

**SPECIAL TERMS AND CONDITIONS FOR
COMMERCIAL PURCHASES
UNDER
U. S. DEPARTMENT OF ENERGY
PRIME CONTRACT NO. 89303321CEM000080**

**BATTELLE SAVANNAH RIVER ALLIANCE, LLC
SAVANNAH RIVER SITE
AIKEN, SC 29808**

Articles apply only if specified in the ordering document.

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1. **INTEGRATION OF ENVIRONMENT, SAFETY AND HEALTH INTO WORK PLANNING AND EXECUTION**

DEAR 970.5223-1

- A. For the purpose of this Article,
- (1) Safety encompasses environment, safety and health, including pollution prevention and waste minimization; and
 - (2) Employees include Subcontractor and subtier subcontractor employees.
- B. In performing work under this Subcontract, the Subcontractor and any subtier subcontractors, shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The Subcontractor shall exercise a degree of care commensurate with the work and the associated hazards. The Subcontractor shall ensure that management of environment, safety and health (“ES&H”) functions and activities becomes an integral, but visible part of the Subcontractor’s work planning and execution processes. The Subcontractor shall, in the performance of work, ensure that:
- (1) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those Subcontractor and subtier subcontractor employees managing or supervising employees performing work.
 - (2) Clear and unambiguous lines of authority and responsibility for ensuring ES&H are established and maintained at all organizational levels.
 - (3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities
 - (4) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.
 - (5) Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.
 - (6) Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.

- (7) The conditions and requirements to be satisfied for operations to be initiated and conducted are established and agreed-upon by BSRA and the Subcontractor. These agreed-upon conditions and requirements of the Subcontract are binding upon the Subcontractor. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work.
- C. Subcontractors and any subtier subcontractor, shall manage and perform work in accordance with Article 2 of these Special Terms and Conditions for Commercial Purchases or a documented Worker Protection Plan (“WPP”) that fulfills all conditions in paragraph B. of this Article to the degree specified in Article 3 or 4 Special Terms and Conditions for Commercial Purchases as indicated applicable to this Subcontract Documentation in the Subcontract shall describe how the Subcontractor will:
 - (1) Define the work to be performed;
 - (2) Identify and analyze hazards associated with the work;
 - (3) Develop and implement hazard controls;
 - (4) Perform work within controls; and
 - (5) Provide feedback on adequacy of controls and continue to improve safety management.
- D. The Subcontract shall describe how the Subcontractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to Subcontract requirements and funding limits while maintaining the integrity of the WPP. The Subcontract shall also describe how the Subcontractor will measure WPP effectiveness.
- E. The Subcontractor shall submit to the BSRA Procurement Representative documentation of its WPP for review and acceptance. The BSRA Procurement Representative will establish dates for submittal, discussions, and revisions to the WPP. The BSRA Procurement Representative will provide guidance on preparation, content, review, and acceptance of the WPP. On an annual basis, the Subcontractor shall review and update, for BSRA acceptance, its safety performance objectives, performance measures, and commitments consistent with, and in response to, Subcontract requirements, funding limits and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire WPP. Accordingly, the Subcontract shall be integrated with the Subcontractor’s business processes, as applicable to the scope of work contained in this Subcontract, for work planning, budgeting, authorization, execution, and change control.

- F. The Subcontractor and any subtier subcontractors, shall comply with, and assist BSRA in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives identified in the Article of this Subcontract entitled, DEAR 970.5204-2 on Laws, Regulations, and DOE Directives. The Subcontractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this Subcontract.
- G. The Subcontractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements including those specified in the Subcontract. If the Subcontractor fails to provide resolution or, if at any time, the Subcontractor'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 BSRA Procurement Representative may issue an order stopping work in whole or in part. Any stop work order issued by the BSRA Procurement Representative under this Article (or issued by the Subcontractor to a subtier subcontractor) shall be without prejudice to any other legal or contractual rights of BSRA. In the event that the BSRA Procurement Representative issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the BSRA Procurement Representative. The Subcontractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this Article.
- H. BSRA shall hold the Subcontractor responsible for compliance with the ES&H requirements applicable to this Subcontract, including performance of work by any subtier subcontractors. In utilizing the Focused Observation Checklists, Subcontractors are required to forward any self- identified safety deficiencies to the Subcontractor Technical Representative ("STR")/end user. The STR/end user will forward the deficiencies to BSRA Contractor Assurance for screening.

2. ENVIRONMENT, SAFETY, AND HEALTH COMPLIANCE - CATEGORY A

(Compliance by the Subcontractor with the requirements of this Article 2 of these Special Terms and Conditions for Commercial Purchases shall satisfy any/all requirements of Article 1 of these Special Terms and Conditions for Commercial Purchases, "Integration of Environment, Safety and Health Into Work Planning And Execution," applicable to the scope of work contained in this Subcontract.)

- A. The Subcontractor, and any subtier subcontractor, shall take all reasonable precautions in the performance of the work under this Subcontract to protect the ES&H of employees and members of the public. All work shall be performed to include subtier subcontracted work in compliance with all applicable BSRA/DOE environmental, safety, and health requirements, including DOE Regulation 10 CFR Part 851, "Worker Safety and Health Program", and orders, and procedures including related reporting requirements and all subsequent updates to Occupational Safety and Health Administration ("OSHA") and 10 CFR 851. Such

procedures provide authority to BSRA employees to call a “time out/stop work” when unsafe conditions are observed and/or employee actions are likely to cause injury to themselves, other personnel, or cause damage to SRS property. The Subcontractor shall ensure that its employees, including sub-tier subcontractor employees are aware of this authority, and also have similar “time out/stop work” authority when performing work under this Subcontract. The BSRA Procurement Representative shall notify the Subcontractor in writing of any noncompliance with the provisions of this Article and the corrective action to be taken. After receipt of such notice, the Subcontractor shall immediately take corrective action. In the event that the Subcontractor fails to take corrective action and comply with said BSRA/DOE regulations, requirements and procedures the BSRA Procurement Representative may, without prejudice to any other legal or contractual rights of BSRA, issue an order stopping work in whole or in part. An order authorizing the resumption of work may be issued at the discretion of the BSRA Procurement Representative. The Subcontractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this Article.

- B. Prior to the start of work under this Subcontract, the Subcontractor shall provide to the BSRA Procurement Representative a completed Prequalification Checklist for review and acceptance by the appropriate contractor’s organization(s). The Prequalification Checklist shall contain the following minimum requirements, as applicable:
- (1) letter acknowledging a corporate safety and health policy and confirmation of compliance with BSRA procedures. In addition, for any tasks identified in the statement of work as outside the scope of BSRA procedures, the Subcontractor shall provide to the BSRA Procurement Representative for BSRA review and acceptance any appropriate documentation, procedures or manuals containing task hazard reviews and safeguards to be implemented. Whenever a significant change or addition is made to such documentation, procedures or manuals, the Subcontractor shall re-submit the revised document to BSRA for review and acceptance. Examples of significant changes include any requirement deletions, additional scope added, total re-write or major revision. Additionally, the Subcontractor must submit annually to BSRA either an update to the documentation, procedures or manuals for acceptance or a letter stating that no changes are necessary in the current accepted documents.
 - (2) EMR & TRC Worksheet

- (3) Safety and Industrial Hygiene Representation: The Subcontractor shall designate required representation as specified in the Subcontract. The designation must include qualifications and duties.
- (4) Insurance Confirmation of EMR Rate
- (5) OSHA 300 Logs/Summaries
- (6) Focused Observation Checklists
- (7) Designated Local Medical Provider
- (8) Assigned Competent Person (ACP): The Subcontractor shall designate in writing an Assigned Competent Person (“ACP”), and alternates, who will be responsible for SRS perimeter barricade escort and safety orientation for non-badged material/equipment delivery personnel and other non-badged Subcontractor personnel seeking temporary badges in support of the Subcontractor’s work scope. The ACP shall be a responsible employee, cognizant of the Subcontract scope and all applicable ES&H requirements, including any focused observation safety checklists. The ACP shall furnish an advance copy of applicable focused observation safety checklists to any non-badged temporary personnel anticipating entry onto SRS, and shall meet entering personnel at the BSRA Badging Office, Building 703-46A when they report for temporary badging. The ACP and entering personnel shall review the scope of work to be performed and upon arrival at the work site review, complete and date any applicable focused observation safety checklist(s). For material/equipment deliveries, the ACP shall review any applicable focused observation safety checklists with delivery personnel, including specific safety measures required for loading/unloading in accordance with OSHA.

C. Equipment Safety

- (1) The Subcontractor shall ensure that major equipment used in the performance of work under this Subcontract is inspected, operated and maintained by qualified competent personnel. As confirmation, the Subcontractor shall complete Form PF-44, Major Equipment Declaration, and (copy available on the BSRA Internet Home Page) and provide one (1) copy to STR/End User, prior to placing any such equipment in service on the Savannah River Site (“SRS”). Additionally, prior to performing any activity involving the loading, unloading, and transporting of self-propelled medium or heavy duty equipment on the SRS, the Subcontractor shall complete the “Self-propelled Equipment Loading, Unloading & Transport Safety Review Checklist”, copy available on the

SRNL Home Page or from the Procurement Representative, and provide a copy to the STR/END USER.

D. Safety and Health Representative

- (1) The Subcontractor shall designate a safety and health professional or representative, as specified in the Subcontract. The designation must include the person's qualifications and duties. A designated Safety and Health Representative shall have a minimum of thirty (30) hours formal Safety and Health training in OSHA standards or one of the following certifications:
 - a. Occupational Hygiene and Safety Technician (OHST)
 - b. Construction Health and Safety Technician (CHST)
 - c. Safety Trained Supervisor (STS)
 - d. Safety Trained Supervisor Construction (STS-C)
 - e. Safety Management Specialist (SMS) and twelve (12) months experience in Safety & Health with an understanding of 29 CFR 1926 and 29 CFR 1910.

E. Site Reporting Requirements

- (1) The Subcontractor shall immediately notify the STR/END USER or BSRA Procurement Representative of any event/condition that may require reporting to DOE. Further, the Subcontractor shall cooperate with any BSRA or DOE critique, analysis, or investigation and complete necessary reports for such events/conditions. Events/conditions that require reporting to DOE are defined in DOE Manual 231.1-2 (DOE M 231.1-2) and can include (but are not limited to):
 - a. Operational emergencies,
 - b. Occupational injury or illness (including exposures to hazardous substances in excess of allowable limits) and near misses,
 - c. Any on—the-job injury where an employee is taken offsite for something other than observation. The notification requirement applies to any person who goes offsite for prompt medical treatment of any type. The mode of transportation (ambulance, personal vehicle, etc.) is not pertinent — any offsite transfers must be reported immediately,
 - d. Any violation of lockout/tagout controls where there are no credible barriers left between the worker, and the energy source regardless of whether or not there was an injury,

- e. Fires/explosions,
- f. Hazardous energy control failures,
- g. Operations shutdown directed by management for safety response,
- h. Environmental release of radioactive materials, hazardous substances, regulated pollutants, oil spills, etc.,
- i. Violation of Federal Motor Carrier Safety Regulations or Hazardous Material Regulations,
- j. Loss, damage, theft, or destruction to government property (including damage to ecological resources like wetlands, critical habitats, historical/archeological sites, etc.),
- k. Spread of radioactive contamination or loss of control of radioactive materials,
- l. Personnel radioactive contaminations or exposures, and
- m. Violations of procedures. Immediate notification is required of such events to ensure BSRA meets its commitment for thirty (30) minute notification to appropriate DOE authorities. The Subcontractor shall preserve conditions surrounding or associated with the event for continued investigation unless such actions interfere with establishing a safe condition. The Subcontractor and their employees shall not conceal nor destroy any information concerning noncompliance or potential noncompliance with the environment, safety and health requirements of this Subcontract.

