

SECTION A

FLUOR BWXT PORTSMOUTH LLC SOLICITATION, OFFER AND AWARD

1. Contract No. PO- TBD	2. Solicitation No. RFP-FBP24SC166497	3. Type of Solicitation Time & Material	4. Date Issued 6/5/2024	5. RFP: Sections A-L Contract: Sections A - J
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6. Issued By: FLUOR BWXT Portsmouth LLC
P. O. Box 548
Piketon, OH 45661

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

SOLICITATION

7. Sealed offers in original and ____ copies for furnishing the supplies or services in the Schedule will be received at the place and at the time specified in Section L. CAUTION - LATE Submissions, Modifications, and Withdrawals - See Section L. All offers are subject to all terms and conditions contained in this solicitation.

8. FOR INFORMATION CONTACT:	A. NAME Kelli Bunstine – CONTRACT ADMINISTRATOR	B. TELEPHONE NO. (Include area code) (No collect calls) 740-897-3941
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OFFER (Must be fully completed by offeror)

In compliance with the above, the undersigned agrees, if this offer is accepted within ____ calendar days (**180 calendar days unless a different period is inserted by the offeror**) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

11. DISCOUNT FOR PROMPT PAYMENT	10 CALENDAR DAYS %	20 CALENDAR DAYS %	30 CALENDAR DAYS %	CALENDAR DAYS %
12. ACKNOWLEDGMENT OF AMENDMENTS <small>(The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated)</small>	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE
13. NAME AND ADDRESS OF OFFEROR			14. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (TYPE OR PRINT)	
15. TELEPHONE NO. (Include area code)	16. <input type="checkbox"/> CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE ENTER SUCH ADDRESS IN SCHEDULE		17. SIGNATURE	18. OFFER DATE

AWARD (To be completed by FLUOR BWXT Portsmouth LLC)

19. ACCEPTED AS TO ITEMS NUMBERED	20. AMOUNT	21. EFFECTIVE DATE
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PART I - THE SCHEDULE

SECTION B - SUPPLIES OR SERVICES AND PRICES/COSTS

B.1 PARTIES AND TYPE OF CONTRACT

This contract is between FLUOR BWXT Portsmouth LLC as identified in Section A block 6 hereafter referred to as “FBP” or “Company”, and the party identified in Section A Block 13 hereafter referred to as “Contractor”.

This is a Time and Materials type of contract. The Contractor shall furnish all personnel and services (except as may be expressly set forth in the contract) and otherwise do all things necessary for, or incident to the performance of the requirements specified in Section C, Statement of Work, in consideration for payment of the prices specified in B.2 below.

B.2 CONTRACT CEILING PRICE – TIME AND MATERIAL SCHEDULE

The Ceiling Price for this contract will be determined using the Fixed Rates listed in the table below. The Ceiling price is based on the estimated number of hours, materials, equipment, subcontracts and associated fixed rates listed in the Table.

Item #	Labor Category	Estimated Hours	Fixed Hourly Rate	Overtime Fixed Hourly Rate	Estimated Amount
001					
002					
003					
004					
005					
006					
007					
008					
009					
	Total Estimated Hours	7,000			
Not-to-Exceed Labor Value:					
Item #	Equipment	Quantity Hours	Hourly Rental Rate	Estimated Amount	
001					
002					
003					
004					
005					
006					
007					
008					
009					

010				
011				
012				
	Total Estimated Equipment Hours	5,300		
Not-to-Exceed Equipment Value:				
Other Direct Costs				
Other Direct Costs			Not to Exceed	\$150,000.00
Total Not to Exceed Value Other Direct Costs				\$150,000.00
Total Not-to-Exceed Value:				

TOTAL NTE PRICE \$ _____

Estimated numbers of hours are provided for evaluation purposes only. FLUOR BWXT Portsmouth LLC may purchase hours in excess of the estimated hours by category at the rates prescribed for the relevant period (basic or options).

The Ceiling price is based on the estimated number of hours and fixed hourly rate listed above.

The Company is not obligated to pay the Contractor any amount in excess of the ceiling price and Contractor shall not be obligated to continue performance if to do so would exceed the Contract ceiling price, unless and until the Company shall have notified the Contractor in writing that the ceiling price has been increased.

All rates are inclusive of all wages, payroll burdens, fringe benefits, travel and subsistence allowances, home office overheads, and other forms of extra payment, protective and/or special clothing and construction consumables. The rates included herein shall be based on labor agreements if any, in effect on the effective date of the Contract.

(a) Fully Burdened Inclusive Labor Hourly Rate

The rates shall include wages, indirect costs, general and administrative cost, and profit.

Time Sheets: For all work performed under this Contract, Contractor shall submit daily time sheets for approval by Company. An approved copy of the time sheets, which shall detail all hours worked as further defined in Section G, Invoicing Instructions, must be submitted in support of Contractor's amounts incurred for the Work performed.

Recording and submitting timecard (s) constitute Contractor's certification that the hours are accurate and in accordance with all other terms and conditions of this Contract.

The Company will provide payment only for hours where productive work is performed. No payment will be made to the Contractor for time spent conducting personal business, Contractor company business, or travel time to or from the work place assignment.

(b) Overtime

The standard work week under this contract is Monday-Thursday, ten (10) hours per day, forty (40) hours work week. Contractor shall be prepared to work the hours required by Contract at the primary work location which is the PORTS Site unless approved otherwise by the Contract Administrator and/or the Contract Technical Representative (CTR). For work being performed outside the normal work schedule, the Contractor shall request overtime approval from the Contract Administrator and/or CTR 24 hours in advance. Overtime must be pre-approved by the Company Contract Administrator and/or Contract Technical Representative.

(c) Other Direct Costs (ODCs)

ODCs are other costs charged directly to the Contractor that have not been included in the proposed fixed hourly labor rate. The Contractor shall be reimbursed for ODCs purchased directly for this Contract only when cash, checks, or other forms of actual payment have been made for such purchased items or services.

ODCs must be substantiated by invoices certified paid or by such documentation as may be required by Company.

SMALL TOOLS: Replacement value of less than \$1,000.00 USD each. Refer to Section B Attachment 1 – Small Tools for typical listing of these types of items.

CONSUMABLE AND EXPENDABLE MATERIALS: Consumable and expendable items will be subject to approval by Contract Administrator and Contract Technical Representative via a Request to Purchase (RTP) form

Company reserves the right to provide, at no cost to Contractor, materials, equipment, services, supplies or incidentals required to perform the Work.

Allowable costs of ODCs shall be determined by the Company in accordance with Subpart 31.2 of the FAR in effect on the date of this Contract.

The Contractor will apply no element of profit to ODCs.

To the extent able, the Contractor shall obtain ODCs at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and obtain all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits.

Reimbursable costs shall not include any costs arising for the letting, administration or supervision of the performance of this Contract.

Fit for Duty Occupational Physical:

Fit for Duty Occupational Physical (required for new personnel) Fluor-BWXT Portsmouth LLC (FBP) requires all employees to complete medical evaluations in accordance with 10 CFR 851 prior to the employee being approved for work. Thus, all employees shall be evaluated by FBP's Health Services prior to being approved for work. The Fit for Duty medical evaluation shall be at FBP's Expense.

Proposed personnel must pass a drug screening administered by FBP's supplied medical organization. The contractor supplied personnel shall submit to a drug screening as part of their in-processing. Work billable to the Company cannot be performed prior to being cleared successfully through the drug screening process.

B.3 PRICING BASIS

- (a) The Contract Price, pricing for changes, and all other prices and rates set forth herein are firm for the duration of the Work and include all Contractor's costs, expenses, overhead and profit for complete performance of the Work.
- (b) The Contract Price, pricing for changes, and all other prices and rates set forth herein shall include, but shall not be limited to all taxes, fees and insurance.
- (c) The Contract Price, pricing for changes, and all other prices and rates set forth herein shall include receipt, offloading, storage and subsequent handling of materials to be installed under the Contract, and the loading, transport and disposal of surplus materials.
- (d) The contract pricing and unit rates shall apply regardless of when the Work is performed, be it day or night or a holiday, whether or not Contractor is required to pay higher pay and benefits to its employees for work performed during such periods, unless Company accepts in writing, prior to performance that Work, a proposal that certain work shall be compensated at premium rates. If the Work is changed and Contractor is entitled to an adjustment in accordance with the Changes Clause of this Contract, compensation for any additional labor required to perform such changed work shall be at the rates set forth in Section B, Schedule C - All Inclusive Labor Rates, applicable to the time of day and calendar day upon which the Work is performed.
- (e) All pricing shall include all costs associated with and relating to, performing Work in accordance with and working in accordance with all applicable local, state and federal safety regulations, as well as Owner's and Company's safety, security and fire regulations.
- (f) Failure by Contractor to assess fully the scope of work, as required and described in Section C, SCOPE OF WORK to the Contract shall not be accepted as a basis for variations to the unit pricing, and time and material rates for changes.

B.4 TAXES

- (a) Except as otherwise set forth below, Contract Price, pricing for changes, and all other prices and rates set forth herein, includes all taxes, duties and fees and other assessments of whatever nature imposed by governmental authorities and applicable to the performance of the Work and this Contract. Company shall not have any obligation to reimburse Contractor for personal property taxes on construction equipment and other property owned by Contractor, and taxes on net income of Contractor.
- (b) Contractor shall pay promptly when due, all such taxes, duties, fees and other assessments set forth in paragraph a, above.
- (c) Contractor shall be responsible for maintaining and furnishing the necessary records and documentation required by government authorities and Company to apply for and obtain tax and duty refunds.

- (d) Company is required to obtain correct taxpayer identification numbers from all non-corporate payees who receive payment for services, rents, royalties or interest that would be subject to IRS Form 1099 reporting. Thirty-one percent (31%) back-up tax withholding will be imposed on all Form 1099 reportable payments made to Contractor, if Contractor fails to provide a correct taxpayer identification number.

Contractor Taxpayer I.D. No. _____

- (e) If Contractor imports and exports materials, equipment, supplies, tools, or any item for performance of the Work, any custom duties, value added, import or export taxes, document fees, handling charges, or other fees related to the importation or exportation of such materials, equipment, supplies, tools or other items shall be paid by Contractor.

The Company has determined that the work covered by this Contract is not within the statutory definition of "employment services" and, therefore is not subject to Ohio Sales Tax on employment services as defined in ORC 5739.01 (JJ):

- i. Contractor is acting as a contractor or subcontractor where all personnel performing the work are not under the direct control of the Company (Purchaser); or,
- ii. Contractor is furnishing medical or health services to the Company (Purchaser); or,
- iii. Each Contractor employee supplied under this Task Order Release / Contract is or shall be supplied to the Company on a task order release contract of at least one year between the Contractor (Service Provider) and the Company (Purchaser) that specifies that each employee covered under the Task Order Release Contract is assigned to the Company (Purchaser) on a permanent basis; or,
- iv. Contractor (Service Provider) is a member of a group affiliated with the Company
- v. Contractor (Service Provider) provides or supplies personnel to the Company (Purchaser) who are then provided or supplied by the Company (Purchaser) to a third party as an employment service, except "employment service" does include the transaction between that purchaser and the third party.

B.5 PRICING FOR CHANGES

- (1) The labor rates set forth in Section B.2 above shall be applied to all agreed hours worked. If Contractor proposes use of workers in any labor category not included in the classifications listed in Section B.2, the Contractor must obtain approval from Company prior to use.
- (2) RESERVED.
- (3) RESERVED.
- (4) Equipment rates shall be negotiated and agreed upon in writing by Company prior to use of such equipment by Contractor for the extra work. If such equipment is rented or leased

from a third party, the rate must be approved by Company in writing prior to rental and shall be at actual cost to Contractor, including transportation to site, (as substantiated by invoices certified paid or by such documentation as may be required by Company) plus a mark-up, as specified in Section B Tables.

- (a) All Contractor owned and rented/leased equipment used for performing the Work or additional and/or changed work in relation to the Contract that has a replacement value of greater than \$ 1,000.00 USD apiece shall be as follows:
 - (b) The rates are for utilization of Contractor owned and/or leased equipment, excluding operators.
 - (c) All rates are for fully maintained equipment and include all costs for repairs, maintaining, servicing, lubricants, administrative costs, overheads, insurance, licenses, depreciation costs, profit, and each and every other item of expense (except for fuel) associated with operating the equipment at any time of day, week or year, other than the cost of labor for directly operating the equipment and the cost of transport of the equipment to and from the work site. Time spent doing anything other than operating will not be reimbursed.
 - (d) The daily, weekly and monthly rates are based on single shifts. Hourly charges for any day shall not exceed the daily rate; daily charges for any calendar week shall not exceed the weekly rate; and weekly charges for any calendar month shall not exceed the monthly rate. Payment shall be calculated using, in order of precedence, the monthly rate, then the weekly rate for any period less than four (4) weeks, then the daily rate for any part weeks (less than five (5) days) and the hourly rate for any part days (less than eight (8) hours).
 - (e) The specified rental rates shall apply whether the equipment is utilized for operations during any period, during day, afternoon, and night shifts.
- (5) Compensation to Contractor for materials supplied by Contractor for incorporation into the permanent facility (excluding consumable, expendable, and small tools as outlined in Section B, Schedule – Small Tools/Expendable/Consumable/Safety Supply List and which cost Contractor less than \$ 1,000.00 USD each, as they are included in the markups on labor rates) shall be at actual invoiced cost to Contractor (exclusive of taxes), including transportation to site, as substantiated by invoices certified paid or by such documentation as may be required by Company, plus a mark-up on the material costs only as specified in Section B Tables. Ref. Attachment 1 for Small Tools List.
- (6) Company reserves the right to provide, at no cost to Contractor, materials, equipment, services, supplies or incidentals required to perform the Work. If the Contractor's agreed scope of work included the obligation to provide such materials, equipment, services, supplies or incidentals, the price of the contract shall be reduced to account for any such items provided by Company.
- (7) All refunds, trade discounts, rebates on materials, supplies and services, and all monies obtained from the disposal of surplus materials or supplies shall accrue to Company.

- (8) Subject to the audit provisions of this Contract, Contractor must procure any materials to be provided under this contract using **competitive procedures** to the maximum extent feasible to provide the most advantageous price and schedule.
- (9) All subcontracts and services provided by others for performance of changes or additional work requested by Company, which have not been objected to by Company, shall be at actual cost to Contractor of such subcontracts or services provided by others (not to exceed such subcontract price), plus a mark-up as specified in Section B Tables.
- (10) Time Sheets

For all work performed under this Contract, Contractor shall submit daily time sheets for approval by Company. An approved copy of the time sheets, which shall detail all hours worked, materials installed and equipment used, as further defined in Section G, Invoicing Instructions, must be submitted in support of Contractor's costs of the Work.

- (11) All costs and expenses (which are not expressly stated in this Section B.5. to be reimbursable) necessary for Contractor to perform changes or extra work shall be deemed included within the rates or the markups for overhead or profit set forth herein. Such costs and expenses shall include all items expressly stated in this Contract that are to be at the cost, expense or for the account of Contractor, or which are stated to be performed by Contractor at no additional cost to Company.

B.6 RESERVED

B.7 REQUIREMENT NOTICE OF LIMITATION OF FUNDING

The amount payable for performance of the work shall not to exceed the ceiling price of the Contract. The Contractor is not authorized to incur liabilities which exceed the ceiling price. Work performed which creates liabilities in excess of the ceiling price shall be performed solely at Contractor's risk. No notice, communication, or representation in any form or by anyone other than the Company's Acquisition Department Contract Administrator or manager shall affect the ceiling price of this Contract.

Contractor shall provide notice in writing whenever the Contractor has reason to believe that within the next 60 days its total liabilities incurred will exceed 75% of the funding allotted to the contract by the Company. The Contractor will include in the notice the estimated amount of additional funding required to continue performance for the period specified in the schedule. If at any time during performing this contract, the Contractor has reason to believe that the total price to the Government for performing this contract will be substantially greater or less than the then stated ceiling price, the Contractor shall so notify the Contract Officer, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. If at any time during performing this contract, the Company has reason to believe that the work to be required in performing this contract will be substantially greater or less than the stated ceiling price, the Contract Administrator will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the contract.

B.8 REQUIRED NOTICE OF PERFORMANCE

Performance of the work beyond the period of performance contained in the Contract is not authorized without express written approval of the Company's authorized representative as specified in Section H.1 and subsequent written modification of this Contract.

The Contractor shall provide written notice 30 days prior to the period of performance (POP) end date.

Company reserves the right to issue a modification to the Contract hereunder to extend the POP or increase the Not-To-Exceed ceiling price.

B.9 RESERVED

B.10 RESERVED

B.11 RESERVED

PART I – THE SCHEDULE

SECTION C – STATEMENT OF WORK - ATTACHED

PART I - THE SCHEDULE

SECTION D - PACKAGING AND MARKING

D.1 PACKAGING

Preservation, packaging and packing for shipment or mailing of all work delivered shall be in accordance with good commercial practice and adequate to ensure acceptance by a common carrier and safe transportation at the most economical rate unless specific packaging and shipping instructions are provided in the individual delivery orders.

D.2 MARKING [As derived from DOE Contract DE-AC30-10CC40017, D.2]

(a) Each package, report, or other deliverable shall be accompanied by a cover letter which:

(1) Identifies the prime contract by number and task order release number under which the item is being delivered; and

(2) Identifies the deliverable item number or report requirement which requires the delivered item(s).

(b) For any package, report, or other deliverable being delivered to a party other than the Contract Administrator (CA), a copy of the cover letter shall be furnished to the CA. However, the CA reserves the right to request a copy of the package, report or deliverable.

D.3 SECURITY

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

D.4 DOCUMENTATION

Each shipment shall be accompanied by the following documents traceable to the items composing the shipment. Failure to provide these documents as applicable may, at the least, result in delayed payment of invoices and can result in rejection of the shipment and return of the shipment to the Contractor at the Contractor's own expense.

(a) Contractor's Inspection Report(s) and/or Inspection/Test Data.

(b) Contractor's Certificate(s) of Compliance.

(c) Bill of Materials/Packing Slip

(d) Company's Task Order Release number

D.5 F.O.B.

Materials to be delivered under this contract are to be shipped F.O.B. destination.

PART I – THE SCHEDULE

SECTION E – INSPECTION AND ACCEPTANCE

E.1 INSPECTION AND ACCEPTANCE

- (a) Inspection and acceptance of all items under this contract shall be accomplished by the FBP Contract Manager's representative, or any other duly authorized FBP representative identified by the Contract Manager. The contractor will be notified in writing if a different representative is designated.
- (b) The Company has the right to inspect and test all materials furnished and services performed under this contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Company may also inspect the plant or plants of the Contractor or any subcontractor engaged in contract performance. The Company shall perform inspections and tests in a manner that will not unduly delay the work. The Company assumes no contractual obligation to perform any inspection and test for the benefit of the Contractor unless specifically set forth elsewhere in this contract.

E.1.1 TIME AND MATERIALS CONTRACTS

- (a) If Fluor-BWXT Portsmouth LLC performs inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.
- (b) Unless otherwise specified in the contract, Fluor-BWXT Portsmouth LLC shall accept or reject services and materials at the place of delivery as promptly as practicable after delivery.
- (c) At any time during contract performance, but not later than 6 months (or such other time as may be specified in the contract) after acceptance of the services or materials last delivered under this contract, Fluor-BWXT Portsmouth LLC may require the Contractor to replace or correct services or materials that at time of delivery failed to meet contract requirements. Except as otherwise specified in paragraph (h) of this clause, the cost of replacement or correction shall be determined under the Payments Under Time-and-Materials and Labor-Hour Contracts clause, but the "hourly rate" for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. The Contractor shall not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.
- (d) (1) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed within the ceiling price (or the ceiling price as increased by Fluor-BWXT Portsmouth LLC), Fluor-BWXT Portsmouth LLC may –

- (i) By contract or otherwise, perform the replacement or correction, charge to the Contractor any increased cost, or deduct such increased cost from any amounts paid or due under this contract; or
 - (ii) Terminate this contract for default.
- (2) Failure to agree to the amount of increased cost to be charged to the Contractor shall be a dispute.
- (e) Notwithstanding paragraphs (c) and (d) above, Fluor-BWXT Portsmouth LLC may at any time require the Contractor to remedy by correction or replacement, without cost to Fluor-BWXT Portsmouth LLC, any failure by the Contractor to comply with the requirements of this contract, if the failure is due to –
 - (1) Fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel; or
 - (2) The conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.
- (f) This clause applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under this contract.
- (g) The Contractor has no obligation or liability under this contract to correct or replace materials and services that at time of delivery do not meet contract requirements, except as provided in this clause or as may be otherwise specified in the contract.
- (h) Unless otherwise specified in the contract, the Contractor's obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.

