

**Section H** **Special Contract Requirements**

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H.1 Key Personnel

- a. The personnel listed below or elsewhere in this contract are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel, the Contractor must: (1) Notify the Contracting Officer (CO) reasonably in advance; (2) submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this Contract; and (3) obtain the Contracting Officer's written approval.
- b. The list of personnel may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel.
- c. Key personnel for the provision of services are as follows:

<u>Name</u>	<u>Title</u>
_____	_____
_____	_____
_____	_____
_____	_____

H.2 Assignment of This Contract

DOE reserves the right to assign this Contract to any Federal agency or onsite contractor for contract administration. The rights and obligations of the Contractor shall not be adversely affected in any material respect as a result of such assignment. Written notice will be provided to the Contractor if an assignment is made. No claim for additional costs will be considered by reason of any assignment under this provision.

H.3 Workers' Compensation Litigation and Claims Support

- a. Whenever necessary to effectively administer workers' compensation claims under this Contract, the Contractor may, with the prior written authorization of the Contracting Officer or COR, and shall, upon the written request of the Government, initiate and/or defend litigation against third parties, including proceedings before administrative agencies, in connection with workers' compensation claims administered under this contract.
- b. The Contractor shall give the Contracting Officer immediate notice in writing of any action, including any proceeding before any administrative agency, filed regarding any workers' compensation claim administered by the Contractor in the performance of this Contract. Except as otherwise directed by the Contracting Officer, in writing, the Contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the Contractor with respect to such action.

- c. If any workers' compensation suit or action is filed or any claim is made, the Contractor shall:
1. Immediately notify the Contracting Officer and promptly furnish copies of all pertinent papers received;
  2. Authorize Government representatives to collaborate with, (i) in-house or approved outside counsel in settling or defending the claim, or (ii) counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed exceeds the amount of coverage, unless precluded by the terms of the insurance contract; and,
  3. Authorize Government representatives to settle the claim or to defend or represent the contractor in and/or to take charge of any litigation, if required by the DOE, when the liability is not insured or covered by bond. In any action against more than one DOE contractor, the DOE may require the contractor to be represented by common counsel. Counsel for the contractor may, at the contractor's expense, be associated with the DOE representatives in any such claim or litigation.
- d. Prior to participating in settlement discussions or alternative dispute resolution regarding any workers' compensation litigation arising under this Contract, the Contractor shall seek written approval by the COR. The Contractor shall provide justification for any proposed settlement or alternative dispute resolution to the COR in sufficient time prior to the proposed settlement discussions or alternative dispute resolution to allow for review and approval by DOE-RL legal counsel.
- e. The Contractor shall submit to the Contracting Officer, to the extent and in the manner directed by the Contracting Officer, any bonds and insurance maintained by the Contractor in connection with the performance of this contract.
- f. The Contractor shall submit an engagement letter to retain legal counsel expected to provide \$25,000 or more in legal services for a particular matter and submit a copy of correspondence relating to the required elements below, including correspondence from retained legal counsel addressing any of the issues/required elements to the Contracting Officer prior to initiating any expense. The engagement letter must require retained legal counsel to assist the contractor in complying with this clause. The required elements are as follows:
1. A process for review and documented approval of all billing by a contractor representative, including the timing and scope of billing reviews.
  2. A statement that provision of records to the Government is not intended to constitute a waiver of any applicable legal privilege, protection, or immunity with respect to disclosure of these records to third parties. (An exemption for specific records may be obtained where contractors can demonstrate that a particular situation may provide grounds for a waiver.)
  3. A requirement that the Contractor, DOE, and the General Accounting Office, have the right upon request, at reasonable times and locations, to inspect, copy, and audit all records documenting billable fees and costs.

