PART I – THE SCHEDULE

SECTION H

SPECIAL CONTRACT REQUIREMENTS

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PART I – THE SCHEDULE
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 U.S. Department of Energy (DOE) Contracting Officer's Representative (COR). The term "technical direction" is defined to include, without limitation:

(1) Provision of written information to the Contractor, which assists in the interpretation of drawings, specifications or technical portions of the work description.

(2) Review and, where required by the contract, approval of technical reports, drawings, specifications and technical information to be delivered by the Contractor to the Government under the contract.

(b) Technical direction must be within the scope of work stated in the contract. The COR does not have the authority to, and may not, issue any technical direction which:

(1) Constitutes an assignment of additional work outside the *Statement of Work*;

(2) Constitutes a change as defined in the Contract Section I Clause entitled, *Changes*;

(3) Changes any of the express terms, conditions or specifications of the contract; or

(4) Interferes with the Contractor's right to perform the terms and conditions of the contract.

(c) All technical direction shall be issued in writing by the COR.

(d) The Contractor shall proceed promptly with the performance of technical direction duly issued by the COR in the manner prescribed by this clause and within its authority under the provisions of this clause. If, in the opinion of the Contractor, any instruction or direction by the COR falls within one of the categories defined in (b)(1) through (b)(4) 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 Contract Section I Clause entitled, *Changes*.

(2) 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 Section H Clause entitled, *Alternative Dispute Resolution*.

H.2 MODIFICATION AUTHORITY

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

(a) Accept nonconforming work,

(b) Waive any requirement of this contract, or

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

H.3 KEY PERSONNEL

A listing of Key Personnel on this Contract is provided as Section J, Attachment F, *Key Personnel.* These Key Personnel are considered to be essential to the work being performed on this Contract. Prior to diverting to other positions or substituting any of the specified Key Personnel, or proposing them as a Key person under another contract, the Contractor shall notify the Contracting Officer in writing at least thirty (30) days in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the work being performed under this Contract. No diversion or substitution 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 or substitution and such ratification shall constitute the consent of the Contracting Officer required by this Clause. Unless approved in writing by the Contracting Officer, no Key Personnel position will remain unfilled by a permanent replacement for more than 60 days. The Key Personnel list shall be amended during the course of the Contract to add or delete Key Personnel as appropriate and as approved by the Contracting Officer.

Anytime the Project Manager is replaced or removed for any reason under the Contractor's control within two (2) years of contract award, fee earned will be reduced by the amount of $250,000. In addition, each time any other Key Personnel for the functions of ESH&Q; Project Cost and Schedule Control; Technology Management; Engineering; Design Management for Systems, Facilities, and/or Engineering Disciplines; and Construction Management are replaced or removed for any reason under the Contractor's control within two (2) years of Contract award, fee earned shall be reduced by the amount of $125,000 for each removed or replaced individual. DOE will effectuate the appropriate reduction in fee by reducing the next provisional payment due to the Contractor for invoiced fee by the appropriate dollar amount as set forth in this Clause. If no or insufficient provisional fee is due the Contractor within 30 days, the Contractor shall refund to DOE the amount of the reduction due under this Clause. The Contractor may request, in writing, that the Contracting Officer waive all part or part of these reductions in fee, if special circumstances exist. The Contracting Officer shall have unilateral discretion to waive or not to waive all or part of a reduction.

H.4 SMALL BUSINESS SUBCONTRACTING PLAN

The Small Business Subcontracting Plan submitted by the Contractor and approved by the Contracting Officer (via contract award) is incorporated into this Contract as Section J, Attachment D, *Small Business Subcontracting Plan.* Any revisions thereto shall be approved by the Contracting Officer and incorporated into the contract by a separate contract modification.

H.5 DISPLACED EMPLOYEE HIRING PREFERENCE

(a) Definition. Eligible employee means a former or current employee of a Contractor or subcontractor (1) who has been employed at a U.S. Department of Energy (DOE) Defense Nuclear Facility as defined in Section 3163 of the *National Defense Authorization Act for FY 1993* (Public Law 102-484) and the Interim Planning Guidance

for Contractor Work Force Restructuring (DEC 1998) or other applicable DOE guidance for Contractor work force restructuring, as may be amended or supplemented from time to time (hereinafter "Guidance"), (2) whose employment at such a Defense Nuclear Facility has been involuntarily terminated (other than for cause) or who has been notified that they are facing termination, (3) who has also met the job attachment test as set forth in applicable DOE Guidance, and (4) who is qualified for a particular position with the Contractor or, with retraining, can become qualified within the time and cost limits set forth in the DOE Guidance.