Alternate I (Apr 1984). If inspection and acceptance are to be performed at the Contractor's plant, paragraph (e) below may be substituted for paragraph (e) of the basic clause:(e) Fluor-BWXT Portsmouth LLC shall inspect for acceptance all items (other than aircraft to be flown away, if any) to be furnished under this contract at the Contractor's plant or plants specified in the contract, or at any other plant or plants approved for such purpose in writing by Fluor-BWXT Portsmouth LLC. The Contractor shall inform Fluor-BWXT Portsmouth LLC when the work is ready for inspection. Fluor-BWXT Portsmouth LLC reserves the right to charge to the Contractor any additional cost of inspection and test when items are not ready at the time for which inspection and test is requested by the Contractor.

- (c) If any of the services do not conform to contract requirements, the Company may require the Contractor to perform the services again in conformity with contract requirements, at no increase in contract price. When the defects in services cannot be corrected by re-performance, the Company may --
 - (1) Require the Contractor to take necessary action to ensure that future performance conforms to contract and/or task order release requirements; and
 - (2) Reduce the contract price to reflect the reduced value of the services performed.

(3) If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the Company may --

- By contract or otherwise, perform the services and charge to the Contractor any cost incurred by the Company that is directly related to the performance of such service; or,
- Terminate the contract for default.

PART I - THE SCHEDULE

SECTION F - DELIVERIES OR PERFORMANCE

F.1 TERM OF THE CONTRACT

The period of performance for this subcontract is 90 calendar days from Notice to Proceed.

Schedule Summary		
Pay Item	Pay Item Description	Duration (Calendar Days)
1	Notice to Proceed (NTP)	-
2	Pre-Mobilization Submittals	30 Days after NTP
3	Mobilization and Training	7 Days after approval of pre-mobilization submittals
4	On-site Transporting of Scrap Equipment	75 Days after NTP
5	Site Restoration	85 Days after NTP
6	Demobilization	90 Days after NTP
7	Project Close Out	120 Days after NTP

F.2 DELIVERY SCHEDULE

All deliveries will be made in accordance with the Contractor's Work Plan.

F.3 STOP-WORK ORDER (AUG 1989) – ALTERNATE I (APR 1984) [As derived from FAR 52.242-15 (AUG 1989), Alternate I (APR 1984)]

(a) FLUOR BWXT Portsmouth LLC may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract and/or task order release for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the FLUOR BWXT Portsmouth LLC shall either --

- (1) Cancel the stop-work order; or

- (2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of FLUOR BWXT Portsmouth LLC, clause of this contract.
- (b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. FLUOR BWXT Portsmouth LLC shall make an equitable adjustment in the delivery schedule or contract and/or task order release price, or both, and the contract shall be modified, in writing, accordingly, if --
 - (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
 - (2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contract Administrator decides the facts justify the action, the Contract Administrator may receive and act upon the claim submitted at any time before final payment under this contract.
- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contract Administrator shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contract Administrator shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

F.4 PRINCIPAL PLACE OF PERFORMANCE

The principal place of performance under the contract shall be Department of Energy's Portsmouth GDP site near Piketon, Ohio.

F.5 DELIVERY

All normal truck deliveries shall be made between the hours of 7:00AM to 5:00PM, Piketon, Ohio time on the Company working days. The Company reserves the right to limit the number of days per week and to specify the allowed delivery days during the week. If such designation is deemed necessary, the buyer shall issue it in writing.

PART I - THE SCHEDULE

SECTION G - CONTRACT ADMINISTRATION DATA

G.1 PREAMBLE

- (a) All references to FLUOR BWXT Portsmouth LLC, Company or FBP in correspondence, memoranda or other writings arising under, relating to or otherwise required by any provision of this contract will be understood to refer to FLUOR BWXT Portsmouth LLC as one and the same corporation.
- (b) This contract is a subcontract entered into to meet in part the requirements of Contract DE-AC30-10CC40017 a contract in which FLUOR BWXT Portsmouth LLC is the Contractor and the United States Department of Energy (DOE) is the Client. By the terms of that contract FLUOR BWXT Portsmouth LLC has agreed to treat appropriately requirements of federal statutes and Presidential executive orders in procurements using funds provided under the contract. Consequently, many of the standard terms and conditions contained herein are similar to terms and conditions used by federal agencies. However, FLUOR BWXT Portsmouth LLC is not a federal agency or instrumentality and is not awarding this subcontract as an agent of the DOE; the use of similar terms and conditions is only for the administrative convenience of FLUOR BWXT Portsmouth LLC.
- (c) The Contractor shall furnish the goods and/or services covered by the contract subject to all the terms and conditions set forth in the contract including the following, which the Contractor, in accepting the contract, agrees to be bound by and to comply with in all particulars, and no other terms or conditions shall be binding upon the parties unless hereafter accepted by them in writing. Written acceptance or shipment of all or any portion of goods or the performance of all or any portion of the services covered by the contract shall constitute unqualified acceptance of all FLUOR BWXT Portsmouth LLC terms and conditions. The terms of any quotation referred to in the contract are included and made a part of the contract only to the extent of specifying the nature of the goods or services ordered, the price therefore, and the delivery thereof, and then only to the extent that such terms are consistent with the terms and conditions of the contract.
- (d) This contract uses or incorporates one or more FAR or DEAR clauses by reference. The version of the FAR or DEAR clause in effect as of the effective date of the contract shall apply with the same force and effect as if they were given in full text. Upon request FLUOR BWXT Portsmouth LLC will make the full text of the clauses available.
- (e) This contract issued hereunder, nor any portion hereof, shall be assigned or delegated without FLUOR BWXT Portsmouth LLC's prior written consent and any such assignment or delegations shall be void. FLUOR BWXT Portsmouth LLC has the right to assign this contract to DOE or its designee, and in case of such assignment and notice thereof to the Contractor, FLUOR BWXT Portsmouth LLC shall have no further responsibility, hereunder.
- (f) The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

G.2 CORRESPONDENCE PROCEDURES

To promote timely and effective administration, correspondence (except for invoices and reports) submitted under this contract shall be subject to the following procedures:

- (a) Technical Correspondence. Technical correspondence (as used herein, excludes technical correspondence where patent or technical data issues are involved and correspondence which proposes or otherwise involves waivers, deviations, or modifications to the requirements, terms or conditions, of this agreement) shall be addressed to the FLUOR BWXT Portsmouth LLC Buyers Technical Representative (BTR) with copy to the FLUOR BWXT Portsmouth LLC Contract Administrator. The mailing address is as follows:

FLUOR BWXT Portsmouth LLC
PO Box 548
Piketon, Ohio 45661
Attn.: Marsha McRoberts (CTR)
Telephone: (740) 897-3591
Email: marsha.mcroberts@ports.pppo.gov

- (b) Other Correspondence. All correspondence, other than technical correspondence, shall reference the contract number, and be addressed to the FLUOR BWXT Portsmouth LLC Contract Administrator, with information copies of the correspondence to the FLUOR BWXT Portsmouth LLC Buyers Technical Representative. The mailing address is as follows:

FLUOR BWXT Portsmouth LLC
PO Box 548
Piketon, Ohio 45661
Attn.: Kelli Bunstine
Telephone: (740) 897-3941
Email: kelli.bunstine@ports.pppo.gov

G.3 CONTRACT ADMINISTRATION

This contract will be administered by the Contract Administrator and the Manager identified below.

Contract Administrator: Kelli Bunstine
Contract Manager: Alan Undheim
Buyer's Technical Representative: Marsha McRoberts

G.4 SUBMISSION OF INVOICES AND MEANS OF PAYMENT

- (a) The Contractor shall submit an original invoice to Accounts Payable at the address below and one copy (or electronic invoice, if authorized) to the Contract Administrator. Invoices should be submitted to:

FLUOR BWXT Portsmouth LLC
P.O. Box 548

Piketon, OH 45661
Attn: Accounts Payable

The Contractor shall submit via email to Accounts Payable at invoice@ports.pppo.gov and copy the contract administrator. If the Contractor elects email submission, Company is not responsible for any failure attributable to the transmission or receipt of the invoice including, but not limited to, the following:

- (1) Receipt of garbled or incomplete invoice.
 - (2) Availability or condition of the email systems.
 - (3) Incompatibility electronic formats.
 - (4) Delay in transmission or receipt of invoice.
 - (5) Failure of the Contractor to properly identify the invoice.
 - (6) Illegibility of invoice.
 - (7) Security of invoice data.
- (b) In the event the terms of this contract provide for payments to be made incrementally, they shall be made not more frequently than monthly at dates within each pay period determined by FLUOR BWXT Portsmouth LLC. Company will advise Contractor of the cut-off date for monthly progress invoices and Contractor shall submit its invoices within five (5) calendar days after such cut-off date. Invoices submitted later than five (5) calendar days after the cut-off date may be paid an additional thirty (30) calendar days later than the payment terms set forth in this Contract.
- (c) An invoice must include, consistent with the individual delivery order --
- (1) Name and address of the Contractor;
 - (2) Invoice date;
 - (3) Contract number, contract line item number, if applicable
 - (4) Description, Position Title, quantity, unit of measure, unit price and extended price of the items delivered;
 - (5) Separate line item for any hours over 40 per week (even if not at premium rate)
 - (6) Terms of any prompt payment discount offered;
 - (7) Name and address of official to whom payment is to be sent;
 - (8) Name, title and phone number of persons to be notified in event of defective invoice
 - (9) Contractor's invoices shall indicate the time period during which the Work was performed and for which the invoice is submitted
- (d) Invoice support must be adequate to demonstrate that invoiced charges and expenses are; within the scope of the contract/release, were incurred and paid, are consistent with GSA, FAR and other contractual limitations or restrictions for the type of contract performed. Invoice support may include but is not limited to the items listed below and in clause in G.5:
- (1) For Time and Materials/Labor Hour contracts/releases:
 - (i) Timesheets showing daily hours worked by Contractor
 - (ii) Receipts for items directly charged as Other Direct Costs to the contract/release for time and material, labor hour and cost reimbursement contracts/releases.
 - (2) For authorized travel under Time and Material, contracts/task order releases ;

- (i) Lodging receipts showing dates and compliance with GSA rate schedule.
 - (ii) Airfare and rental vehicle receipts showing dates and costs
 - (iii) Receipts for authorized incidentals
- (e) Unauthorized deviations or invoices not in conformity with the above may result in a reduction in payment amount or disapproval and return to the Contractor without action for correction and resubmission. Any cost associated with resubmittal of a proper invoice will be at Contractors expense.
- (f) Payment shall be made for items accepted by FLUOR BWXT Portsmouth LLC that have been delivered to the delivery destination(s) set forth in this contract or as otherwise provided in the contract. Payments under this contract may be made either by check, electronic funds transfer, or other automated means at the option of FLUOR BWXT Portsmouth LLC. In connection with any discount offered for early payment, time shall be computed from the date a proper invoice is received and all prerequisite conditions for payment have been met. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the date on which an electronic funds transfer was made.
- (g) Invoices will normally be paid within thirty (30) days after receipt by and acceptance FLUOR BWXT Portsmouth LLC of on invoice that is properly prepared, supported and verification of labor hours charged, percentage of completion (if applicable) and amounts billed.
- (h) In addition to any common-law right to withhold payments otherwise due to Contractor that FLUOR BWXT Portsmouth LLC may have, FLUOR BWXT Portsmouth LLC shall also have the right to withhold payments otherwise due to Contractor under the following circumstances:
 - (1) If the Government questions or withholds payment, in whole or in part, of any amount invoiced to the Government by FLUOR BWXT Portsmouth LLC that is based on an invoice submitted by Contractor under this Contract, regardless of the Government's reasons or the time of the Government action, FLUOR BWXT Portsmouth LLC shall have the right to withhold an equivalent amount from any payment that is otherwise due or becomes payable to Contractor under this Contract.
 - (2) If, as a result of a determination by the Government that costs invoiced to the Government by FLUOR BWXT Portsmouth LLC based on costs invoiced by Contractor to FLUOR BWXT Portsmouth LLC under this Contract are unallowable, whether through a final decision of a Government Contracting Officer, an administrative decision, a judicial decision, or otherwise, FLUOR BWXT Portsmouth LLC is obligated to repay the Government any amount previously paid for performance under the Prime Contract, FLUOR BWXT Portsmouth LLC shall be entitled to withhold an equivalent amount from any payment that is otherwise due or becomes payable to Contractor under this Contract.
 - (3) If is determined that Contractor has been overpaid, whether as a result of a audit performed by FLUOR BWXT Portsmouth LLC, an external auditor, or a Government audit or review, FLUOR BWXT Portsmouth LLC shall have the right to withhold the amount of any such overpayment from any payment that is otherwise due or becomes payable to Contractor under this Contract.

- (4) If it is subsequently determined that any such costs questioned, withheld, or disallowed by the Government are in fact allowable and the Government pays such amounts to FLUOR BWXT Portsmouth LLC, FLUOR BWXT shall promptly pay to Contractor any such amounts that have been paid by the Government that are otherwise due to Contractor.
- (i) Contractor shall submit with each invoice, documentation providing evidence of pre-approval by the FBP Contract Administrator for reimbursement of all travel and per diem costs in accordance with the provisions as defined in Contract Clause H.33 entitled "Travel and Short Term Business Trips Rev2"

G.5 ACCRUAL SUBMITTALS

When requested, the Contractor shall provide accrual information to FBP monthly. A form will be provided for completion by the Contractor. This information is due to FBP by ten days before the close of each FBP business month (C-10). For example, if the August business month closes on August 25th, the Contractor should provide accrual information to FBP by August 15th. An FBP business month calendar will be provided to the Contractor reflecting the closing date of each business month.

G.6 PAYMENT TERMS – TIME AND MATERIALS CONTRACTS

FLUOR BWXT Portsmouth LLC will pay the Contractor as follows upon the submission of a properly prepared and approved by an authorized representative of the Company invoice:

- (a) *Hourly rate.*
 - (1) *Hourly rate* means the rate(s) prescribed in the contract for payment for labor that meets the labor category qualifications of a labor category specified in the contract that are—
 - (i) Performed by the Contractor;
 - (ii) Performed by the Subcontractors; or
 - (iii) Transferred between divisions, subsidiaries, or affiliated of the Contractor under a common control.
 - (2) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the Schedule by the number of direct labor hours performed.
 - (3) The hourly rates shall be paid for all labor performed on the contract that meets the labor qualifications specified in the contract. Labor hours incurred to perform tasks for which labor qualifications were specified in the contract will not be paid to the extent the work is performed by employees that do not meet the qualifications specified in the contract, unless specifically authorized by the Contract Administrator.

- (4) The hourly rates shall include wages, burdens and benefits, taxes, indirect costs, general and administrative expense, and profit. Fractional parts of an hour shall be payable on a prorated basis.
- (5) Vouchers may be submitted once each month (or at more frequent intervals, if approved by the Buyer), to the Buyer or authorized representative. The Contractor shall substantiate vouchers (including any subcontractor hours reimbursed at the hourly rate in the schedule) by evidence of actual payment and by—
 - (i) Individual daily job timekeeping records signed by Contractor Employee; Contractor; and designated FLUOR BWXT Portsmouth LLC representative, weekly;
 - (ii) Records that verify the employees meet the qualifications for the labor categories specified in the contract; or
 - (iii) Other substantiation approved by the Contract Administrator.
- (6) Promptly after receipt of each substantiated voucher, the Company shall, except as otherwise provided in this contract, and subject to the terms of paragraph (d) of this clause, pay the voucher as approved.
- (7) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis. If no overtime rates are provided in the Schedule and overtime work is approved in advance by the Contract Administrator or overtime rates shall be negotiated. Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes clause of this contract. If the Schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Contract Administrator.

(b) *Materials*

- (1) For the purposes of this clause—
 - (i) *Direct materials* mean those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product or service.
 - (ii) *Materials* means—
 - (A) Direct materials, including supplies transferred between divisions, subsidiaries, or affiliates of the Contractor under a common control;
 - (B) Subcontracts for supplies and incidental services for which there is not a labor category specified in the contract;

- (C) Other direct costs (*e.g.*, incidental services for which there is not a labor category specified in the contract, travel, computer usage charges, etc.); and
 - (D) Applicable indirect costs.
- (2) If the Contractor furnishes its own materials that meet the definition of a commercial item at FAR 2.101, the price to be paid for such materials shall not exceed the Contractor's established catalog or market price, adjusted to reflect the—
 - (i) Quantities being acquired; and
 - (ii) Actual cost of any modification necessary because of contract requirements.
- (3) Except as provided for in paragraph (b)(2) of this clause, the Company will reimburse the Contractor for allowable cost of materials provided the Contractor—
 - (i) Has made payments for materials in accordance with the terms and conditions of the agreement or invoice; or
 - (ii) Ordinarily makes these payments within 30 days of the submission of the Contractor's payment request to the Company and such payment is in accordance with the terms and conditions of the agreement or invoice.
- (4) Payment for materials is subject to the Allowable Cost and Payment clause of this contract. The Contract Administrator will determine allowable costs of materials in accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.
- (5) The Contractor may include allocable indirect costs and other direct costs to the extent they are—
 - (i) Comprised only of costs that are clearly excluded from the hourly rate;
 - (ii) Allocated in accordance with the Contractor's written or established accounting practices; and
 - (iii) Indirect costs are not applied to subcontracts that are paid at the hourly rates.
- (6) To the extent able, the Contractor shall--
 - (i) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and
 - (ii) Take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the

benefits, the Contractor shall promptly notify the Contract Administrator and give the reasons. The Contractor shall give credit to the Company for cash and trade discounts, rebates, scrap, commissions, and other amounts that have accrued to the benefit of the Contractor, or would have accrued except for the fault or neglect of the Contractor. The Contractor shall not deduct from gross costs the benefits lost without fault or neglect on the part of the Contractor, or lost through fault of the Government.

- (7) Except as provided for in 31.205-26(e) and (f), the Company will not pay profit or fee to the Contractor on materials.
- (c) *Ceiling price.* The Company will not be obligated to pay the Contractor any amount in excess of the ceiling price in the Schedule, and the Contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until the Contract Administrator notifies the Contractor in writing that the ceiling price has been increased and specifies in the notice a revised ceiling that shall constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.
- (d) *Audit.* At any time before final payment under this contract, the Buyer may request audit of the invoices or vouchers and supporting documentation. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding vouchers, that are found by the Buyer or authorized representative not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the voucher designated by the Contractor as the “completion voucher” and supporting documentation, and upon compliance by the Contractor with all terms of this contract (including, without limitation, terms relating to patents and the terms of paragraph (g) of this section), the Government shall promptly pay any balance due the Contractor. The completion voucher, and supporting documentation, shall be submitted by the Contractor as promptly as practicable following completion of the work under this contract, but in no event later than 1 year (or such longer period as the Buyer may approve in writing) from the date of completion.
- (e) *Assignment and Release of Claims.* The Contractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the Company, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:
- (1) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible of exact statement by the Contractor.
 - (2) Claims, together with reasonable incidental expenses, based upon the liabilities of the Contractor to third parties arising out of performing this contract, that are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to the Buyer not more than 6 years

after the date of the release or the date of any notice to the Contractor that the Company is prepared to make final payment, whichever is earlier.

- (3) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Company against patent liability), including reasonable incidental expenses, incurred by the Contractor under the terms of this contract relating to patents.

G.7 BACKCHARGES

- (a) A backcharge is a cost sustained by Company and chargeable to Contractor for Company's performance of work that is the responsibility of Contractor.
- (b) Without limitation and by way of example only, backcharges may result from:
 - (1) Services performed by Company, at Contractor's request, for work which is within Contractor's scope of work under this Contract.
 - (2) Costs sustained by Company as a result of Contractor's non-compliance with the provisions of this Contract or Contractor's act of omission or negligence.
 - (3) Costs incurred by Company to fix all defects, deficiencies or errors that may appear in the Work during the warranty period.
- (c) Upon identification by Company of an actual or anticipated backcharge, Company will issue a backcharge notice to Contractor. This notice shall describe the backcharge Work to be performed, the schedule period for performance, the cost to be charged by Company to Contractor for the backcharge and other terms.
- (d) The backcharge cost shall consist of:
 - (1) Labor: at actual cost plus fifty-five percent (55%) to cover payroll additives;
 - (2) Materials: at actual supplier and freight invoice cost delivered to jobsite;
 - (3) Equipment: at actual third party rental cost or at Company's equipment rental rates, whichever may be applicable;
 - (4) Subcontracts: At actual cost;
 - (5) All taxes, levies, duties and assessments attributable to the backcharge Work;
 - (6) Twenty-five percent (25%) shall be added to the foregoing for indirect costs, overhead, supervision and administration.
- (e) Within twenty-four (24) hours after receipt of the backcharge notice, Contractor shall fax back to Company a signed copy of the backcharge notice, indicating either acceptance of the backcharge or agreement to perform the described backcharge work within the indicated schedule period for performance, utilizing Contractor supplied labor, material and equipment, as applicable.

- (f)** Contractor will be required to sign the backcharge notice before commencement of the backcharge work by Company or others. In the event Contractor refuses to sign, Company shall, at its option, proceed with the backcharge work and charge the backcharge cost to Contractor's account. Thirty (30) calendar days after commencement of the backcharge work or on completion of the backcharge work, whichever occurs sooner, Company will invoice Contractor for the incurred backcharge cost.

