

**FLUOR-BWXT PORTSMOUTH LLC**  
**PART I – THE SCHEDULE**  
**SECTION A – SOLICITATION, OFFER AND AWARD**

<b>1. Contract No.</b>	<b>2. Solicitation No.</b> FBP25SC200113	<b>3. Type of Solicitation: Negotiated (RFP)</b> Firm-Fixed-Price	<b>4. RFP: Sections A-M</b> <b>Contract: Sections A-K</b>
<b>5. Issued By: Fluor-BWXT Portsmouth LLC</b> P.O. Box 548 Piketon, OH 45661		<b>6. Date and Time Proposals are Due:</b> December 19, 2024 @ 3:00 P.M EST.	

**SOLICITATION**

<b>7. Sealed offers in original and 0 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.</b>	
<b>8. FOR INFORMATION CONTACT</b>	<b>1. NAME: Bruce Knauff</b> <b>2. TELEPHONE: 740-897-3792</b> <b>3. EMAIL: Bruce.knauff@ports.pppo.gov</b>

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**OFFEROR (Must be fully completed by offeror)**

<b>10. The undersigned agrees this offer maybe accepted within 90 calendar days 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 designates point(s), within the time specified in the schedule.</b>				
<b>11. DISCOUNT FOR PROMPT PAYMENT</b>	<b>10 CALENDAR DAYS</b>	<b>20 CALENDAR DAYS</b>	<b>30 CALENDAR DAYS</b>	<b>CALENDAR DAYS</b>
	%	%	%	%
<b>12. ACKNOWLEDGMENT OF AMENDMENTS</b> (The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated)	<b>AMENDMENT NO.</b>	<b>DATE</b>	<b>AMENDMENT NO.</b>	<b>DATE</b>
<b>13. NAME AND ADDRESS OF OFFEROR:</b>			<b>14. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER</b> (TYPE OR PRINT)	
<b>15. TELEPHONE NO.</b>	<b>16. <input type="checkbox"/> (CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE, ENTER SUCH ADDRESS IN SCHEDULE.)</b>		<b>17. SIGNATURE</b>	<b>18. OFFER DATE</b>

**AWARD ( To be completed by Fluor-BWXT Portsmouth LLC)**

<b>19. ACCEPTED AS TO ITEMS NUMBERED</b>	<b>20. AMOUNT</b>
<b>21. NAME AND TITLE OF SIGNER:</b>	<b>22. SIGNATURE:</b>
<b>23. AWARD DATE:</b>	

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**PART I - THE SCHEDULE**

**SECTION B - SUPPLIES OR SERVICES AND PRICES/COSTS**

**B.1 PARTIES AND TYPE OF CONTRACT**

This is a “Firm Fixed Price” type of contract between Fluor BWXT Portsmouth LLC also referred to as FBP or Company and, the party identified in block 13 of Section A. hereafter referred to as Contractor. 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 incidental to the performance of the Work.

**B.2 CONTRACT PRICE – FIRM FIXED PRICE**

a. Full compensation to Contractor for full and complete performance by Contractor of all the Work, compliance with all terms and conditions of this Contract, and for Contractor’s payment of all obligations incurred in, or applicable to the performance of the Work shall be firm-fixed price of \_\_\_\_\_ **WRITE OUT IN FULL**) \_\_\_\_\_ (\$ \_\_\_\_\_), which includes bonding costs

**b. PROGRESS PAYMENT SCHEDULE:**

For the purpose of progress payments, the price is broken down as follows:

<b>Contract Pay Item</b>	<b>Pay Item Description</b>	<b>Schedule of Values</b>
<b>01</b>	<b>Pre-Mobilization Submittals</b>	\$ _____.
<b>02</b>	<b>Complete Field Work</b>	\$ _____.
<b>03</b>	<b>Contract Close-Out and Submittals</b>	\$ _____.
	<b>TOTAL FIRM FIXED PRICE</b>	\$ _____.

### **B.3 PRICING BASIS**

- (a) The Contract Price, forward pricing for changes, and all other prices and rates set forth herein are firm for the duration of the Work. This shall include all Contractor's costs, expenses, overhead and profit for complete performance of the Work.
- (b) The Contract Price, forward pricing for changes, and all other prices and rates set forth herein shall include, but shall not be limited to all taxes, duties, fees and insurance.
- (c) The Contract Price, forward 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 prices for Mobilization, Demobilization shall be fixed and firm and shall not be subject to adjustment based upon any additions or deletions to the work, except at the express written order of Company,
- (e) The fixed price and all unit prices 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.
- (f) 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/United States Government's and Company's safety, security and fire regulations.
- (g) Failure by Contractor to assess fully the scope of work, as required and described in Section C, STATEMENT OF WORK shall not be accepted as a basis for variations to the firm fixed price.

### **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 pay 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: \_\_\_\_\_

## **B.5 PRICING FOR CHANGES**

The following definitions shall apply with regard to cost rates used in the event Contractor submits a proposal for changes to the fixed price:

(1) Labor

All direct labor costs, up to and including general foreman, including payroll burdens, benefits, consumables, and expendable materials, small tools, overhead and associated profit.

(2) Material

Cost to procure and supply materials, including freight, customs duties and taxes.

(3) Construction Equipment

Total cost to provide, maintain, and operate construction equipment (excluding the cost of operating labor), inclusive of associated consumables, overhead and associated profit.

(4) Mobilization

The act of bringing resources to the work site to commence the Contract Work. A portion of the Contract Price, payable when sufficient Site Establishment has been mobilized at the jobsite to allow Contractor to commence productive Work.

(5) Demobilization

The activity to clear the site of all temporary construction facilities upon completion of the direct Work. This portion of the Contract Price that becomes payable only when Contractor has demobilized all its labor, equipment and temporary facilities from the site and returned the allocated temporary facilities area(s) to its pre-mobilization condition.

(6) **Advance Agreement on Contractor mark up on changes**

In the event the parties expressly agree to a change that results in an increase to the contract price, the Contractor's markup for indirect costs (inclusive but not limited to all overhead and general and administrative expenses) shall not exceed 10% and profit shall not exceed 5% as applied to the direct cost for labor, materials, and equipment.

## **B.6 RESERVED**



**B.7 RESERVED**

**B.8 RESERVED**

**B.9 LIST OF SUBCONTRACTORS**

The following is a detailed list of the subcontractors proposed for the Work. Once the Company has given its approval, the subcontractors listed below shall not be changed, except with Company's prior written approval using Attachment J-4.

Approval of Contractor will be deemed to have been given at contract award.

Subcontractor	Description of Work	Cost

Pursuant to Section H.75 "Performance of Work by the Contractor" **insert the following information:**

- (a) Percentage of Work performed by Contractor's own forces: \_\_\_\_\_%
- (b) Percentage of Work performed by subcontractors: \_\_\_\_\_%
- (c) Company reserves the right to request financial information and work experience histories of the proposed subcontractors

**B.10 RESERVED**

**B.11 SURETY INSTRUMENTS**

- (a) Contractor shall provide, at the option of Company, a performance bond and a payment bond Attachment J-2 and J-3, each in an amount equal to one hundred percent (100%) of the Contract Price for a total cost of:

100% Performance Bond	_____
100% Payment Bond	_____
Total	_____

- (b) The performance bond shall be valid through the end of Contractor's obligations, that is, until expiration of the period of performance or of any warranty period set forth in the contract, whichever is later. The payment bond shall remain valid until Contractor has made final payments to all obligees of Contractor.
- (c) The payment and performance bonds set forth above, shall be adjusted, when instructed by Company, for authorized changes, both increases to and decreases from the Contract Price, at the rate of:

Firm Performance Bond Rate: \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) per one thousand dollars of change.

Firm Payment Bond Rate: \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) per one thousand dollars of change.

Changes that vary the Contract Price, cumulatively, by less than 20% shall not require adjustment to the subject bonds except as specifically instructed by Company.

**PART I - THE SCHEDULE**  
**SECTION C – STATEMENT OF WORK**

**C.1 OVERVIEW**

The purpose of this Contract is to provide Construction services in support of the Department of Energy Contract DE-AC30-10CC40017, Portsmouth Decontamination and Decommissioning (D&D) Project at the Portsmouth Gaseous Diffusion Plant (PORTS) near Piketon, Ohio.

**C.2 SCOPE OF WORK**

The Contractor will provide Construction services to the Company in the execution of the environmental restoration of PORTS. The Contractor will provide the necessary personnel, equipment and material to complete work activities identified in this Section C and under the terms of the Contract. Scope of Work, Revision 0 dated November 5, 2024 (attached).

## **PART I - THE SCHEDULE**

### **SECTION D - PACKAGING AND MARKING**

#### **D.1 PACKAGING**

Preservation, packaging and packing for shipment of material 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.

#### **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 that:
  - (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 Buyer, a copy of the cover letter shall be furnished to the Buyer. However, the Buyer 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 RESERVED**

#### **D.5 RESERVED**

**PART I – THE SCHEDULE**  
**SECTION E – INSPECTION AND ACCEPTANCE**

**E.1 INSPECTION OF CONSTRUCTION CONTRACTS**

*(Derived from FAR 52.246-12)*

- (a) *Definition.* “Work” includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.
- (b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. The Contractor shall maintain complete inspection records and make them available to the Company. All work shall be conducted under the general direction of the Company and is subject to Company inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.
- (c) Company inspections and tests are for the sole benefit of the Company and the Government and do not:
  - (1) Relieve the Contractor of responsibility for providing adequate quality control measures;
  - (2) Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;
  - (3) Constitute or imply acceptance; or
  - (4) Affect the continuing rights of the Company after acceptance of the completed work under paragraph (i) of this section.
- (d) The presence or absence of a Company inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without the Buyer’s written authorization.
- (e) The Contractor shall promptly furnish, at no increase in contract price, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Buyer. The Company may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes re-inspection or retest necessary. The Company shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract
- (f) The Contractor shall, without charge, replace or correct work found by the Company not to conform to contract requirements, unless in the public interest the Company consents to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.
- (g) If the Contractor does not promptly replace or correct rejected work, the Company may –

- (1) By contract or otherwise, replace or correct the work and charge the cost to the Contractor; or
  - (2) Terminate for default the Contractor's right to proceed.
- (h) If, before acceptance of the entire work, the Company decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet contract requirements, the Buyer shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.
- (i) Unless otherwise specified in the contract, the Company shall accept, as promptly as practicable after completion and inspection, all work required by the contract or that portion of the work the Buyer determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the Company's rights under any warranty or guarantee.

**PART I - THE SCHEDULE**  
**SECTION F - DELIVERIES OR PERFORMANCE**

**F.1 TERM OF THE CONTRACT**

The performance period under this contract is **148** calendar days from notice to proceed.

