

SECTION H
SPECIAL CONTRACT REQUIREMENTS

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SECTION H

SPECIAL CONTRACT REQUIREMENTS

H.1 TECHNICAL DIRECTION

- (a) Performance of the work under this contract shall be subject to the technical direction of DOE Contracting Officer's Representative (COR). The term "technical direction" is defined to include:
- (1) Directions to the Contractor which redirect the contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details or otherwise serve to accomplish the contractual Statement of Work.
 - (2) Provision of written information to the Contractor which assists in the interpretation of drawings, specifications or technical portions of the work description.
 - (3) Review and, where required by the contract, approval of technical reports, drawings, specifications and technical information to be delivered by the Contractor to the Government under the contract.
 - (4) Directions to the Contractor which suspend work when clear and present danger exists to workers or members of the public. Clear and present danger is a condition or hazard which could be expected to cause death or serious harm to workers, members of the public, or the environment, immediately or before such condition or hazard can be eliminated through normal procedures. The contractor shall make no claim for an extension of time or for compensation or damages by reason of, or in connection with, such work stoppage.
- (b) Technical direction must be within the scope of work stated in the contract. The COR does not have the authority to, and may not, issue any technical direction which:
- (1) Constitutes an assignment of additional work outside the Statement of Work;
 - (2) Constitutes a change as defined in the contract clause entitled "Changes";
 - (3) In any manner causes an increase or decrease in the total estimated contract cost, the fee (if any), or the time required for contract performance;
 - (4) Changes any of the expressed terms, conditions or specifications of the contract; or

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

[End of Clause]

H.2 MODIFICATION AUTHORITY

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

- (a) Accept nonconforming work,
- (b) Waive any requirement of this contract, or

(c) Modify any term or condition of this contract.

[End of Clause]

H.3 SMALL BUSINESS SUBCONTRACTING PLAN

The Small Business Subcontracting Plan submitted by the Contractor for this contract, and approved by the Contracting Officer is, by reference, hereby incorporated in and made a material part of this contract. Any required revisions to the Plan shall also be approved by the Contracting Officer.

[End of Clause]

H.4 SECURITY CLEARANCES

- (a) Clearance Requirements: Certain contractor employees shall be "Q", "L" or "BAO" cleared. For employees requiring DOE "Q" or "L" security clearances, the contractor shall not employ anyone who is not a citizen of the United States. (Clearance-Access authorizations are granted by the DOE pursuant to Title 10, Code of Federal Regulations, Part 710.) Security Badges must be worn properly at all times while working at any of the DOE facilities.
- (b) Obtaining Clearances: Prior to submitting individuals for clearance, the contractor must screen individuals in accordance with an employee screening plan approved by the DOE Contracting Officer's Representative (COR). The certification by the contractor to the COR of a favorable screening is required prior to employment. The screen shall include verification of identity, citizenship, previous employment and education and the results of credit and law enforcement checks. Clearances will be provided and paid for by DOE. The request for clearance and renewal of clearances must be justified based on actual job performance requirements.
- (c) Maintenance of Clearances: Security Badges will be furnished by DOE. Neither the contractor nor its employees shall ever reassign badges to a different employee. The contractor shall assure that badges are turned in for employees who are no longer working on this contract, for employee who no longer need access for whatever reason, or when a badge expires.
- (d) The contractor, on a case-by-case basis, will provide its own cleared escorts as needed and provide appropriate training.

[End of Clause]

H.5 CONFIDENTIALITY OF INFORMATION

- (a) To the extent that the work under this contract requires that the Contractor be given access to confidential or proprietary business, technical, or financial information belonging to the Government or other companies, the Contractor shall after receipt thereof, treat such information as confidential and agrees not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by the Contracting Officer in writing. The foregoing obligations, however, shall not apply to:
- (1) Information which, at the time of receipt by the Contractor, is in public domain;
 - (2) Information which is published after receipt thereof by the Contractor or otherwise becomes part of the public domain through no fault of the Contractor;
 - (3) Information which the Contractor can demonstrate was in its possession at the time of receipt thereof and was not acquired directly or indirectly from the Government or other companies;
 - (4) Information which the Contractor can demonstrate was received by it from a third party who did not require the Contractor to hold it in confidence.
- (b) The Contractor shall obtain the written agreement, in a form satisfactory to the Contracting Officer, of each employee permitted access, whereby the employee agrees that he will not discuss, divulge or disclose any such information or data to any person or entity except those persons within the Contractor's organization directly concerned with the performance of the contract.
- (c) The Contractor agrees, if requested by the Government, to sign an agreement identical, in all material respects, to the provisions of this clause, with each company supplying information to the Contractor under this contract, and to supply a copy of such agreement to the Contracting Officer.
- (d) The Contractor agrees that upon request by DOE it will execute a DOE-approved agreement with any party whose facilities or proprietary data it is given access to or is furnished, restricting use and disclosure of the data or the information obtained from the facilities. Upon request by DOE, such an agreement shall also be signed by Contractor personnel.
- (e) This clause shall flow down to all appropriate subcontracts.