PART I - THE SCHEDULE

SECTION H - SPECIAL CONTRACT REQUIREMENTS

H.1 MODIFICATION AUTHORITY

The FLUOR BWXT Portsmouth LLC Representatives identified as the “Contract Administrator” and the “Manager” in Paragraph G.3 of this contract are the only individuals authorized to bind FLUOR BWXT Portsmouth LLC contractually in performance of work under this contract. After initial contract award, the contract may be further modified either unilaterally or bilaterally by the Contracts Administrator to:

- (a) Waive any requirement of this contract;
- (b) Modify any term of this contract,
- (c) Modify the price of this contract; or,
- (d) Accept nonconforming work.

H.2 TECHNICAL DIRECTION

- (a) Performance of the work under this contract may be subject to the technical direction of the cognizant FLUOR BWXT Portsmouth LLC Technical Representative, if identified in clause G.3 of his contract, in a task order or delivery order issued under this contract, or in writing by the manager or Contract Administrator. The term "technical direction" is defined to include, without limitation:
 - (1) Directions to the Contractor that redirect the contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details or otherwise serve to accomplish the Statement of Work (SOW).
 - (2) Provision of written information to the Contractor, which assists in the interpretations of drawings, specifications, or technical portions of the work description.
 - (3) Review and, where required by the contract, approve technical reports, drawings, specifications and technical information to be delivered by the Contractor to FLUOR BWXT Portsmouth LLC under this contract.
- (b) Technical direction must be within the general scope of work (SOW) stated in the applicable delivery order or task order. The cognizant FLUOR BWXT Portsmouth LLC Technical Representative is not authorized to negotiate, or make any agreements or commitments, which involve a change in the scope, price, period of performance, terms or conditions of the contract. Technical Direction received by the Contractor which it believes constitutes a change to the contract (as defined in items 1-5 below), shall notify the Contracts Administrator in accordance with the requirements of this clause.
 - (1) Constitutes an assignment of additional work outside the general SOW of the delivery order or task order;

- (2) Constitutes a change as defined in the applicable FLUOR BWXT Portsmouth LLC General Provision entitled "Changes" set out in clause H.3.
 - (3) In any manner causes an increase or decrease in the total estimated contract price, the estimated price or cost of a delivery order or task order, or the time required for the contract and/or performance of a delivery order or task order;
 - (4) Changes any of the expressed terms, conditions or specifications of the delivery order or task order;
 - (5) Interferes with the Contractor's right to perform the terms and conditions of the delivery order or task order.
- (c) All technical direction shall be issued in writing by the cognizant FLUOR BWXT Portsmouth LLC Technical Representative.
- (d) The Contractor shall proceed promptly with the performance of technical directions duly issued by the FLUOR BWXT Portsmouth LLC Technical Representative in the manner prescribed by this article and within the FLUOR BWXT Portsmouth LLC Technical Representative's authority under the provisions of this clause. There may be circumstances on large/complex design or construction contracts where the designated Company Technical Representative also acts as a "technical intermediary" between numerous Functional and/or Engineering disciplines for relaying technical matters for resolution on behalf the Contractor. If, in the opinion of the Contractor, any instruction or direction provided by the FLUOR BWXT Portsmouth LLC Technical Representative falls within one of the categories defined in items 1 through 5 above, the Contractor shall not proceed but shall notify the FLUOR BWXT Portsmouth LLC Contract Administrator in writing within five (5) working days of any such instruction or direction and shall request the FLUOR BWXT Portsmouth LLC Contract Administrator to modify the contract. Upon receiving the written notification from the Contractor, the FLUOR BWXT Portsmouth LLC Contract Administrator shall:
- (1) Advise the Contractor in writing within seven (7) working days after receipt of the Contractor's letter that the technical direction is within the scope of the delivery order or task order and does not constitute a change under the FLUOR BWXT Portsmouth LLC clause entitled "Changes";
 - (2) Advise the Contractor in writing within seven (7) working days after receipt of the Contractor's letter not to perform under the direction and to cancel the direction; or
 - (3) Advise the Contractor in writing within a reasonable time that FLUOR BWXT Portsmouth LLC will issue a written change order.
- (e) Failure of the Contractor and the FLUOR BWXT Portsmouth LLC Contract Administrator to agree that the technical direction is within the scope of the contract, or failure to agree upon the contract action to be taken with respect thereto shall be subject to the FLUOR BWXT Portsmouth LLC General Provision entitled "Disputes."

H.3 CHANGES TIME AND MATERIAL *[As derived from FAR 52.243- 3]*

- (a) A FLUOR BWXT Portsmouth LLC Buyer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:
 - (1) Description of services to be performed.
 - (2) Time of performance (*i.e.*, hours of the day, days of the week, etc.).
 - (3) Place of performance of the services.
 - (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the FLUOR BWXT Portsmouth LLC in accordance with the drawings, designs, or specifications.
 - (5) Method of shipment or packing of supplies.
 - (6) Place of delivery.
 - (7) Amount of Government-furnished property.
- (b) If any change causes an increase or decrease in any hourly rate, the ceiling price, total cost, total price or the time required for performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this contract, the Buyer may consider an equitable adjustment in any one or more of the following and will modify the contract accordingly:
 - (1) Ceiling price.
 - (2) Hourly rates.
 - (3) Delivery or completion schedule.
 - (4) Other affected terms.
- (c) The Contractor shall assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Buyer decides that the facts justify it, the Buyer may receive and act upon a proposal submitted before final payment of the contract.
- (d) Failure to agree to any adjustment will be a dispute under the Disputes clause. However, nothing in this clause excuses the Contractor from proceeding with the contract as changed.

H.4 CHANGE ORDER ACCOUNTING [As derived from FAR 52.243-6 (APR 1984)]

FLUOR BWXT Portsmouth LLC may require change order accounting whenever the estimated cost of a change or series of related changes exceeds \$100,000. The Contractor, for each change or series of related changes, shall maintain separate accounts, by job order or other suitable

accounting procedure, of all incurred segregable, direct costs (less allocable credits) of work, both changed and not changed, allocable to the change. The Contractor shall maintain such accounts until the parties agree to an equitable adjustment for the changes ordered by FLUOR BWXT Portsmouth LLC the Contract Administrator or the matter is conclusively disposed of in accordance with the Disputes clause.

H.5 NOTIFICATION OF CHANGES [As derived from FAR 52.243-7 (APR 1984)]

(a) Reserved.

(b) Notice. The purpose of this clause is to obtain prompt reporting of conduct of FLUOR BWXT Portsmouth LLC that the Contractor considers to constitute a change to this contract. Except for changes identified as such in writing, the Contractor shall notify FLUOR BWXT Portsmouth LLC in writing promptly, within 7 calendar days from the date that the Contractor identifies any conduct (including actions, inactions, and written or oral communications) that the Contractor regards as a change to the contract terms and conditions. On the basis of the most accurate information available to the Contractor, the notice shall state -

- (1) The date, nature, and circumstances of the conduct regarded as a change;
- (2) The name, function, and activity of each individual involved in or knowledgeable about such conduct;
- (3) The identification of any documents and the substance of any oral communication involved in such conduct;
- (4) In the instance of alleged acceleration of scheduled performance or delivery, the basis upon which it arose;
- (5) The particular elements of contract performance for which the Contractor may seek an equitable adjustment under this clause, including -
 - (i) What contract line items have been or may be affected by the alleged change;
 - (ii) What labor or materials or both have been or may be added, deleted, or wasted by the alleged change;
 - (iii) To the extent practicable, what delay and disruption in the manner and sequence of performance and effect on continued performance have been or may be caused by the alleged change;
 - (iv) What adjustments to contract price, delivery schedule, and other provisions affected by the alleged change are estimated; and
- (6) The Contractor's estimate of the time by which the Company must reasonably respond to the Contractor's notice to minimize cost, delay or disruption of performance.

(c) Continued performance. Following submission of the notice required by paragraph (b) of this clause, the Contractor shall diligently continue performance of this contract to the maximum extent possible in accordance with its terms and conditions as construed by the Contractor,

unless the notice reports a direction of FLUOR BWXT Portsmouth LLC, in either of which events the Contractor shall continue performance; provided, however, that if the Contractor regards the direction or communication as a change as described in paragraph (b) of this clause, notice shall be given in the manner provided.

(d) FLUOR BWXT Portsmouth LLC. FLUOR BWXT Portsmouth LLC shall promptly, within ten (10) calendar days after receipt of notice, respond to the notice in writing. In responding, FLUOR BWXT Portsmouth LLC either -

- (1) Confirm that the conduct of which the Contractor gave notice constitutes a change and when necessary direct the mode of further performance;
- (2) Countermand any communication regarded as a change;
- (3) Deny that the conduct of which the Contractor gave notice constitutes a change and when necessary direct the mode of further performance; or
- (4) In the event the Contractor's notice information is inadequate to make a decision under subparagraphs (d),(1), (2), or (3) of this clause, advise the Contractor what additional information is required, and establish the date by which it should be furnished and the date thereafter by which FLUOR BWXT Portsmouth LLC will respond.

(e) Equitable adjustments.

(1) If FLUOR BWXT Portsmouth LLC confirms that the conduct identified effected a change as alleged by the Contractor, and the conduct causes an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under this contract, whether changed or not changed by such conduct, an equitable adjustment shall be made -

(i) In the contract price or delivery schedule or both; and

(ii) In such other provisions of the contract as may be affected.

(2) The contract shall be modified in writing accordingly. In the case of drawings, designs or specifications which are defective and for which FLUOR BWXT Portsmouth LLC is responsible, the equitable adjustment shall include the cost and time extension for delay reasonably incurred by the Contractor in attempting to comply with the defective drawings, designs or specifications before the Contractor identified, or reasonably should have identified, such defect. When the cost of property made obsolete or excess as a result of a change confirmed by FLUOR BWXT Portsmouth LLC under this clause is included in the equitable adjustment, FLUOR BWXT Portsmouth LLC shall have the right to prescribe the manner of disposition of the property. The equitable adjustment shall not include increased costs or time extensions for delay resulting from the Contractor's failure to provide notice or to continue performance as provided, respectively, in paragraphs (b) and (c) of this clause.

Note: The phrases "contract price" and "cost" wherever they appear in the clause, may be appropriately modified to apply to cost-reimbursement or incentive contracts, or to combinations thereof.

H.6 DISPUTES

- (a) All disputes arising under or relating to this contract shall be resolved pursuant to the procedures of this clause. Any claim for the payment of a sum certain or other relief arising under or related to this contract shall be made in writing by the claiming party to the other. Claims shall be subject to a written decision by the party against whom the claim is made within a reasonable time of submission. The Contractor agrees to continue to perform this contract pending final resolution of any claims. The Contractor shall have no right to stop work or otherwise fail to perform this contract in spite of pending claims, and the Contractor limits its rights to relief to equitable adjustment of the contract price and/or schedule. Negotiated resolution of all claims shall be memorialized in contract modifications. If a claim cannot be settled through negotiation between the parties, the parties agree to submit the claim to mediation by a third party mediator as agreed to by the parties, or upon the failure to agree, as selected by the American Arbitration Association under its Commercial Mediation Rules. Cost of the mediator and place of mediation shall be borne equally by the parties. If a negotiated settlement cannot be reached through mediation, the parties agree to consider submitting those claims to binding arbitration according to terms and conditions as may be agreed upon by the parties. FLUOR BWXT Portsmouth LLC shall not be liable for, and the Contractor waives any claim or potential claim of the Contractor which was not made by the Contractor in accordance with the provisions of this clause prior to final payment.
- (b) Irrespective of the place of performance, any provision of this contract that is (i) incorporated in full text or by reference from the Federal Acquisition Regulation ("FAR") or the DOE Acquisition Regulation ("DEAR"), or (ii) incorporated in full text or by reference from any agency regulation that implements or supplements the FAR or DEAR, or (iii) that is substantially based on any such agency regulation or FAR or DEAR provision, shall be construed and interpreted according to the Federal common law of Government contracts as enunciated and applied by Federal Courts, agency Boards of Contract Appeals and quasi-judicial agencies of the Federal Government, including but not limited to the Government Accountability Office. Consistent with that law, interest, if any, awarded pursuant to the provisions of this clause shall be simple interest computed at the rate established by the Secretary of the Treasury as provided in the Contract Disputes Act of 1978 applicable to the period for which interest is awarded. In no case shall interest be awarded for a period commencing earlier than the time a complaint is filed in the court of competent jurisdiction or, if, prior to the time a complaint is filed, arbitration is agreed upon, the date of the arbitration agreement. To the extent the Federal common law of Government contracts is not dispositive of any issue arising under or relating to this contract, the law of the state of Ohio shall apply. In the event either party hereto files suit on account of any issue arising under or relating to this contract, each party consents to that action being filed in the court of competent jurisdiction in and for Pike County, Ohio.
- (c) Contractor hereby knowingly, voluntarily and intentionally waives (to the extent permitted by applicable law) any right it may have to a trial by jury of any dispute arising under or relating in any way to this Contract and agrees that any such dispute may, at Company's option, be tried before a judge sitting without a jury.

H.7 RESERVED

H.8 PROPRIETARY RIGHTS

All materials which Contractor is required to prepare or develop in the performance and completion of Contractor's scope of Work hereunder, including documents, calculations, maps, sketches, notes, reports, data, models and samples, and any and all inventions and copyrightable material contained therein, shall become the sole and exclusive property of Company, without limitation, when made or prepared, whether delivered to Company or not, subject to Contractor's right to use the same to perform the Work under this Contract, and such materials shall, together with any materials furnished to Contractor by Company or Owner hereunder, be delivered to Owner or Company upon request and in any event upon completion or termination of this Contract. Contractor agrees to execute all documents and to take all steps requested by Company, at Company's expense, which Company deems necessary or desirable to complete and perfect in Company such ownership and property rights.

H.9 LAWS AND REGULATIONS

- (a) Contractor shall comply strictly with all local, municipal, state, federal and governmental laws, orders, codes and regulations applicable to Contractor's operations in the performance of the Work hereunder.
- (b) Contractor shall not under any circumstances apply to or enter into negotiations with any governmental authority or agency for acceptance of variations from or revisions to safety or health or air, water or noise pollution, laws or regulations relating to this Contract or to the performance thereof, without Company and Owner's prior written approval.
- (c) Contractor certifies that it is in compliance, and shall at all times remain in compliance, with all applicable anti-corruption and anti-bribery laws, including but not limited to the U.S. Foreign Corrupt Practices Act of 1977, as amended.
- (d) This Contract shall be subject to the law and jurisdiction of the State of Ohio, unless expressly designated otherwise in this Contract.

H.10 ADMINISTRATION OF SUBCONTRACTS

- (a) The administration of all subcontracts entered into and/or managed by the Contractor, including responsibility for payment hereunder, shall remain with the Contractor unless assigned at the direction of FLUOR BWXT Portsmouth LLC.
- (b) FLUOR BWXT Portsmouth LLC reserves the right to direct the Contractor to assign to FLUOR BWXT Portsmouth LLC, the Government or another Contractor any subcontract awarded under this Contract.

H.11 PUBLICITY

Contractor shall not make news releases, publicize or issue advertising pertaining to the Work or this Contract without first obtaining the written approval of Company.

H.12 INDEPENDENT CONTRACTOR

Nothing in this Contract shall be deemed to constitute Contractor or any of Contractor's employees or agents to be the agent, representative or employee of Company or Owner. Contractor shall be an independent contractor and shall have responsibility for and control over the details and means for performing the Work and shall be subject to the directions of Company only with respect to the scope and general results required.

H.13 CODE OF BUSINESS CONDUCT AND ETHICS

“FLUOR BWXT Portsmouth LLC’s (FBP) "Code of Business Conduct and Ethics Expectation for Suppliers and Contractors” publication is available at <http://www.fbportsmouth.com/working-with-us/documents>. FBP expects its suppliers and contractors to maintain and enforce policies consistent with the requirements of the “Code of Business Conduct and Ethics Expectation for Suppliers and Contractors” while also adhering to lawful business practices that encompass FBP’s own ethical expectations. FBP’s ethical expectations are reflected in the FBP “Code of Business Conduct” also available at <http://www.fbportsmouth.com/working-with-us/documents>. Contractor shall access and review the "Code of Business Conduct and Ethics Expectation for Suppliers and Contractors" and agrees that it and its suppliers and contractors, and the employees, agents and representatives of each shall at all times comply with the “Code of Business Conduct and Ethics Expectation for Suppliers and Contractors”, and where more stringent, comply with applicable laws and FBP’s/Contractor’s own business conduct guidelines and policies. Violation of this Article may be deemed by FBP to be a material breach of this Contract and in such event, FBP may, without prejudice to any other rights or remedies FBP may have, hold in abeyance further payments to Contractor and/or terminate Contractor’s right to continue performance of this Contract in accordance with Article H.39 Default. The most current version of the “Code of Business Conduct and Ethics Expectation for Suppliers and Contractors” and FBP “Code of Business Conduct” will be maintained at <http://www.fbportsmouth.com/working-with-us/documents>.

H.14 CONFIDENTIALITY OF INFORMATION

- (a) 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 Contract Administrator 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; or
 - (4) Information that the Contractor can demonstrate was received by it from a third party that did not require the Contractor to hold it in confidence.
- (b) The Contractor shall obtain the written agreement, in a form satisfactory to the Contract Administrator, of each employee permitted access, whereby the employee agrees not to 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.
- (c) The Contractor agrees, if requested by the Company, to sign an agreement identical, in all material respects, to the provisions of this clause, with each company supplying information to the Contractor under this contract. From time to time upon request of the Contract

Administrator, the Contractor shall supply the Contractor with reports itemizing information received as confidential or proprietary and setting forth the company or companies from which the Contractor received such information.

- (d) 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 Contractor agrees that no technical data, information made available to the Contractor by the Contractor, or information first produced in the performance of this contract or any subcontract, shall be disseminated without the prior written approval of the Contract Administrator. This includes technical papers, press releases, etc.
- (f) This clause shall flow down to all subcontracts.

H.15 CONDITIONS AND RISK OF WORK (Applies to work performed at Company/DOE controlled site or premises)

Contractor represents that, to the extent necessary to perform the Work, he has examined and acquainted himself with the conditions relevant to the Work, the plant site, and its surroundings, and Contractor assumes the risk of such conditions and will fully complete the Work for the stated Contract Price. Except for items and information which Company is expressly obligated under this Contract to furnish to Contractor, information on the plant site and local conditions at such site furnished by Company or Owner is not guaranteed by Company or Owner and is furnished only for the convenience of Contractor.

H.16 SAFETY AND HEALTH LAWS AND REGULATIONS (Applies to work performed at Company/DOE controlled site or premises)

- (a) Contractor shall take necessary safety and other precautions to protect property, the environment and persons from damage, injury or illness arising out of the performance of the Work. Contractor shall comply strictly with local, municipal, provincial, state and national laws, plans, orders and regulations pertaining to health, safety and environmental protection which are applicable to Contractor or to the Work, including without limitation the Occupational Safety and Health Act, and Contractor warrants the materials, equipment and facilities, whether temporary or permanent, furnished by Contractor in connection with the performance of the Work shall comply therewith. At all times while any of Contractor's employees, agents or contractors are on Owner's or Company's premises, Contractor shall be solely responsible for ensuring that they comply with the safety, health, and environmental protection rules of Owner, Company and Contractor applicable to the premises, and that all its employees, agents and contractors have a safe place of work on the premises of Owner or Company. Contractor shall inspect the places where its employees, agents or contractors are or may be present on Owner's or Company's premises and shall promptly take action to correct conditions which are or may become an unsafe place of employment for them.
- (b) Accidents, injuries and illnesses, damage to property, fires, spills, releases, and other incidents, circumstances and near misses affecting property, the environment, health, or safety shall be promptly reported to Company at the time of the incident or observation. Written reports, satisfactory in form and content to Company shall be submitted by Contractor within

forty-eight (48) hours after each incident or observation.

- (c) Contractor shall maintain, in form and content approved by Company, jobsite accident, injury and illness statistics which shall be available for inspection by, and submitted to, Company upon its written request.
- (d) Contractor shall keep Company's and Owner's premises and the vicinity thereof clean and free of any debris and rubbish caused by the Work and on completion of the Work, shall leave such premises clean and ready for use. Areas used for the purposes of material/equipment lay-down, temporary facilities, storage and the like shall be restored to the condition existing prior to Contractor's occupation.
- (e) In the event that the Contractor fails to comply with these regulations and requirements, FBP may without prejudice to any other legal or contractual right of FBP, issue an order stopping all or any part of the work; thereafter, a start order for resumption of the work may be issued at the discretion of FBP. The Contractor shall make no claim for an extension of time or for compensation or damages by reason of, or in connection with, such stoppage.

H.17 SCHEDULE, COORDINATION AND REPORTING (Applies to work performed at Company/DOE controlled site or premises)

- (a) Company will schedule and coordinate Contractor's performance of the Work with the work of others connected with the Work, and Contractor agrees to comply strictly with such scheduling and coordination. Contractor agrees that if the Work hereunder is performed under joint occupancy conditions on Owner's premises, Contractor will cooperate with Owner, Company and other contractors on Owner's premises so that the Work and the work of others connected with the Work will progress smoothly, with a minimum of delays, due to interference between various contractors on Owner's premises.
- (b) Contractor shall promptly submit to Company such schedules and reports pertaining to Contractor's performance of the Work, as may be required by this Contract.