(b) The Contractor will assess the skills needed for the work to be performed under this Contract and will provide to DOE Job Opportunity Bulletin Board System (JOBBS) all information relevant to the qualifications for all of the positions for which the Contractor has vacancies.

(c) Consistent with the DOE Guidance as supplemented by the appropriate site work force restructuring plan, the Contractor agrees that it will provide to the extent practicable a preference in hiring to an eligible employee as defined other than for managerial positions (define as those above the first level of supervision) for work to be performed under this Contract.

(d) The Contractor will develop training programs designed to improve the qualifications of employees to fill vacancies with the Contractor and will take such training into account in assessing the qualifications of eligible employees.

(e) The requirements of this Clause shall be included in subcontracts at any tier (except subcontracts for commercial items pursuant to 41 United States Code 403) expected to exceed $500,000.

H.6 IMPLEMENTATION OF SECTION 3161 POLICY ON WORK FORCE RESTRUCTURING AND PREFERENCE IN HIRING

(a) After implementation of subpart (a), pursuant to the requirements of Section 3161 of the *National Defense Authorization Act for Fiscal Year 1993* (Public Law 102-484), and consistent with Clause H.5, preference is to be provided to displaced employees whose eligibility is defined in the U.S. Department of Energy (DOE) guidelines on work force restructuring and the *Savannah River Site Work Force Restructuring Plan*, including lower-tier subcontractor employees, for work at the Savannah River Site in accordance with the following, unless modified by Section 3161 guidance issued by DOE.

(b) The Contractor and any lower-tier subcontractor subject to this Clause shall negotiate with affected unions to implement the hiring preference, including if necessary, special agreements for allocation of work or arrangements for exceptions to internal union rules that might otherwise be obstacles to implementation of the hiring preference, consistent with *Planning Guidance for Contractor Work Force Restructuring* (December 1998).

(c) Where these requirements conflict with any existing contract or collective bargaining agreement, the Contractor may be relieved of the obligation to meet these requirements if it specifically identifies the conflict in its proposal and the reasons the conflict cannot be reasonably resolved by other means.

(d) Nothing in this Clause shall be construed to excuse the Contractor or any subcontractor from compliance with the requirements of any applicable law.

H.7 LABOR RELATIONS

(a) The Contractor, and its major subcontractors, will respect the rights of employees, (1) to organize, form, join, or assist labor organizations; bargain collectively through representatives of the employees own choosing; and engage in other protected concerted activities for the purpose of collective bargaining, or (2) to refrain from such activities.

(b) To the extent required by law, the Contractor and its major subcontractors shall give notice to any lawfully designated representative of its employees for purposes of collective bargaining and, upon proper request, bargain to good faith impasses or agreement, or otherwise satisfy applicable bargaining obligations.

(c) The Contractor shall promptly advise the Contracting Officer of, and provide all appropriate documentation regarding, any labor relations developments at the prime or subcontract level that involve or appear likely to involve:

(1) Possible strike situations affecting the facility;

(2) Referral to the Energy Labor-Management Relations Panel;

(3) The National Labor Relations Board at any level;

(4) Recourse to procedures under the *Labor-Management Act of 1947*, as amended, or any other Federal or state labor law; and

(5) Any grievance that may reasonably be assumed to be arbitrated under a Collective Bargaining Agreement.

(d) Cost of wages and fringe benefits to employees represented by collective bargaining units, not in excess of those in appropriate collective bargaining agreements, shall be allowable. The costs associated with grievance processing and settlements, arbitration, and arbitration awards shall be allowable in accordance with the provisions of the Contract Section I Clause entitled, *Insurance – Litigation and Claims*.

H.8 DETERMINATION OF APPROPRIATE LABOR STANDARDS

(a) The U.S. Department of Energy (DOE) shall determine the appropriate labor standards in accordance with the *Davis-Bacon Act*, which shall apply to work performed under this Contract. Where requested by DOE, the Contractor shall provide whatever information is relevant to labor standards determinations, in the form and timeframe required by DOE, as may be necessary for DOE to make such labor standards determinations. The Contractor will then be responsible for ensuring that the appropriate labor standards provisions are included in subcontracts.

(b) Prior to submission of Phase II cost and fee proposals, the Contracting Officer shall provide the contractor the Davis-Bacon Wage Rate Determination applicable to the construction work required under this contract. The applicable Wage Rate Determination will be incorporated into the contract in Section J as Appendix C.