[End of Clause]

H.6 KEY PERSONNEL

The personnel specified below are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified individuals to other programs, the Contractor shall notify the Contracting Officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. The Contracting Officer is to be notified reasonably in advance of diverting of, or substitution for, any of these individuals. That period of time shall not be less than thirty (30) days. No diversion shall be made by the Contractor without the written consent of the Contracting Officer, provided that the Contracting Officer may ratify in writing such diversion and such ratification shall constitute the consent of the Contracting Officer required by this clause. Whenever, for any reason, one or more of the following employees is unavailable for assignment for work under the contract, the Contractor shall, with the approval of the Contracting Officer, replace such employee with an employee of substantially equal abilities and qualifications with meritorious consideration of increasing opportunity to fully use the talents and capabilities of a diverse workforce. This clause may be amended from time to time during the course of the contract to either add or delete personnel, as appropriate.

NAME	TITLE
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

[End of Clause]

H.7 DIVERSITY PROGRAM

- (a) The Contractor shall develop and implement a Diversity Program in support of the DOE Diversity Initiative. A Diversity Plan covering the full period of performance shall be submitted to the Contracting Officer for approval within 60 days after the effective date of the Contract. Once the Diversity Plan is approved by the

Contracting Officer, the Contractor shall implement the plan within thirty (30) days.

- (b) The Diversity Plan shall address, at a minimum, the Contractor's approach to ensure an effective Diversity Program (including addressing applicable Affirmative Action and Equal Employment Opportunity regulations) to include: (1) a statement of the Contractor's policies and practices; (2) planned initiatives and activities which demonstrate a commitment to a Diversity program including recruitment strategies for hiring a diverse work force. The Diversity Plan shall also address, as a minimum, the Contractor's approach for promoting diversity through (1) the Contractor's work force, (2) educational outreach, including a mentor/protegee program, (3) stakeholder involvement and outreach; (4) subcontracting, and (5) economic development.
- (c) An annual Diversity Report shall be submitted to DOE. This report shall provide a list of accomplishments achieved both internally and externally and projected developments during the current reporting period. The report shall also list any proposed changes to the Diversity Plan which shall be subject to Contracting Officer approval.
- (d) Failure on the part of the Contractor to develop and implement a Diversity Plan as required in this clause shall constitute a breach of this contract.

[End of Clause]

H.8 SOFTWARE MADE AVAILABLE FOR CONTRACTOR'S USE

- (a) The Government, from time to time, may make certain software acquired under license available to the Contractor for its use in the performance of this contract.
- (b) The Contractor recognizes and acknowledges that such software or data contained therein may be proprietary and confidential to a third party.
- (c) The Contractor agrees that it and its employees will not use, copy, disclose, modify, or reverse engineer such software except as permitted by the license and any other terms and conditions under which the software is made available to the Contractor.
- (d) The Contractor is not authorized to violate any software licensing agreement, or to cause the Government to violate any licensing agreement. If, at any time during the performance of this contract, the Contractor has reason to believe that its utilization of Government furnished software may involve or result in a violation of DOE's licensing agreement, the Contractor shall promptly notify the Contracting Officer, in writing, of the pertinent facts and circumstances. Pending direction from the Contracting Officer, the contractor shall continue to perform to the full extent possible without utilizing the software in question.

(e) Paragraphs (a) through (d) of this clause shall flow down to all subcontracts.

[End of Clause]

H.9 REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF THE OFFEROR

The Representations, Certifications, and Other Statements of the Offeror, dated (to be filled in at award) for this contract are, by reference, hereby incorporated in and made a part of this contract.

[End of Clause]

H.10 UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION/EXPORT CONTROLLED INFORMATION

Documents, information and/or equipment originated by the Contractor or furnished by the Government to the Contractor in connection with this solicitation and any resulting contract may contain Unclassified Controlled Nuclear Information and/or Export Controlled Information as determined pursuant to Section 148 of the Atomic Energy Act of 1954, as amended, DOE directives and U.S. laws and regulations. The Contractor shall be responsible for protection of such documents, information, and/or equipment from unauthorized dissemination in accordance with DOE regulations, requirements and instructions.

