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Note: See M005

Note: See M016

Note: See M010 and A011.

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## **PART I - SCHEDULE**

### **SECTION H SPECIAL CONTRACT REQUIREMENTS**

#### **H.1 CONSECUTIVE NUMBERING (MAY 1997)**

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

#### **H.2 MODIFICATION AUTHORITY (MAY 1997)**

Notwithstanding any of the other clauses of this contract, the Contracting Officer shall be the only individual authorized to:

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

#### **H.3 OVERSIGHT OF CONTRACTOR (OCT 2004)**

- (a) The parties recognize that DOE has entered into Contract No. DE-AC05-00OR22725 (hereinafter referred to as Contract OR22725) with UT-Battelle, LLC (hereinafter UT-Battelle) and Contract No. DE-AC05-00OR22800 (hereinafter referred to as Contract OR22800) with BWXT Y-12, LLC, (hereinafter BWXT Y-12) for the management and operation of Government-owned facilities located in Oak Ridge, Tennessee, at which the Contractor may be performing under this contract. In addition, DOE has entered into Contract No. DE-AC05-98OR22700 (hereinafter referred to as Contract OR22700) with Bechtel Jacobs Company, LLC, (hereinafter Bechtel Jacobs) for the management and accelerated clean-up of Government-owned facilities located in Oak Ridge, TN, at which the Contractor may be performing under this contract. Collectively, these contractors are Site Contractors. The Contractor hereby agrees that while it is performing work at this site(s) it shall comply with applicable Federal, state and local laws, regulations, DOE orders and directions, and with the standards and procedures of the Site Contractors with respect to health, safety, environmental, quality assurance, and safeguard and security matters. The Contractor agrees that its responsibility to comply with the foregoing is not reduced by the oversight provided by the Site Contractors nor are any of the Contractor's responsibilities assumed by the Site Contractors. The Contractor acknowledges that the performance by the Site Contractors is not intended to and does not reduce the Contractor's obligations, responsibilities, and/or accountability to DOE or any regulatory agency, including judicial body, responsible for audit, licensing, permitting, or other administrative review or adjudication capacity.

- (b) The Contractor agrees to cooperate fully and in good faith with DOE, UT-Battelle, Bechtel Jacobs, and BWXT Y-12, so as to enable the Site Contractors to perform their contractual obligations, including evaluation of the Contractor's programs, procedures, systems, processes, and policies regarding health and safety, housekeeping, environmental requirements, radiation protection, security, quality assurance, industrial hygiene, criticality safety, and related operations. In performing such evaluations, the Contractor agrees to allow the Site Contractors access to documents relating to the foregoing, including but not limited to policies; procedures; operating instructions; manuals; training programs; qualification of employees consistent with the Privacy Act; quality assurance program; accident reports; insurance reports and claim files; and reports whether generated by the Contractor, subcontractor, prospective subcontractors, or a third party relating to such matters.
- (c) The Contractor acknowledges that the Site Contractors are authorized to suspend work of the Contractor or deny the Contractor access to the Government's facilities if the Contractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public. The Contractor agrees to comply with any such Site Contractor direction.
- (d) The Contractor agrees to include in all subcontracts that may include on-site work under this contract, a clause which will obligate such subcontractors to comply with the provisions of this clause and to impose these obligations on all their subcontractors or suppliers, at any tier, which involve performance of work on-site. As used in this clause, subcontractor(s) and subcontract(s) include such at any tier.
- (e) The provisions set forth herein are also applicable to all successors to the above mentioned Site Contractors.

#### **H.4 SMALL BUSINESS SUBCONTRACTING PLAN (SEPT 1999)**

The Small Business Subcontracting Plan submitted by the Contractor for this contract, and approved in writing by the Contracting Officer, is a material part of this contract and is incorporated by reference and has the same force and effect as if attached hereto.

#### **H.5 SAFEGUARDS AND SECURITY AWARENESS PROGRAM (MAY 1997)**

The Contractor shall establish and maintain a Safeguards and Security Awareness Program acceptable to the Department of Energy (DOE) which satisfies the requirements of DOE Order 470.1 Chg. 1 (or current version referenced in Section J, Attachment D). A Safeguards Security Awareness Coordinator must be appointed and will be responsible for ensuring all employees, cleared and uncleared, who are assigned to a DOE facility or who are performing work involving access to classified facilities, classified information, or special nuclear materials are informed of their security responsibilities. Any subcontracts in support of this work shall require subcontractors to comply with the Contractor's Safeguards and Security Awareness Program.

**H.6 QUALITY ASSURANCE SYSTEM ALTERNATE I (JUL 2004)**

The Contractor shall establish and maintain a formal quality assurance program approved by the Department of Energy (DOE) that satisfies the requirements of DOE Order 414.1B (or current version referenced in Section J, Attachment D). The quality assurance program shall encompass all areas of performance by the Contractor. If the Contractor has responsibility to perform activities in connection with a nuclear facility, as defined by Title 10, Section 830.3, Code of Federal Regulations, the applicability of the requirements in Section 830.120 shall be determined. Any subcontracts in support of this work shall require subcontractors to comply with the Contractor's approved quality assurance program.

