

**SECTION H**

**SPECIAL CONTRACT REQUIREMENTS**

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**SECTION H**

**SPECIAL CONTRACT REQUIREMENTS**

**H.1 TECHNICAL DIRECTION**

- a. Performance of the work under this contract shall be subject to the technical direction of DOE Contracting Officer's Representative (COR). The term "technical direction" is defined to include, without limitation:
  1. Provision of written information to the Contractor that assists in the interpretation of drawings, specifications or technical portions of the work description.
  2. Review and, where required by the contract, approval of technical reports, drawings, specifications and technical information to be delivered by the Contractor to the Government under the contract.
- b. Technical direction must be within the scope of work stated in the contract. The COR does not have the authority to, and may not, issue any technical direction which;
  1. Constitutes an assignment of additional work outside the Statement of Work.
  2. Constitutes a change as defined in the contract clause entitled "Changes;"
  3. In any manner causes an increase or decrease in the total estimated contract cost, the fee (if any), or the time required for contract performance.
  4. Changes any of the expressed terms, conditions or specifications of the contract;  
or
  5. Interferes with the Contractor's right to perform the terms and conditions of the contract.
- c. All technical direction shall be issued in writing by the COR.

- d. The Contractor shall proceed promptly with the performance of technical direction duly issued by the COR in the manner prescribed by this clause and within its authority under the provisions of this clause. If, in the opinion of the Contractor, any instruction or direction by the COR falls within one of the categories defined in b.1 through b.5 above, the Contractor shall not proceed but shall notify the Contracting Officer in writing within five (5) working days after receipt of any such instruction or direction and shall request the Contracting Officer to modify the contract accordingly. Upon receiving the notification from the Contractor, the Contracting Officer shall:
  1. Advise the Contractor in writing within thirty (30) days after receipt of the Contractor's letter that the technical direction is within the scope of the contract effort and does not constitute a change under the "Changes" clause of the contract;
  2. Advise the Contractor in writing within a reasonable time that the Government will issue a written change order, or
  3. Withdraw the technical direction.
- e. A failure of the Contractor and Contracting Officer to agree that the technical direction is within the scope of the contract, or a failure to agree upon the contract action to be taken with respect thereto shall be subject to the provisions of the clause entitled "Disputes--Alternate I."

## **H.2 MODIFICATION AUTHORITY**

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 SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN**

The Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan submitted by the Contractor and approved by the Contracting Officer (via contract award) is incorporated into this contract as Section J, Attachment J-O. Required annual Plans and any revisions thereto shall be

approved by the Contracting Officer and incorporated into the contract by a separate contract modification.

**H.4 REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF THE OFFEROR**

The Representations, Certifications, and Other Statements of the Offeror, dated 6/14/99, for this contract are, by reference, hereby incorporated in and made a part of this contract.

**H.5 PERFORMANCE GUARANTEE AGREEMENT**

The Contractor's parent organization(s) has provided a Performance Guarantee Agreement in a manner and form acceptable to the Contracting Officer assuring the performance, duties, and responsibilities of the Contractor shall be satisfactorily fulfilled. The Performance Guarantee Agreement is set forth in Section J, Attachment J-N.

**H.6 PUBLIC RELEASE OF INFORMATION**

- (a) Contractors will be responsible for developing, planning and coordinating proactive approaches to dissemination of timely information regarding DOE unclassified activities. This will be accomplished through coordination with DOE. Proactive communications or public affairs programs will include or make use of a variety of tools, among them open houses, newsletters, press releases and/or conferences, audio/visual presentations, speeches, forums, and tours. The responsibility will be carried out in such a manner that the public, whether it is the media, citizen's groups, private citizens or local, state or Federal Government officials, has a clear understanding of DOE activities at the INEEL.
- (b) Contractors will be responsible for following established DOE procedures for clearances on all oral, written and audio/visual informational material prepared for public use.

**H.7 PRIVACY ACT SYSTEMS OF RECORDS**

The Contractor shall design, develop, or operate the following systems of records on individuals to accomplish an agency function pursuant to the clause in Section I entitled "Privacy Act."