<b>Schedule Summary</b>		
<b>Item</b>	<b>Schedule Activities</b>	<b>Duration (Calendar Days)</b>
1	Notice to Proceed (NTP)	TBD
2	Pre-Mobilization Submittals	28 Days After NTP
3	ATM	29 Days After NTP
4	Complete Field Work	120 Days After NTP
5	Contract Close-Out	148 Days After NTP

**F.2 DELIVERIES**

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

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

**Stop-Work Order (Aug. 1989)**

- (a) The Company may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Company 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. The Company shall make an equitable adjustment in the delivery schedule or contract 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 Buyer decides the facts justify the action, the Buyer 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 Company 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 Buyer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(End of Clause)

#### **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 7AM to 5PM, 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-B&W Portsmouth LLC as one and the same corporation.
- (b) This contract is entered into to meet in part the requirements of Contract DE-AC30-10CC40017 a contract in which Fluor-BWXT Portsmouth LLC is the Company and the United States Department of Energy (DOE) is the Owner/United States Government. By the terms of that contract Fluor-BWXT Portsmouth LLC has agreed to treat appropriately requirements of federal statues 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 contract 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 perform the work 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 performance of all or any portion of the work covered by the contract shall constitute unqualified acceptance of all Fluor-BWXT Portsmouth LLC terms and conditions. .
- (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 the Company will make the full text of the clauses available.
- (e) Neither this contract nor any portion hereof shall be assigned or delegated without the Company's prior written consent and any such assignment or delegations shall be void. The Company has the right to assign this contract to DOE or its designee, and in case of such assignment and notice thereof to the Contractor, the Company shall have no further responsibility, hereunder.

**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 procedures contained in Attachment J-6 – Correspondence and Submittal Process (if applicable). Other correspondence shall be as follows:

- (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 Company Contract Technical Representative (CTR) with copy to the Contract Administrator (CA). The mailing address is as follows:

Fluor-BWXT Portsmouth LLC  
P.O. Box 548  
Piketon, OH 45661  
Attn.: Cabel Breitenbach (CTR)  
Telephone: (740) 897-3577  
Email: [Cabel.breitenbach@ports.pppo.gov](mailto:Cabel.breitenbach@ports.pppo.gov)

- (b) Other Correspondence. All correspondence, other than technical correspondence, shall reference the contract number, and be addressed to the CA, with information copies of the correspondence to the Company CTR. The mailing address is as follows:

Fluor-BWXT Portsmouth LLC  
P.O. Box 548  
Piketon, OH 45661  
Attn: Bruce Knauff (Contract Administrator)  
Telephone: (740) 897-3792  
Email: [Bruce.knauff@ports.pppo.gov](mailto:Bruce.knauff@ports.pppo.gov)

### **G.3 CONTRACT ADMINISTRATION**

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

Contract Administrator: Bruce Knauff  
Contracts Manager: Alan Undheim  
Contract Technical Representative (CTR) direction will be provided by: Cabel Breitenbach

### **G.4 SUBMISSION OF INVOICES AND MEANS OF PAYMENT**

- (a) The Contractor shall submit consecutively numbered invoices, with the Contract number clearly displayed at the top of each page. The Contractor shall submit an original invoice to the address below and one electronic copy to [invoice@ports.pppo.gov](mailto:invoice@ports.pppo.gov) and one copy to the Buyer. Invoices should be submitted to:

Fluor-BWXT Portsmouth LLC  
P.O. Box 548  
Piketon, OH 45661  
Attn.: Accounts Payable

- (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 the Company. 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 (as applicable)--
- (1) Name and address of the Contractor;
  - (2) Invoice date;
  - (3) Contract number, contract line item number, if applicable, and the order number, if applicable;
  - (4) Contractor's invoices shall indicate the time period during which the Work was performed and for which the invoice is submitted
  - (5) Description, quantity, unit of measure, unit price and extended price of the items delivered or milestones achieved;
  - (6) Shipping number and date of shipment including the bill of lading number and weight of shipment, if shipped on the Company's bill of lading;
  - (7) Terms of any prompt payment discount offered;
  - (8) Name and address of official to whom payment is to be sent;
  - (9) Name, title and phone number of person to be notified in event of defective invoice.
  - (10) In the event this contract is an ordering agreement with more than one release, invoicing shall be by release and clearly identified with the contract number and release number.
- (d) Payment shall be made for items accepted by the Company 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 the Company. 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.
- (e) Payment will normally be paid within thirty (30) days after receipt and acceptance by the Company of an invoice that is properly prepared, supported, and verified or percentage of completion signed off.
- (f) Payment Releases:
- (1) Contractor's monthly invoices for the Contract or Release issued there under shall be accompanied by a Progress Payment Release (Attachment J-19).
  - (2) Contractor's final invoice for the Contract or Release shall be marked "FINAL INVOICE" and shall be accompanied by a satisfactorily completed Final Payment Release (Attachment J-20).

- (g) Unauthorized deviations or Invoices not in conformity with the clauses (a) through (f) above may result in a reduction in payment or disapproval and return to the Contractor without action for correction and resubmission. Any cost associated with the re-submittal of a proper invoice will be at the Contractor's expense.
- (h) In addition to any common-law right to withhold payments otherwise due to Contractor that the Company may have, the Company shall also have the right to withhold payments otherwise due to Contractor under the following circumstances:
- (1) If the Owner/United States Government questions or withholds payment, in whole or in part, of any amount invoiced to the Owner/United States Government by the Company that is based on an invoice submitted by Contractor under this Contract, regardless of the Owner/United States Government's reasons or the time of the Owner/United States Government action, the Company 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 Owner/United States Government that costs invoiced to the Owner/United States Government by the Company based on costs invoiced by Contractor to the Company under this Contract are unallowable, whether through a final decision of a Government Contracting Officer, an administrative decision, a judicial decision, or otherwise, the Company is obligated to repay the Owner/United States Government any amount previously paid for performance under the Prime Contract, the Company 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 it is determined that Contractor has been overpaid, whether as a result of an audit performed by the Company, an external auditor, or a Owner/United States Government audit or review, the Company 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 Owner/United States Government are in fact allowable and the Owner/United States Government pays such amounts to the Company, Fluor-BWXT shall promptly pay to Contractor any such amounts that have been paid by the Owner/United States Government that are otherwise due to Contractor.
- (j) Unless otherwise prescribed in this contract, the Buyer may unilaterally issue a contract modification requiring the Contractor to withhold amounts from its billings until a reserve is set aside in an amount that the Buyer considers necessary to protect the Company's and Government's interests. The Buyer may require a "withhold" of up to fifteen (10%) percent of the amounts due under paragraph (a). The amounts withheld shall be retained until the Contractor executes and delivers the Final Payment Release required by paragraph (f) (2) of this clause.

## **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 25<sup>th</sup>, the Contractor should provide accrual information to FBP by August 15<sup>th</sup>. An FBP business month calendar will be provided to the Contractor reflecting the closing date of each business month.

## **G.6 PAYMENT TERMS**

### **G.6.1 PAYMENT TERMS – FIXED PRICE**

- (a) The Contract Price shall be payable in monthly progress payments, payable thirty (30) calendar days after receipt by Company of a proper invoice. Each progress payment shall be for ninety percent (90%) of the earned value of Work completed by Contractor, unless otherwise directed by the Company. Earned value shall be determined by Contractor in accordance with Clause H.77 and other applicable terms of this Contract and approved by Company, as of the working day nearest the mutually agreed cut-off date.
- (b) In order for Contractor to be eligible to receive any progress payments, Contractor is required to transmit to Company all applicable Contract documents including but not limited to Attachment J-28 Pay Item Invoice Summary and Attachment J-27 Pay Item Invoice Schedule. Failure to submit these Contract documents in accordance with the instructions set forth herein will delay any and all approved progress payments until these requirements are met.
- (c) The final and/or retention invoice shall be submitted for final payment (Attachments J-27 and J-28) after completion and acceptance of Work by Company and compliance by Contractor with all terms of this Contract. This invoice shall contain a complete itemized listing of progress and additional work invoices by number, date, gross amount, retention amount, and the total amount of sums retained and due. Unless otherwise required by applicable law, final payment shall not be made less than thirty (30) calendar days after completion and acceptance of all work and in any event shall not be sooner than thirty (30) calendar days after receipt of a proper invoice and supporting documents to Company. Final payment shall not relieve Contractor of any obligation under Contract guarantees.

NOTE: Contractor's performance of their obligations hereunder shall not be deemed complete until Company is in receipt, on proper forms, of all Technical Data, As-Built Drawings, and other documents to be submitted to Company as part of Contractor's Statement of Work. Failure of Contractor to comply with the above data requirements will entitle Company to withhold any progress payment, or final payment, pending Company's receipt of all the above data without prejudice to any other remedy of Company.

- (d) Contractor shall prepare all invoices in a form satisfactory to and approved by Company. Any invoice submitted, which fails to comply with the terms of this Contract, including the requirements of form and documentation, may be returned to Contractor. Any costs associated with the resubmission of a proper invoice shall be to Contractor's account.

- (e) Progress Payment Invoicing Instructions
- (1) 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.
  - (2) Contractor's invoices shall be accompanied by a progress payment certificate, in a format prescribed by Company, itemizing each pay item list previously approved by Company.
  - (3) Contractor's invoices shall indicate the time period during which the Work was performed and for which the invoice is submitted.
  - (4) Company will not be obligated to pay for invoice items not fully supported by Company approved progress measurements and any other such documentation, as may be required. Company reserves the right to make partial or provisional payment on an invoice in dispute, pending audit and reconciliation of the total charge.
  - (5) Contractor shall comply with the requirements of this Contract to furnish the reports and deliverables in a timely manner and in a format satisfactory to Company. If Contractor does not submit the reports or deliverables on schedule, in the time frame stipulated in the Contract, or as requested from time to time by Company, Company may, at its discretion, withhold an amount from Contractor's monthly progress payments. The amount withheld shall continue to be withheld until Contractor submits the reports or deliverables to Company's satisfaction.
  - (6) Changes to the Work and/or additions must be incorporated into the Contract by way of an approved Contract modification before being incorporated into an invoice and submitted for payment.
- (f) Contractor shall certify on each invoice that all Work covered by the invoice is complete and that the invoice is correct, authentic and the only one issued for the Work described therein.

## **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 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 (Attachment J-21) 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.

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 – SCHEDULE**  
**SECTION H - SPECIAL CONTRACT REQUIREMENTS**

**H.1 MODIFICATION AUTHORITY**

The Fluor-BWXT Portsmouth LLC Representatives identified as the “Contract Administrator” and the “Contracts 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, or
- (c) Modify the price of this contract.
- (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 Company technical representative, if identified in paragraph G.3 of his contract or in writing by the Contract Administrator. The term "technical direction" is defined to include, without limitation:
  - (1) Upon request for information (RFI) from Contractor, provide written information to the Contractor, which assists in the interpretations of drawings, specifications, or technical portions of the work description.
  - (2) Review and, where required by the contract, approve technical reports, drawings, specifications and technical information to be delivered by the Contractor to the Company under this contract.
- (b) Technical direction must be within the general scope of work (SOW) stated in this contract. The cognizant Company 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 scope of the SOW of this contract;
  - (2) Constitutes a change as defined in the General Provisions of the Contract
  - (3) In any manner causes an increase or decrease in the total estimated contract price or the time required for the contract and/or performance;
  - (4) Changes any of the expressed terms, conditions or specifications of this contract;



- (5) Interferes with the Contractor's right to perform the terms and conditions of this contract.
- (c) All technical direction shall be issued in writing by the cognizant Company Technical Representative.
- (d) The Contractor shall proceed promptly with the performance of technical directions duly issued by the Company Technical Representative in the manner prescribed by this article and within the Company 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 Company Technical Representative falls within one of the categories defined in items 1 through 5 above, the Contractor shall not proceed but shall notify the Contracts Administrator in writing within five (5) working days of any such instruction or direction and shall request the Buyer to modify the contract. Upon receiving the written notification from the Contractor, the Buyer 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 this contract and does not constitute a change under the General Provision clause entitled "Changes" of this contract;
  - (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 seven (7) working days that the Company will issue a written change order.
- (e) Failure of the Contractor and the Contracts 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 General Provision clause entitled "Disputes."