**H.7 CONFIDENTIALITY OF INFORMATION (MAY 1997)**

- (a) To the extent that the work under this contract requires that the Contractor be given access to confidential or proprietary business, technical, or financial information belonging to the Government or other companies, the Contractor shall after receipt thereof, treat such information as confidential and agrees not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by the 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 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.
- (b) The Contractor shall obtain the written agreement, in a form satisfactory to the Contracting Officer, of each employee permitted access, whereby the employee agrees that he 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.
- (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, and to supply a copy of such agreement to the Contracting Officer.

- (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) This clause shall flow down to all appropriate subcontracts.

## **H.8 INDIRECT COSTS (MAY 1997)**

- (a) Pending establishment of final indirect cost rates for any period, billing and reimbursement of indirect costs shall be made on the basis of provisional rates approved by the Cognizant Contracting Officer for indirect rate matters. The provisional rates shall reflect the anticipated actual annual rates.
- (b) If during the period of performance the Contractor projects a change in the annual rates, the Contractor shall notify the Cognizant Contracting Officer in writing. The Contractor shall also submit this notification to the Cognizant Government audit agency and the office responsible for administration of the contract. After coordination with the responsible administration office and/or audit agency, the Cognizant Contracting Officer shall change the DOE-approved provisional rates as appropriate.
- (c) If during the period of performance, the Contractor's provisional rates have not been established for a particular fiscal year, the Contractor shall continue to bill using those rates most recently approved by the Cognizant Contracting Officer.

## **H.9 GOVERNMENT PROPERTY ALTERNATE I (DEC 2004)**

See M010.

- (a) Only that property and data specifically included in Section J, Attachment B, entitled "List of Government Furnished or Acquired Property," shall be furnished by the Government or acquired by the Contractor as a direct charge to this contract. The List of Government Furnished or Acquired Property indicates whether the property is to be Government Furnished Property or Contractor Acquired Property.
- (b) Any request from the Contractor to acquire direct charge property shall include the following, where applicable:
  - (1) Sufficient details to justify and support the acquisition, including the itemized description and cost estimate.
  - (2) An analysis of the most economical method of acquisition (e.g, lease versus purchase).
  - (3) A description of the material equity arising from any proposed lease agreement to reflect any changes in the acquisition authorization.

The List of Government Furnished or Acquired Property shall be modified as appropriate to reflect any changes in the acquisition authorization.

- (c) The Federal Acquisition Regulation (FAR Subpart 45.5) prescribes the Contractor recordkeeping and reporting requirements for Federal contracts. The FAR reporting requirements apply to plant equipment having an acquisition cost of \$25,000 or more. In addition to these requirements, the Department of Energy requires the Contractor to use established DOE asset codes to identify Government property. The Contractor shall furnish an annual report, as of August 31 of each year for all Government property at subcontractor facilities. The report is due not later than 45 days after the end of the reporting period. The annual reporting requirement applies to capital equipment and real property acquired or disposed of during the period, by asset type.
- (d) Except as otherwise authorized by the Contracting Officer in writing and notwithstanding paragraph (a) above, the Contractor is not authorized to acquire as a direct charge item under this contract any facilities, equipment (including office equipment), furniture, fixtures or other real or personal property items having a unit acquisition cost of \$5,000 or more. The Contractor may request authorization for such acquisitions from the Contracting Officer. Any request for authorization shall include an analysis of the most economical method of acquisition.

#### **H.10 REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF THE OFFEROR (MAY 1997)**

The Representations, Certifications, and Other Statements of the Offeror, dated October 4, 2005, for this contract are, by reference, hereby incorporated in and made a part of this contract.

#### **H.11 WORKFORCE TRANSITION AND MANAGEMENT (NOV 2004)**

- (a) *Right of First Refusal.* At the time the Contractor (including any teaming partners, subcontractors, and joint ventures) becomes fully responsible for the Performance Work Statement, incumbent contractor employees will become employees of the Contractor. "Incumbent contractor employees" is defined as all Oak Ridge Associated Universities (ORAU) full-time and part-time regular employees whose predominant assignment is with ORISE and who were on the payroll of ORAU prior to the end of the contract period. "Incumbent contractor employees" does not include Key Personnel identified in the clause in Section H entitled "Key Personnel," of Contract No. DE-AC05-00OR22750, or other non-clerical direct reports to the Director, ORISE. This provision is known as the Right of First Refusal.

The requirements of this section do not preclude the Contractor from conducting a reorganization as necessary after becoming responsible for the work, subject to prior coordination with DOE.

- (b) *Pay and Benefits.* Incumbent contractor employees shall receive a pay and benefits package that is comparable in the aggregate, but may not necessarily mirror their previous pay and benefits. The Contractor shall recognize the incumbent employees' company service as of the date of contract transition for the purpose of determining benefit eligibility.

All new employees of the Contractor, not on the payroll of ORAU prior to the end of the contract period, shall receive a competitive overall pay and benefits package that provides for market-based retirement and medical benefits that are competitive to their industry. Contractors shall develop and implement welfare benefit programs that meet the tests of allowability and reasonableness established by the Federal Acquisition Regulation 31.205-6.