H.18 DEPARTMENT OF LABOR WAGE DETERMINATION [As derived from DOE Prime Contract DE-AC30-10CC40017H.32] (Applies to work performed at Company/DOE controlled site or premises)

When the Service Contract Act is applicable to the performance of this contract, the contractor shall comply with the requirements of U.S. Department of Labor Wage Determination for covered employees in effect at the time of performance of the work. U.S. Department of Labor Wage Determinations can be found at <https://sam.gov/content/wage-determinations>.

H.19 VALIDITY OF PROVISIONS

In the event any Section, or any part or portion of any Section of this Contract shall be held to be invalid, void or otherwise unenforceable, such holding shall not affect the remaining part or portions of that Section, or any other Section hereof.

H.20 SURVIVAL

The provisions of this Contract, which by their nature are intended to survive the termination, cancellation, completion or expiration of this Contract, shall continue as valid and enforceable obligations of the parties notwithstanding any such termination, cancellation, completion or expiration.

H.21 WAIVER

Company's failure to insist on performance of any term, condition, or instruction, or to exercise any right or privilege included in this Contract, or its waiver of any breach, shall not thereafter waive any such term, condition, instruction, and/or any right or privilege.

H.22 RESERVED

H.23 PERMITS, APPLICATIONS AND LICENSES

Except as otherwise directed by FLUOR BWXT Portsmouth LLC, the Contractor shall procure and execute all necessary permits or licenses and abide by all applicable laws, regulations, and ordinances of the United States and of the state, territory, and political subdivision in which the work under this contract is performed.

H.24 REQUIRED INSURANCE

Contractor shall, at its sole cost, obtain and maintain in force for the duration of the Contract, insurance of the following types, with limits not less than those set forth below:

- (a) Workers' Compensation Insurance, including occupational illness or disease coverage, in accordance with the laws of the nation, state, territory or province having jurisdiction over Contractor's employees and Employer's Liability Insurance with a minimum limit of \$1,000,000 per accident and, for bodily injury by disease, \$1,000,000 per employee. Contractor shall not utilize occupational accident or health insurance policies, or the equivalent, in lieu of mandatory Workers' Compensation Insurance or otherwise attempt to opt out of the statutory Workers' Compensation system.
- (b) Commercial General Liability Insurance ("Occurrence Form") with a minimum combined single limit of liability of \$1,000,000 each occurrence for bodily injury and property damage; with a minimum limit of liability of \$1,000,000 each person for personal and advertising injury liability. Such policy shall have an aggregate products/completed operations liability limit of not less than \$2,000,000 and a general aggregate limit of not less than \$2,000,000, which general aggregate limit will be provided on a per project basis by means of ISO Endorsement CG 25 03 03 97. The products/completed operations liability coverage shall be maintained in full force and effect for not less than three (3) years following completion of Contractor's services. The policy shall be endorsed to name Company and Owner/United States Government, including their respective affiliates, the financing parties and the respective officers, directors, members, managers, and employees of each, as additional insureds. Such endorsement shall be made upon ISO Endorsements CG 20 10 07 04 and CG 20 37 07 04, "Additional Insured - Owner/United States Government, Lessees or Contractors - Scheduled Person or organization/Completed Operations." Current endorsements providing coverage identical to that provided under ISO Endorsements CG 20 10 07 04 and CG 20 37 07 04, and coverage limits identical to those provided under ISO Endorsement CG 25 03 03 97, may

be employed by Contractor's Commercial General Liability insurer to meet the above requirements.

- (c) Automobile Liability Insurance covering use of all owned, non-owned and hired automobiles with a minimum combined single limit of liability for bodily injury and property damage of \$1,000,000 per occurrence. This policy shall be endorsed to name Company and Owner/United States Government, including their respective affiliates, directors, members, managers, and employees, as additional insureds.
- (d) Professional Liability (Errors & Omissions) Insurance, in an amount not less than \$1,000,000 per occurrence, for damages caused by any act or omission of Contractor, or of any other person for whose acts or omissions Contractor is legally responsible, arising out of the performance of services in a professional capacity. If Contractor should terminate such coverage at any time before three (3) years after acceptance or termination of Contractor's Work, Contractor shall obtain extended reporting period coverage ("tail cover"), for a period of not less than three (3) years from Contractor's last services.
- (e) If Contractor will utilize tools or equipment in the performance of its services under the Contract, Equipment Floater Insurance (Tools and Equipment Insurance) covering physical damage to or loss of all major tools and equipment, construction office trailers and their contents, and vehicles for which Contractor is responsible, throughout the course of the Work.
- (f) Umbrella Liability Insurance providing coverage limits in excess of the amounts set forth in paragraph (a) above, Employers Liability, paragraph (b) above, Commercial General Liability and paragraph (c) above Automobile Liability with a combined single limit of liability of not less than \$4,000,000 per occurrence.
- (g) All insurance provided by Contractor under this Clause H.24 shall include a waiver of subrogation by the insurers in favor of Company, Owner/United States Government, financing parties (if any) and all other contractors and subcontractors performing work at the project site, including their respective affiliates, directors, members, managers, and employees. Contractor hereby releases Company and Owner/United States Government, including their respective affiliates, directors, members, managers, and employees for losses or claims for bodily injury, property damage or other insured claims, regardless of the cause including negligence of Company and Owner/United States Government, arising out of Contractor's performance under the Contract.
- (h) Certificates of insurance satisfactory in form to Company (ACORD form or equivalent Attachment J-18) shall be supplied to Company evidencing that the insurance required above is in force, that not less than thirty (30) days written notice will be given to Company prior to any cancellation or restrictive modification of the policies, and that the waivers of subrogation are in force. Contractor shall also provide with its certificate of insurance, executed copies of the additional insured endorsements and dedicated limits endorsements required in this Clause H.24. At Company's request, Contractor will provide a certified copy of each insurance policy required under this Contract.
- (i) The foregoing insurance coverages shall be primary and non-contributing with respect to any other insurance or self-insurance which may be maintained by Company or Owner/United States Government. Contractor's General and Automobile Liability Insurance policies shall contain a cross liability or severability of interest clause. The fact

that Contractor has obtained the insurance required in this Article shall in no manner lessen nor affect Contractor's other obligations or liabilities set forth in this Contract.

- (j) The requirements of this Section are in addition to and do not limit Section H.24 of the Special Terms and Conditions. FBP will verify coverage for bodily injury, property damage and environmental damage (including cleanup) for loss arising out of work performed by the contractor, with a limit of not less than \$5,000,000 each occurrence. The evidence of such coverage must confirm that asbestos exclusions do not exist, or have been removed in their entirety. Such insurance must name FBP and DOE as additional insureds.

H.25 PRESERVATION OF ANTIQUITIES, WILDLIFE AND LAND AREAS (Applies to work performed at Company/DOE controlled site or premises)

- (a) Federal law provides for the protection of antiquities located on land owned or controlled by the U.S. Government. Antiquities include Indian graves or campsites, relics, and artifacts. The Contractor shall control the movements of its personnel and its contractor's personnel at the job site to ensure that any existing antiquities discovered thereon will not be disturbed, removed, or destroyed by such personnel. It shall be the duty of the Contractor to immediately report to DOE the existence of any such antiquities so discovered. The Contractor shall also preserve all vegetation except where such vegetation must be removed for survey or construction purposes. Further, all wildlife shall be protected to the maximum extent practicable.
- (b) Except as required by or specifically provided for in other provisions of this contract, the Contractor shall not perform any excavations, earth borrow, preparation of borrow areas, or otherwise disturb the surface soils within the job site without the prior approval of DOE or its designee.

H.26 LOBBYING RESTRICTION

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.27 ALLOCATION OF LIABILITY FOR FINES AND PENALTIES TO RESPONSIBLE PARTY

- (a) Liability and responsibility for civil fines or penalties arising from or related to violations of environmental, safety, health, or quality requirements shall be borne by the party that caused the violation (Contractor, contractors, etc.). This clause resolves liability for fines and penalties, though the cognizant regulatory authority may assess such fine or penalty upon either party or both parties without regard to the allocation of responsibility or liability under this contract. The allocation of liability for such fine or penalty is effective regardless of which party signs permit applications, manifests, reports or other required documents, is a permittee, or is named subject of an enforcement action or assessment of a fine or penalty.
- (b) Regardless of what party is the named subject (Contractor, FLUOR BWXT Portsmouth LLC or DOE) of an enforcement action for noncompliance with the environmental, safety, health, or quality requirements by the cognizant regulatory authority, liability for payment of any

fine or penalty as a result of Contractor or contractor actions or inactions is the responsibility of the Contractor or contractor, as appropriate, and not reimbursable under this contract. Cost of fines and penalties resulting from violations of, or failure of the Contractor or contractor to comply with Federal, State, local, or foreign laws and regulations, are unallowable.

H.28 FLUOR BWXT PORTSMOUTH LLC WORKING DAYS

Standard work week is Monday through Friday 7:00 am to 5:30 pm. Work during other hours must be coordinated in advance with the FBP technical representative.

The following holidays are observed by the company for all employees:

New Year's Day
Good Friday
Memorial Day
Juneteenth
Independence Day
Day associated with Independence Day
Labor Day
Columbus Day
Thanksgiving Day
Day associated with Thanksgiving Day
Day associated with Christmas
Christmas

H.29 FOREIGN NATIONALS

- (a) In accordance with DOE Order 142.3A, Contractor Requirements Document (CRD) the terms of which are incorporated by reference, and are flowed to the contractor and its subcontractors at any tier, the Contractor has the responsibility to identify to the Contract Administrator any personnel who are Foreign Nationals who may be involved or working with Company personnel or have access to Department of Energy information during the performance of this contract.
- (b) Such personnel (whether off or on site) who will be involved, working with, or visiting Company personnel (including making deliveries), or be assigned to work at the site must obtain approval of the Company before such involvement can take place. This approval requirement includes access to any Department of Energy information used in performance of this contract. A foreign national is defined as a person who is a stateless person or is not a U.S. citizen (i.e., not a U.S. national); an immigrant alien; any corporation not incorporated in the U.S; any international organization; foreign government; or any agency or subdivision of foreign government (e.g., diplomatic missions). A stateless person is one who is currently without nationality by either the action of a state withdrawing the protection of nationality; by his/her own action in effectively renouncing the nationality previously held or because he/she has never held nationality due to the circumstances of birth.
- (c) Each individual must complete applications allowing six to eight weeks for processing after submitting the required information. The Contractor should contact FLUOR BWXT Portsmouth LLC to obtain the necessary information and forms.

H.30 CONTRACTOR PERSONNEL

- (a) The Contractor, in performance of this contract, shall be responsible for selecting personnel who are well qualified to perform the required services, for supervising its personnel and for keeping them informed of all improvements, changes and methods of operation. Persons employed by the Contractor shall be and remain employees of the Contractor, and shall not be deemed employees of FLUOR BWXT Portsmouth LLC. Nothing herein shall require the establishment of any employer-employee relationship between the Contractor and the consultants or others whose services are utilized by the Contractor for work hereunder.
- (b) The Contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, and integrity and shall be responsible for taking such disciplinary action with respect to its employees as may be necessary. In the event the Contractor fails to remove any employee from the contract work whom FLUOR BWXT Portsmouth LLC deems incompetent, careless, or insubordinate, or whose continued employment on the work is deemed by FLUOR BWXT Portsmouth LLC to be contrary to the public interest, FLUOR BWXT Portsmouth LLC reserves the right to require the Contractor to remove the employee at no cost to FLUOR BWXT Portsmouth LLC.
- (c) When the reason for the removal request is due solely to security or misconduct on the part of the employee, replacement shall be at the Contractor's expense and not chargeable to FLUOR BWXT Portsmouth LLC.

H.31 INDEMNITY

- (a) Contractor agrees their primary insurance coverage shall defend, indemnify and hold harmless the Owner/United States Government, and the Company, its parent, affiliates, subsidiaries and their officers, directors, employees, agents, and representatives from and against:
 - (1) Any claim, demand, cause of action, liability, loss or expense arising from Contractor's actual or asserted failure to comply with any of the provisions of this contract;
 - (2) Any claim, demand, cause of action, liability, loss or expense arising from Contractor's actual or asserted failure to comply with any law, ordinance, regulation, rule or order of any governmental or quasi-governmental body (including, but not limited to, the actual or asserted failure to pay taxes) including such failures by Contractor, its subcontractors or suppliers; and
 - (3) Any claim, demand, cause of action, liability, loss or expense relating to actual or alleged contamination, pollution, or public or private nuisance, arising directly or indirectly out of the goods or services provided under this contract, including the acts or omissions of Contractor, its subcontractors or suppliers.
- (b) (1) If this contract is one for the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance, or appliance, including moving, demolition and excavating connected therewith, then:

- (i) Contractor agrees to indemnify and hold harmless the Owner/United States Government and the Company, its parent, affiliates, subsidiaries, and their officers, directors, employees, agents, and representatives from and against any claim, demand, cause of action, liability, loss or expense arising from personal injury (including death) or property damage, to the extent that such personal injury or property damage is caused by the negligence of Contractor, its subcontractors or suppliers; and
- (2) For contracts not included in section (b)(1) above, Contractor agrees to defend, indemnify and hold harmless the United States Government, and the Company, its parent, affiliates, subsidiaries, and their officers, directors, employees, agents, and representatives from and against any claim, demand, cause of action, liability, loss or expense arising from injury to or death of persons (including employees of the Company, Contractor and Contractor's subcontractors) or from damage to or loss of property (including the property of the Government), arising directly or indirectly out of this contract or out of any acts or omissions of Contractor or its subcontractors. The defense and indemnity obligations of Contractor under this section (b)(2) extend to personal injury or property damage caused by Contractor's subcontractors or suppliers, and include claims, demands, causes of action, liability, loss or expense arising under non-delegable duties of the Company or arising from Contractor's use of equipment, tools or facilities furnished by the Company and/or the Owner/United States Government.
- (c) Contractor agrees that its indemnity obligations include the duty to reimburse attorneys' fees and expenses incurred by the Company for legal action to enforce Contractor's indemnity obligations under this clause.
- (d) In the event that any of the indemnity provisions in this clause entitled "Indemnity" are held by a court of competent jurisdiction to be void, invalid or otherwise unenforceable according to any law governing this contract, then such holding shall not affect the remaining provisions, and the remaining indemnity obligations shall be construed to be enforceable to the fullest extent allowed under applicable law.
- (e) With respect to claims by employees of Contractor or its subcontractors, the indemnity obligations created by this clause entitled "Indemnity" shall not be limited by the fact of, amount, or types of benefits or compensation payable by or for Contractor, its subcontractors or suppliers under any workers' compensation, disability benefits, or other employee benefits acts or regulations, and Contractor waives any limitations of liability or immunity arising from workers' compensation or such other acts or regulations.
- (f) The Company shall be entitled to retain from payments otherwise due Contractor such amounts as shall reasonably be considered necessary to satisfy any charges, claims, suits or liens for damages that fall within Contractor's indemnity obligations under this clause entitled "Indemnity", until such charges, claims, suits or liens have been settled and satisfactory evidence to that effect has been furnished to the Company.
- (g) Contractor will have no obligation to indemnify the Owner/United States Government, and/or Company under the provisions of this clause entitled "Indemnity" if and to the extent that the claim, demand, cause of action, liability, loss or expense, or any portion thereof, results directly and proximately from the gross negligence of the United States Government and/or Company. Solely with respect to any claim for indemnification made

by the Company against Contractor under any of the provisions of this clause entitled "Indemnity," the Contractor hereby expressly and specifically waives its statutory and constitutional workers' compensation immunity under Ohio Rev. Code § 4123.74 and Section 35, Article II, Ohio Constitution, from suits arising out of employment. Contractor further agrees that, having expressly and specifically waived its statutory and constitutional immunity solely with respect to any claim made by the United States Government, Company against Contractor, the amount of its indemnity obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

H.32 ASSIGNMENT

- (a) Neither this contract nor any interest therein nor claim there under shall be assigned or transferred by the Contractor except as expressly authorized in writing by FLUOR BWXT Portsmouth LLC.
- (b) FLUOR BWXT Portsmouth LLC may assign this Contract, in whole or in part to DOE or to such party as DOE may designate to perform FLUOR BWXT Portsmouth LLC 's obligations hereunder. Upon receipt by Contractor of written notice that the DOE or a party so designated by the DOE or FLUOR BWXT Portsmouth LLC has accepted an assignment of this Contract, FLUOR BWXT Portsmouth LLC shall be relieved of all responsibility hereunder and Contractor shall thereafter look solely to such assignee for performance of FLUOR BWXT Portsmouth LLC 's obligations.

H.33 TRAVEL - REVISED (OCT 1 2016)

The following (*italicized*) travel and short term business trip language contained within this clause is a mandatory flow-down requirement established by the Department of Energy (DOE) Contracting Officer for this Prime Contract incorporating the requirements of DOE's HCA Directive, Acquisition Letter AL-2013-01, and is not subject to further modification. For the purposes of this clause, any reference to "Contracting Officer (CO)" shall mean Fluor-BWXT Portsmouth LLC (the Company) Contracts Administration Personnel (CA). Extended personnel assignments are assignments for subcontractor personnel to a domestic location different than their normal duty station for a period expected to exceed 30 consecutive calendar days. All extended personnel assignments greater than six months are to be approved by the Company's CA prior to the authorization to or incurrence of cost for such activities as detailed below:

The Contractor is expected to have personnel physically located at the Portsmouth Gaseous Diffusion Plant in Piketon, OH to perform the requirements of the contract. DOE will not reimburse costs associated with salary premiums, per diem, or lodging/other subsidies for Contractor employees on extended personnel assignments unless specifically authorized by the CO. Such authorizations may be considered based on extenuating circumstances; however, the authorization shall have a firm ending date. Short Term business trips (less than six months) shall be in accordance with HCA Directive, Acquisition Letter AL-2018-08. Business Trips exceeding, or expected to exceed, six months duration shall be in accordance with HCA Directive, Acquisition Letter 2018-08 and shall require CO approval.

If travel is authorized by the CO, reimbursement of Contractor employee's travel cost is limited from the date of assignment to the project consistent with Federal Travel Regulations, U.S. Department of Energy Travel Manual DOE M 552.1-IA dated February 17, 2006, Acquisition Letter 2018-08 and any DOE supplementary policies.

As such, business travel is subdivided into the following two categories: **1) Short Term Business Trips**, and **2) Contractor Domestic Personnel Extended Assignments**. Provisions for contractor personnel are based upon the resources period of performance. Contractor personnel who have a period of performance less than six months will be subject to Category 1 requirements. Any contractor personnel who have a period of performance greater than six months (inclusive of contractor personnel whose period of performance was originally less than six months and modified/extended beyond 6 months) shall be subject to Category 2 requirements.

Short Term Business Trips

Short Term Business Trips are defined as assignment of contractor personnel to a domestic location different from their normal duty station for a period expected to be less than six months. The duration of the assignment is determined by the original award by company. Prior approval by the Company's CA is not required. Any change to the duration of the assignment by the company, which results in the assignment breaching the less than six months criteria stated herein, shall require CO approval prior to the incurrence of any cost for such provision from the date of said change in performance period.

Reimbursement for reasonable, allowable, and allocable expenses will be as specified in Federal Travel Regulations, U.S. Department of Energy Travel Manual DOE M 552.1-IA, Acquisition Letter 2018-08, and any DOE supplementary policies.

Contractor Domestic Personnel Extended Assignments

Contractor Domestic Personnel Extended Assignments are defined as assignment of contractor personnel to a domestic location different from their normal duty station for a period expected to exceed 6 months. Prior approval by the Company's CA is required. Reimbursement for reasonable, allowable, and allocable expenses will be as specified in Federal Travel Regulations, U.S. Department of Energy Travel Manual DOE M 552.1-IA, Acquisition Letter 2018-08, and any DOE supplementary policies.

The Contractor shall be responsible for any and all Contractor employee(s) duties and taxes of any and all types. Any violation of the travel policy as set forth in this H.33 Clause may result in disallowed costs, employee termination from contract and/or termination of contract.

H.34 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 a 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 that type of product is not available competitively within a reasonable time, at a reasonable price, is not life cycle cost efficient in the case of energy consuming products, or does not meet reasonable performance standards. The clauses at FAR 52.223-2, Affirmative Procurement of Biobased Products under Service and Construction Contracts, 52.223-15, Energy Efficiency in Energy Consuming Products, and 52.223-17 Affirmative Procurement of EPA-Designated Items in Service and Construction Contracts, in Section I require the use of products that have Biobased content, are energy efficient, or have recycled content.