H.9 PAYMENT BONDS AND PERFORMANCE BONDS

The Contractor will not be required to furnish payment bonds and performance bonds. However, all fixed price subcontractors will be required to submit the necessary payment bonds and performance bonds as required by the *Miller Act*. Specific requirements and penal amounts can be found in Federal Acquisition Regulation (FAR) 28.102.

H.10 DOE ACCESS TO CONTRACTOR MANAGEMENT AND CONTRACT DOCUMENTATION

(a) In order to facilitate interactions with the U.S. Department of Energy (DOE), support safe and efficient performance of the Contract and effective contract administration, the Contractor shall locate Contractor offices in the Aiken, South Carolina/Augusta, Georgia, area for, at a minimum, senior level management responsible for the following major project management functions: Project Management; Environment, Safety, Health and Quality (ESH&Q); Project Cost and Schedule Control; Procurement/Contracting; Environmental Compliance; Operations Interface; Labor Relations; Human Resources; Engineering; Construction Management; and Design Management for Systems, Facilities, and/or Engineering Disciplines.

(b) Although not all work is required to be performed in the Aiken area, the Contractor shall use judgment in relocation of project staff to the Aiken area to facilitate the objectives of cost efficiency, project integration and meeting DOE's needs for frequent and informative interactions. Capability to meet face-to-face with key design personnel on short notice with minimal travel (i.e., less than a four-hour drive, near southeastern airline hubs, or with direct flight service from SRS area) would be desirable.

(c) The design process must have the capability for efficient electronic integration. Video teleconferencing shall also be used to facilitate communications with satellite work locations where critical work is to be performed.

H.11 RESPONSIBLE CORPORATE OFFICIAL

The Government may contact, as necessary, the single responsible corporate official identified below, who is at a level above the Project Manager for the Contractor and who is accountable for the performance of the Contractor, regarding Contractor performance issues. Should the responsible corporate official change during the period of the Contract, the Contractor shall promptly notify the Contracting Officer in writing of the change in the individual to Contract. The following information must be provided:

Name:
Position:
Company/Organization:
Address:
Phone:
Facsimile:
E-mail:

H.12 ASSIGNMENT OF SUBCONTRACTS

The Government reserves the right to direct the Contractor to assign to the Government or another Contractor any subcontract awarded under this contract.

H.13 ASSIGNMENT

Neither this Contract nor any interest therein nor claim thereunder shall be assigned or transferred by the Contractor except as expressly authorized in writing by the Contracting Officer.

H.14 SUBCONTRACTOR ENVIRONMENT, SAFETY, QUALITY, AND HEALTH REQUIREMENTS

The U.S. Department of Energy (DOE) and the Contractor are committed to zero accidents on the SWPF Project. To that end, unless expressly approved by the Contracting Officer, the Contractor is required to subcontract only with subcontractors that have an acceptable Environmental, Safety, Health and Quality (ESH&Q) program and that satisfy the following minimum requirements:

(a) An ESH&Q program that is compliant with applicable local, State, Federal and DOE regulatory requirements;

(b) Employees are properly trained and equipped to perform their assigned work. The subcontractor has established an orientation program for new hires, which includes ESH&Q;

(c) Policies and procedures are in place to eliminate accidents, injuries/illnesses, and damage to property and equipment;

(d) ESH&Q records are adequately and properly maintained;

(e) Accidents/incidents are investigated promptly and required reports are generated. If the investigation discovers inadequacies in either the work process or the policies and procedures, the appropriate processes are put in place to avert the accident/incident in the future and personnel are provided proper training;

(f) Hazards are identified and appropriate measures are taken to ensure that personnel and equipment are adequately protected as a result of identified hazards;

(g) Employees have the right to report unsafe conditions and to interrupt or stop work without fear of reprisal;

(h) The frequency of ESH&Q meetings with employees to discuss the work to be performed and the hazards associated with the work is based on the scope of work and commensurate with the work hazards;

(i) ESH&Q inspections/audits are conducted to evaluate effectiveness of the program;

(j) The subcontractor has an average Experience Modification Rate (EMR), Occupational Safety and Health Administration (OSHA) Recordable, and Lost Workday case rate(s) of (1.0, 3.2, and 0.64), respectively, or less, for the previous three (3) years and shows an improving trend in safety performance; however, for construction subcontractors the values shall be less than 1.0, 3.2, and 3.0.

(k) The subcontractor has an established written Hazard Communication Program and a system within the program to maintain Material Safety Data Sheets (MSDS);

(l) The subcontractor has had no significant willful citations from OSHA or other regulatory organizations during the previous three (3) years;

(m) The subcontractor has received no citations, other than those determined to be minor violations, or fines for Price-Anderson Amendments Act (PAAA) non-compliances during the previous three (3) years; and

(n) The subcontractor has received no fines for Nuclear Regulatory Commission non-compliances during the previous three (3) years.

