately provide the cognizant security office written notice of any change in the extent and nature of foreign ownership, control, or influence over the Contractor which would affect any answer to the questions presented in the Standard Form (SF) 328, *Certificate Pertaining to Foreign Interests*, executed prior to award of this contract. In addition, any notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice shall also be furnished concurrently to the Contracting Officer. Contractors are encouraged to submit this information through the use of the online tool at <https://foci.td.anl.gov>. When completed the Contractor must print and sign one copy of the SF 328 and submit it to the Contracting Officer.

(2) If a Contractor has changes involving foreign ownership, control, or influence, DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, DOE will consider proposals made by the Contractor to avoid or mitigate foreign influences.

(3) If the cognizant security office at any time determines that the Contractor is, or is potentially, subject to foreign ownership, control, or influence, the Contractor shall comply with such instructions as the Contracting Officer shall provide in writing to protect any classified information or special nuclear material.

(4) The Contracting Officer may terminate this contract for default either if the Contractor fails to meet obligations imposed by this clause or if the Contractor creates a foreign ownership, control, or influence situation in order to avoid performance or a termination for default. The Contracting Officer may terminate this contract for convenience if the Contractor becomes subject to foreign ownership, control, or influence and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid, or mitigate the foreign ownership, control, or influence problem.

(K) *Employment announcements.* When placing announcements seeking applicants for positions requiring access authorizations, the Contractor shall include in the written vacancy announcement, a notification to prospective applicants that reviews, and tests for the absence of any illegal drug as defined in 10 CFR 707.4, will be conducted by the employer and a background investigation by the Federal government may be required to obtain an access authorization prior to employment, and that subsequent reinvestigations may be required. If the position is covered by the Counterintelligence Evaluation Program regulations at 10 CFR 709, the announcement should also alert applicants that successful completion of a counterintelligence evaluation may include a counterintelligence scope polygraph examination.

(L) *Flow down to subcontracts.* The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph, in all subcontracts under its contract that will require subcontractor employees to possess access authorizations. Additionally, the Contractor must require such subcontractors to have an existing DOD or DOE facility clearance or submit a completed SF 328, *Certificate Pertaining to Foreign Interests*, as required in 48 CFR 952.204-73, Facility Clearance, and obtain a foreign ownership, control and influence determination and facility clearance prior to award of a subcontract. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the Contracting Officer. For purposes of this clause, Subcontractor means any subcontractor at any tier and the term "Contracting Officer" means the DOE Contracting Officer. When this clause is included in a subcontract, the term "Contractor" shall mean subcontractor and the term "contract" shall mean subcontract.

(End of clause)

DEAR 970.5223-2 AFFIRMATIVE PROCUREMENT PROGRAM AS MODIFIED BY DOE ACQUISITION LETTER 2008-05 (APR 2008)

- (a) In the performance of this contract, the Contractor shall comply with the requirements of Executive Order 13423 and the U.S. Department of Energy (DOE) Affirmative Procurement Program Guidance. This guidance includes requirements concerning environmentally preferable products and services, recycled content products and biobased products. This guidance is available on the Internet.
- (b) In complying with the requirements of paragraph (a) of this clause, the Contractor shall coordinate its activities with the DOE Recycling Coordinator. Reports required by paragraph (c) of this clause shall be submitted through the DOE Recycling Coordinator.
- (c) The Contractor shall prepare and submit reports, at the end of the Federal fiscal year, on matters related to the acquisition of items designated in EPA's Comprehensive Procurement Guidelines that Federal agencies and their Contractors are to procure with recovered/recycled content.
- (d) If the Contractor subcontracts a significant portion of the operation of the Government facility which includes the acquisition of items designated in EPA's Comprehensive Procurement Guidelines, the subcontract shall contain a clause substantially the same as this clause. The EPA Comprehensive Procurement Guidelines identify products

which Federal agencies and their Contractors are to procure with recycled content pursuant to 40 CFR 247. Examples of such a subcontract would be operation of the facility supply function, construction or remodeling at the facility, or maintenance of

the facility motor vehicle fleet. In situations in which the facility management contractor can reasonably determine the amount of products with recovered/recycled content to be acquired under the subcontract, the facility management contractor is not required to flow down the reporting requirement of this clause. Instead, the facility management contractor may include such quantities in its own report and include an agreement in the subcontract that such products will be acquired with recovered/recycled content and that the subcontractor will advise if it is unable to procure such products with recovered/recycled content because the product is not available (i) competitively within a reasonable time, (ii) at a reasonable price, or, (iii) within the performance requirements. If reports are required of the subcontractor, such reports shall be submitted to the facility management contractor. The reports may be submitted at the conclusion of the subcontract term provided that the subcontract delivery term is not multi-year in nature. If the delivery term is multi-year, the subcontractor shall report its accomplishments for each Federal fiscal year in a manner and at a time or times acceptable to both parties

(e) When this clause is used in a subcontract, the word "Contractor" will be understood to mean "subcontractor" and the term "DOE Recycling Coordinator" will be understood to mean "Contractor Recycling Coordinator."