[End of Clause]

H.11 DISPOSITION OF INTELLECTUAL PROPERTY TO ASSURE CONTINUITY OF THE DUF₆ CONVERSION PROGRAM

The following provisions shall apply in order to enable DOE to assure completion and continuity of the DUF₆ conversion program.

- (a) Regarding technical data and other intellectual property, DOE may take possession of all technical data, including proprietary data and data obtained from subcontractors, licensors, and licensees, necessary to operate the conversion and storage facilities ("facility"), as well as the designs, operation manuals, flowcharts, software, etc., construction work in progress, completed manuals, flowcharts, completed facilities, equipment and other property and information and which may be used by DOE or its contractors (in confidence) to the extent necessary for performance of the work or operation of the facility to convert depleted uranium

- hexafluoride, or to store the converted material, in conformance with the purpose of this contract. Contractors shall assure that its subcontractors and licensors make similar rights available to DOE and its contractors.
- (b) The Contractor agrees to and does hereby grant to the Government an irrevocable non-exclusive paid up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the Contractor, and any other intellectual property, which are owned or controlled by the Contractor, at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which covers articles, materials, or products at the facility, (1) to practice or to have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of that facility. The acceptance or exercise by the Government of the aforesaid rights and license shall not prevent the Government at any time from contesting the enforceability, validity, or scope of, or title to, any rights or patents or other intellectual property herein licensed.
- (c) In addition, the Contractor will take all necessary steps to assign permits, authorizations, leases, and any licenses in any third party intellectual property for operations and closure of the facility to DOE or such other third party as DOE may designate.

[End of Clause]

H.12 WORK FORCE TRANSITION AND HUMAN RESOURCES MANAGEMENT

- (a) The Contractor shall adhere to the following requirements in its human-resources actions, and fully cooperate with other contractors and subcontractors of the Department of Energy, and with the United States Enrichment Corp. (USEC), as necessary, in order to meet the following objectives: (1) achieve an orderly transition; (2) be fair to incumbent employees while maintaining a productive and flexible work force; (3) minimize the cost of the transition and its impacts on other DOE programs; and (4) promote those practices which will result in stable collective bargaining relationships.
- (b) Labor Relations
- (1) Collective Bargaining. The work covered under this contract spans a broad life cycle (design, construction, and operation of facilities) at multiple sites, and thus, significant labor relations complexities must be strategically addressed by the Contractor to assure mission success. The Contractor agrees to conduct its labor relations program in accordance with applicable laws and DOE's intent that labor relations policies and practices reflect the best experience of American industry in aiming to achieve the type of stable labor-management

relations essential to the successful accomplishment of DOE's programs at reasonable cost.

- (2) Consistent with labor law, for that work that is being performed by members of the Paper, Allied-Industrial, Chemical, and Energy Workers International Union (PACE) at the time that the contract is signed, the Contractor agrees to recognize PACE as the certified employee representative for operations and maintenance work that has historically and traditionally been performed by PACE members and is covered in the scope of this contract, and negotiate a collective bargaining agreement that considers the applicable terms and conditions of the existing Bechtel Jacobs Company, LLC (BJC) and USEC bargaining agreements for work at the sites.
- (3) For future operations and maintenance work, the Contractor will neither help nor hinder efforts by any labor organization to organize and represent employees within an appropriate bargaining unit. The Contractor will in good faith at all times respect the rights of its employees under the National Labor Relations Act to self-organization; to form, join, or assist labor organizations; to bargain collectively through representatives of their own choosing; to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; and to have the right to refrain from any or all such activities.
- (4) For construction work, the Contractor will give due consideration to the benefit of negotiating a construction project labor agreement with the building trades to promote labor stability and cooperation.
- (5) The Department of Energy will leave the collective bargaining process to orderly negotiation and agreement between Contractor management and the certified representatives of its employees with the maximum possible freedom from involvement by the Department.
- (6) Access. The Contractor will determine whether employees hired to perform operations and maintenance work after the contract is signed constitute a representative complement and an accretion to the work being performed by PACE members at the time the contract is signed. If a labor organization has not been appropriately recognized, the Contractor will permit access during non-working time in non-working areas as agreed by the Contractor and DOE to representatives of any labor organization, including access for the purpose of communicating with employees and distributing authorization cards to employees.
- (7) Card Check. In the event that authorization cards are proffered, the Contractor will submit all such authorization cards proffered by any labor organization to a mutually selected third party, along with copies of each bargaining unit employee's signature from personnel records, to determine whether the

authorization cards represent authorizations from a majority of the employees in the bargaining unit.