The Contractor shall flow down all applicable ESH&Q program criteria to the lowest tier subcontractor performing construction, equipment fabrication or commissioning.

H.15 EMERGENCY CLAUSE

(a) The Manager, DOE-SR, or designee shall have sole discretion to determine when an emergency situation exists as a result of facility operations within the physical boundaries defined by this Contract affecting personnel, public health, safety, the environment, or security. In the event that the DOE-SR Manager or designee, determines that an emergency exists, the DOE-SR Manager, or designee will have the authority to direct any and all activities of the Contractor and subcontractors necessary to resolve the emergency situation. The DOE-SR Manager, or designee may direct the activities of the Contractor and subcontractors throughout the duration of the emergency.

(b) The Contractor shall include this clause in all subcontracts at any tier for work performed at the Savannah River Site.

H.16 STOP WORK AND SHUT DOWN AUTHORITY-ENVIRONMENT, SAFETY AND HEALTH

(a) Definition: Stop Work - The suspension of a specific activity or activities by the Contracting Officer or authorized designee based upon the determination or observation of conditions which are immediately dangerous to the life or health of the workers, the public, or the environment or for any other reason determined to be in the best interests of the Government from and environment, safety and health (ES&H) perspective. Stop-Work Orders for non-ES&H reasons shall be in accordance with the Contract Clause contained in Section F entitled, FAR 52.242-15 Stop-Work - Alternate I (APR 1984).

(b) The Contracting Officer, or authorized designee, may at any time during the performance of this contract issue a stop-work order and shutdown facility operations or stop-work on specific activities of the Contractor or any Subcontractor, in accordance with the following:

(1) The Contracting Officer shall notify the Contractor, in writing, of any noncompliance with applicable ES&H requirements which come to the attention of the Contracting Officer. After receipt of such notice, the Contractor shall immediately take corrective action, consistent with the provisions of the Special Contract Clause entitled, Performance Direction. In the event that the Contractor fails to take corrective action, the Contracting Officer or authorized designee may, without prejudice to any other legal or contractual rights of DOE, issue a written order stopping all or any part of the work; thereafter, a start order for resumption of the work may be issued at the discretion of the Contracting Officer in accordance with applicable DOE Orders/Directive Implementation Instructions, if any. The Contractor 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 clause.

(2) If at any time during performance of the contract work, the Contractor's acts or failure to act causes substantial harm or an imminent danger to the health or safety of individuals or the environment, the Contracting Officer or authorized designees may, without prejudice to any other legal or contractual rights of DOE, issue a verbal order, to be immediately confirmed in writing before departing the incident site, stopping all or any part of the work; thereafter, a start order for resumption of the work may be issued at the discretion of the Contracting Officer in accordance with applicable DOE Orders/Directive Implementation Instructions, if any. The Contractor 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 clause.

(c) The DOE-SR Deputy Manager, Assistant Managers, Director of the Office of Safeguards and Security, and duly appointed DOE Facility Representatives at SRS are authorized designees of the Contracting Officer for the purposes set forth in this clause. Other authorized designees may be appointed by the Contracting Officer.

(d) The Contractor shall include this clause, modified appropriately to include Contractor Representatives, in all subcontracts containing the Contract Clause entitled, DEAR 970.5223-1 Integration of Environment, Safety and Health Into Work Planning and Execution (Dec 2000).

H.17 PERMITS AND CLEARANCES

The contractor is responsible for obtaining all necessary permits and clearances, including but not limited to environmental permits, from regulatory agencies for construction and operation of the contemplated facility. The Contractor also is required to comply with all laws, regulations, and procedures applicable to the work being performed under this Contract. This includes, but is not limited to, compliance with applicable Federal, State, and local laws and regulations, interagency agreements, consent orders, consent decrees, and settlement agreements between DOE and Federal and State regulatory agencies.

(a) Environmental Permits: The Contractor is responsible to DOE for design, construction and commissioning of the salt waste processing facility (SWPF) in compliance with the laws, regulations, etc., as stated in the paragraph above and in accordance with the terms of the environmental permits.

(b) Financial Responsibility: DOE agrees that if bonds, insurance, or administrative fees are required as a condition for permits obtained by the Contractor under this Contract, such costs shall be allowable. In the event 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.