The Contractor is free to set its own terms and conditions of employment, subject to any collective bargaining obligations, so long as (1) those packages include market-based retirement and medical benefits and are competitive for their industry, and (2) the Contractor maintains benefit plans that are equal in cost to the aggregate cost of benefits provided by the predecessor contractor as is consistent with the Service Contract Act.

The Contractor shall comply with all applicable laws, including the Internal Revenue Code (IRC), the Employee Retirement Income Security Act (ERISA), and the Service Contract Act.

- (c) *Severance Pay.* It is the Government's position in accordance with FAR 31.205-6(g)(3) that no severance pay will be payable to the incumbent contractor employees, on the date the incumbent contractor employees transition to the Contractor, since the transition occurs under substantially equal employment conditions. Likewise, no severance pay will be payable to former ORAU employees who were excluded from the incumbent contractor employees as defined in paragraph (a) above that are hired by the Contractor, coincident with initial staffing and take over of the contract work.
- (d) *Research Participant Employees.* The Contractor conducts a postgraduate academic program leading to placement of research participants at Oak Ridge National Laboratory. The participants are defined as employees of the contractor and receive salaries and benefits. These employees are exempt from the requirements of paragraphs (a), (b), and (c) above.
- (e) *Pension and Other Benefit Programs:* The program of employee pensions and other benefits employed by the Contractor shall support at a reasonable cost the effective recruitment and retention of a highly skilled workforce at ORISE. Cost reimbursement of benefit plans will be based on Contracting Officer approval of Contractor actions pursuant to an approved "Employee Benefits Value Study" and an "Employee Benefits Cost Survey Comparison." No presumption of allowability will exist when the Contractor implements a new benefits plan or makes changes to existing employee benefit plans until the Contracting Officer makes a determination



of cost allowability for reimbursement of changes to the program. Unless required by State or Federal statute, funding in advance for post retirement benefits other than pensions is not allowable.

- (1) Unless stated otherwise, or as directed by the Contracting Officer, within 30 days of award or extension and annually thereafter, and prior to implementation of any benefit change, the Contractor shall submit (i) and (ii) below:
  - (i) An Employee Benefits Value Study (ben-val) Measure, every two years, which is an actuarial study of the relative value (RV) of the benefits programs offered by the Contractor measured against the RV of benefit programs offered by comparator companies approved by the Contracting Officer. To the extent that the value study does not address post retirement benefits other than pension, the Contractor shall provide separate post retirement benefit cost and plan design data comparison with external benchmarks for nationally recognized, and Contracting Officer approved, survey sources; and,
  - (ii) An Employee Benefits Cost Survey Comparison (cost survey) Method every year that analyzes the Contractor's employee benefits cost on a per capita basis per full time equivalent employee and compares it with the cost reported by the U.S. Chamber of Commerce Annual Employee Benefits Cost Survey or other Contracting Officer approved broad based national survey.

This information shall be submitted to the Contracting Officer in advance for approval of application of the changes under the contract and for a determination as to whether the costs incurred are consistent with the Contractor's documented program plan and are deemed allowable pursuant to FAR 31.205-6.
- (2) When net benefit value and/or per capita cost exceed the comparator group by more than 5 percent, submit corrective action plans, when requested by the Contracting Officer, to achieve a net benefit value and per capita cost not to exceed the comparator group by more than 5 percent.
- (3) As required by the Contracting Officer, submit an analysis of the specific plan costs that are above the per capita cost range and a corrective action plan to achieve conformance with a Contracting Officer directed per capita cost range.
- (4) Implement corrective action plans determined to be reimbursable by the Contracting Officer to align employee benefit programs with the target in subparagraph (e)(2).
- (5) Annually submit the Report of Contractor Expenditures for Employee Supplemental Compensation.

- (f) *Pension Plans*: The Contractor shall establish or maintain a separate pension plan(s), distinct from any corporate or other pension plan, meeting the requirements of the IRC and ERISA, that recognizes service credit earned at ORISE.
- (1) Contractor policies, practices, and procedures used in the administration of pension plans shall be consistent with law and regulation.
  - (2) Each pension plan shall cover only Contractor employees whose predominant assignment is with ORISE and shall stand alone as a separate pension plan distinct from a Contractor's corporate or other pension plan.
  - (3) The Contractor shall submit the information required under (i) and (ii), below, as applicable, prior to the adoption of any changes to the pension plan, to the Contracting Officer for approval or disapproval and a determination as to whether the costs to be incurred are consistent with the Contractor's documented plan and are deemed allowable pursuant to FAR 31.205-6.
    - (i) For proposed changes to pension plans and pension plan funding, an analysis of the impact of any proposed changes and an analysis of relative benefit value must be provided; and,
    - (ii) The Contractor shall obtain the advance written approval of the Contracting Officer for any proposed special programs (including, but not limited to, plan-loan features, employee contribution refunds, or ancillary benefits) and shall provide DOE with an analysis of the impact of special programs on the pension plan, and on relative benefit value, if applicable.
  - (4) At contract expiration or termination as a part of the transition to another entity awarded the ORISE contract, the Contractor shall transfer sponsorship of the site-specific pension plan(s) covering employees at ORISE, as directed by DOE.
  - (5) Pension Plan Terminations. The Contractor shall not terminate any pension plan (commingled or site-specific) without at least 60 days notice to and the approval of the Contracting Officer prior to the scheduled date of plan termination.
  - (6) Post-Contract Responsibilities for Pension and Benefit Plans.