(End of Clause)

H.63 EMCBC-H-1012 SECURITY

(A) Responsibility: It is the contractor's duty to safeguard all classified information, special nuclear material, any information designated as sensitive and not subject to disclosure that may be provided either for contract proposal preparation or performance, and other DOE property. The contractor shall, in accordance with DOE security regulations and requirements, be responsible for safeguarding and protecting against sabotage, espionage, loss and theft, classified information, sensitive information, and special nuclear material in the contractor's possession in connection with the performance of work under this contract. Special nuclear material will not be retained after the completion or termination of the contract.

(B) Definition of Special Nuclear Material (SNM). SNM means: (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

(C) Subcontracts and purchase orders. Except as otherwise authorized in writing by the CO, the contractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this contract.

(End of Clause)

APPLICABLE TO SUBCONTRACTS/PURCHASE ORDERS EXCEEDING \$500,000

DEAR 952.226-74, DISPLACED EMPLOYEE HIRING PREFERENCE (JUNE 1997)

(a) Definition.

Eligible employee means a current or former employee of a contractor or subcontractor employed at a Department of Energy Defense Nuclear Facility (1) whose position of employment has been, or will be, involuntarily terminated (except if terminated for cause), (2) who has also met the eligibility criteria contained in the Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, and (3) who is qualified for particular job vacancy with the Department or one of its contractors with respect to work under its contract with the Department at the time the particular position is available.

(b) Consistent with Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, the contractor agrees that it will provide a preference in hiring to an eligible employee to the extent practicable for work performed under this contract.

(c) The requirements of this clause shall be included in subcontracts at any tier (except for subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed \$500,000.

(End of Clause)

DEAR 970.5226-2, WORKFORCE RESTRUCTURING UNDER SECTION 3161 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1993 (DEC 2000)

(a) Consistent with the objectives of Section 3161 of the National Defense Authorization Act for Fiscal Year 1993, 42 U.S.C. 7274h, in instances where the Department of Energy has determined that a change in workforce at a Department of Energy Defense Nuclear Facility is necessary, the contractor agrees to (1) comply with the Department of Energy Workforce Restructuring Plan for the facility, if applicable, and (2) use its best efforts to accomplish workforce restructuring or displacement so as to mitigate social and economic impacts.

(b) The requirements of this clause shall be included in subcontracts at any tier (except subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed \$500,000.

(End of Clause)

APPLICABLE TO SUBCONTRACTS/PURCHASE ORDERS EXCEEDING \$2 MILLION

FAR 52.215-19 NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997)

(a) The Contractor shall make the following notifications in writing:

(1) When the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Administrative Contracting Officer (ACO) within 30 days.

(2) The Contractor shall also notify the ACO within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

(b) The Contractor shall—

(1) Maintain current, accurate, and complete inventory records of assets and their costs;

(2) Provide the ACO or designated representative ready access to the records upon request;

(3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and

(4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.

(c) The Contractor shall include the substance of this clause in all subcontracts under this Contract that meet the applicability requirement of FAR 15.408(k).

(End of Clause)

SECTION H – SPECIAL CONTRACT REQUIREMENTS

H.8 (D) LABOR RELATIONS

The Contractor shall use its best efforts to ensure that collective bargaining agreements negotiated under this Contract contain provisions designed to assure no disruption in services during the performance of the Contract. All such agreements entered into the Contract period of performance should, to the extent that the parties voluntarily agree, provide that grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout or other disruption in services. For this purpose, each collective bargaining agreement should provide an effective grievance procedure with arbitration as its final step, unless the parties mutually agree upon some other method of assuring no disruption in services. The Contractor shall include the substance of this subparagraph (D) in any subcontracts.

H.11 ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM ACT (EEOICPA)

The contractor shall provide support of the EEOICPA established under Title XXXVI of the National Defense Authorization Act of 2001 (Public Law 106-398). The contractor shall provide records in accordance with the Section I Clause entitled, DEAR 970.5204-3, Access to and Ownership of Records, in support of EEOICPA claims and the claim process under the EEOICPA.

The contractor shall:

- (A) Verify employment and provide other records which contain pertinent information for compensation under the EEOICPA. The contractor shall provide this support for itself and any named subcontractors' employees.
- (B) Provide reports as directed by the U.S. Department of Energy (DOE), such as costs associated with EEOICPA.
- (C) Provide an EEOICPA point-of-contact; this employee shall attend meetings, as requested by the U.S. Department of Energy Portsmouth Paducah Project Office (DOE-PPPO).
- (D) Locate, retrieve and provide a minimum of two (2) copies of any personnel and other program records as requested.
- (E) Perform records research needed to complete the Department of Labor (DOL) claims or to locate records needed to complete the claims.
- (F) Perform/coordinate records declassification activities required for the processing of claims forms.
- (G) Keep Federal Compensation Program Act (FCPA) information current on EEOICPA claims activities.
- (H) Ensure costs information is input to the FCPA electronic reporting system by the 10th of each month.
- (I) Ensure all EEOICPA claims received are completed and returned to DOE within 45 calendar days of the date entered in the FCPA electronic reporting system.