- (8) Form of Authorization Card. To be considered by the third party selected by the parties to determine whether a union has been authorized to represent a good faith majority of the employees in the bargaining unit, authorization cards must expressly state that by signing the card, the employee designates the labor organization as the employee's exclusive bargaining representative, and further understands that if a majority of the employees in the bargaining unit also sign such cards, the Contractor will recognize the labor organization as the exclusive bargaining representative of all employees in the bargaining unit without a National Labor Relations Board (NLRB) supervised election.
 - (9) Recognition. In the event the third party selected by the parties determines that a labor organization has submitted valid authorization cards (as described above) executed by an uncoerced good faith majority of the employees in an appropriate bargaining unit, the Contractor will voluntarily recognize the labor organization as the sole and exclusive bargaining agent for all of the employees in the bargaining unit.
 - (10) Other Union. In the event that the Contractor has not recognized a labor organization pursuant to this paragraph and that more than one labor organization has expressed its interest in organizing employees in an appropriate bargaining unit and both labor organizations involved have submitted valid authorization cards (as described above) or seeking election executed by more than 30% of the employees in an appropriate bargaining unit, the Contractor shall submit the matter to the NLRB for resolution.
- (c) Hiring Preference. Employees who separated or are threatened with separating from BJC, its first or second tier subcontractor, or USEC will receive a hiring preference for non-managerial positions in non-construction activities listed in the Statement of Work (depleted uranium hexafluoride conversion plant operations, conversion plant product and product storage, cleaning and disposition of empty and heel cylinders, and shipping of product and disposed materials) for this contract consistent with the Contracting Officer approved staffing plan, in accordance with the following priorities:
- (1) Employees who are engaged in cylinder maintenance work for BJC, its first or second tier subcontractor, or USEC at the Portsmouth or Paducah gaseous diffusion plant shall receive a right of first refusal for the jobs they currently perform consistent with applicable site seniority at that facility.
 - (2) Employees who are not employed in the same position for BJC, its first or second tier subcontractor, or USEC at the Portsmouth or Paducah gaseous diffusion plant but who are employed within the same function that is covered by

this procurement at the Portsmouth or Paducah gaseous diffusion plant and who are qualified, shall receive offers for openings at the facility at which they are employed consistent with applicable site seniority at that facility.

- (3) Employees who are not employed in the same position by BJC, its first or second tier subcontractor, or USEC at the Portsmouth or Paducah gaseous diffusion plant but who are employed within the same function that is covered by this procurement at the Portsmouth or Paducah gaseous plant and who are not qualified but who agree to become qualified and can become qualified for openings at the Portsmouth and Paducah facility with the training provided pursuant to paragraph (e), below, shall receive offers for openings at the facility at which they are employed consistent with applicable site seniority at that facility.
- (4) Individuals who have been identified as being at risk of being involuntarily separated in employment with the USEC or BJC (and its 1st and 2nd tier subcontractors) at either plant by a plant closing or mass layoff (as such terms are defined in Section 2101 (a)(2) and (3) of the Title 29 of the United States Code) at either of the gaseous diffusion plants who were employed at such plant on July 1, 1993, and who are qualified or can become qualified by the commencement of active employment for openings at the Portsmouth or Paducah facility, shall receive offers for openings at the facility at which they were employed consistent with site seniority at that facility.
- (5) Individuals who are entitled to recall rights under applicable collective bargaining agreements, and who are qualified or can become qualified by the commencement of active employment for openings at the facility, shall receive recall rights for openings at the facility at which they were employed consistent with applicable site seniority at the facility.
- (6) Individuals who have been involuntarily separated in employment with the USEC or BJC and who are eligible for the hiring preference contained in the clause in I entitled "Displaced Employee Hiring Preference" shall receive a preference-in-hiring for openings as provided in that clause and as consistent with the provisions of the applicable Work Force Restructuring Plan regarding the preferential hiring of employees.
- (7) Former employees of other DOE contractors who are eligible for the hiring preference contained in the clause entitled "Displace Employees Hiring Preference" shall receive the preference included in that clause.
- (8) After the above preferences have been satisfied, other individuals who have separated from employment at the Portsmouth and Paducah gaseous diffusion plant and who are not barred from seeking employment at the Portsmouth or Paducah facility by the terms of employee waivers or releases of claims they

executed shall receive preference for openings for which they are qualified or can become qualified at the Portsmouth or Paducah facility with the training provided pursuant to paragraph (e), below.