3. ENVIRONMENT, SAFETY, AND HEALTH COMPLIANCE — CATEGORY B

(Compliance by the Subcontractor with the requirements of this Article 3 of these Special Terms and Conditions for Commercial Purchases shall satisfy any/all requirements of Article 1 of these Special Terms and Conditions for Commercial Purchases, "Integration of Environment, Safety and Health Into Work Planning And Execution", applicable to the scope of work contained in this Subcontract.)

- A. The Subcontractor and any subtier subcontractors shall take all reasonable precautions in the performance of the work under this Subcontract to protect the environment, safety and health of employees and members of the public, and shall comply with OSHA and all other applicable federal, state and local regulatory requirements, including new DOE Regulation 10 CFR 851, "Worker Safety and Health Program" which will apply to any work performed on the Savannah River Site ("SRS") and all subsequent updates to OSHA and 10 CFR The Subcontractor and any subtier subcontractor shall comply with site-specific ES&H requirements

when specified in the Subcontract. The BSRA Procurement Representative shall notify the Subcontractor in writing of any noncompliance with the provisions of this Article. After receipt of such notice, the Subcontractor shall immediately take corrective action. In the event that the Subcontractor fails to take corrective action and comply with said regulations and requirements, the BSRA Procurement Representative may, without prejudice to any other legal or contractual rights of BSRA, issue an order stopping work in whole or in part. An order authorizing the resumption of work may be issued at the discretion of the BSRA Procurement Representative. The Subcontractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this Article.

B. Prequalification Checklist. Prior to the start of work under this Subcontract, Subcontractor shall provide to BSRA's Procurement Representative a completed Prequalification Checklist for review and acceptance by the appropriate contractor's organization(s). The Prequalification Checklist shall contain the following minimum requirements, as applicable:

- (1) Worker Protection Plan Checklist
- (2) EMR &TRC Worksheet
- (3) Safety and Industrial Hygiene Representation: The Subcontractor shall designate required representation as specified in the Subcontract. The designation must include qualifications and duties.
- (4) Worker Protection Plan ("WPP") and Task Specific Plan ("TSP"): The Subcontractor shall possess and maintain a corporate WPP which implements the requirements applicable to the normal course of the Subcontractor's business. Prior to the start of work under this Subcontract, the Subcontractor shall provide to the BSRA Procurement Representative a copy of the WPP and sample Task Specific Plans ("TSP") for review and acceptance by the appropriate BSRA organization(s). Note: Subcontractor is responsible for conducting hazard analysis and documenting additional TSPs. Work under this Subcontract shall not commence until the WPP and TSPs have been accepted by BSRA. The Subcontractor shall provide a copy of the accepted WPP and TSP to any subtier subcontractor and shall ensure Subcontractor employee's performing work at the site have access to the WPP document accepted by BSRA, and other standards, controls and procedures including DOE worker protection publications applicable to the workplace. The Subcontractor's employees and the employees of any subtier subcontractors shall comply with the WPP and TSPs in the performance of the work under this Subcontract. The Subcontractor shall provide mechanisms to involve workers in the development of WPP goals,

objectives, and performance measures and in the identification and control of workplace hazards. Whenever a significant change or addition is made to the WPP, it shall be re-submitted to BSRA for review and acceptance. Examples of significant changes include any requirement deletions, additional scope added, total re-write or major revision. Additionally, the Subcontractor must submit annually to BSRA either an updated WPP for acceptance or a letter stating that no changes are necessary in the current accepted WPP.

- (5) Insurance Confirmation of EMR Rate
- (6) OSHA 300 Logs/Summaries
- (7) Focused Observation Checklists
- (8) Designated Local Medical Provider
- (9) Assigned Competent Person (ACP): The Subcontractor shall designate in writing an Assigned Competent Person ("ACP"), and alternates, who will be responsible for SRS perimeter barricade escort and safety orientation for non-badged material/equipment delivery personnel and other non-badged Subcontractor personnel seeking temporary badges in support of the Subcontractor's work scope. The ACP shall be a responsible employee, cognizant of the Subcontract scope and all applicable ES&H requirements, including any focused observation safety checklists. The ACP shall furnish an advance copy of applicable focused observation safety checklists to any non-badged temporary personnel anticipating entry onto SRS, and shall meet entering personnel at the BSRA Badging Office, Building 703-46A when they report for temporary badging. The ACP and entering personnel shall review the scope of work to be performed and upon arrival at the work site review, complete and date any applicable focused observation safety checklist(s). For material/equipment deliveries, the ACP shall review any applicable focused observation safety checklists with delivery personnel, including specific safety measures required for loading/unloading in accordance with OSHA.

C. Equipment Safety.

- (1) The Subcontractor shall ensure that major equipment used in the performance of work under this Subcontract is inspected, operated and maintained by qualified competent personnel. As confirmation, the Subcontractor shall complete Form PF-44, Major Equipment Declaration, (copy available on the BSRA Internet Home Page) and provide one (1) copy to the Subcontract Technical Representative ("STR")/End User, prior to placing any such equipment in service on the SRS. Additionally, prior to performing any activity involving the loading, unloading, and transporting

of self-propelled medium or heavy-duty equipment on the SRS, the Subcontractor shall complete the “Self-propelled Equipment Loading, Unloading & Transport Safety Review Checklist”, copy available on the SRNL Home Page or from the Procurement Representative, and provide a copy to the STR/END USER.

D. Safety Data Sheets.

- (1) The Subcontractor shall provide the STR/END USER copies of Safety Data Sheets for all chemicals brought to SRS prior to the initial use of such chemicals. In addition, the Subcontractor shall provide the STR/END USER with a current inventory on a monthly basis for chemicals stored on-site for thirty (30) or more days per EPCRA/CERCLA. All chemicals stored on-site shall follow National Fire Protection Association (“NFPA”) storage guidelines.

E. Environmental Compliance

- (1) The Subcontractor and any subtier subcontractors shall comply with all applicable environmental protection laws, Executive Orders, ordinances, regulations, directives, and codes. Upon request, the Subcontractor shall submit an Environmental Compliance Plan (“ECP”) outlining the methods proposed to address the environmental requirements specified in the scope of work. The ECP shall specify the person responsible for ensuring the requirements are met.

F. Site Reporting Requirements

- (1) The Subcontractor shall immediately notify the STR/END USER or BSRA Procurement Representative of any event/condition that may require reporting to the DOE. Further, the Subcontractor shall cooperate with any BSRA or DOE critique, analysis, or investigation and complete necessary reports for such events/conditions. Events/conditions that require reporting to DOE are defined in DOE Manual 231.1-2 (DOE M 231.1-1-2) and can include (but are not limited to):
 - a. Operational emergencies,
 - b. Occupational injury or illness (including exposures to hazardous substances in excess of allowable limits) and near misses,
 - c. Any on—the-job injury where an employee is taken offsite for something other than observation. The notification requirement applies to any person who goes offsite for prompt medical treatment of any type. The mode of transportation (ambulance, personal vehicle, etc.) is not pertinent — any offsite transfers must be reported immediately,

- d. Any violation of lockout/tagout controls where there are no credible barriers left between the worker, and the energy source regardless of whether or not there was an injury
- e. Fires/explosions,
- f. Hazardous energy control failures,
- g. Operations shutdown directed by management for safety reasons,
- h. Environmental release of radioactive materials, hazardous substances, regulated pollutants, oil spills, etc.
- i. Violation of Federal Motor Carrier Safety Regulations or Hazardous Material Regulations,
- j. Loss damage, theft, or destruction to government property (including damage to ecological resources like wetlands, critical habitats, historical/archeological sites, etc.),
- k. Spread of radioactive contamination or loss of control of radioactive materials,
- l. Personnel radioactive contaminations or exposures, and
- m. Violations of procedures. Immediate notification is required of such events to ensure BSRA meets its commitment for thirty (30) minute notification to appropriate DOE authorities. The Subcontractor shall preserve conditions surrounding or associated with the event for continued investigation unless such actions interfere with establishing a safe condition. The Subcontractor and their employees shall not conceal nor destroy any information concerning noncompliance or potential noncompliance with the ES&H requirements of this Subcontract.

4. ENVIRONMENT, SAFETY, AND HEALTH COMPLIANCE — CATEGORY C

(Compliance by me Subcontractor with the requirements of this Article 4 of these Special Terms and Conditions for Commercial Purchases shall satisfy any/all requirements of Article 1 of these Special Terms and Conditions for Commercial Purchases, "Integration Of Environment, Safety and Health Into Work Planning And Execution", applicable to the scope of work contained in this Subcontract.)

- A. The Subcontractor and any subtier subcontractors shall take all reasonable precautions in the performance of the work under this Subcontract to protect the environment, safety and health of employees and members of the public, and shall comply with OSHA and all other applicable federal, state and local regulatory requirements, including new DOE Regulation 10 CFR 851, "Worker Safety and Health Program" which will apply to any work performed on the Savannah River

Site and all subsequent updates to OSHA and 10 CFR 851. The Subcontractor and any subtier subcontractor shall comply with site-specific ES&H requirements when specified in the Subcontract. The BSRA Procurement Representative shall notify the Subcontractor in writing of any noncompliance with the provisions of this Article. After receipt of such notice, the Subcontractor shall immediately take corrective action. In the event that the Subcontractor fails to take corrective action and comply with said regulations and requirements, the BSRA Procurement Representative may, without prejudice to any other legal or contractual rights of BSRA, issue an order stopping work in whole or in part. An order authorizing the resumption of work may be issued at the discretion of the BSRA Procurement Representative. The Subcontractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this Article.

B. Prequalification Checklist. Prior to the start of work under this Subcontract, Subcontractor shall provide to BSRA's Procurement Representative a completed Prequalification Checklist for review and acceptance by the appropriate contractor's organization(s). The Prequalification Checklist shall contain the following minimum requirements, as applicable:

- (1) Worker Protection Plan Checklist
- (2) EMR & TRC Worksheet
- (3) Safety and Industrial Hygiene Representation: The Subcontractor shall designate required representation as specified in the Subcontract. The designation must include qualifications and duties.
- (4) Worker Protection Plan (WPP): The Subcontractor shall possess and maintain a corporate Worker Protection Plan ("WPP") which implements the requirements applicable to the normal course of the Subcontractor's business. Prior to the start of work under this Subcontract, the Subcontractor shall provide to the BSRA Procurement Representative a copy of the WPP for review and acceptance by the appropriate BSRA organizations. The Subcontractor's employees and the employees of any subtier subcontractors, shall comply with the WPP in the performance of the work under this Subcontract. Work under the Subcontract shall not commence until the WPP has been received and accepted by BSRA. The Subcontractor shall provide a copy of the WPP to any subtier subcontractors and shall ensure Subcontractor employee's performing work at the site have access to the WPP document accepted by BSRA, and other standards, controls and procedures including DOE worker protection publications applicable to the workplace. The Subcontractor

shall provide mechanisms to involve workers in the development of WPP goals, objectives, and performance measures and in the identification and control of workplace hazards. Whenever a significant change or addition is made to the WPP, it shall be re-submitted to BSRA for review and acceptance. Examples of significant changes include any requirement deletions, additional scope added, total re-write or major revision. Additionally, the Subcontractor must submit annually to BSRA either an updated WPP for acceptance or a letter stating that no changes are necessary in the current accepted WPP.