H.35 ORDER OF PRECEDENCE

All Subcontract documents and subsequently issued Change Notices/Orders and Modifications are essential parts of this Subcontract, and a requirement occurring in one is binding as though occurring in all. In resolving conflicts, errors, or omissions, the following order of precedence shall be used:

1. Subcontract Form of Agreement (including Section B, the Schedule, modifications and special provisions therein)
2. Special Conditions
3. General Conditions
4. Attachments attached thereto

H.36 WAIVER OF FACILITIES CAPITAL COST OF MONEY [Derived from FAR 52.215-17 (Oct 1997)]

The Contractor did not include facilities capital cost of money as a proposed cost of this contract. Therefore, it is an unallowable cost under this contract.

H.37 PROTECTION OF INFORMATION

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

- Adequate security means protective measures are applied commensurate with the risks (i.e., consequences and their probability) of loss, misuse, or unauthorized access to or modification of information.
- Clearing information means a level of media sanitization that would protect the confidentiality of information against a robust keyboard attack. Simple deletion of items

would not suffice for clearing. For example, overwriting is an acceptable method for clearing media. The security goal of the overwriting process is to replace written data with random data.

- Compromise means disclosure of information to unauthorized persons, or a violation of the security policy of a system in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object may have occurred.
- Data means a subset of information in an electronic format that allows it to be retrieved or transmitted.
- Exfiltration means any unauthorized release of data from within an information system. This includes copying the data through covert network channels or the copying of data to unauthorized media.
- Government information means any unclassified nonpublic information that is—
 - Provided by or on behalf of the Government to the contractor or its subcontractor(s); or
 - Collected, developed, received, maintained, disseminated, transmitted, used, or stored by the Contractor or its subcontractor(s) in support of an official Government activity.
- Information means any communicable knowledge or documentary material, regardless of its physical form or characteristics.
- Information system means a set of information resources organized for the collection, storage, processing, maintenance, use, sharing, dissemination, disposition, display, or transmission of information.
- Intrusion means unauthorized access to an information system, such as an act of entering, seizing, or taking possession of another's property to include electromagnetic media.
- Media means physical devices or writing surfaces including, but not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which information is recorded, stored, or printed within an information system.
- Safeguarding means measures and controls that are used to protect information.
- Threat means any person or entity that attempts to access or accesses an information system without authority.
- Voice means all oral information regardless of transmission method.

(b) Safeguarding requirements and procedures. The Contractor shall provide adequate security to safeguard unclassified Government information on its unclassified information systems from unauthorized access and disclosure. The Contractor shall apply the following basic safeguarding requirements to Government information:

- (1) Protecting unclassified Government information on public computers or websites: Do not process unclassified Government information on public computers (e.g., those available for use by the general public in kiosks, hotel business centers) or computers that do not have access control. Unclassified Government information shall not be posted on websites that are publicly available or have access limited only by domain/Internet Protocol restriction. Such information may be posted to web pages that control access by user ID/password, user certificates, or other technical means, and that provide protection via use of security technologies. Access control may be provided by the intranet (vice the website itself or the application it hosts).
- (2) Transmitting electronic information. Transmit email, text messages, blogs, and similar communications using technology and processes that provide the best level of security and privacy available, given facilities, conditions, and environment.

- (3) Transmitting voice and fax information. Transmit voice and fax information only when the sender has a reasonable assurance that access is limited to authorized recipients.
- (4) Physical or electronic barriers. Protect information by at least one physical or electronic barrier (e.g., locked container or room, login and password) when not under direct individual control.
- (5) Sanitization. At a minimum, clear information on media that has been used to process unclassified Government information before external release or disposal. Overwriting is an acceptable means of clearing media in accordance with National Institute of Standards and Technology 800-88, Guidelines for Media Sanitization, at http://csrc.nist.gov/publications/nistpubs/800-88/NISTSP800-88_rev1.pdf.
- (6) Intrusion protection. Provide at least the following protections against computer intrusions and data compromise including exfiltration:
 - a. Current and regularly updated malware protection services, e.g., anti-virus, anti-spyware.
 - b. Prompt application of security-relevant software upgrades, e.g., patches, service packs, and hot fixes.
- (7) Transfer limitations. Transfer Government information only to those subcontractors that both have a need to know and provide at least the same level of security as specified in this clause. (c) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts under this contract that may potentially have unclassified Government information resident on or transiting through their unclassified information systems.

H.38 TERMINATION *[As derived from FAR 52.249-6 (May 2004) ALTERNATE IV (SEP 1996)]*

- (a) FLUOR BWXT Portsmouth LLC may terminate performance of work under this contract in whole or, from time to time, in part, if --
 - (1) FLUOR BWXT Portsmouth LLC determines that a termination is in its; or the Government's best interests
 - (2) The Contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the Company's Buyer) after receiving the default. "Default" includes failure to make progress in the work so as to endanger performance.
- (b) FLUOR BWXT Portsmouth LLC shall terminate by delivering to the Contractor a Notice of Termination specifying whether termination is for default of the Contractor or for convenience of FLUOR BWXT Portsmouth LLC, the extent of termination, and the effective date. If, after termination for default, it is determined that the Contractor was not in default or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor, the rights and obligations of the parties will be the same as if the termination was for the convenience of FLUOR BWXT Portsmouth LLC.
- (c) After receipt of a Notice of Termination, and except as directed by FLUOR BWXT Portsmouth LLC, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

- (1) Stop work as specified in the notice.
- (2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.
- (3) Terminate all subcontracts to the extent they relate to the work terminated.
- (4) Assign to FLUOR BWXT Portsmouth LLC, as directed by FLUOR BWXT Portsmouth LLC, all right, title, and interest of the Contractor under the subcontracts terminated, in which case FLUOR BWXT Portsmouth LLC shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
- (5) With approval or ratification to the extent required by FLUOR BWXT Portsmouth LLC, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this contract; approval or ratification will be final for purposes of this clause.
- (6) Transfer title (if not already transferred) and, as directed by FLUOR BWXT Portsmouth LLC, deliver to FLUOR BWXT Portsmouth LLC --
 - (i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated;
 - (ii) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to FLUOR BWXT Portsmouth LLC; and
 - (iii) The jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this contract, the cost of which the Contractor has been or will be reimbursed under this contract.
- (7) Complete performance of the work not terminated.
- (8) Take any action that may be necessary, or that FLUOR BWXT Portsmouth LLC may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which FLUOR BWXT Portsmouth LLC or the Government has or may acquire an interest.
- (9) Use its best efforts to sell, as directed or authorized by FLUOR BWXT Portsmouth LLC, any property of the types referred to in subparagraph (c)(6) of this clause; provided, however, that the Contractor
 - (i) is not required to extend credit to any purchaser and
 - (ii) may acquire the property under the conditions prescribed by, and at prices approved by, FLUOR BWXT Portsmouth LLC. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by FLUOR BWXT Portsmouth LLC under this contract, credited

to the price or cost of the work, or paid in any other manner directed by FLUOR BWXT Portsmouth LLC.

- (d) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by FLUOR BWXT Portsmouth LLC upon written request of the Contractor within this 120-day period.
- (e) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to FLUOR BWXT Portsmouth LLC a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by FLUOR BWXT Portsmouth LLC. The Contractor may request FLUOR BWXT Portsmouth LLC to remove those items or enter into an agreement for their storage. Within 15 days, Fluor will accept the items and remove them or enter into a storage agreement. FLUOR BWXT Portsmouth LLC may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
- (f) After termination, the Contractor shall submit a final termination settlement proposal to FLUOR BWXT Portsmouth LLC in the form and with the certification prescribed by FLUOR BWXT Portsmouth LLC. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by FLUOR BWXT Portsmouth LLC upon written request of the Contractor within this 1-year period. However, if FLUOR BWXT Portsmouth LLC determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, FLUOR BWXT Portsmouth LLC may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.
- (g) Subject to paragraph (f) of this clause, the Contractor and FLUOR BWXT Portsmouth LLC may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The contract shall be amended, and the Contractor paid the agreed amount.
- (h) If the Contractor and FLUOR BWXT Portsmouth LLC fail to agree in whole or in part on the amount to be paid because of the termination of work, FLUOR BWXT Portsmouth LLC shall determine, on the basis of information available, the amount, if any, due the Contractor and shall pay the amount determined as follows:
 - (1) All costs reimbursable under this contract, not previously paid, for the performance of this contract before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the FLUOR BWXT Portsmouth LLC Buyer; however, the Contractor shall discontinue those costs as rapidly as practicable.
 - (2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contracts if not included in paragraph (h)(1) of this clause.
 - (3) The reasonable costs of settlement of the work terminated, including-
 - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

- (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts of the preparation of the Contractor's termination settlement proposal may be included.
 - (4) A portion of the fee payable under the contract, determined as follows:
 - (i) If the contract is terminated for the convenience of FLUOR BWXT Portsmouth LLC, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in the subcontractors' termination proposals, less previous payments for fee.
 - (ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by FLUOR BWXT Portsmouth LLC is the total number of articles (or amount of services) of a like kind required by the contract.
 - (5) If the settlement includes only fee, it will be determined under paragraph (h)(4) of this clause.
- (i) The cost principles and procedures in Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.
 - (j) The Contractor shall have the right of appeal, under the Claims clause, from any determination made by FLUOR BWXT Portsmouth LLC under paragraph (f), (h), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (f) and failed to request a time extension, there is no right of appeal. If FLUOR BWXT Portsmouth LLC has made a determination of the amount due under paragraph (f), (h) or (l) of this clause, FLUOR BWXT Portsmouth LLC shall pay the Contractor --
 - (1) The amount determined by FLUOR BWXT Portsmouth LLC if there is no right of appeal or if no timely appeal has been taken; or
 - (2) The amount finally determined on an appeal.
 - (k) In arriving at the amount due the Contractor under this clause, there shall be deducted --
 - (1) All unliquidated advance or other payments to the Contractor, under the terminated portion of this contract;
 - (2) Any claim which FLUOR BWXT Portsmouth LLC has against the Contractor under this contract; and
 - (3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under this clause and not recovered by or credited to the Government.
 - (l) The Contractor and FLUOR BWXT Portsmouth LLC must agree to any equitable adjustment in fee for the continued portion of the contract when there is a partial termination. The FLUOR BWXT Portsmouth LLC Buyer shall amend the contract to

reflect the agreement.

- (m) (1) FLUOR BWXT Portsmouth LLC may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if FLUOR BWXT Portsmouth LLC believes the total of these payments will not exceed the amount to which the Contractor will be entitled.
- (2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to FLUOR BWXT Portsmouth LLC upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C.App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by FLUOR BWXT Portsmouth LLC because of the circumstances.
- (n) The provisions of this clause relating to fee are inapplicable if this contract does not include a fee.

H.39 DEFAULT *[As derived from FAR 52.249-8 (Apr 1984)]*

- (a) (1) FLUOR BWXT Portsmouth LLC may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to --
 - (i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;
 - (ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) of this clause); or
 - (iii) Perform any of the other provisions of this contract (but see Subparagraph (a)(2) of this clause).
- (2) FLUOR BWXT Portsmouth LLC's right to terminate this contract under subdivisions (a)(1)(ii) and (1)(iii) of this clause, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by FLUOR BWXT Portsmouth LLC) after receipt of the notice from FLUOR BWXT Portsmouth LLC specifying the failure.
- (b) If FLUOR BWXT Portsmouth LLC terminates this contract in whole or in part, it may acquire, under the terms and in the manner it considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to FLUOR BWXT Portsmouth LLC for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

- (c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include
- (1) acts of God or of the public enemy,
 - (2) acts of the Government in either its sovereign or contractual capacity,
 - (3) fires,
 - (4) floods,
 - (5) epidemics,
 - (6) quarantine restrictions,
 - (7) strikes,
 - (8) freight embargoes, and
 - (9) unusually severe weather.

In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

- (d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.
- (e) If this contract is terminated for default, FLUOR BWXT Portsmouth LLC may require the Contractor to transfer title and deliver to the Government, as directed by FLUOR BWXT Portsmouth LLC, any
- (1) completed supplies, and
 - (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract.

Upon direction of FLUOR BWXT Portsmouth LLC, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.

- (f) FLUOR BWXT Portsmouth LLC shall pay contract price for completed supplies delivered and accepted. The Contractor and FLUOR BWXT Portsmouth LLC shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. FLUOR BWXT Portsmouth LLC may withhold from these amounts

any sum it determines to be necessary to protect itself and the Government against loss because of outstanding liens or claims of former lien holders.

- (g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of FLUOR BWXT Portsmouth LLC.
- (h) The rights and remedies of FLUOR BWXT Portsmouth LLC in this clause are in addition to any other rights and remedies provided by law or under this contract.

H.40 DELAYS.

- (a) In the event Contractor or Company is delayed in performing any of their respective obligations in this Contract and such delay is caused by acts of God, war, riots, civil insurrection, acts of the public enemy, accidents, acts of civil or military authority, fires, floods, or earthquakes, beyond the reasonable control of the party delayed, such delay will be excused and the period of such delay will be added to the time for performance of the obligation delayed, unless the date, schedule or time period for performance of the obligation is expressly stated in this Contract to be guaranteed. In the event any delay due to the foregoing causes or events occurs or is anticipated, the party delayed or anticipating delay shall promptly notify the other party in writing of such delay or expected delay and the cause and estimated duration of such delay. In the event of a delay due to the foregoing causes or events, the party delayed shall, at no cost to the other party, exercise due diligence to shorten and avoid the delay and shall keep the other party advised as to the continuance of the delay and steps taken to shorten or terminate the delay.
- (b) Contractor shall, within five (5) working days of the commencement of any delay, give to Company written notice thereof and of the anticipated effects thereof. Within two (2) working days of the termination of any delay, Contractor shall file a written notice with Company specifying the actual duration of the delay. If Company determines that a delay was beyond the control and without the fault or negligence of Contractor or its subcontractors and not foreseeable by Contractor at the effective date of this Contract, Company shall determine the duration of the delay and shall extend the time of performance of this Contract thereby.

Contractor shall not be entitled to, and hereby expressly waives recovery of, any damages suffered by reason of delays of any nature, including the negligence of Company and Owner, and extension of time shall constitute the sole liability of Company and Owner and Contractor's sole remedy for delays.

H.41 COMPETITION IN SUBCONTRACTING *[As derived from FAR 52.244-5 (Dec 1996) (Applicable to Time and Material and Cost Reimbursement Contracts)*

The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract

H.42 GOVERNMENT PROPERTY

- (a) In the event any Government owned property is furnished to the Contractor for any purpose, such property shall be identified in the schedule to the Contractor as "Government-furnished property." Unless the provisions of this contract state that the Government property is to be expended in the conduct of the work or is otherwise not to be returned to the Government, not later than final acceptance of the work,
- (b) The Contractor assumes the risk of, and shall be responsible for, any loss, damage, destruction, or theft of Government property upon its delivery to the Contractor as Government furnished property. However the Contractor is not responsible for reasonable wear and tear to Government property or for Government property properly consumed in performing this contract..

H.43 NOTICE OF LABOR DISPUTES

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Seller shall immediately give notice, including all relevant information, to Company.

H.44 CERTIFICATION OF ELIGIBILITY

- (a) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

H.45 SUBCONTRACTOR COST OR PRICING DATA

- (a) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Seller shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.
- (b) The Seller shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.
- (c) In each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4, when entered into, the Seller shall insert either;

- (1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of cost or pricing data for the subcontract; or The substance of the clause at Subcontractor Cost or Pricing Data – Modifications

H.46 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA

- (a) In the event the total price or estimated or expected payments to the Company exceed the threshold for submission of cost or pricing data at FAR 15.403-1 and no exception to such submission stated at FAR 15.403-1 applies, if any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because:
 - (1) The Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;
 - (2) A subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or
 - (3) Any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.
- (b) Any reduction in the contract price under paragraph (a) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which:
 - (1) The actual subcontract; or
 - (2) The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.
- (c) (1) If the Contracting Officer or Company determines under paragraph (a) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:
 - (j) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.
 - (i) The Contracting Officer or Company should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer or Company.
 - (iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

- (iv) The Contractor or subcontractor did not submit a Certification of Current Cost or Pricing Data.
- (2) (i) Except as prohibited by subdivision (c)(2) (ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer or Company based upon the facts shall be allowed against the amount of the contract price reduction if:
 - (A) The Contractor certifies to Company that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and
 - (B) The Contractor proves that the cost or pricing data were available before the as of date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.
- (ii) An offset shall not be allowed if:
 - (A) The understated data were known by the Contractor to be understated before the As of date specified on its Certificate of Current Cost or Pricing Data; or
 - (B) The Government or Company proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the As-of-date specified on its Certificate of Current Cost or Pricing Data.
- (d) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States or Company at the time such overpayment is repaid:
 - (1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor or Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
 - (2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

**H.47 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA--
MODIFICATIONS**

- (a) This clause shall become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, except that this clause does not apply to any modification if an exception under FAR 15.403-1 applies.
- (b) If any price, including profit or fee, negotiated in connection with any modification under this clause, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause.
- (c) Any reduction in the contract price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which-
 - (1) The actual subcontract; or
 - (2) The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.
- (d) (1) If the Contracting Officer or Company determines under paragraph (b) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:
 - (i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.
 - (ii) The Contracting Officer or Company should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer or Company.
 - (iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.
 - (iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.
- (2) (i) Except as prohibited by subdivision (d)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer or

Company based upon the facts shall be allowed against the amount of a contract price reduction if--

- (A) The Contractor certifies to Company that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and
- (B) The Contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if--

- (A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or
- (B) The Government or Company proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.

(d) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States or Company at the time such overpayment is repaid -

- (1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor or Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
- (2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

H.48 QUALITY OF SERVICES

Contractor warrants to Company and Owner that all services supplied by Contractor, in performance of this Contract, shall be supplied by personnel who are careful, skilled, experienced and competent in their respective trades or professions. Contractor agrees that he is supplying professional services, findings, and/or recommendations in the performance of this Contract and warrants to Company and Owner, that the same shall conform to the highest professional and engineering standards and principles.

H.49 – H.50 RESERVED

H.51 SUBCONTRACTS AND PURCHASE ORDERS

- (a) Contractor shall not subcontract performance of all or any portion of the Work under this Contract without first notifying Company of the intended subcontracting and obtaining Company acceptance in writing of the subcontracting and the subcontractor. If requested by Company, Contractor shall furnish Company a copy of the proposed subcontract (with price deleted if the subcontracted work is part of fixed price Work of Contractor under this Contract) for Company review of the terms and conditions thereof and shall not execute such subcontract until Company has accepted such terms. Failure of Contractor to comply with this Section may be deemed by Company to be a material breach of this Contract.
- (b) Contractor guarantees that its subcontractors will comply fully with the terms of this Contract applicable to the portion of the Work performed by them. If any portion of the Work which has been subcontracted by Contractor is not prosecuted in accordance with this Contract, on request of Company, the subcontractor shall be replaced at no additional cost to Company and shall not be employed again on the Work.
- (c) Contractor shall include a provision in every subcontract that it places authorizing assignment of such subcontract to Company or Owner without requiring further consent from such subcontractor or supplier.
- (d) Company shall have the right from time to time to contact Contractor's subcontractors to discuss their progress.
- (e) As used in this Contract, the term "subcontract" shall also include purchase orders and rental agreements for materials or equipment, and the term "subcontractor" shall also include vendors or suppliers of such material or equipment.
- (f) Contractor shall not be relieved of its responsibility for the Work by virtue of any subcontracts it may place regardless of Company's acceptance of such subcontract.

H.52 – H.56 RESERVED

H.57 CONTRACTOR'S SHIPMENTS

- (a) Contractor shall be responsible for arranging all shipments of Contractor supplied materials and equipment to the site of the Work and shall consign such shipments to itself as Consignee at the project shipping address, freight fully prepaid. Contractor shall be responsible for making demurrage agreements and settlement with carriers for its shipments.
- (b) Contractor shall advise Company in writing, in advance of major shipments of Contractor's materials and equipment and shall coordinate with Company the arrival, unloading and release of carriers' equipment. Contractor shall promptly unload its shipments and promptly release carrier's equipment.
- (c) In the event Contractor may be unable to promptly unload its shipment, Contractor shall notify Company of such inability not less than ten (10) working days in advance of arrival. Company, at its option, may unload or make arrangements for others to unload such shipments for the account and risk of Contractor. Contractor will promptly pay Company for such costs of unloading.

H.58 CONTROL OF COMPANY FURNISHED MATERIALS

- (a) Materials and equipment furnished by Company shall be received by Contractor in the presence of Company authorized representative and quantities thereof shall be checked jointly by Contractor and Company. The delivery and acceptance of all such materials and equipment shall be recorded in writing, and Contractor shall evidence receipt and acceptance of such materials and equipment by signing forms satisfactory to Company.
- (b) Contractor shall carefully note any visible damage to Company furnished materials and equipment prior to Contractor's acceptance of delivery. After Contractor has accepted delivery of such materials and equipment, Contractor shall assume full responsibility for any loss of or damage to such materials and equipment. Contractor shall notify Company of any materials and equipment supplied to Contractor by Company which are surplus and, without additional compensation, shall cooperate with Company and Owner in the disposition of such surplus as directed by Company.
- (c) Contractor shall notify Company of any lack of, or requirement for, materials and equipment required under this Contract to be supplied by Company in sufficient time for Company to furnish said materials or equipment in advance of Contractor's need. In the event of misfit of Company furnished materials or equipment, Contractor shall promptly notify Company of such misfit.
- (d) Contractor shall take all reasonable steps to avoid standby time due to such misfit or lack of Company furnished materials or equipment and to continue progress of other portions of Work pending correction of such misfit and/or the furnishing of materials or equipment.