### **H.3 CHANGES** *[As derived from FAR 52.243-4]*

- (a) The Contract Administrator may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract including but not limited to the following:
  - (1) In the method or manner of performing the work.
  - (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
  - (5) Method of shipment or packing of supplies.
  - (6) Place of delivery.
  - (7) Amount of Government-furnished property.
  - (8) Directing acceleration in performance of the work

- (b) If any change causes an increase or decrease in the 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 Contract Administrator may consider an equitable adjustment in any one or more of the following and will modify the contract accordingly:
  - (1) Delivery or completion schedule.
  - (2) Milestone/Pay Item payment schedule
  - (3) Total price
  - (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 accompanied by a detailed change proposal. However, if the Contract Administrator decides that the facts justify it, the Contract Administrator may receive and act upon a proposal submitted before final payment of the contract. If the contractor does not provide a detailed and well supported cost proposal within the time allowed by this paragraph the Contractor is deemed to have waived any right to additional compensation or to a change to the schedule in respect of the change and will proceed with the work in accordance with the change notification issued pursuant to this article H.3.
- (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)]*

The Company 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 the Buyer 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) Notice. The purpose of this clause is to obtain prompt reporting of conduct of the Company that the Contractor considers to constitute a change to this contract. Except for changes identified as such in writing, the Contractor shall notify the Company in writing promptly, within seven (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.
- (b) 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 the Company, 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.
- (c) The Company shall promptly, within ten (10) calendar days after receipt of notice, respond to the notice in writing. In responding, the Company 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 (c)(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 the Company will respond.
- (d) Equitable adjustments.

- (1) If the Company 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 the Company 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 the Company under this clause is included in the equitable adjustment, the Company 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.
- (e) Unless Contractor notifies Company in accordance with this Section, Contractor is obliged to perform the Work in accordance with the change and will have no entitlement to any additional compensation or to any change to the schedule.

## **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. The Company 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 Hamilton 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 CONSTRUCTION SCHEDULE AND MEASUREMENT FOR PAYMENT**

- (a) FBP Subcontractors are required to provide a cost-loaded baseline schedule, subject to the approval of FBP, in accordance with Special Provision H.77. For contracts anticipated to be less than 60 calendar days in duration or less than \$1,000,000, this schedule may be a simple bar chart format. For contracts in excess of 60 calendar days in duration or greater than \$1,000,000, the schedule shall be CPM schedule compatible with Primavera P6.
- (b) After approval by FBP this schedule is set as the baseline schedule.
- (c) The subcontractor shall status the schedule monthly, in accordance with Section C, Paragraph C.5 (or more frequently, if required by FBP) and is compared to the baseline schedule.
- (d) The cost loaded baseline schedule (Pay item schedule of values) shall be detailed by pay item for the various elements of the Work comprising the subcontract price. The submittal shall include a proposed schedule of monthly progress payments. The proposed breakdown and payment schedule shall be correlated (time phased) with the schedule and reports required by Section C.5. The breakdown and payment schedule shall be subject to FBP’s approval. This approved schedule will be the basis for progress measurement.
- (e) The Subcontractor shall prepare the status update and pay estimate, by the FBP designated date, for FBP approval. Once approved the Subcontractor may proceed to submit the invoice.

- (f) In the event that the Subcontractor plans to subcontract work to a lower-tier subcontractor(s), this provision shall be included in the contract agreement with the lower-tier subcontractor(s).

If the Contractor fails to comply with the requirements, FBP may –

- (1) Withhold payment until an agreed upon baseline schedule/monthly progress is approved by FBP; or
- (2) Terminate the contract for default.

## **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/Owner, without limitation, when made or prepared, whether delivered to Company/Owner 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/United States Government hereunder, be delivered to Owner/United States Government 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/Owner, at Company's/Owner's expense, which Company/Owner deems necessary or desirable to complete and perfect in Company/Owner 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/United States Government'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) Contractor shall not, under any circumstances, cause or permit, in connection with the Work to be performed hereunder, the discharge, emission, or release of any hazardous substance and/or waste, pollutant, contaminant or other material in violation of any applicable laws, rules or regulations which are now or hereafter promulgated by any governmental authorities having jurisdiction over the Work. Contractor shall comply with all legal requirements applicable to the Work performed under this Contract and shall be responsible for compliance with all hazardous waste, health and safety, notice, training, and environmental protection laws, rules, regulations, and requirements.

"Hazardous waste" includes all materials which are or may be identified as such in 40 CFR Part 261 or other applicable laws or regulations. Contractor shall submit to Company material safety data sheets (OSHA Form 20) as required by applicable regulation. As an inducement to award of this Contract, Contractor warrants full compliance and that it will adhere to all applicable project hazardous waste procedures and, if necessary, obtain or arrange for, at its expense, all identification numbers, permits, applications, and other things required in connection with the activities under this Contract.

Contractor agrees that it will not store any hazardous wastes at the jobsite for periods in excess of ninety (90) days or in violation of the applicable site storage limitations imposed by law, the Owner/United States Government or Company, whichever shall be more restrictive. Contractor further agrees that it will not permit any accumulation in excess of the small quantity generator exclusion of 40 CFR Part 261, or other applicable law, as amended. Contractor agrees to take, at its expense, all actions necessary to protect third parties, including without limitation, employees and agents of Owner/United States Government and Company from any exposure to, or hazards of, hazardous and/or toxic wastes or substances generated, or utilized in, Contractor's operations. Contractor agrees to report to the appropriate governmental agencies all discharges, releases, and spills of hazardous substances and/or wastes required to be reported by law and to immediately notify Owner/United States Government and Company of same.

- (e) 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 the Company.
- (b) The Company reserves the right to direct the Contractor to assign to the Company, the Owner/United States 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/United States Government. 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 Company 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 Buyer, 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 Government, 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 Buyer, 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.
- (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 Government, or information first produced in the performance of this contract or any subcontract, shall be disseminated without the prior written approval of the Buyer. This includes technical papers, press releases, etc.
- (f) This clause shall flow down to all subcontracts.

#### **H.15 CONDITIONS AND RISK OF WORK**

Contractor represents that, to the extent necessary to perform the Work, it has carefully examined documentation, drawings and specifications for the Work and acquainted itself with all other 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 the Company is expressly obligated under this Contract to furnish to Contractor, information on the plant site and local conditions at such site furnished by the Company or the Owner/United States Government is not guaranteed by the Company or the Owner/United States Government and is furnished only for the convenience of Contractor.

#### **H.16 SAFETY AND HEALTH LAWS AND REGULATIONS**

- (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 subcontractors are on Owner/United States Government'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/United States Government, Company and Contractor applicable to the premises, and that all its employees, agents and subcontractors have a safe place of work on the premises of Owner/United States Government or Company. Contractor shall inspect the places where its employees, agents or subcontractors are or may be present on Owner/United States Government'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/United States Government'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**

- (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/United States Government's premises, Contractor will cooperate with Owner/United States Government, Company and other contractors on Owner/United States Government'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/United States Government'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. The requirements for content and layout are as described in Section C – Statement of Work.

#### **H.18 COMPLIANCE WITH GPPMA AND DEPARTMENT OF LABOR WAGE DETERMINATIONS** *[As derived from DOE Prime Contract DE-AC30-10CC40017 Clause H.32]*

All work to be performed under the contract shall be performed under the terms and conditions of the General President's Project Maintenance Agreement (GPPMA) as amended for the Project and found in Attachment J-9. Additionally, all Contractors and Subcontractors at any tier must, as a condition of contract award, make application for and obtain approval for the GPPMA with addendum online at <http://www.bctd.org/Field-Services/GPPMA.aspx>. Verification of a pre-job meeting is a required submittal found in attachment J-8 – Contractor/Supplier Submittal Register. A meeting attendance list submitted by the contractor fulfills this requirement. The executed "Letter of Assent" also available at the BCTD website must be transmitted to the Company prior

to mobilization. The terms of the GPPMA will not supersede the minimum wage and benefit requirement of the Davis-Bacon Act.

The Davis-Bacon Act is applicable to the performance of this contract. The contractor shall comply with the requirements of Davis-Bacon Wage determination Number OH160072, Mod 2, dated 02/05/16 and OH160072, Mod 2, dated 02/05/16. Copies of the wage determinations are attached to this contract (Section J, U.S. Department of Labor Wage Determination).

For Davis-Bacon Act (DBA) covered work, the contractor and all applicable subcontractor workers are to receive no less than the applicable DBA wage rate and timely, accurate, and complete Certified Payrolls are required to be submitted for all covered workers on a weekly basis. Certified Payroll is a required submittal found in attachment J-8 – Contractor/Supplier Submittal Register. Each page and attachment to the Certified Payroll report must include the contractor's name, the project number, the week-ending date for the report, and the sequential payroll number. Each Certified Payroll is required to include a Statement of Compliance (or Certification of Payroll), which must be signed by a principal of the firm.

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 Service Contract Act 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 QUALITY ASSURANCE PROGRAM**

Fluor-BWXT Portsmouth LLC maintains 1) a formal Quality Assurance Program (QAPD) acceptable to the DOE which satisfies the Quality Assurance Requirements of 10 CFR 830 Subpart A, Quality Assurance, DOE O 414.1D, Quality Assurance, and American Society of Mechanical Engineers (ASME) Nuclear Quality Assurance (NQA)-1, Quality Assurance Requirements for Nuclear Facility Applications, (2004 with Addenda through 2007), and 2). The Contractor shall comply with such portions of the QAPD as are applicable to the contract work as identified in the Statement of Work, specifications and Attachment J-16 Quality Assurance

Requirements of this contract. Any subcontracts issued in support of this contract shall require subcontractors to comply with those requirements.

## **H.23 PERMITS, APPLICATIONS AND LICENSES**

Except as otherwise directed by the Company, 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 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 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 and employees. Contractor hereby releases Company and Owner/United States Government, including their respective affiliates, directors 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.

## **H.25 PRESERVATION OF ANTIQUITIES, WILDLIFE AND LAND AREAS**

- (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 subcontractor'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, subcontractors, 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 subcontractor actions or inactions is the responsibility of the Contractor or subcontractor, as appropriate, and not reimbursable under this contract. Cost of fines and penalties resulting from violations of, or failure of the Contractor or subcontractor 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 Thursday 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 related to Independence Day

Labor Day  
Columbus Day  
Thanksgiving Day  
Day before Thanksgiving Day  
Christmas Eve  
Christmas

## **H.29 FOREIGN NATIONALS**

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.

- (a) 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.
- (b) 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 the Company. 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) For construction, demolition or decontamination contracts, at all times during the course of the Work, Contractor shall provide at the jobsite a qualified, competent and responsible supervisor who shall be satisfactory to Company. The supervisor shall have authority to represent Contractor and directions given to him shall be binding on Contractor. Upon Company's written request, Contractor shall give the supervisor, in writing, complete authority to act on behalf of, and to bind Contractor in all matters pertaining to the Work and this Contract. Contractor shall furnish Company a copy of the

authorization. Contractor shall not transfer or remove any of its supervisory or key personnel from performance of Work without the prior written approval of Company.

- (c) 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 the Company deems incompetent, careless, or insubordinate, or whose continued employment on the work is deemed by the Company to be contrary to the public interest, the Company reserves the right to require the Contractor to remove the employee at no cost to the Company.
- (d) 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 the Company.