If this contract expires or terminates without a follow-on contract, notwithstanding any other obligations and requirements concerning expiration or termination under any other clause of this contract, including but not limited to the clause in Section I entitled "Termination," the following actions shall occur:

- (i) The Contractor shall continue as plan sponsor of all existing and follow-on pension and welfare benefit plans covering site personnel with

responsibility for management and administration of the plans, as directed by DOE, at DOE's sole discretion.

- (ii) During the final 12 months of this contract, if the parties have not reached agreement on these matters, the Contracting Officer shall provide written direction regarding the provision of post-contract pension and welfare benefits.
- (iii) Notwithstanding termination for convenience or default, the contract may be extended as appropriate for purposes deemed necessary by the Contracting Officer, including, but not limited to, obligating funds to pay the Contractor for costs incurred for the Contractor's existing and, if applicable, follow-on, site pension and welfare benefit plans. Such costs shall continue to be allowable in accordance with applicable laws and regulations.

#### **H.12 PERMITS, APPLICATIONS, LICENSES, AND OTHER REGULATORY DOCUMENTS (NOV 2004)**

- (a) The Contractor must ensure any licenses, permits, other approvals or authorizations for conducting pertinent activities at ORISE are obtained. The Contractor is responsible for complying with all permits, licenses, certifications, authorizations and approvals from Federal, state, and local regulatory agencies that are necessary for operations under this contract (hereinafter referred to collectively as 'permits'). Except as specifically provided in this section and to the extent not prohibited by law or cognizant regulatory authority, the Contractor (or, if applicable, its subcontractors) will be the sole applicant for any such permits required for its activities. The Contractor must take all appropriate actions to obtain transfer of existing applicable permits, and DOE will use all reasonable means to facilitate transfer of existing permits. If DOE determines it is appropriate or if DOE is required by cognizant regulatory authority to sign permit applications, the Contractor (or, if applicable, its subcontractors) must also sign as operator or similar designation reflecting its responsibility under the permit unless DOE waives this requirement in writing.
- (b) The Contractor must submit for DOE's review and comment all permit applications, reports or other documents required to be submitted to the cognizant regulatory authorities. Such draft documents must be provided to DOE within a time frame, identified by DOE, sufficient to allow DOE substantive review and comment; and DOE will perform such substantive review and comment deemed necessary within such time frame. When providing DOE with documents that are to be signed or co-signed by DOE, the Contractor will accompany such document with a certification statement, signed by the appropriate Contractor corporate officer, attesting to DOE that the document has been prepared in accordance with all applicable requirements and the information is, to the best of its knowledge and belief, true, accurate, and complete.

- (c) Except as specifically provided in this clause and to the extent not prohibited by law or cognizant regulator authority, the Contractor (or, if applicable, its subcontractors) will be the signatory for reports, hazardous waste manifests, and other similar documents required under environmental permits or applicable environmental laws and regulations unless DOE waives this requirement in writing.
- (d) DOE agrees that if bonds, insurance, or administrative fees are required as a condition for such permits, such costs shall be allowable. In the event that such costs are determined by DOE to be excessive or unreasonable, DOE shall provide the regulatory agency with an acceptable form of financial responsibility. Under no circumstances shall the Contractor or its parent be required to provide any corporate resources or corporate guarantees to satisfy such regulatory requirements.
- (e) In the event of termination or expiration of this contract, DOE will require the new Contractor to accept transfer of all environmental permits executed by the Contractor, or DOE will accept responsibility for such permits and the Contractor shall be relieved of all future liability and responsibility resulting from the acts or omissions of the successor Contractor or DOE.

**H.13 CONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATION OR ALLEGED VIOLATIONS, FINES, AND PENALTIES (NOV 2004)**

- (a) The Contractor shall accept, in its own name, services of notices of violations or alleged violations (NOVs/NOAVs) issued by Federal or state regulators to the Contractor resulting from the Contractor's performance of work under this contract, without regard to liability. The allowability of the costs associated with fines and penalties shall be subject to the other provisions of this Contract.
- (b) With advance notice given to DOE, the Contractor shall conduct negotiations with regulators regarding NOVs/NOAVs and fines and penalties issued in its own name; however, the Contractor shall not make any commitments or offers to regulators that will bind the Government, including monetary obligations, without receiving written concurrence from the Contracting Officer or his/her authorized representative prior to making any such offers/commitments. Failure to obtain such advance written approval may result in otherwise allowable costs being declared unallowable and/or the Contractor being liable for any excess costs to the Government associated with or resulting from such offers/commitments.
- (c) The Contractor shall notify DOE promptly when it receives service from the regulators of NOVs/NOAVs and fines and penalties.