The FCPA electronic reporting system will be provided to the contractor.

H.13 WORK STOPPAGE AND SHUTDOWN AUTHORIZATION

- (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 from 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 by independent oversight organizations, 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 Portsmouth/Paducah Project Office (PPPO) Manager. Any written direction to suspend operations shall be issued by the Contracting Officer, pursuant to the Section F 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.

H.16 EMERGENCY CLAUSE

- (A) The U.S. Department of Energy (DOE) Portsmouth/Paducah Project Office (PPPO) Manager or designee shall have sole discretion to determine when an emergency situation exists at the Portsmouth site. In the event that either the DOE-PPPO Manager or designee determines such an emergency exists, the applicable DOE Manager or designee will have the authority to direct any and all activities of the contractor and subcontractors necessary to resolve the emergency situation. The applicable DOE Manager or designee may direct the activities of the contractor and subcontractors throughout the duration of the emergency.
- (B) The contractor shall include this Clause in all subcontracts at any tier for work performed at the Portsmouth site

H.19 ASSIGNMENT AND ADMINISTRATION OF SUBCONTRACTS

- (A) Assignment of Subcontracts. The Government reserves the right to direct the contractor to assign to the Government or another contractor any subcontract awarded under this contract, including lower-tier subcontracts. This Clause is required as a flow-down Clause in all subcontracts.
- (B) 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. The transfer of these prime contracts will be for administration purposes and in effect the transferred contracts will become subcontracts to this contract. Any recommendations and/or suggestions on individual transfers shall be submitted in writing to the Contracting Officer prior to the transfer or assignment.
- (C) Administration of Subcontracts. The administration of all subcontracts entered into and/or managed by the contractor, including responsibility for payment hereunder, shall remain with the contractor unless assigned at the direction of the DOE.
- (D) Transfer of Subcontracts. The contractor agrees to accept transfer of existing subcontracts as determined necessary by DOE for continuity of operations. The contractor shall attempt to negotiate changes to the assigned subcontracts incorporating mandatory flow-down provisions at no cost. If the subcontractor refuses to accept the changes or requests price adjustments, the contractor will notify the Contracting Officer in writing.

H.20 DISPOSITION OF INTELLECTUAL PROPERTY – FAILURE TO COMPLETE CONTRACT PERFORMANCE

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

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, operations 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 entitled 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.

H.26 WITHDRAWAL OF WORK

- (A) The Government may, at its option and during the performance of this contract, unilaterally have any of the work contemplated by Section C, Performance Work Statement, of this contract performed by either another contractor or to have the work performed by 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 interests 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.

H.28 INFORMATION

- (A) Management of Information Resources. The contractor shall design and implement Information Resources Management (IRM) capabilities as required to execute this Contract in accordance with the Office of Management and Budget (OMB) Circular A-130, Management of Federal Information Resources.
- (B) Release of Information. The contractor shall provide timely, accurate, and complete responses to information requested by DOE to comply with Freedom of Information Act and Privacy Act requirements.
- (C) Unclassified Controlled Nuclear Information (UCNI). Documents originated by the contractor or furnished by the Government to the contractor, in connection with this contract, may contain Unclassified Controlled Nuclear Information as determined pursuant to Section 148 of the Atomic Energy Act of 1954, as amended. The contractor shall be responsible for protecting such information from unauthorized dissemination in accordance with DOE regulations and directives and Section I Clauses entitled, DEAR 952.204-2, Security Requirements and DEAR 952.204-70, Classification/Declassification.
- (D) Confidentiality of Information. To the extent that the work under this contract requires that the contractor be given access to confidential or proprietary business, technical, or financial information belonging to the Government or other companies, the contractor shall, after receipt thereof, treat such information as confidential and agrees not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by the Contracting Officer in writing. The foregoing obligations, however, shall not apply to:
 - (1) Information which, at the time of receipt by the contractor, is in the public domain;
 - (2) Information which is published after receipt thereof by the contractor or otherwise becomes part of the public domain through no fault of the contractor;
 - (3) Information which the contractor can demonstrate was in its possession at the time of receipt thereof and was not acquired directly or indirectly from the Government or other companies;
 - (4) Information which the contractor can demonstrate was received by it from a third party that did not require the contractor to hold it in confidence.

The contractor shall obtain the written agreement, in a form satisfactory to the Contracting Officer, of each employee permitted access to such information, whereby the employee agrees that he/she will not discuss, divulge or disclose any such information or data to any person or entity except those persons within the contractor's organization directly concerned with the performance of the contract.