- (5) Insurance Confirmation of EMR Rate
- (6) OSHA 300 Logs/Summaries
- (7) Focused Observation Checklists
- (8) Designated Local Medical Provider
- (9) Assigned Competent Person (ACP): The Subcontractor shall designate in writing an Assigned Competent Person (“ACP”), and alternates, who will be responsible for SRS perimeter barricade escort and safety orientation for non-badged material/equipment delivery personnel and other non-badged Subcontractor personnel seeking temporary badges in support of the Subcontractor’s work scope. The ACP shall be a responsible employee, cognizant of the Subcontract scope and all applicable environmental, safety and health requirements, including any focused observation safety checklists. The ACP shall furnish an advance copy of applicable focused observation safety checklists to any non-badged temporary personnel anticipating entry onto SRS, and shall meet entering personnel at the BSRA Badging Office, Building 703-46A when they report for temporary badging. The ACP and entering personnel shall review the scope of work to be performed and upon arrival at the work site review, complete and date any applicable focused observation safety checklist(s). For material/equipment deliveries, the ACP shall review any applicable focused observation safety checklists with delivery personnel, including specific safety measures required for loading/unloading in accordance with OSHA and the WPP.

C. Equipment Safety.

- (1) The Subcontractor shall ensure that major equipment used in the performance of work under this Subcontract is inspected, operated and maintained by qualified competent personnel. As confirmation, the Subcontractor shall complete Form PF-44, Major Equipment Declaration, (copy available on the BSRA Internet Home Page) and provide one (1) copy to the Subcontract Technical

Representative (“STR”)/End User, prior to placing any such equipment in service on the SRS. Additionally, prior to performing any activity involving the loading, unloading, and transporting of self-propelled medium or heavy duty equipment on the SRS, the Subcontractor shall complete the “Self-propelled Equipment Loading, Unloading & Transport Safety Review Checklist”, copy available on the SRNL Home Page or from the Procurement Representative, and provide a copy to the STR/END USER.

D. Safety Data Sheets.

- (1) The Subcontractor shall provide the STR/END USER copies of Safety Data Sheets for all chemicals brought to BSRA prior to the initial use of such chemicals. In addition, the Subcontractor shall provide the STR/END USER with a current inventory on a monthly basis for chemicals stored on-site for thirty (30) or more days per EPCRA/CERCLA. All chemicals stored on-site shall follow NFPA storage guidelines.

E. Environmental Compliance

- (1) The Subcontractor and any subtier subcontractors shall comply with all applicable environmental protection laws, Executive Orders, ordinances, regulations, directives, and codes. Upon request, the Subcontractor shall submit an Environmental Compliance Plan (“ECP”) outlining the methods proposed to address the environmental requirements specified in the scope of work. The ECP shall specify the person responsible for ensuring the requirements are met.

F. Site Reporting Requirements

- (1) The Subcontractor shall immediately notify the STR/END USER or BSRA Procurement Representative of any event/condition that may require reporting to the DOE. Further, the Subcontractor shall cooperate with any BSRA or DOE critique, analysis, or investigation and complete necessary reports for such events/conditions. Events/conditions that require reporting to DOE are defined in DOE Manual 231.1-2 (DOE M 231.1-1-2) and can include (but are not limited to):
 - a. Operational emergencies,
 - b. Occupational injury or illness (including exposures to hazardous substances in excess of allowable limits) and near misses,

- c. Any on—the-job injury where an employee is taken offsite for something other than observation. The notification requirement applies to any person who goes offsite for prompt medical treatment of any type. The mode of transportation (ambulance, personal vehicle, etc.) is not pertinent — any offsite transfers must be reported immediately,
- d. Any violation of lockout/tagout controls where there are no credible barriers left between the worker, and the energy source regardless of whether or not there was an injury
- e. Fires/explosions,
- f. Hazardous energy control failures,
- g. Operations shutdown directed by management for safety reasons,
- h. Environmental release of radioactive materials, hazardous substances, regulated pollutants, oil spills, etc.
- i. Violation of Federal Motor Carrier Safety Regulations or Hazardous Material Regulations, and
- j. Loss damage, theft, or destruction to government property (including damage to ecological resources like wetlands, critical habitats, historical/archeological sites, etc.),
- k. Spread of radioactive contamination or loss of control of radioactive materials,
- l. Personnel radioactive contaminations or exposures, and
- m. Violations of procedures. Immediate notification is required of such events to ensure BSRA meets its commitment for thirty (30) minute notification to appropriate DOE authorities. The Subcontractor shall preserve conditions surrounding or associated with the event for continued investigation unless such actions interfere with establishing a safe condition. The Subcontractor and their employees shall not conceal nor destroy any information concerning noncompliance or potential noncompliance with the ES&H requirements of this Subcontract.

5. RESERVED

6. RESERVED

7. GENERAL EMPLOYEE TRAINING AND ANNUAL REFRESHER TRAINING FOR SUBCONTRACTOR EMPLOYEES

- A. The following terms are applicable if performance of this Subcontract will require the Subcontractor's employee(s) to perform work on SRS premises for more than ten (10) working days.
- B. General Employee Training (GET)
- (1) The Subcontractor shall inform his employees and the employees of his subtier subcontractors and agents that it is the policy of BSRA to adhere to the requirements contained in the DOE Order entitled "Personnel Selection, Training, Qualification, and Certified Requirements for DOE Nuclear Facilities," which requires any individual, employed either full or part-time at any DOE reactor or non-reactor facility to receive selected general training.
 - (2) Successful Completion Required. Said employees, referred to in the remainder of this document as "individual", must successfully complete the training known as "General Employee Training" ("GET") as offered by the SRS. GET is required for individuals who require badged access to the general site. GET is Web Based (on-line).
 - (3) Successful Completion Defined: Successful completion occurs when the individual
 - a. Is given access to the on-line GET,
 - b. Completes the GET,
 - c. Obtains a test score of 80% or greater on the examination (100% is the highest obtainable score),
 - (4) Unsuccessful Completion Defined: If the individual fails to complete successfully GET, the individual is given a failure notice and is to notify the Subcontract Technical Representative ("STR")End/User . The individual will be allowed several chances to successfully complete the GET. Multiple attempts are not allowed on the same day. Continued failure to successfully complete GET will result in resolution by the STR/End User.
 - (5) Access to GET
 - a. The STR/End User shall direct the individual when to complete GET.

- C. Consolidated Annual Training (CAT) CAT is required after an individual's initial successful completion of GET, regardless of the individual's present employer. CAT is required to be completed in January each year the individual has a SRS security badge. The STR/End User may be contacted for assistance.
- D. Annual Safeguards and Security Refresher Training (S&S) S&S training is required to be completed in November-December each year and is required for each individual regardless of the month GET is completed.
- E. GET, CAT and the S&S Training can be completed offsite on a computer, cell phone or tablet at www.srs.gov. The link to the training is available in the lower left corner of the home page. The training can also be completed on SRS network computers. The S&S Training is a prerequisite and must be completed before completing CAT. Individuals are encouraged to use Internet Explorer to complete the training.

8. SECURITY EDUCATION REQUIREMENTS FOR SUBCONTRACTORS

- A. The following items are applicable if performance of this Subcontract will require the Subcontractor's employee(s) to receive a security badge.
- B. Subcontractor Security Education Coordinator
 - (1) If this Subcontract will require a force of more than thirty (30) Subcontract employees receive badges, then the Subcontractor shall provide to the BSRA Security Education Office, the name of its representative appointed to administer its Security Education Program. This representative shall be referred to as the Subcontractor Security Education Coordinator ("SSEC").
 - (2) If this Subcontract will require that less than thirty (30) Subcontract employees receive badges, then the BSRA Subcontract Technical Representative ("STR")/End User will perform the activities discussed in this Article.
- C. Company Roster
 - (1) The SSEC will be responsible for providing the STR/End User with a roster of all Subcontract personnel receiving a badge. At a minimum the data shall include name, social security number, and work telephone number, clearance level and place where work is generally performed. This list shall be kept current and updated every sixty-(60) days.
- D. Initial Briefing
 - (1) The SSEC will ensure that all Subcontract personnel, regardless of clearance level, receive an Initial Security Briefing. This briefing consists of videotape shown during initial General Employee Training (GET), or at the time of badging for those individuals not required to attend GET.

E. Comprehensive Briefing

- (1) If Subcontractor personnel have a clearance at the inception of this Subcontract, or receive a clearance at any time during the course of the Subcontract, the SSEC/STR/End User will ensure that those Subcontractor employees receive a comprehensive briefing from BSRA.

F. Annual Refresher Briefing

- (1) The SSEC/ STR/End User shall ensure that all Subcontract employees receive, at least once in a twelve- (12) month period, an Annual Security Refresher briefing from BSRA. This briefing is provided during GET Refresher Training.

G. Foreign Travel Briefing

- (1) If a Subcontractor employee plans a trip to a sensitive country, whether on official business or for pleasure, the SSEC/STR/End User is responsible for ensuring that the individual receives a foreign travel briefing from BSRA before departing and a debriefing upon return. The Operations Security Officer is responsible for these briefings.

H. Badge Retrieval at Termination

- (1) The Subcontractor is responsible for ensuring that badges are returned or accounted for when a Subcontractor employee terminates employment or when his Subcontract is completed. The employee must report to Employment Processing Center, for proper completion of out-processing and badge return. This effort should be coordinated with the BSRA STR/End User. The Subcontractor shall ensure that any/all SRS-issued site security badges are returned to the Badge Office (703-46A) within ten (10) calendar days after badge expiration date (or subcontract/ subcontractor employee termination date, whichever occurs first). Failure to do so may result in withholding of invoice payments until such time that the badge(s) is returned.

I. Termination Briefing

- (1) When a Subcontractor employee terminates employment or is reassigned, the SSEC/ STR/End User will ensure that a termination briefing by BSRA is given and the appropriate forms are executed. Briefing materials and appropriate forms are provided by BSRA.

9. WORK ON SRS, GOVERNMENT OR OTHER PREMISES

- A. As to the Work to be done or performed by Subcontractor on premises owned or controlled by SRS, the Government, or the premises of other SRS subcontractors, Subcontractor assumes the entire responsibility and liability for losses, expenses,

damages, demands, and claims in connection with or arising out of any injury including death, or damage to property, sustained in connection with or to have arisen out of the negligent acts or omissions of Subcontractor or its subcontractors, agents, or employees. Subcontractor shall indemnify and hold harmless the Government and BSRA from and against any and all claims, demands, actions, causes of action including those brought by an employee of the Subcontractor or a State Industrial Insurance subcontractor under a Workers/ Workmen's Compensation Act or statute, suits, damages, expenses including attorney fees and liabilities whatsoever resulting from or arising in any manner on account of or by reason of any injury to or death of any person or any damage to or loss of property attributable directly or indirectly to the negligent acts or omissions of Subcontractor or its subcontractors, agents, or employees arising out of, or in any way connected with the performance of this Subcontract, whether or not caused in any way by some act or omission, negligence or otherwise, of BSRA or the Government; provided however, that the Subcontractor's duty to indemnify shall not arise if such injury, death, destruction or loss is caused by the negligence of BSRA or the Government. Nothing in the foregoing shall be construed to require Subcontractor to indemnify and save harmless the Government and BSRA from any liability arising out of or resulting from a nuclear incident. To the extent necessary to execute the foregoing indemnification and as permitted by law, Subcontractor specifically waives any and all immunity provided by any industrial insurance or Workers/ Workmen's Compensation Act or statute.

- B. When Subcontractor shall perform any part of the Work on the premises of the SRS or the Government during the performance of this Subcontract, the Subcontractor shall have in force and effect, policies of insurance conforming to the terms set forth in Paragraph C of this Article.
- C. The Subcontractor shall procure and thereafter maintain at its own expense, the following insurance:
 - (1) Workers' Compensation and Employer's Liability. Limits of Liability: Worker's Compensation: Statutory limits in the jurisdiction wherein the Work is to be performed. Employer's Liability: A minimum of \$1,000,000.
 - (2) Comprehensive general liability including Bodily Injury and Property Damage. Limits of Liability: A minimum of \$1,000,000 Combined Single Limit. Endorsements: BSRA and the Government to be endorsed as Additional Insured. Contractual Liability including all coverage endorsed on the basic policy.
 - (3) Automobile Liability including Bodily Injury and Property Damage including All Owned, Non-Owned and Hired. Limits of Liability: \$1,000,000 Combined Single Limit

Note: All personnel operating motor vehicles at SRS must have a valid driver's license, vehicle registration and proof of insurance (regardless of state of origin). Anyone not having these documents is subject to being denied access to SRS and, if in violation of a law, being cited for the violation.