(c) Copies of Technical Information: The Contractor shall provide DOE with copies of environmental permits, authorizations, and regulatory approvals issued to the Contractor by regulatory agencies. DOE shall provide the Contractor access to copies of environmental permits, authorizations, and approvals issued by the regulatory agencies to DOE that the Contractor may need to comply with applicable law.

The Contractor and DOE shall provide to the each other, copies of documentation, such as letters, reports, or other such materials transmitted either to or from regulatory agencies relating to the contract work.

The Contractor and DOE shall maintain all necessary technical information required to support applications for revision of DOE or other Savannah River Site contractor environmental permits when such applications or revisions are related to the Contractor's operations.

(d) Certifications: The Contractor shall provide a written certification statement attesting that information DOE is requested to sign was prepared in accordance with applicable requirements. The Contractor shall include the following certification statement in the submittal of such materials to DOE:

> "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification statement shall be signed by the individual who is authorized, in writing, by the Contractor to sign such certification statements submitted to Federal or State regulatory agencies under the applicable regulatory program.

(e) Negotiations: DOE may elect to be in charge of, and direct, all negotiations with regulatory agencies regarding permits, fines, penalties, and any other proposed notice, notice, administrative order, and similar type of notice. As directed or required by DOE, the Contractor shall participate in negotiations with regulatory agencies; however, the Contractor shall not make any commitments or offers to regulators purporting to bind or binding the Government in any form or fashion, including monetary obligations, without receiving written authorization or approval from the Contracting Officer or his/her authorized representative prior to making 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. In the event DOE elects to allow the Contractor to conduct such negotiations without direct DOE participation, the Contractor shall keep DOE fully advised as to the progress of such negotiations.

(f) Permit Transfer Upon Contract Termination or Expiration: In the event of expiration or termination of this Contract, DOE may require the Contractor on an allowable cost basis to take all necessary steps to transfer to DOE some or all environmental permits held by the Contractor. DOE will assume responsibility for such permits, with the approval of the regulating agency, and the Contractor shall be relieved of all liability and responsibility to the extent that such liability and responsibility results from the acts or omissions of a successor contractor, DOE, or their agents, representatives, or assigns. The Contractor shall remain liable for all unresolved costs, claims, demands, fines, and penalties, including reasonable legal costs arising prior to the date such permits are transferred to another party in accordance with other provisions of the Contract. The Contractor shall not be liable for any such claims occurring after formal transfer of this contract unless said claims result from Contractor's action or inaction.

H.18 ALLOCATION OF RESPONSIBILITIES FOR CONTRACTOR ENVIRONMENTAL COMPLIANCE ACTIVITIES

(a) This Clause allocates the responsibilities of the U.S. Department of Energy (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) Fines and penalties received by the contractor are covered by the applicable Allowable Cost and Payment clause of this contract. If the named subject of an enforcement action or assessment of a fine or penalty is DOE and the enforcement action resulted from the contractor's operations, any payment made by DOE may be offset from any monies due for payment under this contract or any other Government contract in accordance with the Contract Disputes Act (CDA) unless the contractor's actions which gave rise to the final or penalty were a result of direct compliance with the terms and conditions of the contract, or the contractor was complying with written direction from the Contracting Officer.

H.19 HAZARDOUS MATERIALS

In implementation of the Section I Clause 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. After Contract award the Offeror shall submit the information required by paragraph (b) of the Section I Clause referenced above. The MSDS shall conform to the requirements of 29 CFR 1910.1200 (g). MSDS shall be readily accessible during each work shift to employees when they are in their work areas.

H.20 PRESERVATION OF ANTIQUITIES AND LAND AREAS

Federal law provides for the protection of antiquities located on land owned or controlled by the U.S. Department of Energy (DOE). Antiquities include Indian graves or campsites, relics, and artifacts. The Contractor shall control the movements of its personnel and its subcontractors' personnel at the job site and provide appropriate training to ensure that any existing antiquities discovered thereon will not be disturbed or destroyed by such personnel. It shall be the duty of the Contractor to report to the Contracting Officer the existence of any antiquities so discovered. The Contractor shall also preserve all vegetation except where such vegetation must be removed for survey or construction purposes. Any removal of vegetation shall be in accordance with the terms of applicable habitat mitigation plans and permits.

H.21 INFORMATION

(a) Release of Information

(1) The Contractor shall be responsible for developing, planning, and coordinating timely dissemination of information regarding performance of work under the Contract.

(2) The Contractor shall be responsible for following the U.S. Department of Energy (DOE) guidelines and/or procedures for all oral, written and audio/visual information material prepared for public use, including technical information.