The contractor agrees, if requested by the Government, to sign an agreement identical, in all material respects, to the provisions of this subparagraph (d), with each company supplying information to the contractor under this contract, and to supply a copy of such agreement to the Contracting Officer. Upon request from the Contracting Officer, the contractor shall supply the Government with reports itemizing information received as confidential or proprietary and setting forth the company or companies from which the contractor received such information.

The contractor agrees that upon request by DOE, it will execute a DOE-approved agreement with any party whose facilities or proprietary data it is given access to or is furnished, restricting use and disclosure of the data or the information obtained from the facilities. Upon request by DOE, such an agreement shall also be signed by contractor personnel.

- (E) The Government reserves the right to require the contractor to include this Clause or a modified version of this Clause in any subcontract as directed in writing by the Contracting Officer.

H.30 PRICE-ANDERSON AMENDMENTS ACT NONCOMPLIANCE

The contractor shall establish an internal Price-Anderson Amendments Act (PAAA) noncompliance identification, tracking, and corrective action system and shall provide access to and fully support DOE reviews of the system. The contractor shall also implement a Price- Anderson Amendments Act reporting process which meets applicable DOE standards. The contractor shall be accountable for ensuring that subcontractors adhere to these requirements.

H.34 COOPERATION WITH OTHER SITE CONTRACTORS

- (A) The DOE has/or will have prime contracts or agreements in place with the following entities: Depleted Uranium Hexafluoride (DUF6) contractor, Infrastructure, Facilities Support Services contractor, United States Enrichment Cooperation (USEC), and other entities that provide support to the DOE Portsmouth/Paducah Project Office.
- (B) In the event that DOE awards other contracts or establishes agreements with additional entities whose work affects the Contract, all terms and conditions of this provision apply to the contractor’s relationship with such entities.
- (C) In the performance of this D&D project contract, the contractor agrees to cooperate in a timely manner with DOE prime contractors and other entities. Cooperation includes, but is not limited to, the following types of activities: working together to resolve interface and work performance issues; establishing working groups; participating in meetings; providing access to applicable technical and contract information and data such as schedule and milestone data; discussing technical matters related to the Portsmouth site; providing access to contractor facilities or areas; and allowing observation of technical activities by appropriate personnel.
- (D) The contractor is not authorized to direct any other DOE prime contractor or other entities, except as specified elsewhere in this contract or directed by the CO.
- (E) The contractor shall not commit or permit any act which will interfere with the performance of work by any other DOE contractor or by Government employees. If DOE determines that the contractor’s activities may interfere with another DOE contractor, the CO shall provide instructions.

H.36 PERSONNEL SECURITY CLEARANCES

- (A) The contractor is required to conduct pre-employment investigative screening of its prospective employees in order to ensure trustworthiness and reliability. The contractor shall provide certification to the Contracting Officer (CO) that an investigative screening has been completed prior to employment. The certification shall include verification of identity, previous employment and education, and the results of credit and law enforcement checks.

- (B) Personnel assigned by the contractor to work at the DOE site will be required to obtain a security clearance. The levels of clearance are as follows:

Clearance level
 Q – top secret
 L – confidential

Under this contract, contractor personnel may be required to have an “L” or “Q” clearance level. Key Personnel shall be required to have or be able to obtain a “Q” clearance level. The contractor shall seek opportunities to reduce the levels of clearance required for personnel based upon the site conditions.

- (C) This requirement may be waived by the CO for personnel not involved with classified information while clearances are being processed, or for personnel associated with the program for short periods of time, such as consultants.

- (D) The contractor shall retrieve and dispose of badges for employees: 1) who are no longer working on the contract; 2) who no longer require access; 3) when their badge expires; or 4) when the contract expires or is terminated.

H.43 GREEN PURCHASING UNDER DOE SERVICE CONTRACTS

Pursuant to Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management, the Department of Energy is committed to managing its facilities in manner that will promote the natural environment and protect the health and well-being of Federal employees and contractor service providers. In the performance of work under this contract, the Contractor shall exert its best efforts to provide its services in a manner that will promote the natural environment and protect the health and well-being of Federal employees, contract service providers and visitors using the facility. Green purchasing or environmentally preferable contracting includes the initiatives described below:

- Alternative Fuels and Vehicles are described at <http://www.afdc.energy.gov/afdc/>
- Biobased Products are described at <http://www.biopreferred.gov/>
- Energy efficient products are described at <http://energystar.gov/products> for Energy Star products and at <http://www.eere.energy.gov/femp/procurement> for FEMP designated products
- Environmentally Preferable Computers are described at <http://www.epeat.net>
- Non-Ozone Depleting Products are described at <http://www.epa.gov/Ozone/snap/index.html>
- Recycled Products are described at <http://epa.gov/cpg>
- Water efficient products are described at <http://epa.gov/watersense/>

To the extent that the services provided by the Contractor require the provision of any of the above types of products, the environmentally preferable type of product is to be furnished unless the type of product is not available competitively within a reasonable time, at a reasonable price, is not life cycle efficient in the case of energy consuming products, or does not meet reasonable performance standards. The clauses at FAR 52.223-2, Affirmative Procurement of Biobased Products under Service and Construction Contracts, 52.223-15, Energy Efficient in Energy Consuming Products, in Section I require the use of products that have biobased content, are energy efficient, or have recycled content.