<u>DOE System Number</u>	<u>Title</u>
DOE-05 Employees	Personnel Records of Former Contractor

DOE-15	Payroll and Pay Related Data for Employees of Terminated Contractors
DOE-33	Personnel Medical Records
DOE-35	Personnel Radiation Exposure Records
DOE-38	Occupational and Industrial Accident Records
DOE-40	Contractor Insurance Claims
DOE-43	Personnel Security Clearance Files
DOE-51	Employee and Visitor Access Control Records

The above list shall be revised from time to time by mutual agreement between the Contractor and the Contracting Officer as may be necessary to keep it current. Such changes need not be formally incorporated before the annual contract update modification, but shall have the same effect as if actually listed above for the purpose of satisfying the listing requirement contained in paragraph (a)(1) of the clause in section I entitled "Privacy Act."

#### **H.8 SOURCE AND SPECIAL NUCLEAR MATERIALS**

The Contractor shall comply with 10 CFR 71 and 10 CFR 72 relative to the control of and accounting for source and special nuclear material (as those terms are defined in the Atomic Energy Act of 1954). The Contractor shall make such reports and permit such inspections as the NRC regulations may require with reference to source and special nuclear materials. The Contractor shall take all reasonable steps and precautions to protect such materials against theft and misappropriations and to preclude all losses of such materials.

#### **H.9 STOP-WORK AND SHUTDOWN AUTHORITY**

***NOTE: In comparison to FAR 52.242-15, Stop Work Order, contained in Section F, this clause allows DOE employees, designated by the Contracting Officer, the right to stop work due to environmental, safety, and health reasons. The clause at FAR 52.242-15 allows only the Contracting Officer to shutdown facilities and can be for reasons other than environmental, safety, and health.***

- a. Definition: Stop-Work - The suspension of a specific activity or activities by the Contracting Officer or authorized designee based on the determination or

observation of conditions which are immediately dangerous to the life or health of the workers, the public, or the environment.

- b. Authority: As contemplated by the clause in Section I of this contract entitled "INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION", the Contracting Officer or authorized designee may at any time during the performance of this contract shutdown facility operations or stop-work on specific activities of the contractor.
- c. The contractor shall insert a clause, modified appropriately to substitute contractor representatives for the Contracting Officer or authorized designee, in all onsite subcontracts containing the above-cited "INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION" clause.
- d. Any order to shutdown any facility operations or to stop work on any specific activities issued pursuant to this clause shall be limited by NRC requirements.

#### **H.10 CLASSIFIED INVENTIONS**

- (a) The contractor shall not file or cause to be filed on any invention or discovery conceived or first actually reduced to practice in the course of or under this contract in any country other than the United States, an application or registration for a patent without obtaining written approval of the Contracting Officer.
- (b) When filing a patent application in the United States on any invention or discovery conceived of or first actually reduced to practice in the course of or under this contract, the subject matter of which is classified for reasons of security, the contractor shall observe all applicable security regulations covering the transmission of classified subject matter. Then transmitting the patent application to the United States Patent and Trademark Office, the contractor shall by separate letter identify by agency and number, the contract or contracts that require security classification markings to be placed on the application.
- (c) The substance of this clause shall be included in subcontracts which cover or are likely to cover classified subject matter.

#### **H.11 PATENT INDEMNITY - SUBCONTRACTS**

Except as otherwise authorized by the Contracting Officer, the Contractor shall obtain indemnification of the Government and its officers, agents, and employees against liability, including costs, for infringement of Letters Patent (except Letters

Patent issued upon an application which is now or may hereafter be kept secret or otherwise withheld from issue by order of the Government) from Contractor's subcontractors for any contract work subcontracted on the terms and in accordance with the Federal Acquisition Regulations (FAR) as may be supplemented by the Department of Energy Acquisition Regulations (DEAR).

#### **H.12 AUTHORIZATION AND CONSENT IN COPYRIGHT (SPECIAL)**

In the case of suit or potential suit in copyrighted infringement, the Contractor may request authorization and consent in copyright from DOE. Programmatic necessity shall be a major consideration in grant of authorization and consent.

#### **H.13 PRESERVATION OF ANTIQUITIES, WILDLIFE, AND LAND AREAS**

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 or destroyed by such personnel. It shall be the duty of the Contractor to report the existence of any 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 must be protected.