### **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 thereunder shall be assigned or transferred by the Contractor except as expressly authorized in writing by the Company.
- (b) The Company may assign this Contract, in whole or in part to the Owner/United States Government or to such party as the Owner/United States Government may designate to perform the Company's obligations hereunder. Upon receipt by Contractor of written notice that the DOE or a party so designated by the DOE or the Company has accepted an assignment of this Contract, the Company shall be relieved of all responsibility hereunder and Contractor shall thereafter look solely to such assignee for performance of the Company's obligations.

## **H.33 RESERVED**

## **H.34 GREEN PURCHASING UNDER DOE SERVICE CONTRACTS [As derived from DOE Contract DE-AC30-10CC40017, H.43]**

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 Contract documents and subsequently issued Change Notices/Orders and Modifications are essential parts of this Contract, 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:

- (a) Contract Agreement the Schedule, modifications and special provisions therein
- (b) Special Contract Requirements (Section H)
- (c) Contract Clauses (Section I)

**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
- Data means a subset of information in an electronic format that allows it to be security policy of a system in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object may have occurred. 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--
  - (1) Provided by or on behalf of the Government to the contractor or its subcontractor(s); or
  - (2) 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](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:

(i) Current and regularly updated malware protection services, e.g., anti-virus, anti-spyware.

(ii) 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 FOR CONVENIENCE OF FLUOR-BWXT PORTSMOUTH LLC**  
*(FIXED-PRICE) (May2004) [As derived from FAR 52.249-2 May 2004]*

- (a) The Company may terminate performance of work under this contract in whole or, from time to time, in part if it determines that a termination is in its interest. The Company shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

- (b) After receipt of a Notice of Termination, and except as directed by the Company, 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) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
  - (3) Terminate all subcontracts to the extent they relate to the work terminated.
  - (4) Assign to the Owner/United States Government or the Company, as directed by the Company, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Company shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
  - (5) With approval or ratification to the extent required by the Company, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.
  - (6) As directed by the Company, transfer title and deliver to the Company or the Owner/United States Government --
    - (i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and
    - (ii) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Company.
  - (7) Complete performance of the work not terminated.
  - (8) Take any action that may be necessary, or that the Company may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Company or the Owner/United States Government has or may acquire an interest.
  - (9) Use its best efforts to sell, as directed or authorized by the Company, any property of the types referred to in subparagraph (b)(6) of this clause; provided, however, that the Contractor
    - (i) is not required to extend credit to any purchaser and may acquire the property under the conditions prescribed by, and
    - (ii) at prices approved by the Company. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Company under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Company.

- (c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Company upon written request of the Contractor within this 120-day period.
- (d) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to the Company a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Company. The Contractor may request the Company to remove those items or enter into an agreement for their storage. Within 15 days, the Company will accept title to those items and remove them or enter into a storage agreement. The Company 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.
- (e) After termination, the Contractor shall submit a final termination settlement proposal to the Company in the form and with any certification prescribed by the Company. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Company upon written request of the Contractor within this 1-year period. However, if the Company determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Company 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.
- (f) Subject to paragraph (e) of this clause, the Contractor and the Company may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) of this clause, exclusive of costs shown in subparagraph (g)(3) of this clause, may not exceed the total contract price as reduced by
  - (1) the amount of payments previously made and
  - (2) the contract price of work not terminated. The contract shall be modified, and the Contractor paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
- (g) If the Contractor and the Company fail to agree on the whole amount to be paid because of the termination of work, the Company shall pay the Contractor the amounts determined by the Company as follows, but without duplication of any amounts agreed on under paragraph (f) of this clause:
  - (1) The contract price for completed supplies or services accepted by the Company (or sold or acquired under subparagraph (b)(9) of this clause) not previously paid for, adjusted for any saving of freight and other charges.
  - (2) The total of --

- (i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (g)(1) of this clause;
  - (ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (g)(2)(i) of this clause; and
  - (iii) A sum, as profit on subdivision (g)(2)(i) of this clause, determined by the Company under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Company shall allow no profit under this subdivision (g)(2)(iii) and shall reduce the settlement to reflect the indicated rate of loss.
- (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.
- (h) Except for normal spoilage, and except to the extent that the Company or the Owner/United States Government expressly assumed the risk of loss, the Company shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value, as determined by the Company, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to it or to a buyer.
- (i) The cost principles and procedures of 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 rights under the Disputes clause, from any determination made by the Company under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (l), respectively, and failed to request a time extension, there is no right of appeal.
- (k) In arriving at the amount due the Contractor under this clause, there shall be deducted --
  - (1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;
  - (2) Any claim which the Company or the Owner/United States Government has against the Contractor under this contract; and

- (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Company or the Owner/United States Government.
- (l) If the termination is partial, the Contractor may file a proposal with the Company for an equitable adjustment of the price(s) of the continued portion of the contract. The Company shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Company.
- (m) (1) The Company may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Company believes the total of these payments will not exceed the amount to which the Contractor will be entitled.  
  
(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Company upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Company because of the circumstances.
- (n) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the Company, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Company, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

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

- (1) The Company 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) The Company'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 the Company) after receipt of the notice from the Company specifying the failure.
- (a) If the Company 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 the Company for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.
- (b) 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.

- (c) 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.
- (d) If this contract is terminated for default, the Company may require the Contractor to transfer title and deliver to the Owner/United States Government, as directed by the Company, 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 the Company, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.

- (e) The Company shall pay contract price for completed supplies delivered and accepted. The Contractor and the Company 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. The Company 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.

- (f) 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 the Company.
- (g) The rights and remedies of the Company 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 States 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/United States Government, and extension of time shall constitute the sole liability of Company and Owner/United States Government and Contractor's sole remedy for delays.

#### **H.41 RESERVED**

#### **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 Contractor 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) All certifications made hereunder are made pursuant to federal requirements and therefore subject to the criminal provisions of 18 U.S.C. 1001.

#### **H.45 SUBCONTRACTOR *(Referred to as Contractor herein)* COST OR PRICING DATA**

- (a) Before awarding any contract 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 contract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Company shall require the Contractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.
- (b) The Company shall require the Contractor 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 contract or contract 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 Contractor 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

- (2) 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 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:
    - (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 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 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 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 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 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 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 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.
- (e) 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 GUARANTEES**

- (a) Contractor guarantees Company and Owner/United States Government that the Work shall comply strictly with the provisions of this Contract and all specifications, drawings and standards referred to in this Contract or thereafter furnished by Company, and that the Work shall be first-class in every particular and free from defects in materials and workmanship and in any design or engineering furnished by Contractor. Contractor further guarantees Company and Owner/United States Government that all materials, equipment and supplies furnished by Contractor for the Work shall be new, merchantable, of the most suitable grade and fit for their intended purposes. Without limitation of any other rights or remedies of Company or Owner/United States Government, if any defect in the Work in violation of the foregoing guarantees arises within the period set forth below, Contractor shall, upon receipt of written notice of such defect, promptly furnish, at no cost to Company or Owner/United States Government, design and engineering, labor, equipment and materials necessary to correct such defect and cause the Work to comply fully with the foregoing guarantees.
- (b) Contractor's guarantees set forth in Section (a) shall extend for twenty-four (24) months after the date of final written acceptance of the Work by Company, or eighteen (18) months after the start of regular operation or use of the Work by Company, whichever occurs first. Any period wherein the Work is not available for use due to defects in

materials, workmanship or engineering furnished by Contractor shall extend the guarantee period by an equal period of time.

- (c) Design and engineering, labor, equipment and materials furnished by Contractor pursuant to Section (a) to correct defects shall be guaranteed by Contractor in accordance with the guarantees set forth in Section (a) for a period of eighteen (18) months from the date of completion of the correction, or for the remainder of the guarantee period set forth in Section (b) above, whichever is longer.
- (d) In the event Contractor has been notified of any defects in the Work in violation of Contractor's foregoing guarantees and fails to promptly and adequately correct such defects, Company and Owner/United States Government shall have the right to correct or to have such defects corrected for the account of Contractor, and Contractor shall promptly pay Company or Owner/United States Government the costs incurred in correcting such defects.
- (e) Contractor shall include, at a minimum, the foregoing guarantee requirements in any subcontract that it places.

#### **H.49 ISSUED FOR CONSTRUCTION DRAWINGS AND SPECIFICATIONS**

- (a) The Work shall be performed using only drawings and specifications marked "Issued for Construction" (or equivalent) by Company. Such indication shall not relieve Contractor of any obligations under this Contract, nor constitute Company assumption of responsibility for the accuracy or adequacy of any of Contractor's information or Work incorporated in such documents.
- (b) Contractor shall perform all Work outside of the areas marked "HOLD" (or equivalent) on "Issued for Construction" specifications and drawings to maintain the schedule of Work, but shall not perform any Work in the areas or sections marked "HOLD" on "Issued for Construction" specifications and drawings until revised "Issued for Construction" specifications and drawings are received with the "HOLD" markings deleted.
- (c) If Contractor's schedule will be delayed by "HOLD" markings on specifications and drawings, Contractor shall report such delay to Company in writing not less than five (5) working days prior to the start of the delay.
- (d) Contractor shall maintain at the work site a complete and current set of "Issued for Construction" drawings and specifications.

#### **H.50 INTENT OF SPECIFICATIONS AND DRAWINGS**

- (a) The specifications and drawings may not be complete in every detail. Contractor shall comply with their manifest intent and general purpose, taken as a whole, and shall not make use of any errors or omissions therein to the detriment of the Work. Should any conflict, error, omission or discrepancy appear in the drawings, specifications, instructions, in work done by others, or in site conditions, Contractor shall notify Company in writing at once and Company will issue written instructions to be followed. If Contractor proceeds with any of the Work in question prior to receiving such instructions, then required corrections shall be at Contractor's expense.



- (b) Contractor shall not deviate from the specifications and drawings without prior written approval from Company.
- (c) Materials shall not be substituted for those specified, nor shall "or equal" items be furnished pursuant to the specifications without Company prior written approval.

#### **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/United States Government 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 OVERTIME**

- (a) Unless expressly stated elsewhere in this Contract, Work at the jobsite shall be compatible with Company's starting and quitting times or other times approved by Company. Overtime work, whether scheduled or incidental, shall be to Contractor's account unless the compensation therefore is specifically authorized in writing by Company. In the event Company approves compensation of Contractor's overtime such compensation as separately authorized shall be limited to the actual cost to Contractor of the premium portion only of all applicable wages, craft fringe benefits, and payroll burdens imposed by any governmental authority and measured by the compensation payable to employees. To establish the amount of payment, Contractor shall submit supporting documents satisfactory in form and content to Company for its verification and approval.

### **H.53 POSSESSION PRIOR TO COMPLETION**

- (a) The Company or Owner/United States Government shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Company shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the Company or Owner/United States Government intends to take possession of or use. However, failure of the Company to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The Company's or Owner/United States Government's possession or use shall not be deemed an acceptance of any work under the contract.