H.59 – H.60 RESERVED

H.61 WORK RULES (Applies to work performed at Company/DOE controlled site or premises)

Contractor shall comply strictly with Company and Owner's rules governing the conduct of Contractor and Contractor's employees, agents and subcontractors at and about the jobsite. Contractor agrees that it shall ensure that its supervisory personnel, employees, agents and subcontractors at the jobsite comply strictly with such rules. Company and Owner reserve the right to, from time to time, revise any such rules, and Contractor shall comply fully with such rules as revised in accordance with the foregoing provisions.

H.62-H.63- RESERVED

H.64 OWNERSHIP AND USE OF DRAWINGS

Drawings, technical documents and data prepared or developed by Contractor and furnished to Company in performance of the Work, shall be the property of Company and may be used by Company or Owner/United States Government without restriction. For Drawings made available to the Contractor for confidential use, in support of DOE activities, the Contractor promises and agrees to return the drawings upon completion of the work activities and/or by request of either FBP, DOE or its designated Representative(s). Contractor further agrees said drawings shall not be reproduced, copied, reissued or otherwise disposed of directly or indirectly, nor used for any purpose other than that for which said drawings have been furnished to Contractor.

H.65 EMERGENCY MEDICAL SERVICES (Applies to work performed at Company/DOE controlled site or premises)

Company or Owner may furnish emergency medical treatment or related services to Contractor's employees in the case of job connected illness or injury occurring at the jobsite. In the event that such services are available, all such treatment or services, if any, are furnished on a Good Samaritan basis and not as a contractual obligation. In consideration of any such treatment or services, Contractor acknowledges that it assumes full and complete responsibility and liability for all injuries and damages to any of its employees arising out of or allegedly attributable in any way thereto. Nothing herein contained shall be construed as imposing any duty upon Company or Owner to provide facilities necessary to furnish emergency medical treatment or related services to Contractor's employees or to make such facilities and/or services available to Contractor's employees.

H.66 INTERPRETATION

Headings and titles of Articles, Sections, Subsections paragraphs or other subparts of this Contract are for convenience of reference only and shall not be considered in interpreting the text of this Contract. No provision in this Contract is to be interpreted for or against any party because that party or its counsel drafted such provision.

H.67 RIGHT TO OFFSET

Company, without waiver or limitation of any rights or remedies of Company or Owner, shall be entitled from time to time to deduct from any amounts due or owed by Company to Contractor, in connection with this Contract (or any other contract with Company), any and all amounts owed by Contractor to Company or Owner in connection with this Contract.

H.68 – H.69 RESERVED

H.70 CLEANING UP (Derived from FAR 52.236-12) (Applies to work performed at Company/DOE controlled site or premises)

The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Contractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the Company or Government. Upon completing the work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the Company.

H.71 ACCIDENT PREVENTION (Derived from FAR 52.236-13) (Applies to work performed at Company/DOE controlled site or premises)

1. The Contractor shall provide and maintain work environments and procedures which will --
 - (1) Safeguard the public and Company/Government personnel, property, materials, supplies, and equipment exposed to Contractor operations and activities;
 - (2) Avoid interruptions of Company/Government operations and delays in project completion dates; and
 - (3) Control costs in the performance of this contract.

- (b) For these purposes on contracts for construction or dismantling, demolition, or removal of improvements, the Contractor shall --
 - (1) Provide appropriate safety barricades, signs, and signal lights;
 - (2) Comply with the standards issued by the Secretary of Labor at 29 CFR Part 1926 and 29 CFR Part 1910; and
 - (3) Ensure that any additional measures the Company or Government determines to be reasonably necessary for the purposes are taken.
- (c) Whenever the Company or PORTS facility management become aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or Company/Government personnel, the Company or PORTS facility management shall notify the Contractor orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the Contractor or the Contractor's representative at the work site, shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to promptly take corrective action, the Company may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any stop work order issued under this clause.
- (d) The Contractor shall insert this clause, including this paragraph (e), with appropriate changes in the designation of the parties, in subcontracts.

Alternate I. If the contract will involve (a) work of a long duration or hazardous nature, or (b) performance on a Government facility that on the advice of technical representatives involves hazardous materials or operations that might endanger the safety of the public and/or Company/Government personnel or property, the following paragraph (e) is applicable:

- (e) Before commencing the work, the Contractor shall --
 - (1) Submit a written proposed plan for implementing this clause. The plan shall include an analysis of the significant hazards to life, limb, and property inherent in contract work performance and a plan for controlling these hazards; and
 - (2) Meet with representatives of the Contracting Officer to discuss and develop a mutual understanding relative to administration of the overall safety program.

H.72 – H.75 RESERVED

H.76 DIFFERING PROFESSIONAL OPINIONS (Derived from DOE O 442.2)

This clause is applicable when the statement of work involves professional, technical areas where there is more than one professional opinion, solution or direction significantly impacting programmatic missions, safety, health, or the environment. By accepting this subcontract, the Contractor agrees to participation in Company Differing Professional Opinions program pursuant to Department of Energy (DOE) Order (O) 442.2, [*Differing Professional Opinions for Technical Issues Involving Environmental, Safety, and Health*](#)

Technical Concerns, issued on July 29, 2011, as implemented through FBP-NSE-PRO-00139, Differing Professional Opinions, as revised. The Contractor will notify its employees quarterly of their right to utilize Company Differing Professional Option (DPO) Process.

This notification shall include at a minimum informing employees quarterly of the DPO process and that they have the right to report environment, safety, and health technical concerns that have not been resolved through routine work processes.

All issues or concerns regarding the DPO process must be addressed through the Company Engineering Manager using the Differing Professional Opinion (DPO) Submittal Form available through the Company Contract Technical Representative.

H.77 – H.78 RESERVED

H.79 ACCESS (Applies to work performed at Company/DOE controlled site or premises)

Contractor personnel shall not be permitted unescorted access to any site facility without proper training and badging. The Contractor shall be responsible for compliance with all safety, health, security and other requirements of the project site. All work to be performed at the project site or off-site facilities will be in compliance with the Security requirements as specified within the contract.

H.80 DOE NUCLEAR SAFETY REQUIREMENTS & INDEMNIFICATION FOR NUCLEAR SAFETY VIOLATIONS [As derived from 10 CFR 820]

- (a) The Contractor shall comply with all applicable DOE Nuclear Safety Requirements as defined in 10 C.F.R. 820, *Procedural Rules for DOE Nuclear Activities*, and with provisions that implement these requirements contained elsewhere in this contract.
- (b) The Contractor shall implement, document, and maintain such programs (e.g., administrative controls, procedures, and technical work documents) as necessary to ensure compliance with paragraph (a) including the maintenance of complete and accurate records. The Contractor's programs and associated documents are subject to review at all times by the Company. All information and documentation submitted by the Contractor pursuant to this clause must be complete and accurate in all material aspects as required by 10 C.F.R. 820.11.
- (c) The Contractor shall promptly identify, document, and correct (subject to the Company's approval) noncompliance's and deviations from the requirements in paragraphs (a) and (b). If additional information is needed by the Company, the Contractor shall provide such information upon request.
- (d) The Contractor assumes full responsibility and shall indemnify, save harmless, and defend FLUOR BWXT Portsmouth LLC, its directors, officers, and employees from any liability under Section 234A (42 U.S.C. 2282a) of the Atomic Energy Act of 1954, as amended, or its Implementing regulations, arising out of the activities of the Contractor, its subcontractors, suppliers, agents, employees, and their officers, or directors. The Contractor's obligation to indemnify and hold harmless shall expressly include attorneys fees' and other reasonable costs of defending any action or proceeding instituted under Section 234A or its implementing regulations.

- (e) The Contractor shall include the provisions of this clause, including this paragraph (d), in all lower tier subcontracts for any activity that is subject to a DOE Nuclear Safety Requirement.

H.81 SUBSTANCE ABUSE PROGRAMS (Applies to work performed at Company/DOE controlled site or premises)

The Contractor shall submit its written Substance Abuse Program within ten (10) calendar days after contract award for Company concurrence. This plan shall be compliant with the requirements of the FLUOR BWXT Portsmouth LLC Substance Abuse program, Attachment J-14. The plan shall be implemented within ten (10) calendar days of receipt of the Company's written concurrence. Under the plan,

- (a) The Contractor will:
 - (1) Use its best efforts to assure that all of its workers assigned to work under this contract are drug and alcohol free;
 - (2) Require its workers under this contract who are permitted access to any Site facility, to submit to the Company random urinalysis testing for the presence of drugs and to the Company random Breathalyzer testing for the presence of alcohol promptly whenever Notice of Testing is given to the Contractor by the Company;
 - (3) Remove immediately from work under this contract any worker with respect to whom the Medical Review Officer determines to have tested positive for the presence of drugs and/or alcohol;
 - (4) Remove immediately from work under this contract any worker who fails to present himself or herself to the Company's Medical Department for drug and/or alcohol testing promptly when Notice of Testing is given by the Company to the Contractor with respect to such worker, or who otherwise fails to cooperate with the Company's drug/alcohol testing program;
 - (5) Remove from work under this contract any employee who, intentionally or unintentionally, whether by action or inaction, causes the urinalysis testing or the Breathalyzer testing of any employee to be frustrated, as, for example, by miscommunicating or by failing to communicate appropriately information regarding Notice of Testing with respect to any Contractor employee.
- (b) A worker who has been removed, or required to be removed, from work under this contract pursuant to this clause will not be permitted to return to work under this contract.
- (c) Any urinalysis testing and any breathalyzer testing required under this contract will be conducted either by, or at the direction of, the FLUOR BWXT Portsmouth LLC Medical Department.

H.82 RESERVED

H.83 RESERVED

H.84 ORDERING

Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule.

- (a) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.
- (b) If mailed, a delivery order or task order is considered "issued" when the Company deposits the order in the mail. Orders may be issued orally, facsimile, or by electronic commerce methods.
- (c) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and the Company rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period.

H.85 CONTINUITY OF SERVICES

- (a) The Contractor recognized that the services under this contract and /or task order releases are vital and must be continued without interruption and that, upon contract expiration, a successor may continue them. The Contractor agrees to (1) furnish phase-in training; and (2) exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor, if directed to do so by FLUOR BWXT Portsmouth LLC. The Company will exercise its right under this clause by unilateral modification prior to expiration of the contract and/or task order release in accordance with the clause titled "Changes", H.3.
- (b) The Contractor shall, upon FLUOR BWXT Portsmouth LLC's written notice:
 - (1) Furnish phase-in, phase-out services for the period specified (up to ninety (90) days after the previous period of performance and
 - (2) Negotiate in good faith a plan with FLUOR BWXT Portsmouth LLC or other successor to determine the nature and extent of phase-in, phase-out services required. This plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to FLUOR BWXT Portsmouth LLC's approval. The Contractor shall provide sufficient experience personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.
- (c) The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the

successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

- (d) The Contractor shall negotiate with the Company to establish reasonable phase-in, phase-out compensation within an agreed to period.

H.86 RESERVED

H.87 RESERVED

H.88 SITE ACCESS IDENTIFICATION RESTRICTIONS

Due to requirements imposed by the Department of Homeland Security, access to the Portsmouth Gaseous Diffusion site located near Piketon, OH now has additional restrictions. For those entering the site from the states and territories listed below, an additional form of identification aside from the individual's driver's license must be presented. Both forms of identification shall be neither expired nor cancelled.

States and territories requiring additional identification are provided by the Department of Homeland Security at the following web address: <https://www.dhs.gov/real-id>.

Additional forms of identification considered acceptable (not cancelled nor expired):

- ❖ US Passport or a U.S. Passport Card
- ❖ US Military ID Card
- ❖ US Military dependent's ID card
- ❖ PIV Card
- ❖ US Social Security Card
- ❖ US Coast Guard Merchant Mariner Card
- ❖ Certificate of US Citizenship (Form N-560 or N-561)
- ❖ Certificate of Naturalization (Form N-550 or N-570)
- ❖ US Citizen ID Card
- ❖ Certification of Birth Abroad or Certification of Report of Birth issued by the Department of State (Form FS-545 or Form DS-1350)

Refer to clause "H.29 – Foreign Nationals" for information regarding the access of Foreign Nationals.

PART II – CONTRACT CLAUSES

SECTION I – FAR/DEAR 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
NUMBER**

TITLE

APPLICABLE TO ALL SUBCONTRACTS/PURCHASE ORDERS

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 52.204-11	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 52.215-2	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)
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FAR 52.223-7	NOTICE OF RADIOACTIVE MATERIALS (JAN 1997)
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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 52.225-21	REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS-BUY AMERICAN STATUTE CONSTRUCTION MATERIALS

FAR 52.225-22	NOTICE OF REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS-BUY AMERICAN STATUTE-CONSTRUCTION MATERIALS
FAR 52.225-23	REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS-BUY AMERICAN STATUTE CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS
FAR 52.225-24	NOTICE OF REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS-BUY AMERICAN STATUTE-CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS
FAR 52.225-25	PROHIBITION ON CONTRACTING WITH ENTITIES ENGAGING IN CERTAIN ACTIVITIES OR TRANSACTIONS RELATING TO IRAN-REPRESENTATION AND CERTIFICATIONS
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 \$2,000 FOR CONSTRUCTION

<u>FAR 52.222-6</u>	CONSTRUCTION WAGE RATE (MAY 2014)
<u>FAR 52.222-7</u>	WITHOLDING OF FUNDS (MAY 2014)
<u>FAR 52.222-8</u>	PAYROLLS AND BASIC RECORDS (MAY 2014)
<u>FAR 52.222-9</u>	APPRENTICES AND TRAINEES (JUL 2005)

FAR 52.222-10 COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)
FAR 52.222-13 COMPLIANCE WITH CONSTRUCTION WAGE RATE REQUIREMENTS
AND RELATED REGULATIONS (MAY 2014)
FAR 52.222-14 DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)
FAR 52.222-15 CERTIFICATION OF ELIGIBILITY (MAY 2014)
FAR 52.222-30 CONSTRUCTION WAGE RATE REQUIREMENTS – PRICE ADJUSTMENT
(NON OR SEPARATELY SPECIFIED METHOD) (MAY 2014)

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 \$1.5 MILLION

- 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 ¹DISPLAY OF HOTLINE POSTER(S) (DEC 2007)

CLAUSES INCORPORATED IN FULL TEXT

APPLICABLE TO ALL SUBCONTRACTS/PURCHASE ORDERS

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)

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).

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

(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) 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.

(c) 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.

(d) 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 solid 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 non-availability 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)

52.225-21 Required Use of American Iron, Steel, and Manufactured Goods-Buy American Statute-Construction Materials.

As prescribed in [25.1102\(e\)](#), insert the following clause:

Required Use of American Iron, Steel, and Manufactured Goods-Buy American Statute-Construction Materials (Jan 2021)

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

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 a 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.

Domestic construction material means the following-

(1) An unmanufactured construction material mined or produced in the United States. (The Buy American statute applies.)

(2) A manufactured construction material that is manufactured in the United States and, if the construction material consists wholly or predominantly of iron or steel, the iron or steel was produced in the United States. (Section 1605 of the Recovery Act applies.)

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

Manufactured construction material means any construction material that is not unmanufactured construction material.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

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

Unmanufactured construction material means raw material brought to the construction site for incorporation into the building or work that has not been-

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

(b) Domestic preference.

(1) This clause implements-

(i) Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111-5), by requiring, unless an exception applies, that all manufactured construction material in the project is manufactured in the United States and, if the construction material consists wholly or predominantly of iron or steel, the iron or steel was produced in the United States (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives); and

(ii) [41 U.S.C chapter 83](#), Buy American, by providing a preference for unmanufactured construction material mined or produced in the United States over unmanufactured construction material mined or produced in a foreign country.

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

(3) This requirement does not apply to the construction material or components listed by the Government as follows:

_____ [Contracting Officer to list applicable excepted materials or indicate "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-

(i) The cost of domestic construction material would be unreasonable;

(A) The cost of domestic manufactured construction material, when compared to the cost of comparable foreign manufactured construction material, is unreasonable when the cumulative cost of such material will increase the cost of the contract by more than 25 percent;

(B) The cost of domestic unmanufactured construction material is unreasonable when the cost of such material exceeds the cost of comparable foreign unmanufactured construction material by more than 20 percent;

(ii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality;

(iii) The application of the restriction of section 1605 of the Recovery Act to a particular manufactured construction material would be inconsistent with the public interest or the application of the Buy American statute to a particular unmanufactured construction material would be impracticable or inconsistent with the public interest.

(c) *Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American statute.*

(1)

(i) 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) Cost;

(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)(4) of this clause.

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

(iii) The cost of construction material shall include all delivery costs to the construction site and any applicable duty.

(iv) 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.

(2) If the Government determines after contract award that an exception to section 1605 of the Recovery Act or the Buy American statute 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 cost of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to section 1605 of the Recovery Act or the Buy American statute applies, use of foreign construction material is noncompliant with section 1605 of the American Recovery and Reinvestment Act or the Buy American statute.

(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 Cost Comparison

Construction Material

<u>Description</u>	<u>Unit of Measure</u>	<u>Quantity</u>	<u>Cost (Dollars)*</u>
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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.)

(End of Clause)

52.225-22 Notice of Required Use of American Iron, Steel, and Manufactured Goods-Buy American Statute-Construction Materials.

As prescribed in [25.1102\(e\)](#), insert the following provision:

Notice of Required Use of American Iron, Steel, and Manufactured Goods-Buy American Statute-Construction Materials (Jan 2021)

(a) *Definitions*. "Construction material," "domestic construction material," "foreign construction material," "manufactured construction material," "steel," and "unmanufactured construction material," as used in this provision, are defined in the clause of this solicitation entitled "Required Use of Iron, Steel, and Manufactured Goods-Buy American statute-Construction Materials" (Federal Acquisition Regulation (FAR) clause [52.225-21](#)).

(b) *Requests for determinations of inapplicability*. An offeror requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) or the Buy American statute should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The Offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of the clause at FAR [52.225-21](#) in the request. If an offeror has not requested a determination regarding the inapplicability of section 1605 of the Recovery Act or the Buy American statute before submitting its offer, or has not received a response to a previous request, the Offeror shall include the information and supporting data in the offer.

(c) Evaluation of offers.

(1) If the Government determines that an exception based on unreasonable cost of domestic construction material applies in accordance with FAR [25.604](#), the Government will evaluate an offer requesting exception to the requirements of section 1605 of the Recovery Act or the Buy American statute by adding to the offered price of the contract-

(i) 25 percent of the offered price of the contract, if foreign manufactured construction material is incorporated in the offer based on an exception for unreasonable cost of comparable manufactured domestic construction material; and

(ii) 20 percent of the cost of foreign unmanufactured construction material included in the offer based on an exception for the unreasonable cost of comparable domestic unmanufactured construction material.

(2) If the solicitation specifies award on the basis of factors in addition to cost or price, the Contracting Officer will apply the evaluation factors as specified in paragraph (c)(1) of this provision and use the evaluated price in determining the offer that represents the best value to the Government.

(3) Unless paragraph (c)(2) of this provision applies, if two or more offers are equal in price, the Contracting Officer will give preference to an offer that does not include foreign construction material excepted at the request of the Offeror on the basis of unreasonable cost of comparable domestic construction material.

(d) Alternate offers.

(1) When an offer includes foreign construction material not listed by the Government in this solicitation in paragraph (b)(3) of the clause at FAR [52.225-21](#), the Offeror also may submit an alternate offer based on use of equivalent domestic construction material.

(2) If an alternate offer is submitted, the Offeror shall submit a separate Standard Form 1442 for the alternate offer and a separate cost comparison table prepared in accordance with paragraphs (c) and (d) of the clause at FAR [52.225-21](#) for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of the clause at FAR [52.225-21](#) does not apply, the Government will evaluate only those offers based on use of the equivalent domestic construction material, and the Offeror shall be required to furnish such domestic construction material. An offer based on use of the foreign construction material for which an exception was requested-

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

(End of Provision)

Alternate I (May 2014). As prescribed in [25.1102\(e\)](#), substitute the following paragraph (b) for paragraph (b) of the basic provision: (b)*Requests for determinations of inapplicability*. An offeror requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) or the Buy American statute shall submit the request with its offer, including the information and applicable supporting data required by paragraphs (c) and (d) of the clause at FAR [52.225-21](#).

52.225-23 Required Use of American Iron, Steel, and Manufactured Goods-Buy American Statute-Construction Materials under Trade Agreements.

As prescribed in [25.1102\(e\)](#), insert the following clause:

Required Use of American Iron, Steel, and Manufactured Goods-Buy American Statute-Construction Materials under Trade Agreements (Jan 2021)

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

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.