H.44 GREEN PURCHASING UNDER CONTRACTS FOR PERSONAL COMPUTERS (DESKTOPS, LAPTOPS, AND MONITORS)

Pursuant to Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, the Department of Energy is committed to managing its facilities in a manner that will promote the natural environment and protect the health and well-being of its Federal employees and contractor service providers. Any personal computer equipment (i.e., desktops, laptops, or monitors) delivered hereunder shall be energy efficient such that it compliant with EnergyStar or FEMP standards as set forth at 48 CFR 52.223-15. Likewise, when supplying personal computer equipment hereunder, the contractor shall endure that the equipment is rated at least silver pursuant to IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products as set forth at 48 CFR 52.223-16 Alternate I.

(End of Clause)

H.55 EARNED VALUE MANAGEMENT SYSTEM (FEB 2014) (AL-2014-17)

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

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

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

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

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

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

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

- (1) An Earned Value Management System (EVMS) that complies with the EVMS guidelines in the American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems (ANSI/EIA-748, current version at time of award); and
 - (2) *Management procedures.*
 - (i) Management procedures provide for generation of timely, reliable, and verifiable information for DOE Integrated Program Management Report (IPMR) data item of this contract.
 - (ii) The Contractor shall use Department of Energy's (DOE) modified version of Department of Defense's Data Item Description (DID) Integrated Program Management Report (IPMR), DI-MGMT-81861, (DOE version, current version at time of award) which contains data for measuring cost and schedule performance for this DOE contract. The Contractor shall submit the data electronically by uploading the data into the Project Assessment and Reporting System (PARS II) in accordance with the "Contractor Project Performance Upload Requirements" document maintained by the DOE Office of Acquisition and Project Management (OAPM). All requested data shall be submitted timely and accurately, and shall be current as of the close of the previous month's accounting period.
- (c) If the Contractor has one or more DOE contracts valued at \$20,000,000 or greater per contract for a total contract value of \$50,000,000 or more which support DOE Capital Asset Projects, the Contractor shall use an EVMS that has been determined to be acceptable by DOE. If, at the time of award, the Contractor's EVMS has not been determined by DOE to be in compliance with the EVMS guidelines as stated in paragraph (b)(1) of this clause, the Contractor shall apply its current system to the contract and shall take necessary actions to meet the milestones in the Contractor's EVMS plan.
- (d) If this contract has a total value of less than \$50,000,000 and does not meet the condition described at (c) above, the Government will not make a formal determination that the Contractor's EVMS complies with the EVMS guidelines in ANSI/EIA-748 with respect to the contract. The use of the Contractor's EVMS for this contract does not imply a Government determination of the Contractor's compliance with the EVMS guidelines in ANSI/EIA-748 for application to future contracts.
- (e) The Contractor shall submit notification of all proposed changes to the EVMS procedures and the impact of those changes to DOE. If this contractor has one or more contracts in support of DOE Capital Asset Projects and the total contract values are \$20,000,000 or greater per contract for total contract values of \$50,000,000 or more, unless a waiver is granted by DOE, any EVMS changes proposed by the Contractor require approval of DOE prior to implementation. DOE will advise the Contractor of the acceptability of such changes as soon as practicable (generally within 30 calendar days) after receipt of the Contractor's notice of proposed changes. If DOE waives the advance approval requirements, the Contractor shall disclose EVMS changes to DOE at least 14 calendar days prior to the effective date of implementation.
- (f) *Integrated baseline reviews.*
- (1) The purpose of the integrated baseline reviews (IBR) is to verify the technical content and the realism of the related performance budgets, resources, and schedules. It should provide a mutual understanding of the inherent risks in the offerors'/contractors' performance plans and the underlying management control systems, and it should formulate a plan to handle these risks. DOE and the Contractor will use the IBR process described in the National Defense Industrial Association Program Management Systems Committee Integrated Baseline Review (NDIA PMSC IBR) Guide (current version at time of award).
 - (2) The Government will schedule IBRs as early as practicable, and the review process will be conducted not later than 180 calendar days after—
 - (i) Contract award;
 - (ii) The exercise of significant contract options; and
 - (iii) The incorporation of major modifications.
- During such reviews, the Government and the Contractor will jointly assess the Contractor's baseline to be used for performance measurement to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.
- (g) The Contractor shall provide access to all pertinent records and data requested by the Contracting Officer or duly authorized representative as necessary to permit Government surveillance to ensure that the