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.14 EMPLOYEE CONCERNS PROGRAM PLAN**

The Contractor's Employee Concerns Program Plan describes the methodology that will be used to foster positive behavior change in managerial, supervisor and employee attitudes and will address employee concerns in an environment of security and mutual trust. The Plan acknowledges the presence of NRC-licensed facilities. The Contractor shall implement all aspects of its Employee Concerns Program Plan.

#### **H.15 BONDS AND INSURANCE**

- (a) At all times during contract performance, the Contractor shall maintain insurance coverage required by law. In addition, the Contractor shall obtain any performance and payment bonds required by law or this contract underwritten by sureties acceptable to the Government. The Contractor shall submit to the Contracting Officer certificates of all required insurance and copies of all required bonds. Such evidence of insurance provided to the

Contracting Officer is solely intended to demonstrate the Contractor's compliance with this clause and is not intended to enlarge or modify the nature of the indemnity nor the limits of liability set forth in this contract.

- (b) Except for Workers Compensation and Employers Liability, required insurance policies shall name the DOE and the INEEL site M&O contractor(s) as additional insured parties (the INEEL site M&O contractor(s) shall be named as an additional insured party for Phases II and III only), and shall waive any subrogation rights against the Government, the INEEL site M&O contractor(s) (the waiver as to the INEEL site M&O contractor(s) shall be required for Phases II and III only), and their agents, employees and assigns. Required insurance shall include coverage for claims made within three (3) years after the completion of contract performance where the acts or omissions giving rise to the claims occurred during contract performance. The Contractor is responsible for any insurance deductibles or co-payments. On a case-by-case basis, the additional insured requirement described in this subparagraph shall not apply in the event the Contractor can establish to the reasonable satisfaction of the Contracting Officer that such coverage is not available through the commercial insurance industry.

#### **H.16 APPLICABLE DOE REQUIREMENTS**

Section J, Attachment J-J contains a list of DOE requirements that form a part of this contract, and may require action on the part of the contractor to implement. The complete set of requirements for this project will be dictated by the contractor's specific approach. It is incumbent upon the contractor to identify all necessary requirements and ensure their implementation. In some cases, the requirements specified in Attachment J-J may duplicate those requirements levied by other regulations or regulatory authorities. It is the intent of DOE, in conjunction with the contractor, to eliminate duplicative and unnecessary requirements. All requirements set forth in Attachment J-J shall be limited by NRC requirements.

#### **H.17 SERVICE CONTRACT ACT**

The Service Contract Act in accordance with 41 U.S.C. 351-358 applies to phase III of this Contract.

#### **H.18 SECURITY REQUIREMENTS**

- a. Security Clearance

The Contractor's personnel performing construction and on-site services under this Contract shall have a DOE "Building Access Only (BAO)" clearance. Approximately three (3) weeks are required to process a BAO clearance. The Contractor shall obtain the necessary forms from DOE Security.

b. INEEL Access Control and Badging

- (1) All personnel requesting access to the INEEL must be 18 years or older, a U.S. citizen, and will be required to report and obtain a badge from the Security Office located at the main access control point on East Portland Avenue.
- (2) In order to have a photo BAO badge access to the INEEL, employees must have successfully passed a suitability for employment check. Personnel investigations shall include a credit check, verification within the last five years of a high school education or degree/diploma from an institution of higher learning, contacts with listed personal references, contacts with listed employers for the past three years, and local law enforcement checks. In addition, any military experience shall be included in the investigation. The employee's job qualifications and suitability must be established before the employee reports to the INEEL and is issued a photo badge and a request is made to DOE for a security clearance. Those personnel who do not pass the suitability check will be denied access to INEEL facilities.
- (3) Drivers making deliveries must be 18 years or older and have a valid picture identification.

c. INEEL Access Control Points and Procedure

- (1) Specific controls are established at the INEEL that govern personnel access. Four guard stations (access control points) control entrance to the INEEL. The control points are:
  - (a) East Portland between Highway 20/26 and Jefferson Boulevard. This is the primary entrance to the INEEL.
  - (b.) Lincoln Boulevard between TAN and NRF, located immediately south of the junction with U. S. Highway 88.
  - (c) Taylor Boulevard, located approximately 1.3 miles from the entrance to ANL-West at U. S. Highway 20.
  - (d) North Van Buren, located approximately 0.3 miles north of the junction with U. S. Highway 20/26.
- (2) If an occupant does not have a valid INEEL badge, he will be directed to the Security Office badging facility for issuance of a badge. If the individual has forgotten his/her badge, the individual

will be directed to the administrative facility and will be issued a temporary badge.