(b) Unclassified Controlled Nuclear Information (UCNI): Documents originated by the Contractor or furnished by the Government to the Contractor, in connection with this contract, may contain unclassified controlled nuclear information as determined pursuant to Section 148 of the *Atomic Energy Act of 1954*, as amended. The Contractor shall be responsible for protecting such information from unauthorized dissemination in accordance with applicable DOE regulations, directives and orders.

(c) Confidentiality of Information: 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 the public domain.

(2) Information that is published after receipt thereof by the Contractor or otherwise becomes part of the public domain through no fault of the Contractor.

(3) Information that 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 that the Contractor can demonstrate was received by it from a third party that did not require the Contractor to hold it in confidence.

The Contractor shall obtain the written agreement, in a form satisfactory to the Contracting Officer, of each employee permitted access to such information, 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.

The Contractor agrees, if requested by the Government, to sign an agreement identical, in all material respects, to the provisions of this subparagraph (c), with each company supplying information to the Contractor under this contract, and to supply a copy of such agreement to the Contracting Officer. From time to time upon request of the Contracting Officer, the Contractor shall supply the Government with reports itemizing information received as confidential or proprietary and setting forth the company or companies from which the Contractor received such information.

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, Contractor personnel shall also sign such an agreement.

(d) The Government reserves the right to require the Contractor to include this clause or a modified version of this clause in any subcontract as directed in writing by the Contracting Officer.

H.22 COSTS ASSOCIATED WITH WHISTLEBLOWER ACTIONS

(a) Definitions.

Covered contractors and subcontractors for the purposes of this Section means those contractors and subcontractors with contracts for an excess of $500,000.

Employee whistleblower action encompasses any action filed by an employee in Federal and State court for redress of a retaliatory act by a contractor and any administrative procedure brought by an employee under 29 Code of Federal Regulations (CFR) Part 24, 48 CFR subpart 3.9, 10 CFR Part 708 or 42 United States Code (U.S.C.) 7239.

Retaliatory acts means 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 defense costs and 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.

(b) For costs associated with employee whistleblower actions where a retaliatory act is alleged against a covered contractor or subcontractor, the Contracting Officer:

(1) May authorize reimbursement of costs on a provisional basis, in appropriate cases;

(2) Must consult with the DOE Office of General Counsel whistleblower cost point of contact before making a final allowability determination; and

(3) Must determine allowability of defense, settlement, and award costs on a case-by-case basis after considering the terms of the contract, relevant cost regulations, and the relevant facts and circumstances, including Federal law and policy prohibiting reprisal against whistleblowers, available at the conclusion of the employee whistleblower action.

(c) 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.

(d) If a Contracting Officer provisionally disallows costs associated with an employee whistleblower action for a covered contractor or subcontractor, funds advanced by the U.S. Department of Energy (DOE) may not be used to finance costs connected with the defense, settlement and award of an employee whistleblower action.

(e) 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.

H.23 CONTRACTOR LEGAL MANAGEMENT REQUIREMENTS

The Contractor shall prepare a Legal Management Plan that shall be submitted to the Contracting Officer for approval within ninety (90) days following Contract award. The purpose of the Plan will be to control the cost of litigation and implement the DOE policy favoring the use of Alternative Dispute Resolution (ADR) techniques where appropriate and beneficial to the Government. The *Legal Management Plan* shall follow the procedures and cost guidelines in 10 CFR 719, published in the Federal Register on January 18, 2001 (66 FR 4616 as modified by 66 FR 8746). The Plan should also cover legal costs not connected with litigation. The Plan will be revised from time to time to conform to litigation management and ADR policies established by DOE.

H.24 LOBBYING RESTRICTION (ENERGY AND WATER DEVELOPMENT APPROPRIATION ACT, 2000)

The Contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 United States Code (U.S.C.) 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

H.25 ADDITIONAL RIGHTS IN INVENTIONS AND TECHNICAL DATA

(a) In addition to rights specified elsewhere, the Contractor agrees that it will, upon request by the Government, grant to the Government for activities by or on behalf of 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, including technical data which are owned or controlled by the Contractor, at any time through completion of this Contract. This right of the Government shall apply to inventions, discoveries, and intellectual property that are incorporated or embodied in the construction or design of the Salt Waste Processing Facility (SWPF) or which are utilized in the operation of the SWPF or which cover articles, materials, or products manufactured at the SWPF. 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, and rights or patents or other intellectual property herein licensed.

The Contractor shall take all necessary steps to assign permits, authorizations, leases, and any licenses in any third party intellectual property for design, construction, operation, and closure of the SWPF to U.S. Department of Energy (DOE) or such other third party as DOE may designate.

(b) Subcontracting.