4. A statement that all records must be retained for a period of three (3) years after the final payment.

5. The Contractor shall obtain the following information from the retained counsel:

a. Identification of all attorneys and staff who are assigned to the matter and the rate and basis of their compensation (i.e., hourly rates, fixed fees, contingency arrangement) and a process for obtaining approval of temporary adjustments in staffing levels or identified attorneys.

b. An initial assessment of the matter, along with a commitment to provide updates as necessary.

c. A description of billing procedures, including frequency of billing and billing statement format.

6. The Contractor shall obtain retained counsel's agreement to the following:

a. That in significant matters a staffing and resource plan for the conduct of the matter must be submitted by the retained legal counsel to the Contractor.

b. That alternative dispute resolution must be considered at as early a stage as possible where litigation is involved.

c. That retained counsel must comply with the cost guidelines included in this clause.

d. That professional conflicts of interest issues must be identified and addressed promptly.

g. All costs determined to be allowable are reimbursable for actual costs only, with no overhead or surcharge adjustments. All costs covered by this clause are subject to audit by the DOE, its designated representative or the General Accounting Office. The standard for cost reasonableness determinations, one of the criteria for an allowability determination, is contained in the Federal Acquisition Regulation (FAR) 31.201–3. Travel and related expenses must at a minimum comply with the restrictions set forth in FAR 31.205–46 to be reimbursable. The FAR in full text is available at: <http://farsite.hill.af.mil/>.

h. The following categories of costs are unallowable and the Contractor shall not be reimbursed:

1. Specific categories of unallowable costs are contained in the cost principles at FAR Part 31 and Department of Energy Acquisition Regulation (DEAR) Part 931. See also 41 U.S.C. 256(e). The DEAR in full text is available at: <http://farsite.hill.af.mil/>.

2. Costs incurred for entertainment or alcoholic beverages. See FAR 31.205–14 and 31.205–51 and 41 U.S.C. 256(e).

3. Costs that are customarily or already included in billed hourly rates are not separately reimbursable.

4. Interest charges that a contractor incurs on any outstanding (unpaid) bills from retained legal counsel are not reimbursable.

5. Costs for which the Contractor has failed to insure or to maintain insurance as required by law, this Contract, or by written direction of the Contracting Officer.

i. Fees are determined to be unreasonable as follows:

1. Whether the lowest reasonably achievable fees or rates (including any currently available or negotiable discounts) were obtained from retained legal counsel;
2. Whether lower rates from other firms providing comparable services were available;
3. Whether alternative rate structures such as flat, contingent, and other innovative proposals, were considered;
4. The complexity of the legal matter and the expertise of the law firm in this area; and
5. The factors listed in the Legal Management Plan.

i. All invoices for legal services provided pursuant to this Contract shall be submitted to the COR for review and approval by the COR and DOE-RL legal counsel prior to payment.

j. A legal management plan must be delivered to the Contracting Officer within 60 days following contract award (reference clause F.3). The plan is subject to the Contracting Officer's approval and will become Attachment J.4 to Section J. The approved plan must include the following items:

1. A description of the legal matters that may necessitate handling by retained legal counsel.
2. A discussion of the factors the Contractor must consider in determining whether to handle a particular matter utilizing retained legal counsel.
3. An outline of the factors the Contractor must consider in selecting retained legal counsel, including:
  - a. Competition;
  - b. Past performance and proficiency shown by previously retained counsel;
  - c. Particular expertise in a specific area of the law;
  - d. Familiarity with the Department's activity at the Hanford Site and the prevalent issues associated with facility history and current operations;
  - e. Location of retained legal counsel relative to:
    1. The Hanford Site,
    2. Any forum in which the matter will be processed, and
    3. Where a significant portion of the work will be performed;
  - f. Experience as an advocate in alternative dispute resolution procedures such as mediation;