- d. **Foreign Travel.** All current or former employees who possess a current access authorization, or have had an access authorization with-in the last five years, shall report foreign travel when they travel on; (i) official business to any country to discuss a sensitive topic, (ii) travel on official business to a sensitive country as defined in DOE order 1500.3, or (iii) travel for personal reasons to a sensitive country. Such travel shall be reported to Security.
- e. **Control and Surrender of Badges**
  - (1) The Contractor shall ensure that requests for badge transfers are properly executed during the course of work on the contract and that all badges are surrendered upon completion of work on the contract as follows:
    - (a) If a construction craft employee requires permanent transfer from the contract/subcontract to another, under the same firm, the Contractor shall notify Security section of this change by providing the new contract/subcontract number and the duration of work under the new contract/subcontract within 24 hours of the transfer.
    - (b) Upon completion of a construction craft employee's work under the Contract, and unless there is a transfer as stated above, the Contractor shall issue the employee an exit pass and ensure that the badge is surrendered along with signed forms, "Contractor Termination Agreement" and "DOE Termination Statement" the day of the employee's termination. The badge may be surrendered at the main security office on East Portland. The construction craft employee upon exiting through one of the access control points shall surrender the exit pass.
- f. **Illegal Drugs or Controlled Substances**
  - (1) All Contractor employees (including lower-tiers and vendors) who become aware of or have knowledge of the illegal use or possession of drugs or controlled substances, by any individual, have the responsibility to immediately report that information to their supervisor/superintendent/manager. The Contractor shall immediately report this information to DOE.
  - (2) The Contractor shall immediately prevent the implicated individual(s) access to classified matter and or remove the

individual(s) from any security controlled area (INTEC, TRA, SMC). If the implicated individual(s) cannot immediately and clearly establish that the drug or controlled substance in question was legally obtained or used, such as proof it was prescribed or administered by a licensed physician or purchased legally over the counter, the Contractor shall escort the individual(s) to the Security Office at the Main Gate. When the individual(s) arrive at the Security Office their access badge(s) will be confiscated and the individual(s) will be informed of what further action will be taken.

- (3) A controlled substance includes, but is not limited to, the following five basic categories:
- (a) Central Nervous System (CNS) Stimulants. Consist of three basic categories of CNS Stimulants: amphetamines, methamphetamine, and cocaine.
  - (b) Central Nervous System (CNS) Depressants. Consist of three basic categories: barbiturates, methaqualone, and tranquilizers.
  - (c) Narcotics/Opiates. Consists of CNS depressants with the additional characteristic of being a powerful analgesic or painkiller. Examples include Codeine, Demerol, Dialaudid, Methadone, Morphine, Opium, Percodan, and Heroin.
  - (d) Hallucinogens. Consist of four major types: LSD, Psilocybin, Mescaline (Peyote), and PCP.
  - (e) Cannabis. Consists of Marijuana, Hashish, and Hashish Oil.
- (4) Drug Free Work Place/Incumbent Employee screening based on reasonable suspicion/accident/incident. DOE reserves the right to require a Urine Drug Screen or a Blood Alcohol screen based on:
- (a) Reasonable suspicion of illegal substance use or abuse of legal substances.
  - (b) Direct involvement in an accident or incident resulting in personal injury, death, or property damage.

**g. Controlled Commodities**

The introduction of certain controlled commodities and/or activities is prohibited. Included in this category are firearms, alcoholic beverages,

narcotics, explosives, domestic animals and livestock. All personnel and vehicles entering and leaving the INEEL are subject to property checks conducted by INEEL Security personnel. The INEEL is "CLOSED" to all hunting and fishing. Air flights over the INEEL for any reason are restricted under Federal Aviation Agency rules and requirements.

## **H.19 DECONTAMINATION AND DECOMMISSIONING**

The Department Of Energy will maintain responsibility for future facility decontamination and decommissioning when they are no longer useful. The Government, however, may exercise the option to require the Contractor to decontaminate and decommission the facilities. If the Government exercises this option, an equitable adjustment under the Changes Clause will be negotiated.