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

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

(i) *Significant deficiencies.*

- (1) The Contracting Officer will provide an initial determination to the Contractor, in writing, on any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.
- (2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's EVMS. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing. In the event the Contractor did not respond in writing to the initial determination within the response time, this lack of response shall indicate that the Contractor agrees with the initial determination.
- (3) The Contracting Officer will evaluate the Contractor's response or the Contractor's lack of response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—
- (i) Remaining significant deficiencies;
 - (ii) The adequacy of any proposed or completed corrective action;
 - (iii) System noncompliance, when the Contractor's existing EVMS fails to comply with the earned value management system guidelines in the ANSI/EIA-748.
- (4) If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the significant deficiencies.

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

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

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

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

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

H.60 NON-SUPERVISION OF CONTRACTOR EMPLOYEES BY THE GOVERNMENT OR ITS CONTRACTORS

Neither government personnel nor other governmental support contractor employees shall 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.

H.61 DOE-H-1032 RELEASE OF INFORMATION (REVISED)

Any proposed public release of information including publications, exhibits, or audiovisual productions pertaining to the effort/items called for in this contract shall be submitted at least ten (10) days prior to the planned issue date for approval. Proposed releases are to be submitted to Public Affairs Office, Department of Energy, Portsmouth/Paducah Project Office, 1017 Majestic Drive, Lexington, KY 40513, with a copy provided to the CO and COR.

(End of Clause)

H.63 EMCBC-H-1012 SECURITY

- (A) Responsibility: It is the contractor's duty to safeguard all classified information, special nuclear material, any information designated as sensitive and not subject to disclosure that may be provided either for contract proposal preparation or performance, and other DOE property. The contractor shall, in accordance with DOE security regulations and requirements, be responsible for safeguarding and protecting against sabotage, espionage, loss and theft, classified information, sensitive information, and special nuclear material in the contractor's possession in connection with the performance of work under this contract. Special nuclear material will not be retained after the completion or termination of the contract.
- (B) Definition of Special Nuclear Material (SNM). SNM means: (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.
- (C) Subcontracts and purchase orders. Except as otherwise authorized in writing by the CO, the contractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this contract.

(End of Clause)

H.64 EMCBC-H-1014 REQUIRED INSURANCE AND BONDS

- (A) Contractor's Liability Insurance. The contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the project is located such insurance as will protect the contractor from claims set forth below by which may arise out of or result from the contractor's operations under the contract for which the contractor may be legally liable, whether such operations be by the contractor or by a subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:
 - (1) Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
 - (2) Claims for damages because of bodily injury, occupational sickness or disease, or death of the contractor's employees;
 - (3) Claims for damages because of bodily injury, sickness or disease, or death of any person other than the contractor's employees;
 - (4) Claims for damages insured by usual personal injury liability coverage;
 - (5) Claims for damages, other than to the work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
 - (6) Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
 - (7) Claims for bodily injury or property damage arising out of completed operations; and,
 - (8) Claims involving contractual liability insurance applicable to the contractor's obligations.
- (B) The insurance required by this clause shall be written for not less than limits of liability specified in this contract or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of

commencement of work until date of final payment and termination of any coverage required to be maintained after final payment.

- (C) Certificates of insurance acceptable to the CO shall be filed with the CO prior to commencement of work. These certificates and the insurance policies required by this paragraph shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the CO. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the contractor with reasonable promptness in accordance with the contractor's information and belief.
- (D) Performance Bond and Payment Bond for Fixed Price Construction Services
 - (1) The Contractor shall acquire and provide to the CO proof of a performance bond or payment bond of obligations of subcontractors, satisfactory to the CO.
 - (2) Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under subcontracted fixed priced construction services, the contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.
- (E) The contractor agrees to insert the substance of this clause in all subcontracts placed under this contract.
 - (1) The Contractor shall acquire and provide to the CO proof of a performance bond or payment bond of obligations to subcontractors, satisfactory to the CO.
 - (2) Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under this contract, the contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.
- (A) The contractor agrees to insert the substance of this clause in all subcontracts placed under this contract.

H.66 EMCBC-H-1025 DISPOSITION OF INTELLECTUAL PROPERTY

As a supplement to Section I. 48 CFR 970.5227-1 *Rights in Data - Facilities* (DEC 2000) paragraph (e), DOE shall have access to technical data and other intellectual property, make copies of, and use all technical data, including limited rights data and restricted computer software and data and software obtained from subcontractors. Limited rights data and restricted computer software will be protected in accordance with the Rights in Data - Facilities clause. Contractor shall assure that its subcontractors and licensors make similar rights available to DOE and its contractors.