- (9) The Contractor shall not at any time during the terms of this contract make offers of employment for non-managerial positions under the contract to others, or decide to use non-managerial personnel engaged in positions for its operations elsewhere, in non-managerial positions under this contract until the preferences set forth above have all been implemented.
- (d) Pay and Benefits. The Contractor shall provide a competitive overall pay and benefits package that provides substantial continuity of benefits and takes into account employees' previous compensation level for both (1) employees doing work contained in the work scope who are "transitioned" to the contractor, (e.g. cylinder maintenance), and (2) future employees that were displaced (or at risk of being displaced) by USEC or BJC (and first/second tier subcontractors) and subsequently hired by the Contractor.
- (1) The Contractor shall provide a program of medical insurance for active and retired employees which include options for substantial continuity of coverage in all the circumstances to employees and retirees.
 - (2) The Contractor shall grant past service credits wherever practical, e.g., for paid leave, job bidding, and severance pay. If one has received severance pay and is subsequently re-employed and granted credit for past service under this contract, then the severance pay benefit service timetable starts anew.
 - (3) The Contractor shall establish a defined contribution plan and a defined benefit pension plan and seek negotiations with BJC and USEC for transfer of assets and liabilities with the objective of reaching an agreement that reflects DOE's intent to work toward providing a substantial continuity of the level of benefits provided previously to transitioned employees.
- (e) Training. The Contractor will establish one-time training programs specifically for the purpose of training individuals who are employed by BJC, its applicable first or second tier subcontractors, or USEC in the skills required for the commencement of the non-construction activities listed in the Statement of Work (depleted uranium hexafluoride conversion plant operations, conversion plant product and product storage, cleaning and disposition of empty and heel cylinders, and shipping of product and disposed materials) who are threatened with involuntary separation. These one-time training programs will not exceed six months in duration and \$5,000 per person in cost, and will be completed no sooner than sixty days, and no later than ten days, prior to the commencement of the activities listed above. The

Contractor will offer this training opportunity to employees in the same sequence as set out in paragraph (c)(1)-(3), above.

- (f) Severance Pay. No severance pay is warranted on the date incumbent employees transition to the Contractor since the transition occurs under substantial continuity of benefits. These employees will retain their severance pay benefit earned with the incumbent contractor and/or USEC and their predecessor contractors, plus any severance pay based on service with the Contractor, and will be paid applicable severance if an individual is ever subsequently involuntarily terminated (except for cause) by the Contractor. Severance pay benefits are not an allowable cost at the end of the term of the contract, including termination of the contract, if employees are employed by or receive an offer of employment with a replacement contractor or another DOE Contractor with substantial continuity of benefits and credit for prior length of service are maintained.

[End of Clause]

H.13 DETERMINATION OF APPROPRIATE LABOR STANDARDS

The Contracting Officer or designee shall determine the appropriate labor standards, in accordance with the Service Contract Act, the Davis-Bacon Act, or other applicable labor laws which shall apply to work performed under this contract. The Contractor shall provide such information in the form and time required by DOE, as may be necessary for DOE to make such labor standards determinations. The Contractor shall ensure that the appropriate labor standards provisions are applied to the work, including subcontracts, and that appropriate wage determinations are obtained and utilized. Any wage determinations under the Service Contract Act applicable to employees of the Contractor will be added to the contract prior to the performance of the covered work, consistent with the provisions of the clause entitled "Service Contract Act of 1965" in Section I.

[End of Clause]

H.14 SUBCONTRACTING REQUIREMENTS

The Contractor shall accomplish appropriate portions of the work through the award of competitive subcontracts, including the use of fixed price subcontracts, when this produces the best value to the Government in meeting technical, cost, and schedule requirements. The make-or-buy plan required by the clause in Section I entitled "Make-or-Buy Plan" shall be consistent with this clause and the clause in I entitled "Competition in Subcontracting."

[End of Clause]