**H.14 ALLOCATION OF RESPONSIBILITIES FOR CONTRACTOR ENVIRONMENTAL COMPLIANCE ACTIVITIES (NOV 2004)**

- (a) This clause allocates the responsibilities of DOE and the Contractor, referred to collectively as 'the parties' for implementing the environmental requirements at

- facilities within the scope of the contract. In this clause, the term ‘environmental requirements’ means requirements imposed by applicable Federal, state and local environmental laws and regulations, including, without limitation, statutes, ordinances, regulations, court orders, consent decrees, administrative orders or compliance agreements, consent orders, permits, and licenses.
- (b) Liability and responsibility for civil fines or penalties arising from or related to violations of environmental requirements shall be borne by the party that caused the violation irrespective of the fact that the cognizant regulatory authority may assess any such fine or penalty upon either party or both parties without regard to the allocation of responsibility or liability under this contract. This contractual allocation of liability for any such fine or penalty is effective regardless of which party signs permit applications, manifests, reports or other required documents, is a permittee, or is the named subject of an enforcement action or assessment of a fine or penalty.
- (c) Regardless of which party to this contract is the named subject of an enforcement action for noncompliance with environmental requirements by the cognizant regulatory authority, liability for payment of any fine or penalty will be governed by provisions of this contract related to allowable costs. If the named subject of an enforcement action or assessment of a fine or penalty is DOE and the fine or penalty will not otherwise be reimbursable under the allowable cost and preexisting conditions provisions of this contract if the Contractor was the named subject of the enforcement action, the Contractor will either pay the fine or penalty or reimburse the DOE (if DOE pays the fine or penalty). The governing provisions of the contract include, without limitation, the clause in Section I, DEAR 970-5231-4 entitled "Preexisting Conditions."

## **H.15 PRIVACY ACT SYSTEMS OF RECORDS (JUL 2005)**

In accordance with the Privacy Act of 1974, 5 U.S.C. 552(a), and implementing DOE Regulations (10 CFR 1008), the Contractor shall design, develop, or operate the following systems of records on individuals to accomplish an agency function to which the requirements of the Privacy Act, 5 U.S.C. 552(a), are deemed applicable:

<b><u>DOE System Number</u></b>	<b><u>Title</u></b>
5	Personnel Records of Former Contractor Employees
10	Worker Advocacy Records
33	Personnel Medical Records
35	Personnel Radiation Exposure Records
71	The Radiation Accident Registry
72	The Department of Energy Radiation Study Registry
73	The US-DTPA Registry
82	Grant and Contract Records for Research Projects, Science Education, and Related Activities

If DOE requires the Contractor to design, develop, or maintain additional systems of Government owned records on individuals to accomplish an agency function, the Contracting Officer, or designee, shall notify the Contractor in writing and such Privacy Act system shall be deemed added to the above list whether incorporated by contract modification or not. Additional systems of records the Contracting Officer may require the Contractor to design, develop, or maintain include those listed at 68 FR 38756. The parties shall mutually agree to a schedule for implementation of the Privacy Act with respect to each such system.

#### **H.16 ADVANCE UNDERSTANDING ON HUMAN RESOURCE COSTS (NOV 2004)**

- (a) DOE intends to reach an advance understanding with the Contractor on certain human resource costs including pay and benefit package(s) for the base and option periods that will be reimbursed under this contract. These costs are those associated with human resource policies and systems which the Contractor intends to apply to work under this contract. Any deviation from the advance understanding must be approved by DOE before such costs incurred will be allowable (either direct or indirect) under this contract. The advance understanding on Human Resource Costs will be part of this contract and included in Attachment H of Section J.
- (b) The DOE also intends to reach an advance understanding with the Contractor on the reasonable, allowable, and allocable post-retirement benefit costs for retiree health insurance for current and former employees with service under Contract No. DE-AC05-76OR00033. The traditional method of reimbursing allowable post-retirement benefit claimed costs has been on the "pay-as-you-go" basis. This advance understanding will be negotiated after contract award.
- (c) Costs incurred with regard to relocating an employee to the work site are allowable in accordance with FAR 31.205-35, Relocation Costs. However, the Contractor shall keep the number of employees relocated to a minimum. The Contractor shall submit a plan for the first year of the base performance period, and every year thereafter, for advance written approval of the Contracting Officer regarding the temporary and permanent relocation of all employees to the local area and charging the cost, or any portion thereof, to the contract. Unless otherwise agreed, exit relocation costs are not allowable.

#### **H.17 WORK AUTHORIZATION CONTROL SYSTEM (NOV 2004)**

No activities in accordance with the clause in Section C entitled "Performance Work Statement," shall be conducted and no costs shall be incurred by the Contractor until the Contracting Officer or designee has issued written guidance and approval.

**H.18 PERFORMANCE EXPECTATIONS (NOV 2004)**

Performance expectations established in response to the requirements of the clause in Section C entitled "Performance Work Statement" are categorized in the following areas:

*Programs* – The Contractor's core competencies shall be effectively utilized in a quality and timely manner in supporting the Department of Energy mission and achieving customer satisfaction.

*Management/Leadership* – The Contractor shall provide leadership that ensures excellence and efficiency in all aspects of the conduct of assigned programs through optimum use of personnel, facilities, and equipment.