## **H.20 INEEL SITE WORK HOURS**

Normal INEEL workdays are 7:00 a.m. to 5:30 p.m., Monday through Thursday (4-10 shift). Accommodations are limited on Friday through Sunday with no cafeteria services. The Contractor must abide by the INEL Site Stabilization Agreement, Footnotes of Interpretations and Clarification, during the construction phase for rules and regulations related to a 4-10 shift.

## **H.21 OVERTIME NOTIFICATION**

The Contractor must notify DOE 24 hours in advance for weekend work; 48 hours in advance for swing shift or graveyard shift work; and four hours in advance for short duration/intermittent overtime work, if the INTEC facilities personnel will be affected.

## **H.22 HOLIDAYS**

The following days are observed as holidays by the management and operating contractor:

- New Year's Day
- Memorial Day
- Independence Day
- Labor Day
- Thanksgiving
- Christmas Week (This is a five day period of time, to be determined each year by the management and operating contractor; usually one day before Christmas through January 2.)

These holidays may, or may not be, observed by the Construction Trades. See INEL Site Stabilization Agreement for further information.

Federal employees observe the following holidays:

New Year's Day  
Martin Luther King's Birthday  
Washington's Birthday  
Memorial Day  
Independence Day  
Labor Day  
Columbus Day  
Veteran's Day  
Thanksgiving Day  
Christmas Day

### **H.23 SUBCONTRACT LABOR LAW APPLICATION**

- (a) For all subcontracts for the manufacture or furnishing of supplies subject to the Walsh-Healey Public Contracts Act (41 U.S.C. 35-45), the Contractor shall follow those provisions, requirements, and stipulations required by the Act.
- (b) For all subcontracts, the principal purpose of which is to furnish services through the use of service employees, in excess of \$2,500.00, and which are subject to the Service Contract Act of 1965, as amended (41 U.S.C. 351, et seq.), the Contractor shall follow those provisions, requirements, and stipulations required by the Act.
- (c) For subcontracts relating to construction, refer to applicable construction labor clauses in Section I and the requirements of clause H.24.

### **H.24 RESPONSIBILITY FOR EXISTING CONTRACTUAL AND OTHER AGREEMENTS**

- (a) Certain work force commitments will apply to work performed by the Contractor under this contract. These commitments include (a) Public Law 85-804 determination (Site Stabilization Agreement), (b) Site Construction Jurisdictional Procedural Agreement, and (c) Work Force Restructuring Plans issued under Section 3161 of the Defense Authorization Act for Fiscal Year 1993. The Contractor will comply with these commitments.
- (b) DOE is obligated under Public Law 85-804 and Executive Order 10789, to ensure that all construction subcontracts administered by DOE-ID are performed as prescribed by the INEL Site Stabilization Agreement.

Contractors and subcontractors at all tiers who are parties to agreement(s) for construction work performed on the INEEL, or who are parties to a national labor agreement for such construction work, will become signatory to the INEL Site Stabilization Agreement and the Site Construction Jurisdictional Procedural Agreement. This requirement applies to employees performing work under contracts or subcontracts administered by DOE-ID that are subject to the Davis Bacon Act, and is in addition to and will not relieve the Contractor of any obligation imposed by other clauses of this contract, including obligations under the Davis Bacon Act.

- (c) (1) Certain legal obligations are imposed upon DOE under Agreement No. DE-GMO7-96-ID-11209 - between the Department of Energy, Idaho Operations Office and the Paper, Allied-Industrial, Chemical & Energy Workers International Union (PACE), successor union to the Oil, Chemical and Atomic Workers International Union (OCAW) ("Agreement"). Before this Agreement is triggered, there must be a determination that five or more PACE represented Management and Operating ("M&O") contractor employees could be displaced as a result of this contract. DOE believes based upon current circumstances that the triggering mechanism will not be met during the primary SNF contract term. The basis for DOE's belief that there will not be any displaced M&O contractor employees as a result of this contract is the direction provided by the Idaho Operations Office to the current M&O contractor that prohibits, at any time prior to completion of treatment and storage services under the primary term of this SNF contract, the involuntary separation (except for cause) of any PACE-represented employees at the Idaho Nuclear Technology and Engineering Center (INTEC) holding the following job classifications: spent fuel handlers, radcon technicians, maintenance mechanics, drivers, heavy equipment operators, welders, and decontamination technicians (hereinafter referred to in this subsection as "displaced PACE-represented M&O contractor employees"). However, in the event that there are any displaced PACE-represented M&O contractor employees as a result of this contract and the Contractor must supplement its existing work force for the operations phase, DOE will require the contractor to comply with the hiring preferences and wage and benefit continuity provisions contained in the "Solicitation" section of the Agreement.
- (2) If a change in circumstances leads to a determination that the Agreement does apply during the primary SNF contract term or that there are any displaced PACE-represented M&O contractor employees as a result of this contract and the Contractor must supplement its work force for the operations phase of the primary SNF contract term, the Contractor will receive written direction from the Contracting Officer to fully comply with the Agreement or to comply with the additional commitment set forth