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 or acquired by the contractor, and any other intellectual property which are owned or controlled by the contractor, at any time through completion of this contract and which are incorporated or embodied in the design or construction or the facility being remediated or decontaminated, (1) to practice or to have practiced by or on behalf of 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. I.A.70A, FAR 52.227-16 *Additional Data Requirements* (JUN 1987) applies.

(End of Clause)

H.67 ACCESS TO AND OWNERSHIP OF RECORDS (OCT 2014) DEVIATION

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 system 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. Upon the request of the Government, the contractor shall provide either the original contractor-owned records or copies of the records identified in paragraph (b) of this clause, to DOE or its designees, including successor contractors. Upon delivery, title to such records shall vest in DOE or its designees, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act) as appropriate. If the contractor chooses to provide its original contractor-owned records to the Government or its designee, the contractor shall retain future rights to access and copy such records as needed. 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 described 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. 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.

(End of Clause)

H.68 LOBBYING RESTRICTION

Pursuant to the Appropriations Act, 2013, the Contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C.1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

H.70 EMPLOYEE TRAINING

Contractor's Responsibility: The Contractor shall provide fully qualified and trained personnel from its own resources to support project requirements. DOE may provide training assistance or participate in training at its discretion at no cost to the contractor. All training must be approved by the COR.

Mandatory Training: The contractor shall ensure that all employees attend safety and security training once within 30 days of beginning performance on this contract and at least once annually thereafter. Contractor shall ensure that every employee is instructed to safely and competently perform the work.

In accordance with Section J.A, Attachment 7, *Site Services and Interface Requirements Matrix*, and Section J.A, Attachment 18, *Portsmouth D&D Project Training Matrix*, the contractor is encouraged to closely collaborate with other Prime Contractors to combine/recognize similar training and qualifications.

(End of Clause)

H.76 MANDATORY CHANGE ORDER ACCOUNTING (AUG 2013) (PF 2013-72)

- (a) In accordance with FAR 52.243-6, the Contractor must establish change order accounting for each change or series of related changes whose estimated cost exceeds \$100,000.
- (b) The Government has no obligation under this clause or any other term or condition of this contract to remind the Contractor of its obligations under this clause. The Government may or may not, for example, refer to this clause when issuing change orders.
- (c) If the Contractor separately identifies costs in its invoices that pertain to the changed work, the Contractor may invoice costs for both changed work and other work in the same invoice.
- (d) If the Contractor fails to provide an adequate, auditable definitization proposal within 120 days of the Contracting Officer's request for such proposal, the Government may consider some or all of the associated bid and proposal costs to be unallowable.
- (e) If the Contractor fails to comply fully with the requirements of this clause, the Government may reflect the Contractor's failure in its—
 - (1) determination of otherwise earned fee under the contract; and/or
 - (2) past performance evaluation of the Contractor's performance.

(End of Clause)

H.79 NOTICE OF CIVIL PENALTIES FOR VIOLATION OF SECURITY OF DOE CLASSIFIED OR SENSITIVE INFORMATION OR DATA

The contractor shall comply with 42 U.S.C. 2282b relating to the safeguarding and security of restricted data. Any person who has entered into a contract or agreement with DOE, or a subcontract or sub-agreement thereto, and who violates (or whose employee violates) any applicable rule, regulation, or order prescribed or otherwise issued by the Secretary pursuant to this chapter relating to the safeguarding or security of Restricted Data or other classified or sensitive information shall be subject to a civil penalty of not to exceed \$100,000 for each such violation.

(End of Clause)

H.81 ACCESS CONTROLS FOR VISITING MINORS

Access of minors to PPPO areas and facilities controlled for radiologic purposes is not permitted for minors under the age of 18 under any circumstance. Visiting minors may only be permitted into Controlled Access Areas when approved by the PPPO Health Physicist, the appropriate Site Lead and the PPPO Deputy Manager and Manager, or Designee. Such approval shall be documented in writing. Visiting minors must be accompanied by, and under the supervision of, a parent, legal guardian or chaperone. In addition, a Parental Consent for Minors Visiting PPPO must be completed for each visiting minor. This policy is not applicable to workers, who are under the age of 18, including the U.S. Department of Energy (DOE) contractors and their subcontractors and persons working under DOE grants.

H.82 ACCESS TO AND OWNERSHIP OF RECORDS

- (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 system 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:
 - (a) 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.
 - (b) 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.
 - (c) 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. Upon the request of the Government, the contractor shall provide either the original contractor-owned records or copies of the records identified in paragraph (b) of this clause, to DOE or its designees, including successor contractors. Upon delivery, title to such records shall vest in DOE or its designees, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act) as appropriate. If the contractor chooses to provide its original contractor-owned records to the Government or its designee, the contractor shall retain future rights to access and copy such records as needed.
- (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 described 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.