### **H.54 NOTICE OF COMPLETION AND FINAL ACCEPTANCE**

- (a) When Contractor deems the Work fully completed, including satisfactory completion of such inspections, tests and documentation as are specified in this Contract, Contractor shall, within ten (10) working days thereafter, give a written Notice of Completion (Attachment J-22) of the Work to Company, specifying the Work completed and the date it was completed. Within thirty (30) calendar days after receipt of said Notice of Completion, Company may inspect the Work and shall either reject the Notice of Completion and specify defective or uncompleted portions of the Work, or shall give the Contractor a written Notice of Acceptance of the Work either for the purpose of final payment only, or for the purposes of final payment and final acceptance.
- (b) In the event Company rejects the Notice of Completion the Company will issue a Notice of Rejection (Attachment J-24) which will specify defective or uncompleted portions of the Work. The Contractor shall, within five (5) working days, provide for Company review and approval, a schedule detailing when all defects will be corrected and/or the Work will be completed and shall proceed to remedy such defective and uncompleted portions of the Work. Thereafter, Contractor shall again give Company a written Notice of Completion of the Work, specifying a new date for the completion of the Work based upon the date such defective or uncompleted portions of the Work were corrected. The foregoing procedure shall apply again and successively thereafter until Company has given Contractor written Notice of Acceptance (Attachment J-24) for purposes of final payment and final acceptance.
- (c) Any failure by Company to inspect or to reject the Work or to reject Contractor's Notice of Completion as set forth above, shall not be deemed to be acceptance of the Work for any purpose by Company or Owner/United States Government nor imply acceptance of, or agreement with, said Notice of Completion.

### **H.55 PROTECTION OF MATERIALS, EQUIPMENT AND WORK**

- (a) Contractor shall at all times, in accordance with the best practices and at no additional cost to Company, preserve and protect material and equipment used by Contractor in the execution of the Work from damage or loss due to weather, fire, theft, unexplained disappearance or other similar casualty.
- (b) Contractor shall at all times, in accordance with the best practices and at no additional cost to Company, protect from damage due to Contractor's operations, equipment and

materials (whether stored or installed), paving, structures and any and all other items on the jobsite belonging to Owner/United States Government, Company or others.

- (c) Neither Company nor Owner/United States Government shall be responsible for any loss suffered by Contractor, or damage to the Work, or to materials, tools and equipment of Contractor or of any other contractor, regardless of the cause including the negligence of Company and Owner/United States Government, and Contractor assumes responsibility for any such loss or damage and for any cost of repairing, making good, or replacing any such loss or damage that may be directed by Company or Owner/United States Government.

#### **H.56 CONTRACTOR'S CONSTRUCTION EQUIPMENT**

- (a) Construction equipment obtained or furnished by Contractor which is to be used by Contractor on the jobsite shall be in first-class operating condition, safe, fit for the uses for which intended, and suitable for the safe, legal and efficient performance of the Work. Such equipment shall be subject to inspection from time to time by Company.
- (b) Any such equipment of Contractor which is rejected by Company as not conforming with the foregoing shall be promptly removed by Contractor and replaced with equipment acceptable to Company, without additional cost to Company and without delaying the schedule for performance of the Work by Contractor.

#### **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/United States Government 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 CARE, CUSTODY, CONTROL AND TITLE TO MATERIALS AND EQUIPMENT**

- (a) Good and clear title to all materials and equipment furnished by Contractor under this Contract for the Work shall, except as expressly provided otherwise, elsewhere in this Contract, pass to Owner/United States Government upon incorporation into the

permanent plant. Contractor shall ensure that subcontractors from whom Contractor obtains materials and equipment do not retain, encumber or reserve title to such items, and Contractor shall defend, indemnify and hold Company and Owner/United States Government harmless from any such claims by its subcontractors.

- (b) Notwithstanding the provisions of paragraph (a) above, the care, custody and control of Contractor's Work incorporated into the permanent plant shall remain with Contractor until such Work has been accepted in writing by Company and shall thereupon pass to Company unless Company or Owner/United States Government notify Contractor in writing that such care, custody, and control is assumed by Company or Owner/United States Government at an earlier date. The taking of possession of such Work pursuant to Article 13.0, Possession Prior to Completion, shall not constitute the assumption of care, custody and control of such Work until such time as such Work has either been accepted in writing by Company or Contractor has been notified as set forth herein.
- (c) Contract revenues representing payments to subcontractors shall not be considered to be earned by Contractor unless and until Contractor has paid the current invoices of such subcontractor. In the event Company determines, in its sole discretion, that Contractor has become insolvent or is in danger of becoming insolvent, then Company is authorized, but not required, to make direct payment to Contractor's subcontractors with respect to any current or past-due invoices then outstanding. Alternatively, Company may, in its sole discretion, require that contracts between Contractor and any such subcontractor be assigned to Owner/United States Government or Company, and Contractor hereby authorizes and consents to any such assignment. Owner/United States Government and Company shall be entitled to full credit against any obligations to Contractor for any payments made to any subcontractor under this paragraph (c), whether made pursuant to assigned subcontracts or otherwise. Title to any materials or equipment for which such direct payment is made shall pass directly from such subcontractor to Company or Owner/United States Government.

## **H.60 LABOR HARMONY & DISPUTES**

- (a) Contractor agrees that all labor employed by it, its agents, and/or its subcontractors for Work on the Work Site shall be in harmony with and be compatible with all other labor used by Company or other contractors. Whenever Contractor has knowledge that any actual or potential labor dispute is delaying, or threatens to delay, the timely performance of the Work, Contractor shall immediately give notice thereof, including all relevant information to Company.
- (b) Contractor shall comply with and shall cooperate with Company in enforcing Work Site conditions including, but not limited to, starting and quitting time, hours of work, overtime, shift differentials, holidays, travel and subsistence payments, smoking regulations, daily clean-up and/or other conditions that affect the overall performance of the Work.
- (c) Owner/United States Government and Company may determine that labor be performed in accordance with a recognized labor agreement. Such determination may be noted in Section C to the Contract and the terms of such agreement will be set forth in Attachment J to the Contract. In the event of such determination, Contractor shall make available upon request of Company and/or Owner/United States Government, including, but not limited to, all records and documents, for the purpose of verifying Contractor's

compliance with working in accordance with the labor agreement set forth in Attachment J. Compliance by Contractor or any of its subcontractors in any tier with the provisions of the specified labor agreement is a specific Contract obligation and any failure or default in compliance will be grounds for termination under Article H.39 entitled Default.

- (d) In the event that Company and Owner/United States Government make the determination set forth in paragraph (c) above, Contractor and its suppliers and subcontractors in any tier shall be responsible to adhere to all requirements as outlined in the labor agreement specified in Attachment J.

## **H.61 WORK RULES**

Contractor shall comply strictly with Company and Owner/United States Government'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/United States Government 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 SURETY INSTRUMENTS**

If requested by Company, Contractor shall obtain payment and performance bonds each in an amount equal to one hundred percent (100%) of the Contract Price. The bonds shall be written on forms satisfactory to Company. Contractor's bond sureties shall be only those approved by the Department of Treasury, as indicated in Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies."

## **H.63 CONTRACTUAL RELATIONSHIP**

- (a) Contractor represents that it is fully experienced and properly qualified to perform the class of Work provided for herein, and that it is properly equipped, organized and financed to perform such Work. Contractor represents that at the time of submission of its quotation for performance of the Work, it was properly licensed and qualified to do business in all governmental jurisdictions in which the Work is to be performed. Upon written request by Company, Contractor shall furnish to it such evidence as Company may require relating to the Contractor's ability to fully perform this Contract. Nothing contained in this Contract or any subcontract awarded by Contractor shall create any contractual relationship between any subcontractor and Company or Owner/United States Government. Contractor agrees that Contractor is an independent contractor and an employer subject to all applicable unemployment compensation, occupational safety and health, workers' compensation, or similar statutes so as to relieve Company of any responsibility or liability for treating Contractor's employees as employees of Company for the purpose of their safety or of keeping records, making reports or paying of any payroll taxes or contribution; and Contractor agrees to defend, indemnify and hold Company and Owner/United States Government harmless and reimburse them for any expense or liability incurred under said statutes in connection with employees of Contractor, including a sum equal to any unemployment benefits paid to those who were Contractor's employees, where such benefit payments are charged to Company or Owner/United States Government under any merit plan or to Company or Owner/United States Government reserve account pursuant to any statute.

- (b) Contractor further agrees, as regards the items set forth below and for Work under this Contract, that it will keep and have available all necessary records and make all payments, reports, collections and deductions and otherwise do any and all things so as to fully comply with all federal, state and local laws, ordinances and regulations as they affect performance of this Contract, so as to fully relieve and protect Company and Owner/United States Government from any and all responsibility or liability therefore or in regard thereto: (1) the production, purchase and sale, furnishing and delivering, pricing, and use or consumption of materials, supplies and equipment; (2) the hire, tenure or conditions of employment of employees and their hours of work and rates of the payment of their work, and (3) the keeping of records, making of reports, and the payment, collection and/or deduction of federal, state, commonwealth and local taxes, contributions, pension funds, welfare funds, or similar assessments.

#### **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.

Drawings are made available to the User for their confidential use in support of DOE activities. The User promises and agrees to return the drawings upon completion of the work activities and/or by request of the either FBP, DOE or its designated Representative (s). User further agrees said drawings shall not be reproduced, copied, reissued or otherwise disposed of directly or indirectly, nor used for any purpose other than for which the drawings have been furnished to User.

#### **H.65 EMERGENCY MEDICAL SERVICES**

Company or Owner/United States Government 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/United States Government 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/United States Government, 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/United States Government in connection with this Contract.

**H.68 DIFFERING SITE CONDITIONS** *(derived from FAR 52.236-2)*

- (a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Company of –
  - (1) Subsurface or latent physical conditions at the site which differ materially from those indicated in this contract; or
  - (2) Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.
- (b) The Company shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.
- (c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in paragraph (a) of this clause for giving written notice may be extended by the Company.
- (d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

**H.69 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK** *(derived from FAR 52.236-3)*

- (a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to
  - (1) conditions bearing upon transportation, disposal, handling, and storage of materials;
  - (2) the availability of labor, water, electric power, and roads;
  - (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site;
  - (4) the conformation and conditions of the ground; and
  - (5) the character of equipment and facilities needed preliminary to and during work performance.



- (b) The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Company, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Company.
- (c) The Company assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Company. Nor does the Company assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

#### **H.70 RESERVED**

#### **H.71 ACCIDENT PREVENTION** *(Derived from FAR 52.236-13)*

- (a) 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 becomes 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/Owner/United States Government personnel, the Company 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 Company to discuss and develop a mutual understanding relative to administration of the overall safety program.

#### **H.72 AVAILABILITY AND USE OF UTILITY SERVICES**

- (a) The Company and/or Owner/United States Government may provide reasonably required amounts of utilities to the Contractor from existing outlets and supplies, as specified in Section C – Statement of Work. The Contractor shall carefully conserve any utilities furnished without charge.
- (b) The Company will install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used. Before final acceptance of the work by the Company, the Contractor shall notify the Company and ensure proper removal of all the temporary connections, distribution lines, meters, and associated paraphernalia.