Unless otherwise directed by the contracting officer, the Contractor agrees to use this clause in subcontracts in which technical data or computer software is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data.

H.26 PATENT INDEMNITY - SUBCONTRACTS

Except as otherwise authorized by the Contracting Officer, the Contractor must obtain indemnification of the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States 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 the Contractor's subcontractors for any contract work subcontract in accordance with Federal Acquisition Regulation (FAR) 52.227-3.

H.27 RESERVED

H.28 THIRD PARTIES

Nothing contained in this Contract or its amendments shall be construed to grant, vest, or create any rights in any person not a party to this Contract. This provision is not intended to limit or impair the rights, which any person may have under applicable Federal Statutes.

H.29 USE OF MANAGEMENT AND OPERATING CONTRACTOR RESOURCES

(a) The contractor shall obtain the written approval of the contracting officer prior to utilization of any personnel, services, equipment, resources, or any other function provided by the Government or reimbursed to SRS' management and operating (M&O) contractor.

(b) The contractor shall keep detailed records, suitable for specific identification and audit, on the use of all personnel, services, equipment, resources, or any other function provided by the SRS M&O contractor to the contractor. Any support provided by the M&O shall be billed to the contractor by the Government on a full cost recovery basis. Any such billings shall not constitute a waiver of the Government's right to pursue any other remedy permitted by this contract or applicable Federal or state law.

(c) The Government makes no warranty regarding the services or support provided by the M&O contractor and use of the M&O's services/support does not relieve the contractor of any of its responsibilities or liabilities under the terms of this contract.

H.30 OTHER CONTRACTS

(a) The contractor shall be working on a Government installation under which a contractor is currently performing other work in the immediate areas of the contract work. Additionally, the Government may undertake or award other contracts for additional work, and the Contractor shall fully cooperate with Government employees and such other contractors and carefully fit its own work to such additional work as may be directed by the Contracting Officer. The Contractor shall not commit or permit any act, which will interfere with the performance of work by Government employees or by any other Contractor, particularly the management and operating (M&O) contractor at the Savannah River Site.

(b) The contractor shall coordinate its work with designated representatives of the site M&O contractor to ensure site operations are not adversely impacted by work performed under this contract. The contractor is to work closely with the M&O's designated representative to ensure its design and/or construction plans and work will function in conjunction with existing site facilities and procedures. Any lack of cooperation or failure to provide needed information by any site contractor is to be immediately reported orally to the

Contracting Officer and confirmed in writing. Similarly, any failure of the Contractor to coordinate or cooperate with other site contractors may be considered a defect in services provided and may serve as a basis for a reduction in the Contractor's fee in accordance with the appropriate Inspection clause contained in Section I of this contract.

H.31 SUBCONTRACTING FOR DESIGN AND CONSTRUCTION WORK

(a) The contractor acknowledges that under this contract, the work required for final construction shall be competitively subcontracted to the maximum practical extent in accordance with the contractor's Government approved purchasing system or as otherwise approved in accordance with the provisions of the clause entitled, FAR 52.244-2 Subcontracts (AUG 1998).

(b) Notwithstanding the above, the contractor shall be responsible for ensuring compliance with all terms and conditions of this contract and delivering a complete and functional facility which satisfies the performance requirements of the contract.

H.32 PROJECT INTEGRATION AND THE SAFETY MANAGEMENT SYSTEM

(a) Prior to performance of any work on Government-owned or leased facilities, the contractor shall develop and have approved by DOE a Safety Management System that complies with the following contract clauses: DEAR 952.223-71 Integration of Environment Safety and Health Into Work Planning and Execution and DEAR 970.5204-78 Laws, Regulations and DOE Directives (June 1997).

(b) The salt waste processing facility must function as an integral part of the site's High Level Waste system and the products, documentation, processes, operational procedures and other contract deliverables developed under this contract must be merged into the site's systems. Therefore, in developing the implementing procedures for the Safety Management System (SMS) the contractor must plan and provide for total system integration of the project with the full spectrum of site systems (both physical and administrative) to ensure all design output components of the project interface both physically and functionally with all other site systems (i.e., configuration management). Consideration of integration with site systems must commence concurrent with formation of the design requirements for the project. The facility and process design must also incorporate human factors engineering (i.e., functionality of design from a day-to-day usage perspective).