in subsection (1), which ever applies. Compliance by the Contractor will, to the extent consistent with the Agreement, law, and the terms of any applicable contract or collective bargaining agreement include the following: (a) offers of employment and qualification training for displaced PACE-represented M&O contractor employees in the event the Contractor must supplement its existing work force; (b) for displaced PACE-represented M&O contractor employees, payment of equivalent base wages and comparable benefits for the first year of employment with the Contractor, and beginning with the second year of employment payment of at least prevailing wages and benefits reflected in the wage determination or applicable collective bargaining agreement; and (c) if the Agreement applies, efforts by the Contractor to structure the work so that displaced PACE-represented M&O contractor employees hired by the Contractor comprise a separate bargaining unit within the meaning of the National Labor Relations Act.

(3) If DOE gives consideration to exercising options provided under this SNF contract for additional work to be performed after the primary contract term and if there is a determination that the Agreement does apply to such additional work, DOE and the SNF Contractor will fully comply with the Agreement. As outlined in the Agreement, compliance will include preparation of a job function and skill analysis and an analysis of the economic advantages of performing the options under this SNF contract. In such circumstances, the Contractor will receive written direction from the Contracting Officer to fully comply with the Agreement. Compliance by the Contractor will, to the extent consistent with the Agreement, law, and the terms of any applicable contract or collective bargaining agreement include the following: (a) offers of employment and qualification training for displaced PACE-represented M&O contractor employees in the event the Contractor must supplement its existing work force; (b) for displaced PACE-represented M&O contractor employees, payment of equivalent base wages and comparable benefits for the first year of employment with the Contractor, and beginning with the second year of employment payment of at least prevailing wages and benefits reflected in the wage determination or applicable collective bargaining agreement; and (c) efforts by the Contractor to structure the option work so that displaced PACE-represented M&O contractor employees hired by the Contractor comprise a separate bargaining unit within the meaning of the National Labor Relations Act.

(4) Any pricing impacts to the Contractor associated with compliance with written direction issued by the Contracting Officer pursuant to this clause H.24(c) will be addressed by application of the contract clause entitled "Changes – Fixed Price."

(5) Subparagraph (3) above may also apply if DOE exercises the option to have the Contractor perform decontamination and decommissioning services under Clause H.19, but only if DOE determines that work is not subject to Davis-Bacon Act requirements.

- (d) DOE is obligated under Section 3161 of the Defense Authorization Act for Fiscal Year 1993 (P.L. 102-484) to prepare work force restructuring plans which meet the objectives of Section 3161 and the concerns of affected stakeholders. The Contractor will comply with all final work force restructuring plans and restructuring plan implementation procedures issued by DOE, and any other commitments made by DOE regarding the INEEL work force.
- (e) The Contractor will develop a Human Resource/Labor Management Plan that establishes the Contractor's approach to achieving a fair and stable labor relations program that complies with all contract requirements, including those requirements imposed in this clause H.24. This plan must be submitted in accordance the deliverables required in Section J, Attachment J-K.

## **H.25 FACILITY AGREEMENT AND CONSENT ORDER**

The Idaho National Engineering and Environmental Laboratory is a facility as defined in Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9) and was listed on the National Priorities List ("NPL") on November 21, 1989. The U.S. Department of Energy, U.S. Environmental Protection Agency, and the State of Idaho entered into the Idaho National Engineering Laboratory Federal Facility Agreement and Consent Order (FFA/CO) effective December 9, 1991, documenting DOE's CERCLA response obligations. The FFA/CO has designated the area at which INTEC is located as Waste Area Group (WAG) 3. There are known releases and areas of contamination at the WAG 3 site. Although the land designated by DOE for siting the Contractor facilities under this contract is not believed to be contaminated, the potential exists to encounter subsurface contamination during construction excavation. In the event contamination is encountered, the Contractor shall take actions necessary for a safe shutdown and discontinue work at that location until further direction is received from DOE. DOE shall be immediately notified in the event that contamination is encountered.