- g. Actual or potential conflicts of interest;
- h. The means and rate of compensation (*e.g.*, hourly billing, fixed fee, blended fees, etc.), and
- i. A description of:
  - 1. The system that the Contractor will use to review each case to determine whether and when alternative dispute resolution is appropriate;
  - 2. The role of in house counsel in cost management;
  - 3. The contractor's process for review and approval of invoices from outside law firms or consultants;
  - 4. The Contractor's strategy for interaction with, and supervision of, retained legal counsel;
  - 5. How appropriate interaction with the Contracting Officer and DOE/RL counsel will be ensured; and,
  - 6. The Contractor's corporate approach to legal decision making.
- j. Costs for the following require specific justification or advance written approval from the contracting officer to be considered for reimbursement:
  - 1. Computers or general application software, or non-routine computerized databases specifically created for a particular matter;
  - 2. Charges for materials or non-attorney services exceeding \$5,000;
  - 3. Secretarial and support services, word processing, or temporary support personnel;
  - 4. Attendance by more than one person at a deposition, court hearing, interview or meeting;
  - 5. Expert witnesses and consultants;
  - 6. Trade publications, books, treatises, background materials, and other similar documents;
  - 7. Professional or educational seminars and conferences;
  - 8. Preparation of bills or time spent responding to questions about bills from either the Department or the contractor;
  - 9. Food and beverages when the attorney or consultant is not on travel status and away from the home office; and
  - 10. Pro hac vice admissions.
- k. Invoice format:

*Contractor Litigation and Legal Costs, Model Bill Certification and Format*

1. Certification. Bills or invoices should contain a certification signed by a representative of the retained legal counsel to the effect that:

“Under penalty of law, [the representative] acknowledges the expectation that the bill will be paid by the contractor and that the contractor will be reimbursed by the Federal Government through the U.S. Department of Energy, and, based on personal knowledge and a good faith belief, certifies that the bill is truthful and accurate, and that the services and charges set forth herein comply with the terms of engagement and the policies set forth in the Department of Energy's regulation and guidance on contractor legal management requirements, and that the costs and charges set forth herein are necessary.”

2. Model Bill Format

FOR FEES					
Date of Service	Description of Service	Name or Initials of Attorney	Approved Rate	Time Charged	Amount (Rate * Time)
See Note 1					

FOR DISBURSEMENTS		
Date	Description of Disbursement	Amount
See Note 2		

Note 1—Description of Service:

All fees must be itemized and described in sufficient detail and specificity to reflect the purpose and nature of the work performed (*e.g.*, subject matter researched or discussed; names of participants of calls/meetings; type of documents reviewed).

Note 2—Description of Disbursement:

Description should be in sufficient detail to determine that the disbursement expense was in accordance with all applicable Department policies on reimbursement of contractor legal costs and the terms of engagement between the contractor and the retained legal counsel. The date the expense was incurred or disbursed should be listed rather than the date the expense was processed. The following should be itemized: copy charge (*i.e.*, number of pages times a maximum of 10 cents per page); fax charges (date, phone number and actual amount); overnight delivery (date and amount); electronic research (date and amount); extraordinary postage (*i.e.*, bulk or certified mail); court reporters; expert witness fees; filing fees; outside copying or binding charges; temporary help (assuming prior approval).

Note 3—Receipts:

Receipts for all expenses equal to or above \$75 must be attached.

H.4 Claim Administration Payments

The Contractor shall make payments from a letter of credit to administer the workers' compensation claims. Examples could include payments for time loss, independent medical examinations, permanent partial disability awards, outside counsel, vocational rehabilitation consultation, etc. The Contractor will not be required to provide funds to cover these payments. If, in the Contractor's judgment, the total amount of payments that will be disbursed from the account within the next 30 days will exceed the total funds available, the Contractor shall notify the Contracting Officer in writing. In no case will the Contractor issue checks in excess of the funds available.

#### H.5 Interface with the Hanford Site Occupational Medical Services Provider

The Occupational Medical Services provider for the Hanford Site may assist with case management services, nursing, vocational rehabilitation, work hardening, physical examinations, return-to-work determinations, first aid, and other occupational medical services. The occupational medical services provider may serve as the medical liaison between the Contractor, the employee, the employee's personal physician and the employer.