*Environment, Safety, and Health (ES&H)* – The Contractor shall maintain an Integrated Safety Management System to systematically integrate ES&H into management and work practices at all levels so that missions are accomplished while protecting the worker, the public, and the environment.

*Communications* – The Contractor shall work with all customers, stakeholders, and the community in an open, frank, and constructive manner to disseminate accurate information about the DOE and ORISE activities and key messages.

*Cooperative Initiatives* – The Contractor shall promote collaborations and enhanced relationships between university, industry, and Federal research capabilities.

**H.19 PERFORMANCE EVALUATION PLAN (NOV 2004)**

Prior to the beginning of each evaluation period, the Government will establish a Contractor Performance Evaluation Plan to serve as a means for assessment and improvement of Contractor performance upon which the determination of award fee shall be based. The Performance Evaluation Plan may be revised unilaterally by the Government during the period of performance.

The Government shall establish performance objectives responsive to the Performance Expectations established in the clause in Section H entitled "Performance Expectations." The Plan will include the performance criteria to be assessed in evaluating the performance objectives and the percent of award fee, if any, available for each objective.

A copy of the Plan shall be provided to the Contractor 15 calendar days prior to the start of the evaluation period. Within 30 days after the end of the evaluation period, the Contractor shall submit a self-evaluation of performance which may be given such consideration, if any, as the Government may find appropriate in assessing Contractor performance.



See M020.

## **H.20 ASSIGNMENT OF EXISTING AGREEMENTS AND SUBCONTRACTS (NOV 2004)**

- (a) During contract transition, applicable existing agreements and subcontracts entered into by the incumbent contractor will be identified and assigned to the successor Contractor upon the effective date of the assumption of full responsibility under this contract. The agreements and subcontracts may include but not be limited to all subcontracts and purchase orders, licenses, agreements with domestic and foreign research organizations, agreements with universities and colleges, agreements with local and state Governments, partnership agreements, and other similar agreements.
- (b) The terms and conditions of these agreements and subcontracts, as they exist when signed, shall remain in full force and effect unless modified by the Contractor and the agreement participant(s) or the Contractor and the subcontractor.

## **H.21 CLARIFICATION BETWEEN DRUG-FREE WORKPLACE AND WORKPLACE SUBSTANCE ABUSE CLAUSES (NOV 2004)**

NOTE: See M045

The clause in Section I, FAR 52.223-6, entitled "Drug-Free Workplace," is applicable to employees not located at DOE owned or leased facilities. The clause in Section I, DEAR 970.5223-4, entitled "Workplace Substance Abuse Programs at DOE Sites," is applicable to employees located at DOE owned or leased facilities.

## **H.22 SECURITY CLEARANCES (NOV 2004)**

The Director (or equivalent) and other management personnel responsible for the operations of the REAC/TS, national security activities, and emergency management activities must possess a DOE "Q" security clearance on the date the Contractor assumes responsibility for the contract, or demonstrate the ability to obtain such clearance on the award date of the contract.

## **H.23 DIVERSITY PROGRAM (MAY 1997)**

- (a) The Contractor shall develop and implement a Diversity Program in support of the DOE Diversity Initiative. A Diversity Plan covering the full period of performance (base and option periods) shall be submitted to the Contracting Officer for approval within 60 days after the effective date of the contract. Once the Diversity Plan is approved by the Contracting Officer, the Contractor shall implement the plan within 30 days.
- (b) The Diversity Plan shall address, at a minimum, the Contractor's approach to ensure an effective Diversity Program (including addressing applicable Affirmative Action and Equal Employment Opportunity regulations) to include:
  - (1) A statement of the Contractor's policies and practices



- (2) Planned initiatives and activities which demonstrate a commitment to a Diversity program including recruitment strategies for hiring a diverse work force.

The Diversity Plan shall also address, as a minimum, the Contractor's approach for promoting diversity through:

- (1) The Contractor's work force
  - (2) Educational outreach, including a mentor/protégé program
  - (3) Stakeholder involvement and outreach
  - (4) Subcontracting
  - (5) Economic development
- (c) An annual Diversity Report shall be submitted pursuant to Section J, Attachment A, entitled "Reporting Requirements." This report shall provide a list of accomplishments achieved both internally and externally and projected developments during the current reporting period. The report shall also list any proposed changes to the Diversity Plan which shall be subject to Contracting Officer approval.

#### **H.24 PROTECTION OF GOVERNMENT PROPERTY – MANAGEMENT OF HIGH RISK PROPERTY AND CLASSIFIED MATERIALS (NOV 2004)**

- (a) The Contractor shall take all reasonable precautions, and such other actions as may be directed by the Contracting Officer, or in the absence of such direction, in accordance with sound business practice, to safeguard and protect Government property in the Contractor's possession or custody.
- (b) In addition, the Contractor shall ensure that adequate safeguards are in place, and adhered to, for the handling, control and disposition of high-risk property and classified materials through the life cycle of the property and materials consistent with the policies, practices, and procedures for property management contained in the Federal Property Management Regulations (41 CFR Chapter 101), the Department of Energy Property Management Regulations (41 CFR Chapter 109), and other applicable regulations.
- (c) High-risk property is property, the loss, destruction, damage to, or the unintended or premature transfer of which could pose risks to the public, the environment, or the national security interests of the United States. High-risk property includes proliferation sensitive, nuclear related dual use, export controlled, chemically or radioactively contaminated, hazardous, and specially designed and prepared property, including property on the militarily critical technologies list.