- (4) Certificates of insurance evidencing that the requirements of this Article have been met shall be furnished to BSRA before work is commenced with respect to high hazardous performance under this Subcontract, (Ref. OSR 1-183). In addition, a copy of the policy endorsement for Comprehensive General Liability insurance (Ref. paragraph C. above), naming BSRA and the Government as "Additional Insured", shall be submitted with the certificate of insurance. Provisions shall be made for thirty days advance notice by mail to BSRA of change in or cancellation of such insurance. Certificates shall be issued by insurance carriers satisfactory to BSRA.
 - a. With respect to all other services, Statements of Certification of insurance evidencing that the requirements of this Article have been met shall be furnished to BSRA before work is commenced. In addition, a Statement of Endorsement for Comprehensive General Liability insurance (Ref. paragraph C. above), naming BSRA and the Government as "Additional Insured", shall be submitted with the certificate of insurance. Provisions shall be made for thirty days advance notice by mail to BSRA of change in or cancellation of such insurance. Certificates shall be issued by insurance carriers satisfactory to BSRA.
 - (5) In the event the Subcontractor fails to furnish such certificates of insurance, as required in Paragraph 2 herein above, prior to commencement of work or to continue to maintain such insurance during the performance of the Subcontract, BSRA shall have the right to stop work and/or to withhold any payments or partial payments required to be made under this Subcontract; and shall have the right to continue withholding any or all of said payments so long as the Subcontractor has not complied with the requirements of this Article.
 - (6) On orders involving blasting or other hazardous operations, the Subcontractor's insurance shall specifically state that all blasting or such other hazardous operations are fully covered.
- D. Subcontractor agrees to comply with and require its subcontractors to comply with all applicable laws, rules, and regulations with respect to state industrial insurance or Workers/Workmen's Compensation, occupational disease, occupational safety and health, or withholding and payment of social security and federal and state income taxes. Subcontractor further agrees to indemnify BSRA and the Government against, and to save and hold harmless BSRA and the

Government from, any and all liability and expense with respect to claims against BSRA or the Government which may result from the failure or alleged failure of Subcontractor or of any of its subcontractors to comply therewith.

10. GOVERNMENT PROPERTY

Note: If the total acquisition cost of all Government property furnished under this Order is \$100,000 or less, Paragraph F of this Article is deleted, and the following is substituted in lieu thereof:

- A. The Subcontractor shall be responsible and accountable for all Government Property provided under this Subcontract. The Subcontractor shall maintain adequate property control records in accordance with sound industrial practice and will make such records available for BSRA inspection at all reasonable times. The Subcontractor shall provide an annual inventory listing identifying all Government Property associated with this Subcontract. The inventory shall include the following information for each property item: ID number, description, manufacturer, model number, serial number, acquisition date, acquisition value, condition, location, and primary user.
- B. Government Property
- (1) BSRA shall deliver to the Subcontractor, for use in connection with and under the terms of this Subcontract, the Government property described elsewhere in the Subcontract or specifications together with any related data and information that the Subcontractor may request and is reasonably required for the intended use of the property (hereinafter referred to as "Government Property").
 - (2) The delivery or performance dates for this Subcontract are based upon the expectation that Government Property suitable for use (except for property furnished "as-is") will be delivered to the Subcontractor at the times stated in the Subcontract or if not so stated, in sufficient time to enable the Subcontractor to meet the Subcontract delivery or performance dates.
 - (3) If Government Property is received by the Subcontractor in a condition not suitable for the intended use, the Subcontractor shall, upon receipt of it, notify the BSRA Procurement Representative detailing the facts, and, as directed by the BSRA Procurement Representative and at BSRA's expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written electronic request of the Subcontractor, the BSRA Procurement Representative shall make an equitable adjustment as provided in paragraph I of this article.

- (4) If Government Property is not delivered to the Subcontractor by the required time, the BSRA Procurement Representative shall, upon the Subcontractor's timely written electronic request, make a determination of the delay, if any, caused the Subcontractor and shall make an equitable adjustment in accordance with paragraph I of this article.

C. Changes in Government Property

- (1) The BSRA Procurement Representative may, by written notice,
 - a. Decrease the Government Property provided or to be provided under this Subcontract, or
 - b. Substitute other Government Property for the property to be provided by BSRA, or to be acquired by the Subcontractor for the Government, under this Subcontract. The Subcontractor shall promptly take such action as the BSRA Procurement Representative may direct regarding the removal, shipment, or disposal of the property covered by such notice.
- (2) Upon the Subcontractor's written request, the BSRA Procurement Representative shall make an equitable adjustment to the Subcontract in accordance with paragraph I of this article, if BSRA has agreed in the Subcontract to make the property available for performing this Subcontract and there is any –
 - a. Decrease or substitution in this property pursuant to subparagraph B (1) above; or
 - b. Withdrawal of authority to use this property, if provided under any contract or lease.

D. Title in Government Property

- (1) The Government shall retain title to all Government Property.
- (2) All Government Property and all property acquired by the Subcontractor, title to which vests in the Government under this paragraph are subject to the provisions of this Article. Its incorporation into or attachment to any property not owned by the Government shall not affect title to Government Property, nor shall Government Property become a fixture or lose its identity as personal property as being attached to any real property.
- (3) Title to each item of facilities, special test equipment, and special tooling (other than that subject to a special tooling clause) acquired by the

Subcontractor for BSRA under this Subcontract shall pass to and vest in the Government when its use in performing this Subcontract commences or when BSRA has paid for it, whichever is earlier, whether or not title previously vested in the Government.

- (4) If this Subcontract contains a provision directing the Subcontractor to purchase material for which BSRA will reimburse the Subcontractor as a direct item of cost under this Subcontract –
 - a. Title to material purchased from a vendor shall pass to and vest in the Government upon the vendor’s delivery of such material; and
 - b. Title to all other material shall pass to and vest in the Government upon –
 - (i) Issuance of the material for use in Subcontract performance;
 - (ii) Commencement of processing of the material or its use in Subcontract performance; or
 - (iii) Reimbursement of the cost of the material by BSRA, whichever occurs first.

E. Use of Government Property

- (1) The Government property shall be used only for performing this Subcontract, unless otherwise provided in this Subcontract or approved by the BSRA Procurement Representative.

F. Property Administration

- (1) The Subcontractor shall be responsible and accountable for all Government Property provided under this Subcontract and shall comply with DOE Property Management Regulations 41 CFR 109, as in effect on the date of this Subcontract.
- (2) The Subcontractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government Property in accordance with sound industrial practice and the applicable provisions of Subpart 45.5 of the FAR and Subpart 945.5 of the DEAR. The Subcontractor shall provide an annual inventory as required in Federal Property Regulation 41 CFR 101 and the Department of Energy Property Management Regulation 41 CFR 109.
- (3) If damage occurs to Government Property, the risk of which has been assumed by BSRA or the Government under this Subcontract, BSRA shall replace the items or the Subcontractor shall make such repairs as BSRA directs. However, if the Subcontractor cannot affect such repairs within

the time required, Subcontractor shall dispose of the property as directed by the BSRA Procurement Representative. When any property for which BSRA is responsible is replaced or repaired, the BSRA Procurement Representative shall make an equitable adjustment in accordance with paragraph I of this article.

- (4) The Subcontractor understands that the Subcontract price does not include any amount for repairs or replacement for which BSRA is responsible. The Subcontractor at its own expense shall accomplish repair or replacement of property for which the Subcontractor is responsible.

G. Access

- (1) BSRA and the Government and all their designees have access at all reasonable times to the premises in which any Government Property is located for the purpose of inspecting the Government Property.

H. Risk of loss

- (1) Unless otherwise provided in this Subcontract, the Subcontractor assumes the risk of and shall be responsible for, any loss or destruction of, or damage to Government Property upon its delivery to the Subcontractor or upon passage of title to the Government under paragraph D of this article. However, the Subcontractor is not responsible for reasonable wear and tear to Government property or for Government Property consumed in performing this Subcontract.

I. Equitable Adjustment

- (1) When this Article specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes Article in this Subcontract. When appropriate, the BSRA Procurement Representative may initiate an equitable adjustment in favor of BSRA. The right to an equitable adjustment shall be the Subcontractor's exclusive remedy. BSRA and the Government shall not be liable to suit for breach of contract for:

- a. Any delay in delivery of Government Property;
- b. Delivery of Government Property in a condition not suitable for its intended use;
- c. A decrease in or substitution of Government Property; or
- d. Failure to repair or replace Government Property for which BSRA or the Government is responsible.

J. Final Accounting and Disposition of Government Property

- (1) Upon completing this Subcontract, or at such earlier dates as may be fixed by the BSRA Procurement Representative, the Subcontractor shall submit, in a form acceptable to the BSRA Procurement Representative, inventory schedules covering all items of Government Property (including any resulting scrap) not consumed in performing this Subcontract or delivered to BSRA. The Subcontractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government Property as may be directed or authorized by the BSRA Procurement Representative. The net proceeds of any such disposal shall be credited to the Subcontract price or shall be paid to BSRA as the BSRA Procurement Representative directs.

K. Abandonment and Restoration of Subcontractor's Premises

- (1) Unless otherwise provided herein, BSRA –
 - a. May abandon any Government Property in place, at which time all obligations of BSRA and the Government regarding such abandoned property shall cease; and
 - b. Has no obligation to restore or rehabilitate the Subcontractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon Subcontract completion). However, if the Government Property is withdrawn or is unsuitable for the intended use, or if other Government Property is substituted, then the equitable adjustment under paragraph I of this Article may properly include restoration or rehabilitation costs.

L. Communications

- (1) All communications under this Article shall be in writing.

M. Overseas Orders

- (1) If this Subcontract is to be performed outside of the United States of America, its territories, or possessions, the words "Government" and "Government Property" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government Property," respectively.

11. LIMITATION OF FUNDS

Note: This article is applicable only if this Subcontract is partially funded.

- A. Of the total price of this Subcontract, the sum of \$_____ is presently available for payment and allotted to this Subcontract. It is anticipated that additional funds will be allocated to the Subcontract in accordance with the

following schedule until the total price of the Subcontract is funded: [insert schedule]

- B. The Subcontractor agrees to perform or have performed work on this Subcontract up to the point at which, if this Subcontract is terminated pursuant to the Termination For Convenience Article of this Subcontract, the total amount payable by BSRA (including amounts payable for subcontracts and settlement costs) pursuant to the Termination For Convenience Article would, in the exercise of reasonable judgment by the Subcontractor, approximate the total amount at the time allotted to the Subcontract. The Subcontractor is not obligated to continue performance of the work beyond that point. BSRA is not obligated in any event to pay or reimburse the Subcontractor more than the amount from time to time allotted to the Subcontract, anything to the contrary in the Termination for Convenience of BSRA article notwithstanding.
- C. It is contemplated that funds presently allotted to this Order will cover the work to be performed until _____.
 - (1) If funds allotted are considered by the Subcontractor to be inadequate to cover the work to be performed until that date, or an agreed date substituted for it, the Subcontractor shall notify BSRA in writing when, within the next 60 days, the work will reach a point at which, if the Subcontract is terminated pursuant to the Termination For Convenience Article of the Subcontract, the total amount payable by BSRA (including amounts payable for subcontracts and settlement costs) pursuant to the Termination For Convenience Article will approximate 75 percent of the total amount then allotted to the Subcontract.
 - a. The notice shall state the estimated date when the point referred to in this paragraph C of this clause will be reached and the estimated amount of additional funds required to continue performance to the date specified in subparagraph C of this clause, or an agreed date substituted for it.
 - b. The Subcontractor shall, sixty (60) days in advance of the date specified in this paragraph C of this clause, or an agreed date substituted for it, advise BSRA in writing as to the estimated amount of additional funds required for the timely performance of the Order for a further period as may be specified in the Order or otherwise agreed to by the parties.
 - (2) If, after the notification referred to in paragraph C of this clause, additional funds are not allotted by the date specified in paragraph C. of this clause, or an agreed date substituted for it, BSRA shall, upon the Subcontractor's written request, terminate this Subcontract on that date or on the date

set forth in the request, whichever is later, pursuant to the Termination For Convenience Article of this Subcontract.