DOE directives and Orders require employees who experience lost time injuries or illnesses to receive a medical clearance evaluation through the occupational medical services provider prior to their return to work.

#### H.6 Certifications and Other Statements of the Offeror

The Representations, Certifications, and Other Statements of the offeror submitted with the offer for this contract are, by reference, hereby incorporated in and made a part of this contract.

#### H.7 Fines, Penalties and Erroneous Payments

a. In the event DOE is assessed a fine or penalty by the State of Washington pursuant to the Revised Code of Washington (RCW) Chapter 51.48, and DOE determines that the penalty was assessed because of action or inaction on the part of the Contractor, the Contractor shall be liable to DOE for the penalty amount.

b. The Contractor shall be responsible and held liable for erroneous payments and overpayment caused by the Contractor. The Contractor will also be responsible and held liable if it causes DOE to make erroneous payments or overpayments.

c. The Contractor shall be responsible for any fines or penalties imposed by WSDL&I or any other entity resulting from Contractor's failure to provide timely reports, make timely payments, or any other failure of the Contractor to comply with the terms of this contract.

d. The Contractor shall off-set the amount of fines, penalties and erroneous payments against any amounts due. If there are no outstanding invoices, the Contractor shall reimburse DOE for the amount of the penalty. DOE will not reimburse the Contractor for fines or penalties imposed against the Contractor.

#### H.8 Workers' Compensation Claims For Conditions Related to Chronic Beryllium Disease of Beryllium Sensitivity



In order to clarify the treatment of workers' claims that are for Conditions purportedly related to Chronic Beryllium Disease (CBD) or Beryllium Sensitivity, the following guidelines are provided:

a. Definitions

1. Valid Claim: For the purposes of this clause, a valid (workers' compensation) claim is identified as a condition that has been:

- I. Diagnosed based upon objective medical evidence,
- II. Determined related to employment, on a more-probable-than-not basis, and
- III. Attested-to by signature from a licensed physician

Diagnostic testing for all beryllium exposure claims will be provided at either Harborview Hospital in Seattle, Washington or at National Jewish hospital in Denver, Colorado (or at other locations deemed acceptable by RL/ORP).

Expenses associated with travel to Harborview or National Jewish for the purpose of diagnosing Beryllium Sensitivity or Chronic Beryllium Disease and surveillance examinations of either condition will be paid; based on the L&I allowable rates. All other travel expenses will be paid in accordance with RCW Title 51.

b. Application Guidelines

1. For workers with previously-validated Beryllium Sensitivity:

It is the opinion of medical experts that individuals diagnosed with Beryllium Sensitivity do not suffer any symptoms and no treatment is required other than surveillance exams on an annual basis or as specified by a physician. Therefore, the Contractor shall not authorize payment of any treatment that is submitted as related to Beryllium Sensitivity condition, except for annual surveillance examinations.

2. For workers with previously-validated Chronic Beryllium Disease (CBD) Claims:

According to medical experts, Chronic Beryllium Disease usually originates in the lungs. Research has found that people with Chronic Beryllium Disease often suffer from a variety of other, non-pulmonary illnesses, believed to be caused by CBD.

Accordingly, the Contractor shall accept all workers' compensation claims for conditions diagnosed as a manifestation of CBD when such claims are based upon the diagnosis of a physician who specializes in diagnosing and treating CBD, consistent with the criteria set forth in subsection (a.1) above. In such cases, the Contractor is authorized to rely solely upon the diagnosis provided by such physician to support the diagnosis and relationship.

3. Workers without previously-validated CBD or Beryllium Sensitivity Claims:

The Contractor shall not authorize/approve CBD or Beryllium Sensitivity related claim that does not meet with the Valid Claim requirements of subsection (a.1) above.