**H.25 ACCESS TO AND OWNERSHIP OF RECORDS (NOV 2004)**

- (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 shall be the property of the Government and shall be delivered to the Government or otherwise disposed of by the Contractor in accordance with federal requirements established by the National Archives and Records Administration or as the Contracting Officer may from time to time direct during the progress of the work or, in any event, as the Contracting Officer shall direct upon the completion or termination of the contract.
- (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. However, records may be audited by DOE under the clause in Section I, entitled "Audit and Records – Negotiation."
- (1) Employment-related records (including, but not limited to the following: workers' compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns, and other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/health-related records, except for those records described by the contract as being maintained in Privacy Act systems of records as published in Federal Register system notices by DOE;
  - (2) Confidential Contractor financial information, and correspondence between the Contractor and other segments of the Contractor;
  - (3) Records relating to any procurement action by the Contractor; and
  - (4) Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges.
- (c) Records retention/disposition standards. Special records retention standards, described in DOE Order 200.1, Information Management Program (version in effect on the effective date of the contract), as directed by the National Archives and Records Administration in 36 CFR, Part 300 to the end, are applicable for the classes of Government owned records as described in paragraph (a) above. Records will be destroyed as appropriate based on guidance directed in 36 CFR, Part 300 to the end, or as directed by the Contracting Officer or his designee. The Contractor will also be required to comply with any additional records retention guidance established by DOE.
- (d) As directed by the Contracting Officer, the Contractor shall grant access to all DOE records in its possession as may be required in conduct of normal DOE business. If any inspection or evaluation is made by the Government on the premises of the

Contractor or a subcontractor, the Contractor shall provide and shall require his subcontractors to provide all reasonable facilities and assistance for the convenience of the Government representatives in the performance of their duties.

- (e) The Contractor shall include the requirements of this clause in all subcontracts.

## **H.26 WORK FOR OTHERS PROGRAM (NON-DOE FUNDED WORK) (APR 2005)**

- (a) The Contractor may perform work for non-DOE entities (sponsors) on a fully reimbursable basis in accordance with this clause. Authority to Perform Work for Others is pursuant to the Economy Act of 1932, as amended (31 U.S.C. 1535), and the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.) or other applicable authority.
- (b) The Contractor must draft, implement, and maintain formal policies, practices, and procedures in accordance with this clause, which must be submitted to the Contracting Officer for review and approval.
- (c) The Contractor may participate in a Work for Others Program subject to the following conditions:
- (1) The Contractor must not perform Work for Others activities that would place it in direct competition with the domestic private sector.
  - (2) The Contractor must not respond to a request for proposals or any other solicitation from another Federal agency or non-Federal organization that involves direct comparative competition, either as an offeror, team member, or subcontractor to an offeror. The Contractor may, following notification to the Contracting Officer, respond to Broad Agency Announcements, Financial Assistance solicitations, and similar solicitations from another Federal Agency or non-Federal organizations when the selection is based on merit or peer review, the work involves basic or applied research to further advance scientific knowledge or understanding, and a response does not result in direct, comparative competition.
  - (3) The Contractor must not begin work on any Work for Others activity until a Work for Others proposal package has been approved by the DOE Contracting Officer or designated representative.
  - (4) The Contractor must not incur project costs until receipt of DOE notification that a budgetary resource is available for the project, except as provided in the clause in Section H titled "Work for Others Funding Authorization."
  - (5) The Contractor must ensure that all costs associated with the performance of the work, including specifically all DOE direct costs and applicable surcharges, are included in any Work for Others proposal.

- (6) The Contractor must maintain records for the accumulation of costs and the billing of such work to ensure that DOE's appropriated funds are not used in support of Work for Others activities and to provide an accounting of the expenditures to DOE and the sponsor upon request.
  - (7) The Contractor must perform all Work for Others projects in accordance with the standards, policies, and procedures that apply to performance under this contract, including but not limited to environmental, safety and health, security, safeguards and classification procedures, and human and animal research regulations.
  - (8) The Contractor may subcontract portion(s) of a Work for Others project; however, the Contractor must select the subcontractor and the work to be subcontracted. Any subcontracted work must be in direct support of the DOE Contractor's performance as defined in the DOE approved Work for Others proposal package.
  - (9) The Contractor must maintain a summary listing of project information for each active Work for Others project, consisting of:
    - (i) Sponsoring agency;
    - (ii) Total estimated costs;
    - (iii) Project title and description;
    - (iv) Project point of contract; and
    - (v) Estimated start and completion dates.
- (d) Negotiation and Execution of Work for Others Agreement.
- (1) The Contractor may negotiate the terms and conditions that will govern the performance of a specific Work for Others project, when delegated such authority by the Contracting Officer. Such terms and conditions must be consistent with the terms, conditions, and requirements of the Contractor's contract with DOE. The Contractor may use DOE-approved contract terms and conditions as delineated in DOE Manual 481.1-1A or terms and conditions previously approved by the Contracting Officer or authorized designee for agreements with non-Federal entities. The Contractor must not hold itself out as representing DOE when negotiating the proposed Work for Others agreement.
  - (2) The Contractor must submit all Work for Others agreements to the DOE Contracting Officer for DOE review and approval. The Contractor may not execute any proposed agreement until it has received notice of DOE approval.