- D. When additional funds are allotted from time to time for continued performance of the work under this Subcontract, the parties shall agree on the applicable period of Subcontract performance to be covered by these funds. The provisions of paragraphs B and C of this clause shall apply to these additional allotted funds and the substituted date pertaining to them, and the Subcontract shall be modified accordingly.
- E. If, solely by reason of BSRA's failure to allot additional funds in amounts sufficient for the timely performance of this Subcontract, the Subcontractor incurs additional costs or is delayed in the performance of the work under this Subcontract, and if additional funds are allotted, an equitable adjustment shall be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the work to be performed.
- F. BSRA may at any time before termination, and, with the consent of the Subcontractor, after notice of termination, allot additional funds for this Subcontract.
- G. The provisions of this clause with respect to termination shall in no way be determined to limit the rights of BSRA under the default article of this Subcontract. This clause shall become inoperative upon the allotment of funds for the total price of the work under this Subcontract except for rights and obligations then existing under this clause.
- H. Nothing in this clause shall affect the right of BSRA to terminate this Subcontract pursuant to the Termination for Convenience article of this Subcontract.

12. SECURITY REQUIREMENTS (JUN 2009) DEAR 952.204-2

Note: Applicable if under the terms of this Subcontract, Subcontractor's employees will be required to possess access authorizations (L or Q Security Clearance). As prescribed in 904.404(d) (1), the following clause shall be included in subcontracts entered into under section 31 (research assistance, 42 U.S.C. 2051), or section 41 (ownership and operation of production facilities, 42 U.S.C. 2061) of the Atomic Energy Act of 1954, and in other subcontracts which involve or are likely to involve classified information or special nuclear material.

- A. **Responsibility.** It is the Subcontractor's duty to protect all Classified Information, Special Nuclear Material, and other DOE property. The Subcontractor shall, in accordance with DOE security regulations and requirements, be responsible for protecting all Classified Information and all classified matter (including documents, material and Special Nuclear Material) which are in the Subcontractor's possession in connection with the performance of work under

this Subcontract against sabotage, espionage, loss or theft. Except as otherwise expressly provided in this Subcontract, the Subcontractor shall, upon completion or termination of this Subcontract, transmit to DOE any classified matter or Special Nuclear Material in the possession of the Subcontractor or any person under the Subcontractor's control in connection with performance of this Subcontract. If retention by the Subcontractor of any classified matter is required after the completion or termination of the Subcontract, the Subcontractor shall identify the items and classification levels and categories of matter proposed for retention, the reasons for the retention, and the proposed period of retention. If the retention is approved by the DOE Contracting Officer, the security provisions of the Subcontract shall continue to be applicable to the classified matter retained. SPECIAL NUCLEAR MATERIAL shall not be retained after the completion or termination of the Subcontract.

- B. **Regulations.** The Subcontractor agrees to comply with all security regulations and Subcontract requirements of DOE in effect on the date of award.
- C. **Definition of Classified Information.** The term "Classified Information" means information that is classified as Restricted Data or Formerly Restricted Data under the Atomic Energy Act of 1954, or information determined to require protection against unauthorized disclosure under Executive Order 12958, Classified National Security Information, as amended, or prior executive Orders, which is identified as National Security Information.
- D. **Definition of Restricted Data.** The term "Restricted Data" means all data concerning design, manufacture, or utilization of atomic weapons; production of Special Nuclear Material; or use of Special Nuclear Material in the production of energy, but excluding data declassified or removed from the Restricted Data category pursuant to 42 U.S.C. 2162 [Section 142, as amended, of the Atomic Energy Act of 1954].
- E. **Definition of Formerly Restricted Data.** The term "Formerly Restricted Data" means information removed from the Restricted Data category based on a joint determination by DOE or its predecessor agencies and the Department of Defense that the information: (1) relates primarily to the military utilization of atomic weapons; and (2) can be adequately protected as National Security Information. However, such information is subject to the same restrictions on transmission to other countries or regional defense organizations that apply to Restricted Data.
- F. **Definition of National Security Information.** The term "National Security Information" means information that has been determined, pursuant to Executive Order 12958, Classified National Security Information, as amended, or

any predecessor Executive Order, to require protection against unauthorized disclosure, and that is marked to indicate its classified status when in documentary form.

- G. **Definition of Special Nuclear Material.** The term “Special Nuclear Material” means: (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which, pursuant to 42 U.S.C. 2071 [section 51 as amended, of the Atomic Energy Act of 1954] has been determined to be Special Nuclear Material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.
- H. **Access authorizations of personnel.**
- (1) The Subcontractor shall not permit any individual to have access to any Classified Information or Special Nuclear Material, except in accordance with the Atomic Energy Act of 1954, and the DOE’s regulations and Subcontract requirements applicable to the particular level and category of Classified Information or particular category of Special Nuclear Material to which access is required.
 - (2) The Subcontractor must conduct a thorough review, as defined at 48 CFR 904.401, of an uncleared applicant or uncleared employee, and must test the individual for illegal drugs, (BSRA to provide this testing), prior to selecting the individual for a position requiring a DOE access authorization.
- I. A review must: verify an uncleared applicant’s or uncleared employee’s educational background, including any high school diploma obtained within the past five years, and degrees or diplomas granted by an institution of higher learning; contact listed employers for the last three years and listed personal references; conduct local law enforcement checks when such checks are not prohibited by state or local law or regulation and when the uncleared applicant or uncleared employee resides in the jurisdiction where the Subcontractor is located; and conduct a credit check and other checks as appropriate.
- (1) Subcontractor reviews are not required for an applicant for DOE access authorization who possesses a current access authorization from DOE or another Federal agency, or whose access authorization may be reapproved without a federal background investigation pursuant to Executive Order 12968, Access to Classified Information (August 4, 1995), Sections 3.3(c) and (d).
 - (2) In collecting and using this information to make a determination as to whether it is appropriate to select an uncleared applicant or uncleared

employee to a position requiring an access authorization, the Subcontractor must comply with all applicable laws, regulations, and Executive Orders, including those: (a) governing the processing and privacy of an individual's information, such as the Fair Credit Reporting Act, Americans with Disabilities Act (ADA), and Health Insurance Portability and Accountability Act; and (b) prohibiting discrimination in employment, such as under the ADA, Title VII and the Age Discrimination in Employment Act, including with respect to pre- and post-offer of employment disability related questioning.

- (3) In addition to a review, each candidate for a DOE access authorization must be tested to demonstrate the absence of any illegal drug (BSRA to provide this testing), as defined in 10 CFR Part 707.4. All positions requiring access authorizations are determined to be testing designated positions in accordance with 10 CFR Part 707. All employees possessing access authorizations are subject to applicant, random or for cause testing for use of illegal drugs. DOE will not process candidates for a DOE access authorization unless their tests confirm the absence from their system of any illegal drug.
- (4) When an uncleared applicant or uncleared employee receives an offer of employment for a position that requires a DOE access authorization, the Subcontractor shall not place that individual in such a position prior to the individual's receipt of a DOE access authorization, unless an approval has been obtained from the head of the cognizant local security office. If the individual is hired and placed in the position prior to receiving an access authorization, the uncleared employee may not be afforded access to Classified Information or matter or Special Nuclear Material (in categories requiring access authorization) until an access authorization has been granted.
- (5) The Subcontractor must furnish to the head of the cognizant local DOE Security Office, in writing, electronically, the following information concerning each uncleared applicant or uncleared employee who is selected for a position requiring an access authorization:
 - a. The date(s) each review was conducted;
 - b. Each entity that provided information concerning the individual;
 - c. A certification that the review was conducted in accordance with all applicable laws, regulations, and Executive Orders, including those governing the processing and privacy of an individual's information collected during the review;

- d. A certification that all information collected during the review was reviewed and evaluated in accordance with the Subcontractor's personnel policies; and
- e. The results of the test for illegal drugs (BSRA to provide this testing).
 - (i) ***Criminal liability.*** It is understood that disclosure of any Classified Information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to protect any Classified Information, Special Nuclear Material, or other Government Property that may come to the Subcontractor or any person under the Subcontractor's control in connection with work under this Subcontract, may subject the Subcontractor, its agents, employees, or Subcontractors to criminal liability under the laws of the United States (see the Atomic Energy Act of 1954, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794).

J. **Foreign Ownership, Control, or Influence.**

- (1) The Subcontractor shall immediately provide the cognizant security office written notice of any change in the extent and nature of foreign ownership, control or influence over the Subcontractor which would affect any answer to the questions presented in the Standard Form (SF) 328, Certificate Pertaining to Foreign Interests, executed prior to award of this Subcontract. In addition, any notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice, shall also be furnished concurrently to DOE.
- (2) If a Subcontractor has changes involving foreign ownership, control, or influence, DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, DOE will consider proposals made by the Subcontractor to avoid or mitigate foreign influences.
- (3) If the cognizant security office at any time determines that the Subcontractor is, or is potentially, subject to foreign ownership, control, or influence, the Subcontractor shall comply with such instructions as the DOE Contracting Officer shall provide in writing to protect any Classified Information or Special Nuclear Material.
- (4) The DOE Contracting Officer may terminate this Subcontract for default either if the Subcontractor fails to meet obligations imposed by this clause or if the Subcontractor creates a foreign ownership, control, or influence situation in order to avoid performance or a termination for default. The DOE Contracting Officer may require that BSRA terminate this Subcontract for convenience if the Subcontractor becomes subject to foreign ownership, control, or influence and

for reasons other than avoidance of performance of the Subcontract, cannot, or chooses not to, avoid or mitigate the foreign ownership, control, or influence problem.

- K. ***Employment announcements.*** When placing announcements seeking applicants for positions requiring access authorizations, the Subcontractor shall include in the written electronic vacancy announcement, a notification to prospective applicants that reviews, and tests for the absence of any illegal drug as defined in 10 CFR 707.4, will be conducted by the employer and a background investigation by the Federal government may be required to obtain an access authorization prior to employment, and that subsequent reinvestigations may be required. If the position is covered by the Counterintelligence Evaluation Program regulations at 10 CFR 709, the announcement should also alert applicants that successful completion of a counterintelligence evaluation may include a counterintelligence-scope polygraph examination.
- L. Flow down to any Subcontractor at any tier. The Subcontractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph, in all Subcontracts under its Subcontract that will require any subcontractor (at any tier) employees to possess access authorizations. Additionally, the Subcontractor at any tier must require such Subcontractors to have an existing DOD or DOE facility clearance or submit a completed SF 328, Certificate Pertaining to Foreign Interests, as required in DEAR 952.204-73 and obtain a foreign ownership, control and influence determination and facility clearance prior to award of a subcontract. Information to be provided by a subcontractor (at any tier), pursuant to this clause may be submitted directly to the DOE Contracting Officer.