H.15 PERMITS, APPLICATIONS, LICENSES, AND OTHER REGULATORY DOCUMENTS

- (a) Consistent with the clause in Section I entitled, “**Permits or Responsibilities**,” the Contractor must obtain any licenses, permits, other approvals or authorizations for conducting all activities under the contract. The Contractor is responsible for complying with all permits, licenses, certifications, authorizations and approvals from federal, state, and local regulatory agencies that are necessary for all activities under this contract (hereinafter referred to collectively as ‘permits’). Except as specifically provided in this section and to the extent not prohibited by law or cognizant regulatory authority, the Contractor (or, if applicable, its subcontractors) will be the sole applicant for any such permits required for its activities. The Contractor must take all appropriate actions to obtain transfer of existing permits, and DOE will use all reasonable means to facilitate transfer of existing permits. If DOE determines it is appropriate or if DOE is required by cognizant regulatory authority to sign permit applications, DOE may elect to sign as owner or similar designation, but the Contractor (or, if applicable, its subcontractors) must also sign as operator or similar designation reflecting its responsibility under the permit unless DOE waives this requirement in writing.
- (b) Unless otherwise authorized by the Contracting Officer, the Contractor must submit to DOE for DOE’s review and comment all permit applications, reports or other documents required to be submitted to cognizant regulatory authorities. Such draft documents must be provided to DOE within a time frame, identified by DOE, sufficient to allow DOE substantive review and comment; and DOE will perform such substantive review and comment within such time frame. When providing DOE with documents that are to be signed or co-signed by DOE, the Contractor will accompany such document with a certification statement, signed by the appropriate Contractor corporate officer, attesting to DOE that the document has been prepared in accordance with all applicable requirements and the information is, to the best of its knowledge and belief, true, accurate, and complete.
- (c) Except as specifically provided in this clause and to the extent not prohibited by law or cognizant regulator authority, the Contractor (or, if applicable, its subcontractors) will be the signatory for reports, hazardous waste manifests, and other similar documents required under environmental permits or applicable environmental laws and regulations.
- (d) DOE agrees that if bonds, insurance, or administrative fees are required as a condition for such permits, such costs shall be allowable. In the event that such costs are determined by DOE to be excessive or unreasonable, DOE shall provide the regulatory agency with an acceptable form of financial responsibility. Under no circumstances shall the Contractor or its parent be required to provide any corporate resources or corporate guarantees to satisfy such regulatory

requirements.

- (e) In the event of termination or expiration of this contract, DOE will require the new Contractor to accept transfer of all environmental permits executed by the Contractor, or DOE will accept responsibility for such permits and the Contractor shall be relieved of all future liability and responsibility resulting from the acts or omissions of the successor contractor or DOE.
- (f) The contractor shall become a party-signatory to the Director's Final Findings and Orders (DFF&O) prior to undertaking any cylinder-related activities covered by the DFF&O.
- (g) At the request of DOE, the contractor shall become a party-signatory to the Consent Order with the Department of Environment and Conservation of the State of Tennessee. In addition, the Contractor shall negotiate in good faith and become a party-signatory to such other regulatory agreements or orders, as DOE may deem appropriate for the work performed pursuant to this contract.

[End of Clause]

H.16 CONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATION OR ALLEGED VIOLATIONS, FINES, AND PENALTIES

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

[End of Clause]

H.17 NUCLEAR FACILITY OPERATIONS

- (a) The activities under this Contract include the operation of nuclear facilities. The Contractor recognizes that such operations involve the risk of a nuclear incident which, while the chances are remote, could adversely affect the public health and safety as well as the environment. Therefore, the Contractor will exercise a degree of care commensurate with the risk involved.
- (b) The Contractor shall comply with all applicable DOE nuclear safety related rules, regulations, and orders and with those nuclear safety requirements (including reporting requirements and instructions) of DOE. Operations within the Nuclear Facility will be conducted in accordance with DOE approved authorization agreements.

[End of Clause]

H.18 COMPLIANCE WITH ORDERS, AGREEMENTS, AND REGULATORY AUTHORITIES

In addition to the requirements of the clause entitled "Laws, Regulations, and DOE Directives" in Section I, the Contractor shall comply with any current or future orders and agreements with regulatory authorities pertaining to UF6 cylinders, including but not limited to the State of Ohio Director's Final Findings and Orders, dated February 24, 1998, and the State of Tennessee Department of Environment and Conservation Consent Order, dated February 8, 1999. In addition the Contractor shall comply with any future laws or regulations pertaining to any required activities under the contract.

[End of Clause]

H.19 ALLOCATION OF RESPONSIBILITIES FOR CONTRACTOR ENVIRONMENTAL COMPLIANCE ACTIVITIES

- (a) This clause allocates the responsibilities of DOE and the Contractor, referred to collectively as 'the parties' for implementing the environmental requirements at facilities within the scope of the contract. In this clause, the term 'environmental requirements' means requirements imposed by applicable Federal, state and local environmental laws and regulations, including, without limitation, statutes, ordinances, regulations, court orders, consent decrees, administrative orders or compliance agreements, consent orders, permits, and licenses.
- (b) Liability and responsibility for civil fines or penalties arising from or related to violations of environmental requirements shall be borne by the party that caused the violation irrespective of the fact that the cognizant regulatory authority may assess any such fine or penalty upon either party or both parties without regard to the allocation of responsibility or liability under this contract. This contractual allocation of liability for any such fine or penalty is effective regardless of which party signs permit applications, manifests, reports or other required documents; is a

permittee; or is the named subject of an enforcement action or assessment of a fine or penalty.