H.83 COVID-19 VACCINATION ADMINISTRATIVE PAID LEAVE

- (a) All contractor personnel are authorized up to eight (8) hours of paid administrative leave for each vaccination dose and per vaccination dose to accompany a family member² receiving the COVID-19 vaccine (including booster shot). Additionally, all contractor personnel are authorized up to two days (eight hours per day) of COVID-19 vaccination or booster shot “side effect leave” (work excuse from a medical provider required). The administrative leave is only applicable for actual hours missed from work and shall not be claimed as overtime or as part of overtime calculations. Any hours realized beyond the maximum number authorized will need to be accounted for through the Contractor Employee Benefits Program. The contractor personnel will be expected to provide attestation of the family relationship along with showing proof of vaccination. Contractor shall provide proof of a full course of an approved COVID-19 vaccine on or before midnight Thursday, November 18, 2021 to the secure FBP HR email fbphr@ports.pppo.gov
- (b) Vaccination administrative leave hours shall be segregated and invoiced separately per the subcontract. Invoice vouchers claiming reimbursement of vaccine leave shall be submitted as Other Direct Costs (ODC) in accordance with *Payment Terms*. Additional supplemental invoice requirements supporting vaccination leave are as follows:
 - Clearly identify the number of this modification
 - Invoice shall only include resource name, labor category, and quantity of hours claimed, and lowest fixed unit hourly rate in accordance with established billing rates per the subject contract agreement.
 - Vaccine proof/vaccine cards SHALL NOT be included as invoice backup. A copy of personnel and/or personnel with family member vaccination proof (vaccine card) shall be provided directly to FBP Human Resource via secure email at fbphr@ports.pppo.gov with the following fully completed markings:
 - Contractor Name, Contract Number
 - Documents Front Marking – The front of each document containing Official Use Only (OUO) information must include:

² Family member means an individual with any of the following relationships to the employee:

1. Spouse, and parents thereof;
2. Sons and daughters, and spouses thereof;
3. Parents, and spouses thereof;
4. Brothers and sisters, and spouses thereof;
5. Grandparents and grandchildren, and spouses thereof;
6. Domestic partner and parents thereof, including domestic partners of any individual in paragraphs (2) through (5) of this definition; and
7. Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship (Title 5 CFR 630.201)

“May be exempt from public release under the Freedom of Information Act (5 U.S.C 552), Exemption number and category 6, Personal Privacy: Information that constitutes a clearly unwarranted invasion of personal privacy, including information that might cause distress or embarrassment or risk of identity

theft. This exception applies to Personally Identifiable Information (PII). Department of Energy review required prior to public release.

Name/Org: _____ Date: _____
 Guidance (if applicable): _____ ”

- (c) Contractor Personnel electing to use the COVID-19 Vaccination Administrative Paid Leave or COVID-19 Side Effect Leave shall be fully briefed by the Subcontractor regarding requirements for the distribution and submittal of vaccination cards to the designated FBP Human Resource noted herein “prior to using” the Paid Administrative Leave. Submittal of vaccination documentation in accordance with the requirements and instructions herein constitutes acknowledgement and approval for release of such information by your company and designated resource(s) claiming the reimbursement. Any costs invoiced by the Subcontractor not supported with the required backup documentation in accordance with this Modification shall not be reimbursed by the Company.
- (d) All claimed costs for COVID-19 Vaccination Administrative Paid Leave are subject to the False Claims Act and are auditable directly by the U.S. Government (including audit of subcontractor/sub-tier subcontract claimed costs)

FAR 52.204-27 Prohibition on ByteDance Covered Application (June 2023)

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

Covered application means the social networking service TikTok or any successor application or service developed or provided by ByteDance Limited or an entity owned by ByteDance Limited.

Information technology, as defined in 40 U.S.C. 11101(6)—

(1) Means any equipment or interconnected system or subsystem of equipment, used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the executive agency, if the equipment is used by the executive agency directly or is used by a contractor under a contract with the executive agency that requires the use—

(i) Of that equipment; or

(ii) Of that equipment to a significant extent in the performance of a service or the furnishing of a product;

(2) Includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources; but

(3) Does not include any equipment acquired by a Federal contractor incidental to a Federal contract.

(b) *Prohibition.* Section 102 of Division R of the Consolidated Appropriations Act, 2023 (Pub. L. 117-328), the No TikTok on Government Devices Act, and its implementing guidance under Office of Management and Budget (OMB) Memorandum M-23-13, dated February 27, 2023, “No TikTok on Government Devices” Implementation Guidance, collectively prohibit the presence or use of a covered application on executive agency information technology, including certain equipment used by Federal contractors. The Contractor is prohibited from having or using a covered application on any information technology owned or managed by the Government, or on any information technology used or provided by the Contractor under this contract, including equipment provided by the Contractor’s employees; however, this prohibition does not apply if the Contracting Officer provides written notification to the Contractor that an exception has been granted in accordance with OMB Memorandum M-23-13.

(c) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts, including subcontracts for the acquisition of commercial products or commercial services

(End of
clause)