#### **H.73 LAYOUT OF WORK** *(Derived from FAR 52.236-17)*

The Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the work. The Contractor shall be responsible for executing the work to the lines and grades that may be established or indicated by the Company. The Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by the Company until authorized to remove them. If such marks are destroyed by the Contractor or through its negligence before their removal is authorized, the Company may replace them and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

#### **H.74 SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION** *(Derived from FAR 52.236-21)*

- (a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give Company access thereto. Anything mentioned in the specifications

and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to Company, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. Company shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

- (b) Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription", of the Company is intended and similarly the words "approved", "acceptable", "satisfactory", or words of like import shall mean "approved by," or "acceptable to", or "satisfactory to" the Company, unless otherwise expressly stated.
- (c) Where "as shown," "as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless States otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place," that is "furnished and installed".
- (d) Shop drawings means drawings, submitted to the Company by the Contractor, subcontractor, or any lower tier subcontractor pursuant to a construction contract, showing in detail
  - (1) The proposed fabrication and assembly of structural elements, and
  - (2) The installation (i.e., fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the contractor to explain in detail specific portions of the work required by the contract. The Company may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.
- (e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to Company without evidence of the Contractor's approval may be returned for resubmission. Company will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the Company's reasons therefore. Any work done before such approval shall be at the Contractor's risk. Approval by the Company shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.
- (f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Company approves any such variation, Company shall issue an appropriate contract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

- (g) The Contractor shall submit to Company for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained and one set will be returned to the Contractor.

Upon completing the work under this contract, the Contractor shall furnish a complete set of all shop drawings as finally approved. These drawings shall show all changes and revisions made up to the time the equipment is completed and accepted.

#### **H.75 PERFORMANCE OF THE WORK BY THE CONTRACTOR** *(Derived from FAR 52.236-1)*

The Contractor shall perform on the site, and with its own organization, work equivalent to at least thirty (30%) percent of the total amount of work to be performed under the contract. This percentage may be reduced by a supplemental agreement to this contract if, during performing the work, the Contractor requests a reduction and the Company determines that the reduction would be to the advantage of the Government.

#### **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 SCHEDULE FOR CONSTRUCTION** *(Derived from FAR 52.236-15)*

- (a) The Contractor shall, prepare and submit to the Company for approval three copies of a Project Schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and equipment). The requirements for content and layout are as described in Section C – Statement of Work. The Project Schedule shall be submitted within the time period indicated in Attachment J-8 Contractor/Supplier Submittal Register. If the Contractor fails to submit a schedule within the time prescribed, the Company may withhold approval of progress payments until the Contractor submits the required schedule.

- (b) If, in the opinion of the Company, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Company, without additional cost to the Company. In this circumstance, the Company may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Company deems necessary to demonstrate how the approved rate of progress will be regained.
- (c) Failure of the Contractor to comply with the requirements of the Company under this clause shall be grounds for a determination by the Company that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Company may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this contract.

#### **H.78 NEW MATERIAL**

Unless this contract specifies otherwise, the Contractor represents that the supplies and components, including any former Government property identified under the Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property Clause of this contract, are new, including recycled (not used or reconditioned) and are not of such age or so deteriorated as to impair their usefulness or safety. If the Contractor believes that furnishing used or reconditioned supplies or components will be in the Company's and the Owner/United States Government's interest, the Contractor shall so notify the Company in writing. The Contractor's notice shall include the reasons for the request along with a proposal for any consideration to the Company if the Company authorized the use of used or reconditioned supplies or components.

#### **H.79 ACCESS**

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) noncompliances 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**

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 mis-

communicating 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 KEY PERSONNEL**

The personnel specified below are considered to be essential to the work being performed and the contractor shall notify the Buyer reasonably in advance of any proposed change to the key personnel identified. The contractor shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. No diversion shall be made by the Contractor without the written consent of the Buyer. This clause may be amended from time to time during the course of the contract to either add or delete personnel, as appropriate.

Name	Title
_____	_____
_____	_____
_____	_____

**H.84 RESERVED**

**H.85 RESERVED**

**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 – FER/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>

<b><u>CLAUSE NUMBER</u></b>	<b><u>TITLE</u></b>
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**APPLICABLE TO ALL SUBCONTRACTS/PURCHASE ORDERS**

<b>FAR 52.203-7</b>	ANTI-KICKBACK PROCEDURES (MAY 2014)
<b>FAR 52.203-15</b>	WHISTLEBLOWER PROTECTIONS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (MAR 2009) (JUN 2010)
<b>FAR 52.204-9</b>	PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (JAN 2011)
<b>FAR 52.204-11</b>	AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA) REPORTING REQUIREMENTS (MAR 2009)
<b>FAR 52.204-14</b>	SERVICE CONTRACT REPORTING REQUIREMENTS (JAN 2014)
<b>FAR 52.204-15</b>	SERVICE CONTRACT REPORTING REQUIREMENTS FOR INDEFINITE-DELIVERY CONTRACTS (JAN 2014)
<b>FAR 52.215-2</b>	AUDIT & RECORDS – NEGOTIATION (OCT 2010)
<b>FAR 52.215-15</b>	PENSION ADJUSTMENTS AND ASSET REVERSIONS (OCT 2010)
<b>FAR 52.215-18</b>	REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (JUL 2005)
<b>FAR 52.222-4</b>	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION (MAY 2014)
<b>FAR 52.222-11</b>	SUBCONTRACTS (LABOR STANDARDS) (MAY 2014)
<b>FAR 52.222-12</b>	CONTRACT TERMINATION-DEBARMENT (MAY 2014)

<b>FAR 52.222-50</b>	COMBATING TRAFFICKING IN PERSONS (MAR 2015)
<b>FAR 52.223-3</b>	HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997) – ALTERNATE I (JUL 1995)
<b>FAR 52.223-6</b>	DRUG-FREE WORKPLACE (MAY 2001)
<b>FAR 52.223-7</b>	NOTICE OF RADIOACTIVE MATERIALS (JAN 1997)
<b>FAR 52.223-11</b>	OZONE-DEPLETING SUBSTANCES (MAY 2001)
<b>FAR 52.223-15</b>	ENERGY EFFICIENCY IN ENERGY CONSUMING PRODUCTS (DEC 2007)
<b>FAR 52.224-2</b>	PRIVACY ACT (APR 1984)
<b>FAR 52.225-11</b>	BUY AMERICAN – CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (MAY 2014)
<b>FAR 52.225-13</b>	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008)
<b>FAR 52.225-21</b>	REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS-BUY AMERICAN STATUTE CONSTRUCTION MATERIALS
<b>FAR 52.225-22</b>	NOTICE OF REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS-BUY AMERICAN STATUTE-CONSTRUCTION MATERIALS
<b>FAR 52.225-23</b>	REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS-BUY AMERICAN STATUTE CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS
<b>FAR 52.225-24</b>	NOTICE OF REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS-BUY AMERICAN STATUTE-CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS
<b>FAR 52.225-25</b>	PROHIBITION ON CONTRACTING WITH ENTITIES ENGAGING IN CERTAIN ACTIVITIES OR TRANACTIONS RELATING TO IRAN-REPRESENTATION AND CERTIFICATIONS
<b>FAR 52.227-3</b>	PATENT INDEMNITY (APR 1984)
<b>FAR 52.228-5</b>	INSURANCE-WORK ON A GOVERNMENT INSTALLATION (JAN 1997)
<b>FAR 52.232-40</b>	PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (DEC 2013)
<b>FAR 52.236-3</b>	SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK (APR 1984)
<b>FAR 52.236-13</b>	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**

**FAR 52.222-6** CONSTRUCTION WAGE RATE (MAY 2014)

**FAR 52.222-7** WITHHOLDING OF FUNDS (MAY 2014)

**FAR 52.222-8** PAYROLLS AND BASIC RECORDS (MAY 2014)

**FAR 52.222-9** 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 \$650,000**

**FAR 52.219-9** SMALL BUSINESS SUBCONTRACTING PLAN (OCT 2014) ALTERNATE II (OCT 2001)

**FAR 52.219-9-DEV** SMALL BUSINESS SUBCONTRACTING PLAN (DEVIATION 2013-00014) (AUG 2013)

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

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

**APPLICABLE TO SUBCONTRACTS/PURCHASE ORDERS EXCEEDING \$2 MILLION**

**FAR 52.215-13** SUBCONTRACTOR COST OR PRICING DATA-MODIFICATIONS (OCT 2010)

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

**FAR 52.230-6** ADMINISTRATION OF COST ACCOUNTING STANDARDS (JUN 2010)

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

**FAR 52.203-13** CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (APR 2010)

**FAR 52.203-14** <sup>1</sup>DISPLAY 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;

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- (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).

(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

<u>Description</u>	<u>Unit of Measure</u>	<u>Quantity</u>	<u>Price (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 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

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)

#### **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 (May2014).* 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.

(1) 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 1 (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 a government or governmental entity that is not operating as a business enterprise.

*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](mailto: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)

**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)

**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 THE FAR  
SIMPLIFIED ACQUISITION THRESHOLD (FAR PART 2.101)**

**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)

**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 manner that will promote the natural environment and protect the health and well-being of Federal employees and contractor service providers. In the performance of work under this contract, the Contractor shall exert its best efforts to provide its services in a manner that will promote the natural environment and protect the health and well-being of Federal employees, contract service providers and visitors using the facility. Green purchasing or environmentally preferable contracting includes the initiatives described below:

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

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

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

Pursuant to Executive Order 13423, Strengthening Federal Environmental, Energy and

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

(End of Clause)

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

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

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

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

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

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

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

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

- (1) An Earned Value Management System (EVMS) that complies with the EVMS guidelines in the American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems (ANSI/EIA-748, current version at time of award); and
- (2) *Management procedures.*
  - (i) Management procedures provide for generation of timely, reliable, and verifiable information for DOE Integrated Program Management Report (IPMR) data item of this contract.
  - (ii) The Contractor shall use Department of Energy's (DOE) modified version of Department of Defense's Data Item Description (DID) Integrated Program Management Report (IPMR), DI-MGMT-81861, (DOE version, current version at time of award) which contains data for measuring cost and schedule performance for this DOE contract. The Contractor shall submit the data electronically by uploading the data into the Project Assessment and Reporting

System (PARS II) in accordance with the “Contractor Project Performance Upload Requirements” document maintained by the DOE Office of Acquisition and Project Management (OAPM). All requested data shall be submitted timely and accurately, and shall be current as of the close of the previous month’s accounting period.

(c) If the Contractor has one or more DOE contracts valued at \$20,000,000 or greater per contract for a total contract value of \$50,000,000 or more which support DOE Capital Asset Projects, the Contractor shall use an EVMS that has been determined to be acceptable by DOE. If, at the time of award, the Contractor's EVMS has not been determined by DOE to be in compliance with the EVMS guidelines as stated in paragraph (b)(1) of this clause, the Contractor shall apply its current system to the contract and shall take necessary actions to meet the milestones in the Contractor's EVMS plan.

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

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

(f) *Integrated baseline reviews.*

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

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

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

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

(g) The Contractor shall provide access to all pertinent records and data requested by the Contracting Officer or duly authorized representative as necessary to permit Government surveillance to ensure that the EVMS complies, and continues to comply, with the performance criteria referenced in paragraph (b) of this clause.

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

(i) *Significant deficiencies.*

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

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

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

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

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

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

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

Neither government personnel nor other governmental support contractor employees shall exercise any supervision or control over contractor employees performing services under this contract. The contractor's employees shall be held accountable solely to the contractor's management, who in turn is responsible for contract performance to the Government.

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

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

(End of Clause)

#### **H.63 EMCBC-H-1012 SECURITY**

- (A) Responsibility: It is the contractor's duty to safeguard all classified information, special nuclear material, any information designated as sensitive and not subject to disclosure that may be provided either for contract proposal preparation or performance, and other



DOE property. The contractor shall, in accordance with DOE security regulations and requirements, be responsible for safeguarding and protecting against sabotage, espionage, loss and theft, classified information, sensitive information, and special nuclear material in the contractor's possession in connection with the performance of work under this contract. Special nuclear material will not be retained after the completion or termination of the contract.