## **H.26 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:

- (a) Regarding technical data and other intellectual property, DOE may take possession of all technical data, including proprietary data and data obtained from subcontractors, licensors, and licensees, necessary to operate the facility, subject to the Rights in Data clause of this contract, as well as the designs, operation manuals, flowcharts, software, etc., construction work in progress, completed facilities, equipment and other property and information necessary for performance of the work or operation of the facility. The Rights in Data - Facility clause includes protection for proprietary data.
- (b) In addition, the Contractor will take all necessary steps to assign permits, authorizations, and any licenses in any third party intellectual property for operations and closure of the facility to DOE or such other third party as DOE may designate.

#### **H.27 LIENS AND LOSSES**

- (a) For the purpose of this acquisition, facilities and equipment shall mean the Dry Transfer Facility (DTF) and the Independent Spent Fuel Storage Installation (ISFSI) to be constructed under this contract and all associated equipment, drawings, specifications, plans, technical data, procedures, and all NRC and other licenses and permits.
- (b) The contractor agrees to furnish the facilities equipment, and technical data, free and clear of all liens, claims, and encumbrances. The contractor agrees to hold DOE harmless from all liens, claims, or demands in connection with the facilities and equipment.
- (c) Except as otherwise provided in this contract,
  - 1. The contractor shall bear the risk of loss, destruction, non-maintenance, or damage to the facilities and equipment.
  - 2. The contractor shall bear all risk of loss, destruction or damage of rejected facilities and/or equipment.

#### **H.28 GOVERNMENT'S RIGHT TO TAKE TITLE**

- (a) The Government retains the option to take title to the dry transfer facility (DTF) and the Independent Spent Fuel Storage Installation (ISFSI) (including fixtures and all equipment associated with the DTF and ISFSI) in the event the contractor does not complete performance for any reason,

whether as the result of a termination for convenience, termination for default, or otherwise.

- (b) The contractor agrees to indemnify and hold DOE harmless from any costs, losses, claims, demands, suits, or liabilities of any kind whatsoever in connection with or arising out of any secured transactions or other loan transactions involving the Contractor.
- (c) Notwithstanding the above, the Government shall have the right to terminate this contract at anytime if the Government determines that termination is in its best interest. Should the Government elect to terminate this contract for any reason, the Contractor shall negotiate in good faith the costs it expects to incur in supporting the transfer of the NRC license to the Government.
- (d) Notwithstanding the above, the Government shall retain title to the spent nuclear fuel placed in dry storage by the Contractor. No action under this contract shall defeat such ownership or liability therefor.

#### **H.29 DEAR 952.235-70 KEY PERSONNEL (APR 1994)**

The personnel specified in an attachment to this contract are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified individuals to other programs, the Contractor shall notify the contracting officer reasonably in advance and 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 contracting officer: Provided, that the contracting officer may ratify in writing such diversion and such ratification shall constitute the consent of the contracting officer required by this clause. The attachment to this contract may be amended from time to time during the course of the contract to either add or delete personnel, as appropriate.

#### **H.30 COMMITMENT OF PUBLIC FUNDS**

The Contracting Officer is the only individual who can legally commit the Government to the expenditure of public funds in connection with the proposed acquisition. Any other commitment, either explicit or implied, is invalid. This means that any expenditure that is not authorized by the Contracting Officer is voluntary on the contractor's part, prohibited by law, and not recoverable from the Government by the Contractor.

In essence, your disregard of this clause will absolutely result in non-payment for work directed by any individual other than the Contracting Officer. You, the

Contractor, should ensure all of your employees are aware of the consequences of this clause.