- (c) Regardless of which party to this contract is the named subject of an enforcement action for noncompliance with environmental requirements by the cognizant regulatory authority, liability for payment of any fine or penalty will be governed by provisions of this contract related to allowable costs. If the named subject of an enforcement action or assessment of a fine or penalty is DOE and the fine or penalty would not otherwise be reimbursable under the allowable cost and preexisting conditions provisions of this contract if the Contractor was the named subject of the enforcement action, the Contractor will either pay the fine or penalty or reimburse the DOE (if DOE pays the fine or penalty). The governing provisions of the contract include, without limitation, clauses in Section I entitled, "Allowable Cost and Payment" and "Pre-Existing Conditions."

[End of Clause]

H.20 PRICE ANDERSON AMENDMENTS ACT NONCOMPLIANCE

The Contractor shall establish an internal Price Anderson Amendments Act noncompliance identification, tracking, and corrective action system and shall provide access to and fully support DOE reviews of the system. The Contractor shall also implement a Price Anderson Amendments Act reporting process which meets applicable DOE standards. The Contractor shall be accountable for ensuring that subcontractors adhere to these requirements.

[End of Clause]

H.21 DEFENSE NUCLEAR FACILITY SAFETY BOARD

The Contractor shall conduct activities in accordance with those DOE commitments to the Defense Nuclear Facilities Safety Board (DNFSB) which are contained in implementation plans and other DOE correspondence to the DNFSB. The Contractor shall support preparation of DOE responses to DNFSB issues and recommendations which affect or can affect contract work. Based on Contracting Officer's Representative direction, the Contractor shall fully cooperate with the DNFSB and provide access to such work areas, personnel, and information as necessary. The Contractor shall maintain a document process consistent with the DOE manual on interface with the DNFSB. The Contractor shall be accountable for ensuring that subcontractors adhere to these requirements.

[End of Clause]

H.22 HAZARDOUS MATERIALS

In implementation of the clause in Section I entitled, "Hazardous Material Identification and Material Safety Data," the Contractor shall obtain, review and maintain a Material Safety Data sheet (MSDS) in a readily accessible manner for each hazardous material (or mixture containing a hazardous material) ordered, delivered, stored or used; and maintain an accurate inventory and history of use of hazardous materials at each use and storage location. The MSDS shall conform to the requirements of 29 CFR 1910.1200(g).

[End of Clause]

H.23 ADVANCE UNDERSTANDINGS REGARDING PARTICULAR ITEMS OF COST

DOE intends to reach advance understandings with the Contractor after contract award on certain items of cost which are allowable in accordance with the clause entitled

"Allowable Cost and Payment", in Section I. This may include such items as corporate home office expense, salaries, benefits, relocation, etc.

[End of Clause]

H.24 PRIVATELY GENERATED RESTRICTED DATA

The DOE will not itself be providing any classified information as part of this contract. However, in the event that the Contractor introduces new or unique technology into the conversion process, the requirements of 10 CFR 1045.21; "Privately Generated Restricted Data" may apply. If there is a chance that such technology will be utilized, the Contractor shall coordinate with DOE as soon as it is known that such technology will be used.

[End of Clause]

H.25 COSTS RELATED TO LEGAL AND OTHER PROCEEDINGS

The following is added to FAR 31.205-47, Costs related to legal and other proceedings, which is incorporated into the contract by the clause entitled "Allowable Cost and Payment" in Section I:

(a) Costs Associated with Whistleblower Actions.

(1) Definitions

Covered contractors and subcontractors for the purposes of this section means those contractors and subcontractors with contracts exceeding \$500,000.

Employee whistleblower action means any action filed by an employee in Federal or state court for redress of a retaliatory act by a contractor and any administrative procedure initiated by an employee under 29 CFR Part 24, 48 CFR subpart 3.9, 10 CFR Part 708 or 42 U.S.C 7239.

Retaliatory act means a discharge, demotion, reduction in pay, coercion, restraint, threat, intimidation or other similar negative action taken against an employee by a contractor as a result of an employee's activity protected as a whistleblower activity by a Federal or state statute or regulation.

Settlement and award costs means costs arising from judicial orders, negotiated agreements, arbitration, or an order from a Federal agency or board and includes compensatory damages, underpayment for work performed, and reimbursement for a complainant employee's legal counsel.