- (B) Definition of Special Nuclear Material (SNM). SNM means: (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.
- (C) Subcontracts and purchase orders. Except as otherwise authorized in writing by the CO, the contractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this contract.

(End of Clause)

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

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

- (C) Certificates of insurance acceptable to the CO shall be filed with the CO prior to commencement of work. These certificates and the insurance policies required by this paragraph shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the CO. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the contractor with reasonable promptness in accordance with the contractor's information and belief.
- (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.

(End of Clause)

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

A) Government-owned records. Except as provided in paragraph (b) of this clause, all records acquired or generated by the contractor in its performance of this contract, including records series described within the contract as Privacy Act systems of records, shall be the property of the Government and shall be maintained in accordance with 36 Code of Federal Regulations (CFR), Chapter XII, -- Subchapter B, "Records Management." The contractor shall ensure records classified as Privacy Act system of records are maintained in accordance with FAR 52.224.2 "Privacy Act." (B) Contractor-owned records. The following records are considered the property of the contractor and are not within the scope of paragraph (a) of this clause. 1. Employment-related records (such as worker's compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns; records generated during the course of responding to allegations of research misconduct; records generated during other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/health-related records and similar files), and non-employee patient medical/health-related records, except those records described by the contract as being operated and maintained by the Contractor in Privacy Act system of records. 2. Confidential contractor financial information, internal corporate governance records and correspondence between the contractor and other segments of the contractor located away from the DOE facility (i.e., the contractor's corporate headquarters); 3. Records relating to any procurement action by the contractor, except for records that under 48 CFR 970.5232-3 are described as the property of the Government; and 4. Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges; and 5. The following categories of records maintained pursuant to the technology transfer clause of this contract: i. Executed license agreements, including exhibits or appendices containing information on royalties, royalty rates, other financial information, or commercialization plans, and all related documents, notes and correspondence. ii. The contractor's protected Cooperative Research and Development Agreement (CRADA) information and appendices to a CRADA that contain licensing terms and conditions, or royalty or royalty rate information. iii. Patent, copyright, mask work, and trademark application files and related contractor invention disclosures, documents and correspondence, where the contractor has elected rights or has permission to assert rights and has not relinquished such rights or turned such rights over to the Government. (C) Contract completion or termination. Upon contract completion or termination, the contractor shall ensure final disposition of all Government-owned records to a Federal Record Center, the National Archives and Records Administration, to a successor contractor, its designee, or other destinations, as directed by the Contracting Officer. Upon the request of the Government, the contractor shall provide either the original contractor-owned records or copies of the records identified in paragraph (b) of this clause, to DOE or its designees, including successor contractors. Upon delivery, title to such records shall vest in DOE or its designees, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act) as appropriate. If the contractor chooses to provide its original contractor-owned records to the Government or its designee, the contractor shall retain future rights to access and copy such records as needed. Inspection, copying, and audit of records. All records acquired or generated by the Contractor under this contract in the possession of the Contractor, including those described at paragraph (b) of this clause, shall be subject to inspection, copying, and audit by the Government or its designees at all reasonable times, and the Contractor shall afford the Government or its designees reasonable facilities for such inspection,

copying, and audit; provided, however, that upon request by the Contracting Officer, the Contractor shall deliver such records to a location specified by the Contracting Officer for inspection, copying, and audit. The Government or its designees shall use such records in accordance with applicable federal laws (including the Privacy Act), as appropriate. (E) Applicability. This clause applies to all records created, received and maintained by the contractor without regard to the date or origination of such records including all records acquired from a predecessor contractor. (F) Records maintenance and retention. Contractor shall create, maintain, safeguard, and disposition records in accordance with 36 Code of Federal Regulations (CFR), Chapter XII, -- Subchapter B, "Records Management" and the National Archives and Records Administration (NARA)-approved Records Disposition Schedules. Records retention standards are applicable for all classes of records, whether or not the records are owned by the Government or the contractor. The Government may waive application of the NARA-approved Records Disposition Schedules, if, upon termination or completion of the contract, the Government exercises its right under paragraph (c) of this clause to obtain copies of records described in paragraph (b) and delivery of records described in paragraph (a) of this clause. (G) Subcontracts. 1. The contractor shall include the requirements of this clause in all subcontracts that contain the Radiation Protection and Nuclear Criticality clause at 952.223-72 , or whenever an on-site subcontract scope of work (i) could result in potential exposure to: A) radioactive materials; B) beryllium; or C) asbestos or (ii) involves a risk associated with chronic or acute exposure to toxic chemicals or substances or other hazardous materials that can cause adverse health impacts, in accordance with 10 CFR part 851. In determining its flow-down responsibilities, the Contractor shall include the requirements of this clause in all on-site subcontracts where the scope of work is performed in: (A) Radiological Areas and/or Radioactive Materials Areas (as defined at 10 CFR 835.2); (B) areas where beryllium concentrations exceed or can reasonably be expected to exceed action levels specified in 10 CFR 850; (C) an Asbestos Regulated area (as defined at 29 CFR 1926.1101 or 29 CFR 1910.1001); or (D) a workplace where hazard prevention and abatement processes are implemented in compliance with 10 CFR 851.21 to specifically control potential exposure to toxic chemicals or substances or other hazardous materials that can cause long term health impacts. The Contractor may elect to take on the obligations of the provisions of this clause in lieu of the subcontractor, and maintain records that would otherwise be maintained by the subcontractor.

(End of Clause)

## **H.68 LOBBYING RESTRICTION**

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

## **H.70 EMPLOYEE TRAINING**

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

**Mandatory Training:** The contractor shall ensure that all employees attend safety and security training once within 30 days of beginning performance on this contract and at least once annually

thereafter. Contractor shall ensure that every employee is instructed to safely and competently perform the work.

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

(End of Clause)

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

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

(End of Clause)

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

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

(End of Clause)

## **H.81 ACCESS CONTROLS FOR VISITING MINORS**

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

## **H.82 ACCESS TO AND OWNERSHIP OF RECORDS**

- (A) Government-owned records. Except as provided in paragraph (b) of this clause, all records acquired or generated by the contractor in its performance of this contract, including records series described within the contract as Privacy Act systems of records, shall be the property of the Government and shall be maintained in accordance with 36 Code of Federal Regulations (CFR), Chapter XII, -- Subchapter B, "Records Management." The contractor shall ensure records classified as Privacy Act system of records are maintained in accordance with FAR 52.224.2 "Privacy Act."
- (B) Contractor-owned records. The following records are considered the property of the contractor and are not within the scope of paragraph (a) of this clause.
- (1) Employment-related records (such as worker's compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns; records generated during the course of responding to allegations of research misconduct; records generated during other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/health-related records and similar files), and non-employee patient medical/health-related records, except those records described by the contract as being operated and maintained by the Contractor in Privacy Act system of records.
  - (2) Confidential contractor financial information, internal corporate governance records and correspondence between the contractor and other segments of the contractor located away from the DOE facility (i.e., the contractor's corporate headquarters);
  - (3) Records relating to any procurement action by the contractor, except for records that under 48 CFR 970.5232-3 are described as the property of the Government; and
  - (4) Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges; and
  - (5) The following categories of records maintained pursuant to the technology transfer clause of this contract:
    - (a) Executed license agreements, including exhibits or appendices containing information on royalties, royalty rates, other financial information, or commercialization plans, and all related documents, notes and correspondence.
    - (b) The contractor's protected Cooperative Research and Development Agreement (CRADA) information and appendices to a CRADA that contain licensing terms and conditions, or royalty or royalty rate information.
    - (c) Patent, copyright, mask work, and trademark application files and related contractor invention disclosures, documents and correspondence, where the

contractor has elected rights or has permission to assert rights and has not relinquished such rights or turned such rights over to the Government.

- (C) Contract completion or termination. Upon contract completion or termination, the contractor shall ensure final disposition of all Government-owned records to a Federal Record Center, the National Archives and Records Administration, to a successor contractor, its designee, or other destinations, as directed by the Contracting Officer. Upon the request of the Government, the contractor shall provide either the original contractor-owned records or copies of the records identified in paragraph (b) of this clause, to DOE or its designees, including successor contractors. Upon delivery, title to such records shall vest in DOE or its designees, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act) as appropriate. If the contractor chooses to provide its original contractor-owned records to the Government or its designee, the contractor shall retain future rights to access and copy such records as needed.
- (D) Inspection, copying, and audit of records. All records acquired or generated by the Contractor under this contract in the possession of the Contractor, including those described at paragraph (b) of this clause, shall be subject to inspection, copying, and audit by the Government or its designees at all reasonable times, and the Contractor shall afford the Government or its designees reasonable facilities for such inspection, copying, and audit; provided, however, that upon request by the Contracting Officer, the Contractor shall deliver such records to a location specified by the Contracting Officer for inspection, copying, and audit. The Government or its designees shall use such records in accordance with applicable federal laws (including the Privacy Act), as appropriate.
- (E) Applicability. This clause applies to all records created, received and maintained by the contractor without regard to the date or origination of such records including all records acquired from a predecessor contractor.
- (F) Records maintenance and retention. Contractor shall create, maintain, safeguard, and disposition records in accordance with 36 Code of Federal Regulations (CFR), Chapter XII, - Subchapter B, "Records Management" and the National Archives and Records Administration (NARA)-approved Records Disposition Schedules. Records retention standards are applicable for all classes of records, whether or not the records are owned by the Government or the contractor. The Government may waive application of the NARA-approved Records Disposition Schedules, if, upon termination or completion of the contract, the Government exercises its right under paragraph (c) of this clause to obtain copies of records described in paragraph (b) and delivery of records described in paragraph (a) of this clause.
- (G) Subcontracts.
  - (1) The contractor shall include the requirements of this clause in all subcontracts that contain the Radiation Protection and Nuclear Criticality clause at 952.223-72 , or whenever an on-site subcontract scope of work (i) could result in potential exposure to: A) radioactive materials; B) beryllium; or C) asbestos or (ii) involves a risk associated with chronic or acute exposure to toxic chemicals or substances or other hazardous materials that can cause adverse health impacts, in accordance with 10 CFR part 851. In determining its flow-down responsibilities, the Contractor shall include the requirements of this clause in all on-site subcontracts where the scope of work is performed in: (A) Radiological Areas and/or Radioactive Materials Areas (as defined at 10 CFR 835.2); (B)

areas where beryllium concentrations exceed or can reasonably be expected to exceed action levels specified in 10 CFR 850; (C) an Asbestos Regulated area (as defined at 29 CFR 1926.1101 or 29 CFR 1910.1001); or (D) a workplace where hazard prevention and abatement processes are implemented in compliance with 10 CFR 851.21 to specifically control potential exposure to toxic chemicals or substances or other hazardous materials that can cause long term health impacts.

(2) The Contractor may elect to take on the obligations of the provisions of this clause in lieu of the subcontractor, and maintain records that would otherwise be maintained by the subcontractor.