### **H.31 APPORTIONMENT OF LIABILITY**

- (a) The Contractor shall reimburse and hold the Government and the INEEL site M&O contractor(s) harmless from the following claims, damages, fines, penalties, administrative and judicial orders, and costs, including litigation costs, counsel fees, judgments and settlements (hereafter "liabilities"):
- (1) Liabilities which the Contractor and/or an indemnitor have assumed in accordance with the terms of this contract;
  - (2) Liabilities for which the Contractor has failed to obtain or maintain required insurance in accordance with clause H.15 of this contract;
  - (3) Liabilities resulting from the denial of full or partial coverage or compensation by an insurer on a claim for damage or loss, except to the extent the proximate cause of the denied claim is an act or failure to act of a third party, the Government, the INEEL site M&O contractor(s), or their subcontractors, agents, or assigns (this provision does not affect or waive any claim the Government may have against the insurer);
  - (4) Liabilities caused by errors, omissions, or negligence related to the delivery of professional services by or to the Contractor (i.e., directors and officers liability and professional errors and omissions liability);
  - (5) Liabilities attributed to the Contractor's failure to comply with any statutory, common law, or regulatory requirements and or permits, including the existing INEEL site air permit, except to the extent the proximate cause of such liabilities is an act or failure to act of a third party, the Government, the INEEL site M&O contractor(s), or their subcontractors, agents, or assigns;
  - (6) Liabilities caused by willful misconduct, lack of good faith, or failure to exercise prudent business, technical, or ES&H (including radiological and nuclear safety) judgment on the part of any of the Contractor's directors, officers, managers, superintendents, or other agents or representatives of the Contractor who have supervision or direction over all or substantially all of the Contractor's operations under this contract, including the withholding of

information by fraud or concealment regarding a potential claim which would, in each case, otherwise be covered by required insurance under clause H.15 of this contract;

- (7) Liabilities asserted by the Contractor's subcontractors; suppliers; corporate parents, affiliates or assigns; lending institutions; debtors; or any other persons, lienholders, or entities, except to the extent the proximate cause of such liabilities is an act or failure to act of a third party, the Government, the INEEL site M&O contractor(s), or their subcontractors, agents, suppliers, or assigns.

- (b) Nothing in this clause is intended to impose upon the Contractor any liability for which it is indemnified under NRC licensure.

### **H.32 SITEWIDE PENSION PORTABILITY**

DOE is actively studying options in the design of the current site-wide INEEL defined benefit pension plans and defined contribution pension plans regarding portability, while protecting comparability for incumbent employees affected by initiatives such as privatization and outsourcing, to the extent practicable. The INEEL Management and Operating (M&O) contractor shall be responsible for the implementation and administration of any such plans. Whatever determinations are made in the context of the M&O contract regarding pension portability shall be applied to separated M&O employees hired by the Contractor as provided in that determination. If this occurs, an equitable adjustment to this contract will be negotiated.

### **H.33 AGE DISCRIMINATION IN EMPLOYMENT**

The Contractor shall not discriminate against any employee, applicant for employment, or former employee on the basis of age. The Contractor shall comply with the Age Discrimination in Employment Act, with any state or local legislation regarding discrimination based on age, and with all applicable regulations thereunder.

### **H.34 LEASE OF INEEL LAND FOR FACILITIES**

Government land at the INEEL shall be used for the location of the SNFDSP and shall be leased to the Contractor at the rate of \$1.00 per year. The Contractor shall not assign its interest in all or any portion of the leased land without the prior approval of the Contracting Officer. The SNFDSP site shall be located outside the current INTEC security fence. The SNFDSP site is bounded by East Perimeter Road on the West, Spruce Avenue on the North, Balsa Street on the East, and the

rail line on the South. An additional area of up to 10 acres is available for use as a laydown and parking area only during the construction phase. The Contractor shall restore this laydown and parking area to its pre-construction condition. This additional area is located North of Spruce Avenue and East of Balsa Street. Final siting of the facilities shall be subject to NRC requirements. See drawings 509143 and 055705 in Section J-G for site location.

### **H.35 REGULATORY CHANGES AFFECTING DESIGN, CONSTRUCTION AND OPERATION**

The Contractor shall design, construct, and operate the facilities required by this contract in accordance with current regulations. In the event there are changes in the regulations after contract award that impact the cost of design, construction or operation, the contractor shall be entitled to an equitable adjustment under the "Changes" clause of this contract. Any other changes, unless specifically directed by the Contracting Officer, shall not be subject to an equitable adjustment, including changes resulting in stricter enforcement of current regulations.