Designated country means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, 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, Moldova, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, Ukraine, or United Kingdom);

(2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru, or Singapore);

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

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Saint Eustatius, Saint Maarten, 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 the following:

(1) An unmanufactured construction material mined or produced in the United States. (The Buy American statute applies.)

(2) A manufactured construction material that is manufactured in the United States and, if the construction material consists wholly or predominantly of iron or steel, the iron or steel was produced in the United States. (Section 1605 of the Recovery Act applies.)

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

Free trade agreement (FTA) country construction material means a construction material that-

(1) Is wholly the growth, product, or manufacture of an FTA 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 an 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-

(1) Is wholly the growth, product, or manufacture of a least developed 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 least developed country into a new and different construction material distinct from the materials from which it was transformed.

Manufactured construction material means any construction material that is not unmanufactured construction material.

Non-designated country means a country other than the United States or a designated country.

Recovery Act designated country means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, 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, Moldova, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, Ukraine, or United Kingdom);

(2) A Free Trade Agreement country (FTA) (Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru, or Singapore); or

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

Recovery Act designated country construction material means a construction material that is a WTO GPA country construction material, an FTA country construction material, or a least developed country construction material.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

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

Unmanufactured construction material means raw material brought to the construction site for incorporation into the building or work that has not been-

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

WTO GPA country construction material means a construction material that-

(1) Is wholly the growth, product, or manufacture of a WTO GPA 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 WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) *Construction materials.*

(1) The restrictions of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) do not apply to Recovery Act designated country manufactured construction material. The restrictions of the Buy American statute do not apply to designated country unmanufactured construction material. Consistent with U.S. obligations under international agreements, this clause implements-

(i) Section 1605 of the Recovery Act by requiring, unless an exception applies, that all manufactured construction material in the project is manufactured in the United States and, if the construction material consists wholly or predominantly of iron or steel, the iron or steel was produced in the United States (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives); and

(ii) The Buy American statute by providing a preference for unmanufactured construction material mined or produced in the United States over unmanufactured construction material mined or produced in a non-designated country.

(2) The Contractor shall use only domestic construction material, Recovery Act designated country manufactured construction material, or designated country unmanufactured 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:

[Contracting Officer to list applicable excepted materials or indicate "none".]

(4) The Contracting Officer may add other construction material to the list in paragraph (b)(3) of this clause if the Government determines that-

(i) The cost of domestic construction material would be unreasonable;

(A) The cost of domestic manufactured construction material is unreasonable when the cumulative cost of such material, when compared to the cost of comparable foreign manufactured construction material, other than Recovery Act designated country construction material, will increase the overall cost of the contract by more than 25 percent;

(B) The cost of domestic unmanufactured construction material is unreasonable when the cost of such material exceeds the cost of comparable foreign unmanufactured construction material, other than designated country construction material, by more than 20 percent;

(ii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act to a particular manufactured construction material would be inconsistent with the public interest or the application of the Buy American statute to a particular unmanufactured construction material would be impracticable or inconsistent with the public interest.

(c) *Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American statute.*

(1) (i) 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) Cost;

(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)(4) of this clause.

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

(iii) The cost of construction material shall include all delivery costs to the construction site and any applicable duty.

(iv) 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.

(2) If the Government determines after contract award that an exception to section 1605 of the Recovery Act or the Buy American statute 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 cost of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to section 1605 of the Recovery Act or the Buy American statute applies, use of foreign construction material other than manufactured construction material from a Recovery Act designated country or unmanufactured construction material from a designated country is noncompliant with the applicable statute.

Foreign (Nondesignated Country) and Domestic Construction Materials Cost Comparison

Construction Material Description	Unit of Measure	Quantity	Cost (Dollars)*
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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.)

(End of Clause)

Alternate I (May 2014). As prescribed in [25.1102\(e\)](#), add the following definition of "Bahrainian, Mexican, or Omani construction material" to paragraph (a) of the basic clause, and substitute the following paragraphs (b)(1) and (b)(2) for paragraphs (b)(1) and (b)(2) of the basic clause:

Bahrainian, Mexican, or Omani construction material means a construction material that-

(1) Is wholly the growth, product, or manufacture of Bahrain, Mexico, or Oman; 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 Bahrain, Mexico, or Oman into a new and different construction material distinct from the materials from which it was transformed.

(b) *Construction materials.* (1) The restrictions of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) do not apply to Recovery Act designated country manufactured construction material. The restrictions of the Buy American statute do not apply to designated country unmanufactured construction material. Consistent with U.S. obligations under international agreements, this clause implements-

(i) Section 1605 of the Recovery Act, by requiring, unless an exception applies, that all manufactured construction material in the project is manufactured in the United States and, if the construction material consists wholly or predominantly of iron or steel, the iron or steel was produced in the United States (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives); and
(ii) The Buy American statute by providing a preference for unmanufactured construction material mined or produced in the United States over unmanufactured construction material mined or produced in a nondesignated country.

(2) The Contractor shall use only domestic construction material, Recovery Act designated country manufactured construction material, or designated country unmanufactured construction material, other than Bahrainian, Mexican, or Omani construction material, in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

52.225-24 Notice of Required Use of American Iron, Steel, and Manufactured Goods-Buy American Statute-Construction Materials Under Trade Agreements.

As prescribed in [25.1102\(e\)](#), insert the following provision:

NOTICE OF REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS-BUY AMERICAN STATUTE-CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (JAN 2021)

(a) *Definitions.* "Construction material," "domestic construction material," "foreign construction material," "manufactured construction material," "Recovery Act designated country construction material," "steel," and "unmanufactured construction material," as used in this provision, are defined in the clause of this solicitation entitled "Required Use of Iron, Steel, and Manufactured Goods-Buy American Statute-Construction Materials Under Trade Agreements" (Federal Acquisition Regulation (FAR) clause [52.225-23](#)).

(b) *Requests for determination of inapplicability.* An Offeror requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) or the Buy American statute should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The Offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause [52.225-23](#) in the request. If an

Offeror has not requested a determination regarding the inapplicability of section 1605 of the Recovery Act or the Buy American statute before submitting its offer, or has not received a response to a previous request, the Offeror shall include the information and supporting data in the offer.

(c) Evaluation of offers.

(1) If the Government determines that an exception based on unreasonable cost of domestic construction material applies in accordance with FAR [25.604](#), the Government will evaluate an offer requesting exception to the requirements of section 1605 of the Recovery Act or the Buy American statute by adding to the offered price of the contract-

(i) 25 percent of the offered price of the contract, if foreign manufactured construction material is included in the offer based on an exception for the unreasonable cost of comparable manufactured domestic construction material; and

(ii) 20 percent of the cost of foreign unmanufactured construction material included in the offer based on an exception for the unreasonable cost of comparable domestic unmanufactured construction material.

(2) If the solicitation specifies award on the basis of factors in addition to cost or price, the Contracting Officer will apply the evaluation factors as specified in paragraph (c)(1) of this provision and use the evaluated cost or price in determining the offer that represents the best value to the Government.

(3) Unless paragraph (c)(2) of this provision applies, if two or more offers are equal in price, the Contracting Officer will give preference to an offer that does not include foreign construction material excepted at the request of the Offeror on the basis of unreasonable cost.

(d) Alternate offers.

(1) When an offer includes foreign construction material, other than Recovery Act designated country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause [52.225-23](#), the Offeror also may submit an alternate offer based on use of equivalent domestic or Recovery Act designated country construction material.

(2) If an alternate offer is submitted, the Offeror shall submit a separate Standard Form 1442 for the alternate offer and a separate cost comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause [52.225-23](#) for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause [52.225-23](#) does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or Recovery Act designated country construction material, and the Offeror shall be required to furnish such domestic or Recovery Act designated country construction material. An offer based on use of the foreign construction material for which an exception was requested-

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

(End of Provision)

Alternate I (May2014). As prescribed in [25.1102\(e\)](#), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) *Requests for determination of inapplicability.* An offeror requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) or the Buy American statute shall submit the request with its offer, including the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause [52.225-23](#).

Alternate II (Mar2009). As prescribed in [25.1102\(e\)](#), add the definition of "Bahrainian, Mexican, or Omani construction material" to paragraph (a) and substitute the following paragraph (d) for paragraph (d) of the basic provision:

(d) *Alternate offers.* (1) When an offer includes foreign construction material, except foreign construction material from a Recovery Act designated country other than Bahrain, Mexico, or Oman that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause [52.225-23](#), the offeror also may submit an alternate offer based on use of equivalent domestic or Recovery Act designated country construction material other than Bahrainian, Mexican, or Omani construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer and a separate cost comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause [52.225-23](#) for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause [52.225-23](#) does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or Recovery Act designated country construction material other than Bahrainian, Mexican, or Omani construction material. An offer based on use of the foreign construction material for which an exception was requested-

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

52.225-25 Prohibition on Contracting With Entities Engaging in Certain Activities or Transactions Relating to Iran—Representation and Certifications.

As prescribed at [25.1103](#)(e), insert the following provision:

PROHIBITION ON CONTRACTING WITH ENTITIES ENGAGING IN CERTAIN ACTIVITIES OR TRANSACTIONS RELATING TO IRAN—
REPRESENTATION AND CERTIFICATIONS (JUN 2020)

(a) *Definitions.* As used in this provision-

Person—

(1) Means—

(i) A natural person;
(ii) A corporation, business association, partnership, society, trust, financial institution, insurer, underwriter, guarantor, and any other business organization, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise; and

(iii) Any successor to any entity described in paragraph (1)(ii) of this definition; and

(2) Does not include information or informational materials the export of which the President does not have the authority

Sensitive technology-

(1) Means hardware, software, telecommunications equipment, or any other technology that is to be used specifically-

(i) To restrict the free flow of unbiased information in Iran; or

(ii) To disrupt, monitor, or otherwise restrict speech of the people of Iran; and

(2) Does not include information or informational materials the export of which the President does not have the authority to regulate or prohibit pursuant to section 203(b)(3) of the International Emergency Economic Powers Act ([50 U.S.C. 1702](#)(b)(3)).

(b) The offeror shall e-mail questions concerning sensitive technology to the Department of State at CISADA106@state.gov.

(c) Except as provided in paragraph (d) of this provision or if a waiver has been granted in accordance with Federal Acquisition Regulation (FAR) [25.703-4](#), by submission of its offer, the offeror—

(1) Represents, to the best of its knowledge and belief, that the offeror does not export any sensitive technology to the government of Iran or any entities or individuals owned or controlled by, or acting on behalf or at the direction of, the government of Iran;

(2) Certifies that the offeror, or any person owned or controlled by the offeror, does not engage in any activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act. These sanctioned activities are in the areas of development of the petroleum resources of Iran, production of refined petroleum products in Iran, sale and provision of refined petroleum products to Iran, and contributing to Iran's ability to acquire or develop certain weapons or technologies; and

(3) Certifies that the offeror, and any person owned or controlled by the offeror, does not knowingly engage in any transaction that exceeds the threshold at FAR [25.703-2](#)(a)(2) with Iran's Revolutionary Guard Corps or any of its officials, agents, or affiliates, the property and interests in property of which are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) (see OFAC's Specially Designated Nationals and Blocked Persons List at <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>).

(d) *Exception for trade agreements.* The representation requirement of paragraph (c)(1) and the certification requirements of paragraphs (c)(2) and (c)(3) of this provision do not apply if-

(1) This solicitation includes a trade agreements notice or certification (e.g., [52.225-4](#), [52.225-6](#), [52.225-12](#), [52.225-24](#), or comparable agency provision); and

(2) The offeror has certified that all the offered products to be supplied are designated country end products or designated country construction material.

(End of provision)

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.

(I) *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 bio-based 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 a 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 a 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 ensure 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.

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 re-baselining. 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.

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.

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.

- (A) 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.
- (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.
- (D) 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.

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.

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.

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.

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.

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.

PART III – LIST OF ATTACHMENTS, EXHIBITS & OTHER DOCUMENTS

SECTION J – ATTACHMENTS

J.1 LIST OF ATTACHMENTS

Attachment No.	Title	Document Location
J-1	Certificate of Exemption	Section B.4
J-2	Reserved	Section B.11
J-3	Reserved	Section B.11
J-4	Subcontractor Request Form	Section B.9
J-5	Contractor Daily Report	Section C 7.1
J-6	Contractor Document Transmittal Form/Process	Section C 8.1
J-7	Reserved	
J-8	Contractor/Supplier Submittal Register	Section C 8.2
J-9	General President's Project Maintenance Agreement (GPPMA)	Section H.18
J-10	Reserved	
J-11	Request for Information (RFI) Form	Section H.1
J-12	Contractor Overtime Request	Section H.52
J-13, Rev 26	J-13 Rev26 Health & Safety Requirements for Onsite Work at the following web address are incorporated into and become part of this contract: J13 Documents :: Fluor-BWXT Portsmouth (fbportsmouth.com)	Section C
J-13 App1	J-13 Appendix 1 Training Catalog	Section C
J-13 Appendices	J-13 Appendices at the following web address are incorporated into and become part of this contract: Appendices Documents :: Fluor-BWXT Portsmouth (fbportsmouth.com)	Section C
J-14	HR-144 Workplace Substance Abuse Program	Section H.81
J-15	Specification 01546 (Ports FBP Site Security Requirements)	Section C 11
J-16	Standard Procurement Quality Requirements. FBP-QA-PRO-00016	Section C 12
J-17	Davis Bacon Labor Determination	Section H.18
J-18	Certificate of Insurance	Section H.24
J-19	Progress Payments Release	Section G.4
J-20	Final Payment Release	Section G.4
J-21	Back Charge Agreement	Section G.7
J-22	Notice of Completion	Section H.54
J-23	Notice of Rejection	Section H.54
J-24	Notice of Acceptance	Section H.54
J-25	Work Plan Format	Section C
J-26	General JHA at the following web address are incorporated into and become part of this contract: Required Read Documents :: Fluor-BWXT Portsmouth (fbportsmouth.com)	Section C
J-27	Pay Item Invoice Schedule Invoice	Section G.6
J-28	Pay Item Invoice Summary	Section G.6
J-29	FBP Fire Protection	Section C 9.3
J-30	Four Week Rolling Schedule	Section C 6.5

PART IV – REPRESENTATIONS AND INSTRUCTIONS

SECTION K – REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS

K.1 AGREEMENT TO CONTRACT TERMS AND CONDITIONS/GENERAL PROVISIONS

K.2 REPRESENTATION AND CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS

FLUOR BWXT PORTSMOUTH LLC
AGREEMENT TO CONTRACT
TERMS AND CONDITIONS/GENERAL PROVISIONS

This proposal in response to RFP No. _____ is based on full acceptance of the General Provisions, Section I. **(This block must be checked.** The Company will not entertain any exceptions to the Section I, General Provisions.)

General Provisions, Section I, are accepted without exception.

All exceptions to provisions other than the General Provisions of this RFP are delineated and **attached to this form.**

Provisions accepted without exception.

Provisions accepted with the following exception(s):

(Signature)

(Date)

(Company)

PART IV – REPRESENTATIONS AND INSTRUCTIONS

Section L – Instructions, Conditions, and Notices to Offerors

- L.1 – Proposal Preparation Instructions
- L.2 – Formal Communications
- L.3 – Submission of Proposals
- L.4 – Explanation to Prospective Offerors
- L.5 – Period of Acceptance
- L.6 – NAICS Code and Small Business Size Standard
- L.7 – Preparation of Offers
- L.8-L.9 – Reserved
- L.10 – Failure to Submit an Offer
- L.11 – Late Submissions, Modifications, and Withdrawals of Proposals
- L.12 – Opening of Proposals
- L.13 – Protests
- L.14 – Disclaimer
- L.15 – Special Notes
- L.16 – Final Revised Proposals
- L.17 – Teaming Subcontractors of Fluor BWXT Portsmouth LLC
- L.18 – Oral Presentations
- L.19 – Facilities Capital Cost of Money
- L.20 – Reserved
- L.21 – Technical/Performance Evaluation
- L.22 – Proprietary Rights
- L.23 – Restriction on Disclosure and Use of Data
- L.24 – 952.204-73 Facility Clearance

PART IV – REPRESENTATIONS AND INSTRUCTIONS

SECTION L – INSTRUCTIONS, CONDITIONS, AND NOTICES TO OFFERORS

L.1 PROPOSAL PREPARATION INSTRUCTIONS

Offerors shall provide proposals in two separate volumes.

Volume 1 – Technical/Management Proposal

Volume 2 – Cost/Contractual Proposal

Volume 1- Technical/Management Proposal

- (a) **General:** The technical proposal should be specific, detailed, and complete to demonstrate clearly and fully that the prospective Offeror has a thorough understanding of the requirements. The technical proposal must enable Fluor BWXT Portsmouth LLC technical Personnel to make a thorough evaluation and arrive at a sound determination as to whether or not the proposal meets the requirements of the Solicitation.
- (b) **Technical Qualification Information Requirements:** The technical proposal shall contain, as a minimum, the following information.
- Past Performance (*Include references and contact information*)
 - Key Personnel and qualifications
 - Work/Execution Plan
 - Project Schedule
 - Health and Safety Information (*If applicable*)
- (c) **Minimum Qualification Requirements:** Section M contains minimum qualification requirements. Offeror must meet these qualification requirements to be eligible for award. Offeror’s technical proposal must include evidence and supporting documentation to support a favorable determination that Offeror meets each and every qualification requirement.

No information regarding pricing shall be provided within the technical proposal.

Volume 2 – Price/Cost Proposal

REQUIRED PRICE PROPOSAL SUBMITTALS

- (a) Completed Fluor BWXT Portsmouth LLC Solicitation, Offer and Award Form.
- (b) Completed Section B- Pricing Schedule
- (c) Cost and pricing data in accordance with Public Law 87-653, “Truth in Negotiations Act”, when applicable.
- (d) Completed Fluor BWXT Portsmouth LLC Representations, Certifications and other Statements of Bidders/Offerors (Section K).
- (e) Completed Agreement to Contract Terms and Conditions/General Provisions (Section K), with any exceptions and detailed and attached.

- (f) Completed Organizational Conflicts of Interest Representation or Disclosure Statement, Attachment No.1 to Fluor BWXT Portsmouth LLC Representations, Certifications and Other Statements of Bidders/Offers (Section K), when applicable.
- (g) A Certificate of Insurance in accordance with the Fluor BWXT Portsmouth LLC General Provision entitled “Required Insurance.” (Ref. H24)
- (h) Bidder’s attention is drawn to FAR clauses 52.225-21 through 52.225.25 regarding the Buy American Act and the use of foreign construction materials, American iron, steel and manufactured goods. Bidder shall complete and include with Bidders proposal any required information regarding the use of foreign construction materials, use of American iron, steel and manufactured goods as noted there in. Bidder’s information will be used to request an exception to the Buy American Act statute as appropriate.

The Offeror shall, upon request, promptly furnish Fluor BWXT Portsmouth LLC with a current certified statement of the Offeror’s financial condition and such as data as FLUOR BWXT Portsmouth LLC may request with respect to the Offeror’s operations. FLUOR BWXT Portsmouth LLC will use this information to determine the Offeror’s financial responsibility and ability to perform under the contract. Failure of an offeror to comply with a request for information will subject the offer to possible rejection on responsibility grounds. If this was provided in the prequalification, so state.

L.2 FORMAL COMMUNICATIONS

Formal communications such as Requests for Clarification and/or information concerning this solicitation should be submitted either electronically or in writing to the address below:

Attn: Kelli Bunstine
Title: Contract Administrator
Fluor-BWXT Portsmouth LLC
P.O. Box 548
Piketon, Ohio 45661
Telephone: (740) 897-3941
Email: kelli.bunstine@ports.pppo.gov

L.3 SUBMISSION OF PROPOSALS

Proposal Due Date: Proposals must be received on or before June 25, 2024 at 1:00 PM EST. While electronic submission is preferred, offers and modifications thereof may be submitted in sealed envelopes or packages, with the technical and commercial volumes clearly separated within the package. A representative of the Offeror authorized to legally bind the company must sign the original proposal. Envelopes or packages containing proposals shall be marked with the solicitation number, date and hour specified for receipt of offers, and the name and address of the Offeror on the outer cover in the lower right-hand corner.

Proposals shall be addressed as follows:

E-mail version to kelli.bunstine@ports.pppo.gov (files must be less than 10M each). Call to confirm receipt.

When the Offeror chooses to transmit a facsimile or email proposal, Fluor BWXT Portsmouth LLC will not be responsible for any failure attributable to the transmission or receipt of the proposal including, but not limited to, the following:

- (1) Receipt of garbled or incomplete proposal.
- (2) Availability or condition of the receiving facsimile equipment.
- (3) Incompatibility between the sending and receiving equipment.
- (4) Delay in transmission or receipt of proposal.
- (5) Failure of the Offeror to properly identify the proposal.
- (6) Illegibility of proposal.
- (7) Security of proposal data.

L.4 EXPLANATION TO PROSPECTIVE OFFERORS

Any explanation desired by prospective Offerors regarding the meaning or interpretation of the solicitation, specifications, etc. shall be transmitted in writing. The format of the questions shall follow the sequential numbering of this solicitation's sections and paragraphs and shall state the major paragraph heading.