**PART III – LIST OF ATTACHMENTS, EXHIBITS & OTHER DOCUMENTS**

**SECTION J – ATTACHMENTS**

**J.1 LIST OF ATTACHMENTS**

<b>Attachment No.</b>	<b>Title</b>	<b>Document Location</b>
J-1	Certificate of Exemption	Section B.4
J-2	Performance Bond	Section B.11
J-3	Payment Bond	Section B.11
J-4	Subcontractor Request Form	Section B.9
J-5	Contractor Daily Report	Section C7.1
J-6	Contractor Document Transmittal Form/Process	Section C8.1
J-7	Reserved	
J-8	Contractor / Supplier Submittal Register	Section C8.2
J-9	General President’s Project Maintenance Agreement (GPPMA)	Section H18
J-10	OSWDF Construction Quality Assurance Project Plan	
J-11	Request for Information (RFI) Form	Section H1
J-12	Contractor Overtime Request	Section H52
J-13 Rev 28	J-13 Rev 28 Health & Safety Requirements for Onsite Work at the following web address are incorporated into and become part of this contract: <a href="https://www.fbportsmouth.com/working-with-us/j13.html">https://www.fbportsmouth.com/working-with-us/j13.html</a>	Section C
J-13 A1	J-13 Appendix 1 Training Catalog	Section C
J-14	HR-144 Workplace Substance Abuse Program	Section H81
J-15	Specification 01546 (Ports FBP Site Security Requirements)	Section C12
J-16	Standard Procurement Quality Requirements. FBP-QA-PRO-00016	Section C13
J-17	Davis Bacon Labor Determination	Section H18
J-18	Certificate of Insurance	Section H24
J-19	Progress Payments Release	Section G4
J-20	Final Payment Release	Section G4
J-21	Back Charge Agreement	Section G7
J-22	Notice of Completion	Section H54
J-23	Notice of Rejection	Section H54
J-24	Notice of Acceptance	Section H54
J-25	Work Plan Format	Section C3.7
J-26	General JHA Revision 27	Available on the FBP Website. See link : <a href="https://www.fbportsmouth.com/assets/docs/documents/required-read/FBP-JHA-13-1647%20Revision%2047.pdf">https://www.fbportsmouth.com/assets/docs/documents/required-read/FBP-JHA-13-1647%20Revision%2047.pdf</a>
J-27	Pay Item Invoice Schedule Invoice	Section G6
J-28	Pay Item Invoice Summary	Section G6
J-29	FBP Fire Protection	Section C10
J-30	Four Week Rolling Schedule	Section C6.5

**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  
BIDDERS/OFFERORS**

**PART IV – REPRESENTATIONS AND INSTRUCTIONS**  
**SECTION K - REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS**  
**OF BIDDERS/OFFERORS**

FLUOR-BWXT PORTSMOUTH LLC

AGREEMENT TO CONTRACT  
TERMS AND CONDITIONS/GENERAL PROVISIONS

This proposal in response to **RFP No. FBP25SC200113** 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**

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 should include sufficient detail in order to enable Fluor-BWXT Portsmouth LLC (FBP or “The Company”) 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 and is technically responsible. Note that references to the ‘Offeror’ below refer to the Offeror including its Subcontractors.
- (b) **Technical Qualification Information Requirements:** The technical proposal should contain, as a minimum, the following information. Past Performance, Key Personnel and qualifications, Work/Execution Plan, Project Schedule, Technical Approach, and Health and Safety Information that provides sufficient information for FBP to Validate an offeror’s ability to meet the minimum qualification criteria specified in Section M.
- i. **Past Performance:** Offeror is to provide evidence of experience with relevant projects. For verification of past contract performance the proposal must include the following information:
    - Client Name and Address
    - Client Technical Point of Contact and phone number
    - Brief Description of Work Scope
    - Contract Type
    - Period of Performance
    - Contract Value
  - ii. **Key Personnel and qualifications:** Submit resumes and qualifications for the following Key Positions:
    - Project Manager
    - Onsite Superintendent
    - Occupational Health and Safety Representative
    - Industrial Hygiene Representative
    - Quality Assurance/Quality Control Representative
  - iii. **Technical Approach:** The technical approach should include at a minimum the following:
    - Detailed Project Execution plan
    - Quality Assurance Program
    - Man-power staffing levels
    - Use of major equipment planned for the work

- iv. **Health and Safety Information.** The Offeror should provide the following information for its firm and all proposed subcontractors that will be performing any type of onsite work at Portsmouth:
- Offeror’s Experience Modification Rate (EMR) for the past three (3) years.
  - OSHA 300 Log and Summary for past three (3) years.
  - OSHA Total Recordable Case Rate (TCR) for the past three (3) years.

- (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 requirements.

**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 –Proposed List of Subcontractors
- (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 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/Offerors (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) Financial Statement - 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.
- (i) The Offeror’s proposal shall include a completed Attachment 1 of this Section L, in MS Excel, providing a breakdown of the Offeror’s pricing FBP will use the price breakdown as part of the proposal evaluation process, and as the basis for Section B, of the Contract once awarded.
- (j) 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 therein. Bidder’s information will be used to request an exception to the Buy American Act statute as appropriate.

## **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: Bruce Knauff  
Title: Contract Administrator  
Fluor-BWXT Portsmouth LLC  
P.O. Box 548  
Pike-ton, Ohio 45661  
Telephone: (740) 897-3792  
Email: [Bruce.knauff@ports.pppo.gov](mailto:Bruce.knauff@ports.pppo.gov)

### L.3 SUBMISSION OF PROPOSALS & PRE-PROPOSAL CONFERENCE

A Pre-Proposal Conference is scheduled for December 5, 12:00 P.M. EST, at Fluor-BWXT Portsmouth LLC's, **X-780 T-5 Meeting Trailer** location to discuss the requirements of this solicitation. Offerors are requested to submit the names of its personnel who plan to attend this conference (*submit at least 24 hours in advance of the pre-proposal meeting*) to the Contract Technical Representative. Offerors are encouraged to attend this conference.

**Proposal Due Date:** Proposals must be received on or before **December 19, 2024 at 3:00 P.M. Eastern Daylight/Standard Time**. 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 [Bruce.knauff@ports.pppo.gov](mailto:Bruce.knauff@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.

Hard copy versions in sealed envelopes to:

USPS  
Fluor-BWXT Portsmouth LLC  
Attn. Bruce Knauff

Overnight  
Fluor-BWXT Portsmouth LLC  
Attn. Bruce Knauff

Contract Administrator  
P.O. Box 548  
Piketon, Ohio 45661

Contract Administrator  
3930 US Rt. 23 South, X-1000  
Piketon, OH 45661

E-mail and hard copy versions are expected to be identical in substance and format.

#### **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.

All questions must be submitted in writing by **December 16, 2024 at 03:00 P.M. EST.**

All costs and expenses incurred by you in preparing your proposal will be borne 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 237110.
- (b) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is \$45,000,000.00.

#### **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) 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 \$650,000 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**

Sections L and M 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 non-concurrence 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 Babcock & 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-B&W 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 COST OR PRICING DATA**

- (a) Although not presently required by this solicitation, the requirements of the Fluor-BWXT Portsmouth LLC's prime contract may necessitate that an Offeror's proposal be fully supported by cost and pricing data in accordance with Public Law 87-653, "Truth in negotiations Act." If required, failure to provide cost and pricing information in support of the proposal as set forth herein may be sufficient cause to reject an Offeror's proposal.
- (b) In the event that any cost data or supporting information described herein is deemed to be proprietary, or otherwise not available to Fluor-BWXT Portsmouth LLC, Offerors shall provide the location of pertinent data available for assist audit by the government.

#### **L.21 TECHNICAL/PERFORMANCE EVALUATION**

Representatives from, but not limited to, Fluor-BWXT Portsmouth LLC Quality Assurance 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.24 952.204-73 FACILITY CLEARANCE**

As prescribed in 904.404(d)(5), insert the following provision in all solicitations which require the use of Standard Form 328, Certificate Pertaining to Foreign Interests, for contracts or subcontracts subject to the provisions of 904.70:

### **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)

**L.25 RESERVED**

**L.26 PROPOSAL PRICING BREAKDOWN SHEET**

Pay Item	Pay Item Description	Labor \$	Material \$	Equipment \$	Subcontractor Labor \$	Subcontractor Material \$	Subcontractor Equipment \$	TOTAL PRICE
01	Pre-Mobilization Submittals							
02	Complete Field Work							
03	Contract Close-Out and Submittals							
	<b>TOTAL FIRM FIXED PRICE</b>							

**L.27 PROPOSAL TECHNICAL BREAKDOWN SHEET**

<b>Labor Categories</b> <i>(modify as necessary)</i>	<b>Number of Personnel</b>	<b>Total Hours</b>
<b>Laborers</b>		
<b>Pipefitters</b>		
<b>Carpenters</b>		
<b>Electricians</b>		
<b>Operators</b>		
<b>Iron Workers</b>		
<b>HSE</b>		
<b>QA</b>		
<b>PM</b>		
<b>Superintendent</b>		
<b>Total</b>		

<b>Key Material Procurements</b>	<b>UOM</b>	<b>Quantities</b>

<b>Major Pieces Equipment</b>	<b>Quantity</b>	<b>Total Duration*</b>

*\*Total Duration based on one piece of equipment (e.g. 1 month rental of 2 forklifts = 2 months total duration)*



## **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: *South LTS PEMB Valve Houses 3, 6, and 7*.

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 determined 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 EVALUATION OF PROPOSALS**

##### **MINIMUM QUALIFICATION REQUIREMENTS (GO/NO-GO CRITERIA)**

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:** Company, or traceable Company history, has a minimum of five (5) years of corporate experience with similar projects. Description of three (3) similar construction projects of equal or greater magnitude. Past performance shall meet the following requirements:
  - Project was completed by Offeror within the last ten (10) years.
  - Name and contact information (phone and email) of one reference for each project
- (b) **Key Personnel and qualifications:**
  - The Project Manager and Site Superintendent must have a minimum of five (5) years of applicable experience on projects of similar scope, hazard, cost, and complexity.

- The OS&H Representative must meet the minimum qualifications and experience requirements as specified in Section 3.3 of Attachment J-13.
  - The IH Representative must meet the minimum qualifications and experience requirements as specified in Section 3.4 of Attachment J-13.
  - QA/QC rep must have QA experience working knowledge of DOE 414.1D and NQA-1 requirements, and have current applicable project specific QC discipline certification, e.g, mechanical, welding, receipt, etc. Minimum NQA-1 Level II QC Certification required, or equivalent as approved by the CTR
- (c) **Resource Loaded Schedule:** The Offeror's schedule must be a resource loaded, critical path method schedule with detailed activities which role up to support each Pay Item to illustrate the sequence in which the Offeror proposes to perform the work and be in accordance with the Milestone Schedule included in Section C.
- (d) **Technical Approach:**
- Contractor's Detailed Project Execution Plan: Project Execution Plan must adequately describe the work processes the Offeror will employ to execute the entire scope of the project. Specific detail shall be added to critical work evolutions, demonstrating Contractors unique approach, or experienced based plan to execute the work.
  - Contractor's Corporate Quality Assurance Program: Compliant QA program to the DOE Order 414.1D, Quality Assurance requirements identified in Attachment J-16.
- (e) **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. If Contractor's EMR or OSHA Total Recordable Case Rate is greater than 1.0, Offeror shall submit a process improvement plan showing how rates are planned to be reduced to acceptable Company levels.

#### 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 or other customers, review of D&B reports, excluded parties list search (EPLS in SAMS), review of any exceptions to T&C, 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.

1. Fluor-BWXT Portsmouth LLC will evaluate total pricing, for award purposes only, by adding the total price of all items shown in Section B.
2. 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. **FBP reserves the right to award any, all, or none of the individual Contract Line Items as specified in Section B.2.**

**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**