- (e) The Contractor may assist the project sponsor in the preparation of project proposal packages, including the preparation of costs estimates, when the Contractor proposes to perform Work for Others activities pursuant to this clause.
- (f) DOE may conduct periodic appraisals of the Contractor's compliance with its Work for Others Program policies, practices and procedures. The Contractor must provide facilities and other support in conjunction with such appraisals as directed by the Contracting Officer or authorized designee.
- (g) The Contractor must provide assistance as required by the Contractor or authorized designee in the preparation of a DOE annual Summary Report of Work for Others Activities under the contract.

#### **H.27 WORK FOR OTHERS FUNDING AUTHORIZATION (APR 2005)**

Any uncollectible receivables resulting from the Contractor utilizing Contractor corporate funding for reimbursable work shall be the responsibility of the Contractor. The United States Government shall have no liability to the Contractor for the Contractor's uncollected receivables. The Contractor is permitted to provide advance payment utilizing Contractor corporate funds for reimbursable work to be performed by the contractor for a non-Federal entity in instances where advance payment from that entity is required and such advance cannot be obtained. The Contractor is also permitted to provide advance payment utilizing Contractor corporate funds to continue reimbursable work to be performed by the Contractor for a Federal entity when the term or the funds on a Federal interagency agreement have elapsed. The Contractor's utilization of Contractor corporate funds does not relieve the Contractor of its responsibility to comply with all requirements for Work for Others applicable to this contract.

#### **H.28 LOBBYING RESTRICTION (ENERGY AND WATER ACT 2005) (APR 2005)**

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 as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

#### **H.29 LOBBYING RESTRICTION (INTERIOR ACT 2005) (APR 2005)**

The Contractor agrees that none of the funds obligated on this award shall be made available for any activity or the publication or distribution of literature that in anyway tends to promote public support or opposition to any legislative proposal on which Congressional action is not complete. This restriction is in addition to those prescribed elsewhere in statute and regulation.

**H.30 CLARIFICATION FOR APPLICABILITY OF THE CLAUSES IN SECTION I ENTITLED “PREEXISTING CONDITIONS – ALTERNATE I” AND “PREEXISTING CONDITIONS – ALTERNATE II” (JUN 2005)**

These clauses are applicable in conjunction with the operation and maintenance of the Government-furnished facilities described in Section J, Attachment C. The clause entitled “Preexisting Conditions – Alternate I” is applicable to the Contractor if the incumbent contractor is selected for award. The clause entitled “Preexisting Conditions – Alternate II” is applicable to the Contractor if other than the incumbent contractor is selected for award.

**H.31 CLARIFICATION OF REFERENCES IN SECTION I, THE CLAUSE ENTITLED “PAYMENTS AND ADVANCES” (JUN 2005)**

- (a) In paragraph (a) of the clause entitled “Payments and Advances,” the reference to the “...Government’s Determination of Total Available Fee Amount Earned in accordance with the clause of this contract entitled “Total Available Fee: Base Fee Amount and Performance Amount...” should be to the “...determination of award fee amount earned in accordance with the clause in Section B entitled “Determination of Award Fee Earned.”
- (b) In paragraph (e)(2)(iv)(B) the reference to DEAR 970.5228-1, “Insurance – Litigation and Claims” should be to DEAR 952.231-71, “Insurance – Litigation and Claims.”

**H.32 CLARIFICATION FOR METHOD OF PAYMENT (JUN 2005)**

The clauses in Section I entitled “Allowable Cost and Payment” and “Payments and Advances” address the method of payment to the Contractor for work performed under this contract. It is the Government’s intent to make payment in accordance with the procedures described in the clause entitled “Payments and Advances.”

**H.33 COMPLIANCE WITH FEDERAL INFORMATION PROCESSING STANDARD PUBLICATION 201 (FIPS Pub 201) (SEP 2005)**

This contract involves the acquisition of hardware, software, or services related to physical access to Federal premises or electronic authentication or access control to a Federal agency’s computer systems and electronic infrastructure. Any such hardware, software, or services delivered under this contract shall comply with FIPS Pub 201, and FIPS 201 shall take precedence over any conflicting performance requirement of this contract. Should the Contractor find that the statement of work or specifications of this contract do not conform to FIPS Pub 201, it shall notify the Contracting Officer of such nonconformance and shall act in accordance with instructions of the Contracting Officer

This clause shall flow down to subcontractors at any tier.

For Clauses H. 34 and H.35  
see M005

For Clause H. 36 see M010  
and A011

For Clause H. 37 see M016

For Clause H.38 see M045