- (2) For costs associated with employee whistleblower actions where a retaliatory act is alleged against a covered contractor or subcontractor, the contracting officer:
 - (i) may authorize reimbursement of costs on a provisional basis, in appropriate cases;
 - (ii) must consult with the Whistleblower Costs Committee, comprised of Department Headquarters officials, before making a final allowability determination;
 - (iii) must determine allowability of defense, settlement and award costs on a case-by-case basis after considering other relevant cost regulations, the terms of the contract and the relevant facts and circumstances available at the conclusion of the employee whistleblower action;
 - (iv) must report final allowability determinations to the Whistleblower Costs Committee and the analysis or basis for their determinations.
- (3) Covered contractors and subcontractors must segregate legal costs, including costs of in-house counsel, incurred in the defense of an employee whistleblower action so that the costs are separately identifiable.
- (4) If a Contracting Officer provisionally disallows costs associated with an employee whistleblower action for a covered contractor or subcontractor, funds advanced by the Department may not be used to finance costs connected with the defense, settlement and award of an employee whistleblower action.

- (5) Contractor defense, settlement and award costs incurred in connection with the defense of suits brought by employees under section 2 of the Major Fraud Act of 1988 are excluded from coverage of this section.

[End of Clause]

H.26 BONDING FOR CONSTRUCTION

Prior to the Contractor beginning construction, appropriate performance and payment bonds, or other financial protections, shall be obtained in accordance with FAR part 28, Bonds and Insurance as directed by the Contracting Officer.

[End of Clause]

H.27 SITE SERVICES

- (a) The Contractor will be performing work at sites where other entities are conducting various activities, including other DOE prime contractors, subcontractors, and other organizations. These entities, including the Contractor, need to acquire or perform certain services in support of their activities that may be common to other entities on the site. In some instances it is to the net benefit to DOE for these services to be provided by one central source at the respective sites.
- (b) The Contractor may both receive services from and provide services to other prime contractors, subcontractors, or other organizations at the sites as approved by the Contracting Officer or designee. These services may be provided in one of the following categories:
- (1) Services that are the responsibility of the Contractor, but the Contractor elects, or the Contracting Officer or designee directs the Contractor, to purchase the service from another prime contractor, subcontractor, or other organization rather than perform the work with its own employees or acquire the service from one of its subcontractors.
 - (2) Services that are common to the Contractor, other prime contractors, subcontractors, or other organizations where the Contractor elects, or the Contracting Officer or designee directs the Contractor, to provide such services to such entities where it is to the overall net benefit to DOE.
- (c) When services are acquired under these provisions, the Contractor shall maintain control and accountability for the work under this contract and shall execute appropriate agreements with the other entities.
- (d) Services which the Contractor is expected to purchase from other prime

contractors, subcontractors, or other entities at the sites include protective services, fire protection, emergency response, and other services of this general nature where it is not to the overall benefit of DOE for there to be multiple sources for such services.

[End of Clause]

H.28 AGE DISCRIMINATION IN EMPLOYMENT

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

[End of Clause]

H.29 PATENT INDEMNITY-SUBCONTRACTS

Except as otherwise authorized by the CO, the Contractor must obtain indemnification of the Government and its officers, agents, and employees against liability, including costs, for infringement of any U.S. Patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a secrecy order by the Government) from Contractor's subcontractor for any contract work subcontracted in accordance with FAR 48 CFR 52.227-3.

[End of Clause]

H.30 COMMUNITY COMMITMENT

It is the policy of the DOE to be a constructive partner in the geographic region in which DOE conducts its business. The basic elements of this policy include: (1) recognizing the diverse interests of the region and its stakeholders, (2) engaging regional stakeholders in issues and concerns of mutual interest, and (3) recognizing that giving back to the community is a worthwhile business practice. Accordingly, the Contractor agrees that its business operations and performance under the contract will be consistent with the intent of the policy and elements set forth above.

[End of Clause]

H.31 PERFORMANCE GUARANTEE

If the Contractor is a joint venture, limited liability company, or other similar entity, the Contractor's parent organization(s) or all member organizations, shall guarantee performance as evidenced by the Performance Guarantee Agreement incorporated in the contract in Section J, Appendix O. If the Contractor is a joint venture, limited liability company, or other similar entity where more than one organization is involved, the parent or all member organizations shall assume joint and several liability for the performance of the contract. In the event any of the signatories to the Performance Guarantee Agreement enters into proceedings related to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer.

[End of Clause]