13. **COUNTERINTELLIGENCE**

- A. The Subcontractor shall take all reasonable precautions in the work under this subcontract to protect BSRA/DOE programs, facilities, technology, personnel, unclassified sensitive information and classified matter from foreign intelligence threats and activities conducted for governmental or industrial purposes, in accordance with DOE Order 475-1, Counterintelligence Program; Executive Order 12333, U.S. Intelligence Activities; and other pertinent national and Departmental Counterintelligence requirements.
- B. The Subcontractor shall comply with requirements established by the DOE-SR Counterintelligence Officer. The DOE-SR Counterintelligence Officer will be responsible for conducting defensive Counterintelligence briefings and debriefings of Subcontractor employees traveling to foreign countries or interacting with foreign nationals. The Subcontractor shall be responsible for requesting defensive counterintelligence briefings and debriefings of Subcontractor employees who have traveled to foreign countries or interacted

with foreign nationals. The Subcontractor shall coordinate counterintelligence awareness training activities with the BSRA Procurement Representative. The Subcontractor shall immediately report targeting, suspicious activity and other Counterintelligence concerns to the BSRA Procurement Representative and provide assistance to other elements of the U.S. Intelligence Community as stated in the aforementioned Executive Order, the DOE Counterintelligence Order, and other pertinent national and departmental Counterintelligence requirements.

14. RESERVED

15. COMPLIANCE WITH EMPLOYEE CONCERNS

- A. Subcontractors shall ensure Subcontractor employees are aware of the DOE-SRS and BSRA Employee Concerns Programs (“ECP”) and how to use the program by performing the following:
 - (1) Ensure employees are provided with information on the DOE-SRS and BSRA ECPs during initial orientation and annual training.
 - (2) Ensure that posters identifying the DOE-SRS and BSRA ECP telephone “hotline” numbers are displayed in conspicuous locations throughout the worksite. BSRA will provide posters, as necessary.
 - (3) Inform employees and Subcontractor employees of the availability of the DOESRS ECP in case of dissatisfaction or lack of confidence with other reporting systems.
 - (4) Ensure managers and supervisors are aware of the prohibition of any reprisal against employees who have or are believed to have raised or reported concerns.
- B. Subcontractors must immediately notify the STR/End User or the BSRA Procurement Representative of any employee concern involving:
 - (1) A condition which constitutes an imminent threat to the health and safety of site personnel or to the general public.
 - (2) Circumstances which would cause adverse public reaction or receive local media attention.
 - (3) Allegations of reprisal.
- C. Subcontractors shall investigate any employee concern referred by the STR/End User and inform the STR/End User of investigation results within seven (7) days of receipt of concern. Inform the STR/End User in writing if an extension to this 7-day timeframe is required, along with status of investigation to date and actions

pending to closure. The investigation shall be conducted to the satisfaction of the BSRA Procurement Representative.

16. NON-PROLIFERATION

- A. If any item(s) provided under this Subcontract are foreign made and will require importation into the United States to fulfill the requirements under this Subcontract, the Subcontractor represents that delivery of such items will not violate any non-proliferation laws, rules or regulations of the country or countries from which the materials are to be exported.

17. SCIENTIFIC AND TECHNICAL INFORMATION

- A. Electronic submissions of technical reports will consist of two virus-free copies that are readable in the following formats:
 - (1) Text will be submitted in native software (that is compatible with the suite of document creation software currently used at SRS) (fonts identified) or in RTF (rich text format).
 - (2) Embedded objects and files that are linked to a document must be supplied as well, as follows:
 - (i) Raster images (for example, photographs) will be submitted as TIFF or EPS @ resolution > 100 dpi.
 - (ii) Vector art (for example, line art) will be submitted as EPS images.
 - (iii) Data-driven displays (e.g., spreadsheet charts) must be accompanied by data set used to generate them.

18. COPYRIGHTS FOR BSRA DIRECTED TECHNICAL PERFORMANCE

- A. Subcontractor shall cause its employee(s) to assign to BSRA all rights under the copyright in all works of authorship prepared at the direction of BSRA during the term of this Subcontract. Subcontractor/Supplier shall include terms in its arrangements with its employee(s) to require such assignments to BSRA.
- B. To the extent that such works of authorship are considered to be works made for hire for Subcontractor, Subcontractor agrees to assign and does hereby assign all of its rights under the copyrights in such works to BSRA or the U. S. Government.

19. GENERAL CONDITIONS OF EQUIPMENT RENTAL

- A. Rental Payments
 - (1) Upon the submission of proper invoices or vouchers, BSRA shall pay, as full compensation for use of the equipment, rent at rates set forth in the

Subcontractor to which these Special Conditions are attached. Payments will be made at the end of each month or at the end of the rental, whichever occurs first, for rental accrued during the previous rental period.

B. Rental Rates

- (1) The actual length of the rental period will establish the base rental rate (for example, if the lessor’s proposal included a daily, weekly, and monthly rate, and the actual rental period was three days - the daily rate would apply; if the actual rental period was ten days - the weekly rate would apply; and if the actual rental period was 40 days - the monthly rate would apply). The base rental period shall be as in column 1 below. For portions of a rental period beyond one or more full base periods, rental shall be calculated by the fractional period multiplied by the Base Rental rate. The fractional periods are specified in Column 2 below. Base rental rates contemplate the following maximum use: Day - 8 hrs. (or as stipulated at time of rental); Week - 40 hrs; and Month - 176 hrs. For each hour that the equipment is in use in excess of the applicable contemplated operation, there shall be paid as rental a sum equal to the base rental rate multiplied by the overtime rate in Column 3 below.
- (2) Should the total rental calculated on the applicable base rental rate, exclusive of overtime, exceed the proposed rate for the next longer rental term the lesser rental shall be paid.

	Column 1	Column 2	Column 3
<u>Rental Term</u>	<u>Base Rent Period</u>	<u>Fractional Period</u>	<u>Overtime Rate</u>
Monthly	1 cal month	.0455xmonthly = rate/day	.0057 x monthly = rate/hour
Weekly	7 cons days	.20 x weekly = rate/day	.025 x weekly = rate/hour
Daily	24 cons hours	.125 x daily = rate/hour	.125 x daily = rate/hour
Hourly	1 oper hour	1 hour	1 hour

C. Condition of Equipment

- (1) When delivered to job site, the Equipment shall be in condition to render efficient, economical, and continuous service and its condition shall comply fully with all applicable Federal and State statutes and any regulations issued there under. Each item of equipment shall be inspected, tested, and inventoried by lessor and BSRA at job site upon

arrival and immediately prior to return shipment. A joint written electronic report shall be made, and copies filed with each of the parties. Lessor shall accept BSRA's report in the event the lessor fails to participate in such inspections. Such inspections and reports shall fix and determine the rights and obligations of the parties with reference to the condition of the Equipment.

- (2) If BSRA determines that any equipment furnished does not comply with this Order, BSRA shall promptly inform the lessor in writing. If the lessor fails to replace the equipment or correct the defects as required by BSRA, BSRA may
 - (i) By contract or otherwise, correct the defect or arrange for the lease of similar equipment and shall charge or set off against the lessor any excess costs occasioned thereby, or
 - (ii) Terminate the Order under the Termination for Cause article of this Order.
- (3) BSRA shall make repairs or, at its option, shall reimburse lessor for repairs due to damage caused by exceeding manufacturer's rated capacities. All other repairs attributable to equipment failure shall be Lessor's responsibility. Should equipment become inoperative because of necessary repairs which are the lessor's responsibility, rental period will discontinue upon BSRA's notification to the lessor of such conditions, and rental period will resume only when equipment is placed in a condition as required under this Section 3. BSRA will notify lessor prior to making repairs for the account of the lessor. Unless otherwise specified in the Subcontract, BSRA will furnish all fuel and lubricants and all operators and mechanics for necessary operation, use, and servicing of the equipment.
- (4) Equipment, when returned to lessor, shall be in as good condition as when delivered at job site, usual and ordinary wear and tear excepted.

D. Rental Period

- (1) The period for which rental is payable for an item of equipment shall begin on the date equipment is delivered to the job site, except that if BSRA gives a definite required delivery date to the lessor prior to shipment, the rental period shall not start until such date. However, rent shall accrue only for the period that the equipment is in the possession of BSRA. The rental period shall end when the equipment is delivered for shipment to the point of origin or such other return point as may be designated by lessor, such delivery to be evidenced by a bill of lading or other similar

evidence covering shipment. If lessor fails to notify BSRA of destination prior to time equipment is ready for return shipment, no rental time shall accrue until such notification is given BSRA and equipment is loaded for shipment.

- (2) If equipment is not in required condition, as determined by BSRA, when it arrives at the job site, the rental period shall not begin until it shall, at the expense of lessor, have been placed in proper condition.
- (3) If the inspection report made immediately prior to return shipment establishes that the equipment is not in condition required of BSRA under the fourth paragraph of Section C of these conditions, BSRA shall do all things necessary to place it in such condition and the Rental Period shall not terminate prior to placing the equipment in such condition.
- (4) Unless otherwise stated in the Subcontract, BSRA makes no representation or guarantee as to the length of the rental period or the amount of rental, which will accrue, for any equipment, it being the intent that the equipment may be rented for as long as BSRA requires. The rental of any equipment which does not perform to BSRA's satisfaction may be terminated upon notice by BSRA to Lessor.

E. Transportation Costs

- (1) If so stated in the Subcontract, transportation will be paid by BSRA F.O.B. original point of shipment and return transportation F.O.B. to original point of shipment or equivalent mileage. Transportation of equipment shall be accomplished by the most economical means and there shall be paid the actual cost of such transportation. No transportation charges will be paid by BSRA for any equipment which BSRA determines is not in the condition required by Section C.

F. Loading, Unloading & Transport of Self-Propelled Medium or Heavy Construction Equipment.

- (1) Lessor shall ensure that any activity involving the loading, unloading, and transport of self-propelled medium or heavy construction equipment on the SRS (i.e., upon delivery and pickup by the lessor) is performed in a manner that provides for the safety of all personnel involved in the process. Prior to performing any such activities, the lessor shall read and complete the BSRA "Self-Propelled Equipment Loading, Unloading and Transport Safety Review Checklist", and provide a copy to the BSRA Portable Equipment Commodity Management Center (PECMC) representative on delivery of the equipment to SRS and also before equipment is loaded for return to the lessor. A copy of the checklist can

be found on the SRS Home Page or can be provided by the BSRA Procurement Representative on request.

G. Liability Provisions

- (1) By acceptance of the Subcontract to which these conditions apply, lessor agrees that
 - a. Lessor assumes and hereby relieves BSRA of any and all liability for any loss or damage to the equipment rented to BSRA occurring during the period from the date of shipment to BSRA to the date of return to lessor as the result of any cause other than the sole fault or negligence of BSRA;
 - b. BSRA's liability under this provision shall be limited to the fair market value of the equipment taking into consideration its age and condition immediately prior to said loss or damage.

H. Recapture Provisions

Note: Optional and in effect only if so stated in the terms and conditions of the Order.

- (1) If this provision is applicable,
 - a. a recapture valuation mutually agreeable to BSRA and lessor shall be established and stated in the Subcontract.
 - b. Lessor certifies that there are no encumbrances of any nature, legal or equitable, held by any person against the equipment rented hereunder, unless so stated in the Subcontract.
- (2) At any time during or at the end of the rental period of the equipment, BSRA may purchase the equipment by paying to lessor the difference between such valuation and total rental paid, plus a charge to cover interest at a rate specified in this Order for the unpaid balance of the equipment valuation for each month or fraction thereof that such Equipment has been under rental to BSRA. Title to such Equipment shall then vest in BSRA and Lessor shall deliver to BSRA such instruments of title as BSRA may require, free of any and all liens and encumbrances.