There will be a pre-proposal meeting on Tuesday, June 11, 2024 at 10:00 AM EST. Location and agenda information will be provided.

All questions must be submitted in writing by Thursday, June 13, 2024 at 10:00 AM EST.

All questions will be answered by FBP in writing by Tuesday, June 18, 2024, at 1:00 PM EST.

All technical and cost proposals are due no later than Tuesday, June 25, 2024 at 1:00 PM EST.

All costs and expenses incurred by you in preparing your proposal will be born solely by you. You will be informed whether or not your proposal has been successful. We reserve the right to reject any or all proposals. Actual award of the Contract(s) is contingent upon execution of formal documents satisfactory to both parties and funding availability.

FLUOR BWXT Portsmouth LLC, (FBP) reserves the right to accept: or reject any proposal with or without prior discussion with the Offeror(s); determine that any proposal not submitted in accordance with this Request for Proposal (RFP) is non-responsive and reject the proposal.

- award a contract on the basis of proposals received without discussions with Offerors (therefore, initial proposals should be submitted with the most favorable technical and price terms);
- select one or more Offerors to negotiate with;
- reject any or all proposals received;
- issue a request for revised proposals; or
- cancel the RFP without awarding a contract.

L.5 PERIOD OF ACCEPTANCE

Proposals in response to this solicitation will be valid for the number of days specified on the solicitation cover sheet.

L.6 NAICS CODE AND SMALL BUSINESS SIZE STANDARD

- (a) The North American Industry Classification System (NAICS) for this acquisition is 562910.

L.7 PREPARATION OF OFFERS

- (a) Offerors are expected to examine the drawings, specifications, schedule, and all instructions. Failure to do so will be at the Offeror's risk.
- (b) Each Offeror shall furnish the information required by the solicitation. The Offeror shall sign the offer and print or type its name on the Schedule and each continuation sheet on which it makes an entry. The person signing the offer must initial erasures or other changes. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to FLUOR BWXT Portsmouth LLC.
- (c) For each item offered, Offerors shall (1) show the unit price/cost, including, unless otherwise specified, packaging, packing, and preservation and (2) enter the extended price/cost for the quantity of each item offered in the "Quantity" column of the Schedule. In case of discrepancy between a unit price/cost and an extended price/cost, the unit price/cost will be presumed to be correct, subject, however, to correction to the same extent and in the same manner as any other mistake.
- (d) Offers for supplies or services other than those specified will not be considered unless authorized by the solicitation.
- (e) Offerors must state a definite time for performance of services, unless otherwise specified in the solicitation.
- (f) Time, if stated as a number of days, will include Saturdays, Sundays, and holidays.

L.8 RESERVED

L.9 SMALL BUSINESS SUBCONTRACTING PLAN

If the Offeror is other than a small business as defined in Item No. L.6 above, a subcontracting plan that separately addresses subcontracting with small and small disadvantaged businesses is required with proposals with proposed price exceeding \$1,500,000 for construction and \$750,000 for other services. This plan shall include the elements as defined in FAR 52.219-9, Small Business Subcontracting Plan, Alternate II. This plan will be attached to and made a part of the proposed contract. Failure to submit and negotiate the subcontracting plan may make the Offeror ineligible for award.

L.10 FAILURE TO SUBMIT AN OFFER

Those firms not responding should advise FLUOR BWXT Portsmouth LLC why no offer is being submitted and whether the firm wishes to receive future solicitations for similar requirements. If a recipient does not submit an offer and does not notify FLUOR BWXT Portsmouth LLC that future solicitations are desired, the recipient's name may be removed from the applicable mailing list.

L.11 LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF PROPOSALS

- (a) Offers or modifications of offers received at the address specified for the receipt of offers after the exact time specified for receipt of offers will not be considered.
- (b) Notwithstanding Paragraph A above, a late modification of an otherwise successful proposal, that makes its terms more favorable to the Company, will be considered at any time it is received before award and may be accepted.
- (c) Proposals may be withdrawn by written notice received at any time before award. Proposals may be also withdrawn via facsimile or email if the request is received by the proper Company Buyer at any time before award. Proposals may be withdrawn in person by an offeror or an authorized representative, if the representative's identity is made known and the representative signs a receipt for the proposal before award.

L.12 OPENING OF PROPOSALS

There will be no public opening of the proposals. Offerors may be advised of award as soon as possible after source selection has been made and the consent of the Department of Energy (DOE) has been submitted, if required.

L.13 PROTESTS

- (a) This is not a solicitation issued by the U.S. Government, and FLUOR BWXT Portsmouth LLC is not acting as an agent of the U.S. Government in issuing this solicitation. Any contract resulting from this solicitation will not be a contract of the U.S. Government. Therefore, the courts and administrative organizations that have jurisdiction over bid protests relating to the award of government contracts will not have jurisdiction to consider any protest relating to the award or proposed award of a contract relating to this solicitation.
- (b) The DOE has advised FLUOR BWXT Portsmouth LLC that the DOE will not act upon any protest about the award or proposed award resulting from this solicitation, and that it will not request the General Accounting Office (GAO) to consider any such protest.

L.14 DISCLAIMER

This solicitation does not commit the United States Government and/or FLUOR BWXT Portsmouth LLC to pay for any costs incurred in the preparation and submission of a proposal or for any other costs incurred prior to the execution of the contract. This solicitation shall not be construed in any manner to be an obligation on the part of the United States Government and/or

FLUOR BWXT Portsmouth LLC to enter into a contract or any other arrangement with the Offeror.

L.15 SPECIAL NOTES

Section L will be physically removed from any resultant award.

L.16 FINAL REVISED PROPOSALS

- (a) Offerors are cautioned to review carefully all terms and conditions and specifications of this solicitation prior to the submission of proposals. FLUOR BWXT Portsmouth LLC may award this solicitation without discussion of proposals received.
- (b) Discussions may be held at the sole discretion of FLUOR BWXT Portsmouth LLC. A complete understanding of technical requirements and all other terms and conditions of the proposed contract should exist between the Offeror and FLUOR BWXT Portsmouth LLC at the conclusion of any such discussions. Final revised proposals may be requested upon the completion of discussions if held.
- (c) Offerors may not submit any new or revised terms or conditions in their final revised proposals that have not been fully disclosed, discussed, and understood during discussions. Any such revisions must be substantiated and must be able to be traced back to the original proposal. Any revisions or nonconcurrence to negotiated agreement terms and conditions submitted in the revised proposal may be a basis for the rejection of the Offeror's final revised proposal.

L.17 TEAMING SUBCONTRACTORS OF FLUOR BWXT PORTSMOUTH LLC

Offerors are cautioned that if your company is a Parent, Division, Affiliate or teaming partner of Fluor Federal Services, Inc. or Babcox & Wilcox Technical Services Group, the members of FLUOR BWXT Portsmouth LLC that is performing prime contract DE-AC30-10CC40017 with the Department of Energy, you must identify this on the OCI certification in Section K.

L.18 ORAL PRESENTATIONS

Oral presentations may be required from the Offeror's determined to be in the competitive range. The content, format, time and location of any oral presentation will be specified in writing by FLUOR BWXT Portsmouth LLC. The presentations may be held at FLUOR BWXT Portsmouth LLC or the Offeror's facility. The purpose of any oral presentation will be to facilitate understanding by FLUOR BWXT Portsmouth LLC of the Offeror's Technical Proposal.

L.19 FACILITIES CAPITAL COST OF MONEY

- (a) Facilities capital cost of money will not be an allowable cost under the contemplated contract,
- (b) The resulting contract will include the clause Waiver of Facilities Capital Cost of Money (FAR 52.215-17).

L.20 RESERVED

L.21 TECHNICAL/PERFORMANCE EVALUATION

Representatives from, but not limited to, FLUOR BWXT Portsmouth LLC Project Controls and FLUOR BWXT Portsmouth LLC Acquisitions may conduct a Technical/Performance Evaluation to verify the Offeror's compliance with this solicitation's requirements. Such an evaluation may include, but will not necessarily be limited to, an inspection of capacity, capability, procedures, management control systems (financial, quality assurance and schedule), and material storage and handling procedures. This evaluation could be conducted at the Offeror's manufacturing facility or conducted as a review of appropriate documents, past performance, previous FLUOR BWXT Portsmouth LLC surveys, surveys performed by other Department of Energy (DOE) sites, etc. The method of evaluating is at the discretion of FLUOR BWXT Portsmouth LLC. The conduct of such an evaluation does not constitute a commitment by FLUOR BWXT Portsmouth LLC to award any contract to the Offeror. Failure by the Offeror to successfully demonstrate its ability to comply with the requirements of this solicitation may result in the Offeror being considered non-responsible and removed from further consideration.

L.22 PROPRIETARY RIGHTS

FLUOR BWXT Portsmouth LLC's proprietary rights are involved in the information disclosed and requested herein. The Offeror shall not disclose neither this document nor the information disclosed herein, nor any part thereof, shall be reproduced or transferred to other documents, or used or disclosed to others for any other purpose other than for purposes of this proposal, except as specifically authorized in writing by FLUOR BWXT Portsmouth LLC.

L.23 RESTRICTION ON DISCLOSURE AND USE OF DATA

Offerors or quoters who include in their proposals or quotations data that they do not want disclosed to the public for any purpose or used by FLUOR BWXT Portsmouth LLC except for evaluation purposes, shall--

- (a) Mark the title page with the following legend:

"This proposal or quotation includes data that shall not be disclosed outside FLUOR BWXT Portsmouth LLC and the Government and shall not be duplicated, used, or disclosed--in whole or in part-- for any purpose other than to evaluate this proposal or quotation. If, however, a contract is awarded to this offeror or quoter as a result of--or in connection with-- the submission of this data, FLUOR BWXT Portsmouth LLC and the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit FLUOR BWXT Portsmouth LLC's or the Government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets [insert numbers or other identification of sheets]"; and

- (b) Mark each sheet of data it wishes to restrict with the following legend:

"Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal or quotation."

L.24 RESERVED

FACILITY CLEARANCE (MAY 2002)

NOTICES

Section 2536 of title 10, United States Code, prohibits the award of a contract under a national security program to an entity controlled by a foreign government if it is necessary for that entity to be given access to information in a proscribed category of information in order to perform the contract unless a waiver is granted by the Secretary of Energy. In addition, a Facility Clearance and foreign ownership, control and influence (FOCI) information are required when the contract or subcontract to be awarded is expected to require employees to have access authorizations.

Offerors who have either a Department of Defense or a Department of Energy Facility Clearance generally need not resubmit the following foreign ownership information unless specifically requested to do so. Instead, provide your DOE Facility Clearance code or your DOD assigned commercial and government entity (CAGE) code. If uncertain, consult the office which issued this solicitation.

(a) Use of Certificate Pertaining to Foreign Interests, Standard Form 328

- (1) The contract work anticipated by this solicitation will require access to classified information or special nuclear material. Such access will require a Facility Clearance for the Contractor organization and access authorizations (security clearances) for Contractor personnel working with the classified information or special nuclear material. To obtain a Facility Clearance the offeror must submit a Certificate Pertaining to Foreign Interests, Standard Form 328, and all required supporting documents to form a complete Foreign Ownership, Control or Influence (FOCI) Package.
- (2) Information submitted by the offeror in response to the Standard Form 328 will be used solely for the purposes of evaluating foreign ownership, control or influence and will be treated by DOE, to the extent permitted by law, as business or financial information submitted in confidence.
- (3) Following submission of a Standard Form 328 and prior to contract award, the Contractor shall immediately submit to the Contracting Officer written notification of any changes in the extent and nature of FOCI which could affect the offeror's answers to the questions in Standard Form 328. Following award of a contract, the

Contractor must immediately submit to the cognizant security office written notification of any changes in the extent and nature of FOCI which could affect the offeror's answers to the questions in Standard Form 328. 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 must also be furnished concurrently to the cognizant security office.

(b) Definitions

(1) Foreign Interest means any of the following—

- (i) A foreign government, foreign government agency, or representative of a foreign government;
- (ii) Any form of business enterprise or legal entity organized, chartered or incorporated under the laws of any country other than the United States or its possessions and trust territories; and
- (iii) Any person who is not a citizen or national of the United States.

(2) *Foreign Ownership, Control, or Influence (FOCI)* means the situation where the degree of ownership, control, or influence over a Contractor by a foreign interest is such that a reasonable basis exists for concluding that compromise of classified information or special nuclear material may result.

(c) Facility Clearance means an administrative determination that a facility is eligible to access, produce, use or store classified information, or special nuclear material. A Facility Clearance is based upon a determination that satisfactory safeguards and security measures are carried out for the activities being performed at the facility. It is DOE policy that all Contractors or Subcontractors requiring access authorizations be processed for a Facility Clearance at the level appropriate to the activities being performed under the contract. Approval for a Facility Clearance shall be based upon—

- (1) A favorable foreign ownership, control, or influence (FOCI) determination based upon the Contractor's response to the ten questions in Standard Form 328 and any required, supporting data provided by the Contractor;
- (2) A contract or proposed contract containing the appropriate security clauses;
- (3) Approved safeguards and security plans which describe protective measures appropriate to the activities being performed at the facility;
- (4) An established Reporting Identification Symbol code for the Nuclear Materials Management and Safeguards Reporting System if access to nuclear materials is involved;
- (5) A survey conducted no more than 6 months before the Facility Clearance date, with a composite facility rating of satisfactory, if the facility is to possess classified matter or special nuclear material at its location;

- (6) Appointment of a Facility Security Officer, who must possess or be in the process of obtaining an access authorization equivalent to the Facility Clearance; and, if applicable, appointment of a Materials Control and Accountability Representative; and
 - (7) Access authorizations for key management personnel who will be determined on a case-by-case basis, and must possess or be in the process of obtaining access authorizations equivalent to the level of the Facility Clearance.
- (d) A Facility Clearance is required prior to the award of a contract requiring access to classified information and the granting of any access authorizations under a contract. Prior to award of a contract, the DOE must determine that award of the contract to the offeror will not pose an undue risk to the common defense and security as a result of its access to classified information or special nuclear material in the performance of the contract. The Contracting Officer may require the offeror to submit such additional information as deemed pertinent to this determination.
- (e) A Facility Clearance is required even for contracts that do not require the Contractor's corporate offices to receive, process, reproduce, store, transmit, or handle classified information or special nuclear material, but which require DOE access authorizations for the Contractor's employees to perform work at a DOE location. This type facility is identified as a non-possessing facility.
- (f) Except as otherwise authorized in writing by the Contracting Officer, the provisions of any resulting contract must require that the Contractor insert provisions similar to the foregoing in all subcontracts and purchase orders. Any Subcontractors requiring access authorizations for access to classified information or special nuclear material shall be directed to provide responses to the questions in Standard Form 328, Certificate Pertaining to Foreign Interests, directly to the prime Contractor or the Contracting Officer for the prime contract.

NOTICE TO OFFERORS—CONTENTS REVIEW

(PLEASE REVIEW BEFORE SUBMITTING)

Prior to submitting the Standard Form 328, required by paragraph (a)(1) of this clause, the offeror should review the FOCI submission to ensure that:

- (1) The Standard Form 328 has been signed and dated by an authorized official of the company;
- (2) If publicly owned, the Contractor's most recent annual report, and its most recent proxy statement for its annual meeting of stockholders have been attached; or, if privately owned, the audited, consolidated financial information for the most recently closed accounting year has been attached;
- (3) A copy of the company's articles of incorporation and an attested copy of the company's by-laws, or similar documents filed for the company's existence and management, and all amendments to those documents;

- (4) A list identifying the organization's owners, officers, directors, and executive personnel, including their names, social security numbers, citizenship, titles of all positions they hold within the organization, and what clearances, if any, they possess or are in the process of obtaining, and identification of the government agency(ies) that granted or will be granting those clearances; and,
- (5) A summary FOCI data sheet.

NOTE: A FOCI submission must be attached for each tier parent organization (i.e. ultimate parent and any intervening levels of ownership). If any of these documents are missing, award of the contract cannot be completed.

(End of provision)

PART IV – REPRESENTATIONS AND INSTRUCTIONS

SECTION M - EVALUATION FACTORS FOR AWARD

M.1 INTRODUCTION

Fluor-BWXT Portsmouth LLC. (FBP or “The Company”) acting under its contract with the Department of Energy intends to issue a contract for Removal of Scrap Equipment at the PORTS Site near Piketon, Ohio.

The Company intends to evaluate proposals and award a contract without discussions with the Offerors. Therefore, the Offeror’s initial proposal should contain the Offeror’s best terms from a price and technical standpoint. The Company reserves the right to conduct discussions if it determines that they are necessary.

FBP will evaluate proposals and select an Offeror for award of a contract in accordance with the evaluation factors set forth below.

M.2 BASIS FOR AWARD

Lowest Prices, Technically Acceptable (LPTA)

FBP will utilize a Lowest Price Technically Acceptable source selection process. Technical tradeoffs will not be made and no additional credit will be given for exceeding requirements. FBP will award a contract to the technically acceptable offeror with the lowest evaluated price provided the offeror is deemed responsible and submits a proposal conforming to the solicitation requirements.

M.3 MINIMUM QUALIFICATION REQUIREMENTS

Offeror’s proposal must include information to allow FBP to validate compliance with the solicitation requirements. Proposals will first be reviewed against the following minimum qualification requirements (go/no go requirements) in order to be eligible for award. In addition to meeting the minimum qualifications, FBP will review proposals for overall technical acceptability in regards to the entire solicitation.

Minimum Qualifications:

(a) Past Performance: Offeror shall provide evidence of demonstrated successful experience working on Government installations. Offeror shall provide evidence of being signatory to a trade agreement with multiple union trades, which must include at a minimum, Electricians, Laborers, and Operators.

Offeror must provide evidence that it has successfully completed a minimum of 5 Discrete Scopes of Work with Contract Values of at least \$50K. Contact information should be current and include the following:

- Client Name and Address
- Client Technical Point of Contact, Phone Number and E-Mail
- Brief Description of Work Scope
- Contract Type

- Period of Performance
- Base Contract Value
- Final Contract Value
- Summary of qualifications and experience

NOTE: Each Project Description shall be a maximum of one half (1/2) single sided 8.5 inch x 11 inch page.

(b) Key Personnel and qualifications: Submit resumes and qualifications for the following Key Positions:

- Project Manager
- Health/Safety/Environmental Representative
- Quality Assurance/Quality Control Representative
- Industrial Hygiene Representative

Provide resumes of a minimum of four (4) personnel including one (1) Project Manager, one (1), one (1) Health, Safety, and Environmental (HSE) Representative; one (1) designated Quality Assurance/Quality Control (QA/QC) Representative; and one (1) Industrial Hygiene Representative.

Resumes shall include the proposed role and responsibility on this Contract; a summary of each person's qualifications including education, training, registration, and number of years of overall and relevant experience; and representative and relevant project experience.

The Project Manager shall have a minimum of 10 years of relevant work experience. See Attachment J-13 for HSE Representative qualifications and responsibilities. The QA/QC Representative shall have a minimum of 5 years of relevant work experience. The Industrial Hygiene Representative shall have a minimum of 5 years of relevant work/field experience. For each specific project, include the overall scope of the project, their specific role, and when/where the project was performed.

(c) Health and Safety Information: The Offeror and all Onsite Lower-Tier Subcontractors' Experience Modification Rate (EMR) and Total Case Rate (TCR) must be 1.0 or less. Greater than 1.0 requires additional explanation and will be subject to review and approval by FBP.

No information regarding pricing shall be provided within the technical proposal.

Administrative Reviews

FBP will also evaluate each proposal from a contracts/administrative perspective to ensure financial standing; resource allocations, etc. indicate that the Offeror(s) can reasonably be expected to perform the required work successfully. The review may be based on submittals provided by the Offeror(s) and information gathered from other sources including past performance for Fluor-BWXT or other customers, review of D&B reports, excluded parties list search (EPLS in SAM.gov), review of any exceptions to Terms & Conditions, and other similar evaluations to determine if Offerors are responsive and responsible.

PRICE EVALUATION- The following price evaluation criteria shall be used to evaluate the price proposals submitted to Fluor-BWXT Portsmouth LLC for this solicitation.

The specified unit prices provided by an Offeror for Section B will be used for price evaluation purposes and will be multiplied by the specified Fluor-BWXT Portsmouth LLC quantity for the total evaluated NTE amount.

Fluor-BWXT Portsmouth LLC will evaluate total pricing, for award purposes only, by adding the total price for each type of Labor Description together for all items specified.

All Offerors shall propose only the unit of measure specified in **Section B**, to be found responsive.

Multiple awards may be awarded at the sole discretion of Fluor-BWXT Portsmouth LLC.

M.4 PRICING IRREGULARITIES

The Company may determine that an offer is unacceptable if the prices proposed are materially unbalanced between line items, sub line items or options. An offer is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to the cost for the work, and if there is reasonable doubt that the offer will result in the lowest overall cost to the Company, even though it may be the low evaluated offer, or it is so unbalanced as to be tantamount to allowing an advance payment.

M.5 RESERVED