I. Equipment Operated and Maintained

The following provisions shall be applicable if equipment is rented on the basis of operation and maintenance by the lessor:

- (1) All rental rates stipulated in this Subcontract include all charges for operation and maintenance of the equipment by lessor.

- (2) Lessor has qualified or will promptly qualify and will make all payments under the terms of the unemployment compensation laws of the state in which the Equipment will be operated. In addition, lessor will, at lessor's expense, carry insurance in minimum limits as specified in the Article titled "Work on SRS, Government or other Premises", included in these Special Terms and Conditions.
- (3) Lessor shall obtain BSRA's prior approval before employing any Subcontractors. Each Subcontractor must also carry insurance as specified in subparagraph (2), supra. Lessor shall carry BSRA's protective public liability, bodily injury, and protective property damage insurance of the same minimum limits.
- (4) Lessor shall be responsible for all persons engaged to operate or maintain the equipment or to perform any other work lessor is obligated to perform under this purchase Subcontract. None of said persons shall constitute employees of BSRA.
- (5) In the operation of the equipment, lessor shall comply with all Federal, State, and local regulations and with all safety regulations in effect on the BSRA site. In addition, lessor shall
 - a. Comply with recognized safety practices for the type of work being performed including the furnishing of necessary safety equipment
 - b. Conduct and protect operations in such a manner as to avoid exposing others to injury.
- (6) Lessor shall ensure that all equipment operators have appropriate qualifications and experience for operating the specified equipment, to include any applicable State, Federal or local licenses or certifications.

J. Notices

- (1) Any notice to be given hereunder shall be mailed to the party to be notified, at the address set forth in the Subcontract, by registered mail, and shall be determined to be given when so mailed.

20. PERFORMANCE-BASED MILESTONE PAYMENTS

A. Amount of payments and limitations on payments.

- (1) Subject to such other limitations and conditions as are specified in this Subcontract and this Article, the amount of payments and limitations on

payments shall be specified in the Subcontract's description of the basis for payment.

B. Subcontractor request for performance-based payment.

- (1) The Subcontractor may submit requests for payment of performance-based payments not more frequently than monthly, in a form and manner acceptable to BSRA. Unless otherwise authorized by the BSRA, all performance-based payments in any period for which payment is being requested shall be included in a single request, appropriately itemized and totaled. The Subcontractor's request shall contain the information and certification detailed in paragraphs (L) and (M) of this article.

C. Approval and payment of requests.

- (1) The Subcontractor shall not be entitled to payment of a request for performance based payment prior to successful accomplishment of the event or performance criterion for which payment is requested. The BSRA Procurement Representative shall determine whether the event or performance criterion for which payment is requested has been successfully accomplished in accordance with the terms of the subcontract. BSRA may, at any time, require the Subcontractor to substantiate the successful performance of any event or performance criterion which has been or is represented as being payable.
- (2) The approval by BSRA of a request for performance-based payment does not constitute an acceptance by BSRA and does not excuse the Subcontractor from performance of obligations under this Subcontract.

D. Liquidation of performance-based payments.

- (1) Performance-based finance amounts paid prior to payment for delivery of an item shall be liquidated by deducting a percentage or a designated dollar amount from the delivery payment. If the performance-based finance payments are on a delivery item basis, the liquidation amount for each such line item shall be the percent of that delivery item price that was previously paid under performance based finance payments or the designated dollar amount. If the performance based finance payments are on a whole subcontract basis, liquidation shall be by either pre-designated liquidation amounts or a liquidation percentage.
- (2) If at any time the amount of payments under this subcontract exceeds any limitation in this subcontract, the Subcontractor shall repay to BSRA the excess. Unless otherwise determined by BSRA, such excess shall be credited as a reduction in the un-liquidated performance-based payment balance(s), after adjustment of invoice payments and balances for any retroactive price adjustments.

- E. Reduction or suspension of performance-based payments.
- (1) BSRA may reduce or suspend performance-based payments, liquidate performance-based payments by deduction from any payment under the subcontract, or take a combination of these actions after finding upon substantial evidence any of the following conditions:
 - a. The Subcontractor failed to comply with any material requirement of this subcontract (which includes paragraphs (H) and (I) of this clause).
 - b. Performance of this contract is endangered by the Subcontractor's-
 - (i) Failure to make progress; or
 - (ii) Unsatisfactory financial condition.
 - c. The Subcontractor is delinquent in payment of any subtier subcontract under this subcontract in the ordinary course of business.

- F. Title.
- (1) Title to the property described in this paragraph (F) shall vest in the Government. Vestiture shall be immediately upon the date of the first performance-based payment under this subcontract, for property acquired or produced before that date. Otherwise, vestiture shall occur when the property is or should have been allocable or properly chargeable to this subcontract.
 - (2) "Property," as used in this clause, includes all of the following described items acquired or produced by the Subcontractor that are or should be allocable or properly chargeable to this subcontract under sound and generally accepted accounting principles and practices:
 - a. Parts, materials, inventories, and work in process;
 - b. Special tooling and special test equipment to which the Government is to acquire title under any other clause of this subcontract;
 - c. Nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment and other similar manufacturing aids, title to which would not be obtained as special tooling under paragraph (F)(2)(ii) of this clause; and

d. Drawings and technical data, to the extent the Subcontractor or Subcontractors are required to deliver them to BSRA by other articles of this Subcontract.

(3) Although title to property is in the Government under this article, other applicable articles of this Subcontract (e.g., the termination or special tooling articles) shall determine the handling and disposition of the property.

(4) The Subcontractor may sell any scrap resulting from production under this Subcontract, without requesting BSRA's approval, provided that any significant reduction in the value of the property to which the Government has title under this clause is reported in writing to BSRA.

(5) In order to acquire for its own use or dispose of property to which title is vested in the Government under this clause, the Subcontractor must obtain BSRA's advance written approval of the action and the terms. If approved, the basis for payment (the events or performance criteria) to which the property is related shall be determined to be not in compliance with the terms of the subcontract and not payable (if the property is part of or needed for performance), and the Subcontractor shall refund the related performance-based payments in accordance with paragraph (D) of this clause.

(6) When the Subcontractor completes all of the obligations under this Subcontract, including liquidation of all performance-based payments, title shall vest in the Subcontractor for all property (or the proceeds thereof) not—

a. Delivered to, and accepted by, BSRA under this Subcontract; or

b. Incorporated in supplies delivered to, and accepted by, BSRA under this Subcontract and to which title is vested in the Government under this article.

(7) The terms of this Subcontract concerning liability for Government-furnished property shall not apply to property to which the Government acquired title solely under this article.

G. Risk of loss.

(1) Before delivery to and acceptance by BSRA, the Subcontractor shall bear the risk of loss for property, the title to which vests in the Government under this Article, except to the extent BSRA expressly assumes the risk. If any property is damaged, lost, stolen, or destroyed, the basis of payment (the events or performance criteria) to which the property is related shall be determined to be not in compliance with the terms of the subcontract

and not payable (if the property is part of or needed for performance), and the Subcontractor shall refund the related performance based payments in accordance with paragraph (D) of this article.

H. Records and controls.

- (1) The Subcontractor shall maintain records and controls adequate for administration of this Article. The Subcontractor shall have no entitlement to performance-based payments during any time the Subcontractor's records or controls are determined by BSRA to be inadequate for administration of this Article.

I. Reports and BSRA access.

- (1) The Subcontractor shall promptly furnish reports, certificates, financial statements, and other pertinent information requested by BSRA for the administration of this Article and to determine that an event or other criterion prompting a financing payment has been successfully accomplished. The Subcontractor shall give BSRA reasonable opportunity to examine and verify the Subcontractor's records and to examine and verify the Subcontractor's performance of this Subcontract for administration of this Article.

J. Special terms regarding default.

- (1) If this subcontract is terminated under the Termination for Cause article,
 - a. The Subcontractor shall, on demand, repay to BSRA the amount of unliquidated performance-based payments, and
 - b. title shall vest in the Subcontractors, on full liquidation of all performance-based payments, for all property for which BSRA elects not to require delivery under the Termination for Cause Article of this Subcontract. BSRA shall be liable for no payment except as provided by the Termination for Cause Article.

K. Reservation of rights.

- (1) No payment or vesting of title under this clause shall—
 - a. Excuse the Subcontractor from performance of obligations under this Subcontract; or
 - b. Constitute a waiver of any of the rights or remedies of the parties under the Subcontract.
- (2) BSRA's rights and remedies under this article—
 - a. Shall not be exclusive, but rather shall be in addition to any other rights and remedies provided by law or this Subcontract; and

- b. Shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this Article or the exercise of any other right, power, or privilege of BSRA.

L. Content of Subcontractor's request for performance-based payment.

- (1) The Subcontractor's request for performance-based payment shall contain the following:
 - a. The name and address of the Subcontractor;
 - b. The date of the request for performance-based payment;
 - c. The subcontract number and/or other identifier of the subcontract or Order under which the request is made;
 - d. Such information and documentation as are required by the Subcontract's description of the basis for payment; and
 - e. A certification by a Subcontractor official authorized to bind the Subcontractor, as specified in paragraph (M) of this clause.

M. Content of Subcontractor's certification.

- (1) As required in paragraph (L)(5) of this article, the Subcontractor shall make the following certification in each request for performance-based payment:

I certify to the best of my knowledge and belief that—

- a. This request for performance-based payment is true and correct; this request (and attachments) has been prepared from the books and records of the Subcontractor, in accordance with the Subcontract and the instructions of BSRA;
- b. (Except as reported in writing on__), all payments to subtier subcontractors under this Subcontract have been paid, or will be paid, currently, when due in the ordinary course of business;
- c. There are no encumbrances (except as reported in writing on) against the property acquired or produced for, and allocated or properly chargeable to, the Subcontract which would affect or impair the Government's title;
- d. There has been no materially adverse change in the financial condition of the Subcontractor since the submission by the Subcontractor to BSRA of the most recent written information dated ; and

- e. After the making of this requested performance-based payment, the amount of all payments for each deliverable item for which performance based payments have been requested will not exceed any limitation in the Subcontract, and the amount of all payments under the Subcontract will not exceed any limitation in the Subcontract.

21. SUSTAINABLE ACQUISITION PROGRAM

- A. Pursuant to Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, and Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance, the Department of Energy (DOE) is committed to managing its facilities in an environmentally preferable and sustainable manner that will promote the natural environment and protect the health and well-being of its Federal employees and subcontractor service providers. In the performance of work under this Subcontract, the subcontractor shall provide its services in a manner that promotes the natural environment, reduces greenhouse gas emissions and protects the health and well-being of Federal employees, contract service providers and visitors using the facility.
- B. Green purchasing or sustainable acquisition has several interacting initiatives. The subcontractor must comply with initiatives that are current as of the contract award date. DOE may require compliance with revised initiatives from time to time. The Subcontractor may request an equitable adjustment to the terms of this Subcontract using the procedures in the Changes clause of the Subcontract. The initiatives important to these orders are explained on the following Government or industry internet sites:
 - (1) Recycled Content Products are described at <http://epa.gov/cpg>
 - (2) Biobased products are described at <http://www.biopreferred.gov/>
 - (3) Energy efficient products are at <http://energystar.gov/products> for Energy Star products
 - (4) Energy efficient products are at <http://www.femp.energy.gov/procurement> for FEMP designated products
 - (5) Environmentally preferable and energy efficient electronics including desktop computers, laptops and monitors are at <http://www.epeat.net> the Electronic Products Environmental Assessment Tool (EPEAT) the Green Electronics Council site
 - (6) Greenhouse gas emission inventories are required, including Scope 3 emissions which include subcontractor emissions. These are discussed at Section 13 of Executive Order 13514 which can be found at

<http://www.archives.gov/federal-register/executive-orders/disposition.html>

(7) Non-Ozone Depleting Alternative Products are at <http://www.epa.gov/ozone/strathome.html>

(8) Water efficient plumbing products are at <http://epa.gov/watersense>.

C. The clauses at FAR 52.223-2, Affirmative Procurement of Biobased Products under Service and Construction Contracts, 52.223-15, Energy Efficiency in Energy Consuming Products, and 52.223-17 Affirmative Procurement of EPA-Designated Items in Service and Construction Contracts, require the use of products that have biobased content, are energy efficient, or have recycled content. To the extent that the services provided by the subcontractor require provision of any of the above types of products, the subcontractor must provide the energy efficient and environmentally sustainable type of product unless that type of product—

(1) Is not available;

(2) Is not life cycle cost effective or does not exceed 110% of the price of alternative items if life cycle cost data is unavailable (EPEAT is an example of lifecycle costs that have been analyzed by DOE and found to be acceptable at the silver and gold level);

(3) Does not meet performance needs; or,

(4) Cannot be delivered in time to meet a critical need.

D. In the performance of this Subcontract, the Subcontractor shall comply with the requirements of Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, (http://www.epa.gov/greeningepa/practices/eol3_423.htm) and Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance (<http://www.archives.gov/federal-register/executive-orders/disposition.html>). The Subcontractor shall also consider the best practices within the DOE Acquisition Guide, Chapter 23, Acquisition Considerations Regarding Federal Leadership in Environmental, Energy, and Economic Performance. This guide includes information concerning recycled content products, bio-based products, energy efficient products, water efficient products, alternative fuels and vehicles, non-ozone depleting substances and other environmentally preferable products and services. This guide is available on the Internet at: <http://management.energy.gov/documents/AcqGuide23pt0Rev1.pdf>.

E. In complying with the requirements of paragraph (c) of this clause, the subcontractor(s) shall coordinate its activities with and submit required reports through the Environmental Sustainability Coordinator or equivalent position. Reporting under this paragraph and paragraphs (f) and (g) of this clause is only

required if the Subcontract or subtier subcontract offers subcontracting opportunities for energy efficient and environmentally sustainable products or services exceeding \$100,000 in any contract year.

- F. The Subcontractor shall prepare and submit performance reports, if required, using prescribed DOE formats, at the end of the Federal fiscal year, on matters related to the acquisition of environmentally preferable and sustainable products and services. This is a material delivery under the Subcontract. Failure to perform this requirement may be considered a failure that endangers performance of this contract and may result in termination for default.
- G. These provisions shall be flowed down only to first tier subcontracts exceeding the Simplified Acquisition Threshold, as defined in FAR 2.101, that support operation of the DOE facility and offer significant subcontracting opportunities for energy efficient or environmentally sustainable products or services. The Subcontractor, if subcontracting opportunities for sustainable and environmentally preferable products or services exceed the threshold in paragraph (E) of this clause, will comply with the procedures in paragraphs (C) through (E) of this clause regarding the collection of all data necessary to generate the reports required under paragraphs through (C) of this clause, and submit the reports directly to the Prime Contractor's Environmental Sustainability Coordinator at the supported facility. The Subcontractor will advise the BSRA Procurement Representative if it is unable to procure energy efficient and environmentally sustainable items and cite which of the reasons in paragraph (C) of this clause apply. The reports may be submitted at the conclusion of the Subcontract term provided that the Subcontract delivery term is not multiyear in nature. If the delivery term is multi-year, the Subcontractor shall report its accomplishments for each Federal fiscal year in a manner and at a time or times acceptable to both parties. Failure to comply with these reporting requirements may be considered a breach of contract with attendant consequences.

22. EXECUTIVE ORDER 13423, STRENGTHENING FEDERAL ENVIRONMENTAL, ENERGY, AND TRANSPORTATION MANAGEMENT [OCT 2010]

- A. Since this Subcontract involves subcontractor operation of Government-owned facilities and/or motor vehicles, the provisions of Executive Order 13423 are applicable to the subcontractor to the same extent they would be applicable if the Government were operating the facilities or motor vehicles. Information on the requirements of the Executive Order may be found at <http://www.archives.gov/federal-register/executive-orders/>.

23. *SERVICE CONTRACT ACT OF 1965 AS AMENDED (NOV 2007)

Incorporated by Reference FAR 52.222-41

24. **RESERVED**
25. ***STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (MAY 1989)**
Incorporated by Reference FAR 52.222-42
26. ***FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT - PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS) (NOV 2006)**
Incorporated by Reference FAR 52.222-43
27. ***FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT - PRICE ADJUSTMENT (FEB2002)**
Incorporated by Reference FAR 52.222-44
28. ***GOVERNMENT PROPERTY FURNISHED "AS IS" (APR 1984)**
Incorporated by Reference FAR 52.245-1
29. ***UTILIZATION OF SMALL BUSINESS CONCERNS (MAY 2004)**
Incorporated by Reference FAR 52.219-8
30. ***SMALL BUSINESS SUBCONTRACTING PLAN (JUL 2005)**
Incorporated by Reference FAR 52.219-9
- (The following two articles apply to Basic Ordering Agreements (BOAs) and Blanket Purchase Agreements (BPAs.)*
31. ***SMALL BUSINESS SUBCONTRACTING PLAN ALT III (JAN 2017)**
Incorporated by Reference FAR 52.219-9
32. ***SMALL BUSINESS SUBCONTRACTING PLAN ALT IV (JAN 2019) (DEVIATION 2-19-00005) (JAN 2019)**
Incorporated by Reference FAR 52.219-9
33. ***RIGHTS IN DATA – GENERAL (JUN 1987)**
Incorporated by Reference FAR 52.227-14 as modified pursuant to DEAR 927.409(a)(1)
34. ***CLASSIFICATION/ DECLASSIFICATION (SEP 1997)**
Incorporated by Reference DEAR 952.204-70
35. ***FILING OF PATENT APPLICATIONS-CLASSIFIED SUBJECT MATTER (APR 1984)**
Incorporated by Reference FAR 52.227-10
36. ***FOREIGN TRAVEL (DEC 2000)**
Incorporated by Reference DEAR 952.247-70

37. *REQUIRED SOURCES FOR HELIUM AND HELIUM USAGE DATA (APR 2002)

Incorporated by Reference FAR 52.208-8

38. RESERVED**39. *DUTY FREE ENTRY (FEB 2000)**

This Article is applicable to supplies identified in the schedule to be accorded duty-free entry will be imported into the customs territory of the United States; or other foreign supplies in excess of \$10,000 may be imported into the customs territory of the United States.

- (a) *Definition.* “Customs territory of the United States” means the States, the District of Columbia, and Puerto Rico.
- (b) Except as otherwise approved by the Company, the Subcontractor shall not include in the subcontract price any amount for duties on supplies specifically identified in the schedule to be accorded duty-free entry.
- (c) Except as provided in paragraph (d) of this clause or elsewhere in this Subcontract, the following procedures apply to supplies not identified in the schedule to be accorded duty-free entry:
 - (1) The Subcontractor shall notify the BSRA Procurement Representative in writing of any purchase of foreign supplies (including, without limitation, raw materials, components, and intermediate assemblies) in excess of \$10,000 that are to be imported into the customs territory of the United States for delivery to the BSRA under this Subcontract, either as end products or for incorporation into end products. The Subcontractor shall furnish the notice to the PR at least thirty (30) calendar days before the importation. The notice shall identify the:
 - a Foreign supplies;
 - b Estimated amount of duty; and
 - c Country of origin
 - (2) The BSRA Procurement Representative will determine whether any of these supplies should be accorded duty-free entry and will notify the Subcontractor within ten (10) calendar days after receipt of the Subcontractor’s notification.
 - (3) Except as otherwise approved by the BSRA Procurement Representative, the Subcontract price shall be reduced by (or the allowable cost shall not

include) the amount of duty that would be payable if the supplies were not entered duty-free.

- (d) The Subcontractor is not required to provide the notification under paragraph (c) of this clause for purchases of foreign supplies if:
 - (1) The supplies are identical in nature to items purchased by the Subcontractor or any subtier subcontractor in connection with its commercial business; and
 - (2) Segregation of these supplies to ensure use only on BSRA subcontracts containing duty-free entry provisions is not economical or feasible.
- (e) The Subcontractor shall claim duty-free entry only for supplies to be delivered to BSRA under this Subcontract, either as end products or incorporated into end products, and shall pay duty on supplies, or any portion of them, other than scrap, salvage, or competitive sale authorized by the PR, diverted to nongovernmental use.
- (f) The Government will execute any required duty- free entry certificates for supplies to be accorded duty-free entry and will assist the BSRA and Subcontractor in obtaining duty-free entry for these supplies.
- (g) Shipping documents for supplies to be accorded duty-free entry shall consign the shipments to BSRA in care of the Subcontractor and shall include the:
 - (1) Delivery address of the Subcontractor (or prime contracting agency, if appropriate);
 - (2) BSRA Subcontract number and BSRA Prime Contract number;
 - (3) Identification of carrier;
 - (4) Notation "UNITED STATES GOVERNMENT, [DOE or 1VNSA] , Duty-free entry to be claimed pursuant to Item No(s) [from Tariff Schedules] , Harmonized Tariff Schedules of the United States. Upon arrival of shipment at port of entry, District Director of Customs, please release shipment under 19 CFR Part 142 and notify BSRA for execution of Customs Forms 7501 and 7501-A and any required duty-free entry certificates.";
 - (5) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight); and
 - (6) Estimated value in United States dollars.
- (h) The Subcontractor shall instruct the foreign supplier to:
 - (1) Consign the shipment as specified in paragraph (g) of this clause;

- (2) Mark all packages with the words "UNITED STATES GOVERNMENT" and the title of the Battelle Savannah River Alliance, LLC; and
- (3) Include with the shipment at least two copies of the bill of lading (or other shipping document) for use by the District Director of Customs at the port of entry.
- (i) The Subcontractor shall provide written notice to the cognizant contract administration office immediately after notification by the BSRA Procurement Representative that duty-free entry will be accorded foreign supplies or, for duty-free supplies identified in the Subcontract, upon award by the Subcontractor to the overseas supplier. The notice shall identify the:
 - (1) Foreign supplies;
 - (2) Country of origin;
 - (3) BSRA Subcontract number and BSRA Prime Contract Number; and
 - (4) Scheduled delivery date(s).
- (j) The Subcontractor shall include and flow down the substance of this clause to their subtier subcontractors.

40. *ACCOUNTS, RECORDS, AND INSPECTIONS (DEC 2000) DEVIATION ACQUISITION LETTER 2005-04, 11/02/2004

DEAR 970.5232-3

(Paragraphs (a) through (h) only)

NOTE: Applicable to all subcontracts (including fixed-price or unit-price subcontracts or purchase orders) of any tier entered hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.

41. DEAR 952.204-71 SENSITIVE FOREIGN NATIONS CONTROLS (MAR 2011)

The following is applicable in subcontracts which may involve making unclassified information about nuclear technology available to sensitive foreign nations

- A. In connection with any activities in the performance of this Subcontract, the Subcontractor agrees to comply with the "Sensitive Foreign Nations Controls" requirements attached to this Subcontract, relating to those countries, which may from time to time, be identified to the Subcontractor by written notice as sensitive foreign nations. The Subcontractor shall have the right to terminate its performance under this subcontract upon at least forty-five (45) days prior written notice to the BSRA Procurement Representative if the Subcontractor determines that it is unable, without substantially interfering with its polices or without adversely impacting its performance to continue performance of the

work under this Subcontract as a result of such notification. If the Subcontractor elects to terminate performance, the provisions of this Subcontract regarding Termination for Convenience shall apply.

- B. The provisions of this clause shall be included in any of Subcontractor's contracts/agreements with a subtier supporting Subcontractor's performance of this Subcontract which may involve making unclassified information about nuclear technology available to sensitive foreign nations.