(c) In creating its SMS, the contractor shall develop its implementing procedures/documents based upon the existing Westinghouse Savannah River Company's (WSRC) Standards/Requirements Identification Document (S/RID). The WSRC S/RID, at the Functional Area Level, identifies all known DOE environment, safety and health requirements set forth in applicable Federal, State and local laws and regulations, DOE Rules, DOE Orders and directives, relevant industry (consensus) codes and standards, international standards, established site safety practices, etc. The WSRC S/RID has been tested and approved by DOE for work at the site; however, the contractor is to review the S/RID to ensure all requirements applicable to the contemplated work are addressed, add new requirements as necessary and delete, with DOE approval, those determined not to be applicable, if any. In developing its own system of implementing procedures/documents to ensure compliance with the S/RID the contractor, at its own discretion, may either: (a) totally adopt the existing WSRC procedures, including revisions as issued, as its own corporate procedures; (b) utilize some or all of its existing corporate procedures and adapt or create new corporate procedures/documents as needed to meet the requirements; or (c) merge applicable WSRC implementing procedures with its own existing, adapted or new corporate procedures/documents. The SMS must provide for linkage of implementing

procedures/documents to the S/RID requirements, and for maintaining configuration control whenever changes are made in the SMS. During design, construction, and preparation for startup phases, verification of ISMS implementation will be a key element of Critical Decision Reviews. Final verification of ISMS implementation will be part of Operational/Readiness Reviews.

(d) Pending development and approval of its own Safety Management System, any time the contractor is on site, its employees and those of its subcontractors shall comply with all existing site policies, procedures and requirements. Assistance in identification and meeting the site requirements may be provided by the designated representative of the M&O contractor identified in the Section H clause entitled, Other Contracts. After approval of the SMS by DOE, the contractor shall manage and perform all work under this contract in accordance with the system as required by the Clause entitled DEAR 952.223-71, Integration of Environment, Safety and Health Into Work Planning and Execution.

(e) For non-ES&H systems, the implementing procedures developed by the contractor for compliance with the non-Environmental Safety and Health requirements must similarly provide for system integration and maintaining configuration management as discussed above.

H.33 RESPONSIBILITY OF THE ARCHITECT-ENGINEER CONTRACTOR

(a) The Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Contractor under this contract.

(b) Neither the Government's review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract.

(c) The rights and remedies of the Government provided for under this contract are in addition to any other rights and remedies provided by law.

(d) If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

H.34 SALT WASTE PROCESSING FACILITY PRE-CONCEPTUAL DESIGN AND SUPPORTING INFORMATION

The Salt Waste Processing Facility (SWPF) Pre-Conceptual Design and supporting information are provided to the Contractor. Additional information developed for the SWPF Pre-Conceptual Design will be transitioned from the U.S. Department of Energy (DOE) to the Contractor subsequent to Contract award. The Contractor is responsible for designing, constructing, and commissioning the SWPF in a manner that meets all Contract specifications and requirements, and results in an operating facility that meets or exceeds all functional and performance specifications and requirements. The DOE makes no warranties as to the accuracy, reliability, completeness or usefulness of the SWPF Pre-Conceptual Design materials. The Contractor shall have no recourse against DOE, or the individuals, or contractors who prepared such information for DOE, for impacts resulting from the Contractor's use or reliance upon SWPF Pre-Conceptual Design or supporting information. The Contractor shall perform such reviews and evaluations, as it deems necessary for the Contractor to satisfy itself as to the accuracy, reliability, usefulness and completeness of any SWPF Pre-Conceptual Design or supporting information, which it may utilize in performing the Contract. Any reference to the contractor(s) who prepared the SWPF Pre-Conceptual Design and supporting information shall not be carried forward by the Contractor in any work products, permits, presentations or deliverables produced under this Contract except where necessary to comply with applicable laws or comply with proprietary data requirements. A listing of the SWPF Pre-Conceptual design and supporting information is provided in Section J, Attachment H, *Listing of SWPF Pre-Conceptual Design and Supporting Information.*

As part of the Conceptual Design Report, the Contractor shall state that all data needs have been identified and data used have been reviewed and accepted by the Contractor.

H.35 AGE DISCRIMINATION IN EMPLOYMENT

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

H.36 DOWNSELECTION AND DEMOBILIZATION

(a) Downselection

(1) If DOE awarded two contracts for conceptual design services for the Salt Waste Processing Facility, DOE intends to downselect to one contractor after completion of Line Item 0001A.

(2) Selection of the single contractor to continue performance will employ the evaluation criteria set forth below. Each contractor's performance during the base period of performance will be used for rating each contractor against the following evaluation criteria, listed in descending order of importance:

(a) Demonstrated effectiveness of technical approach.
(b) Technical adequacy, thoroughness, timeliness, and quality of the deliverables defined in Section C.5.
(c) Demonstrated performance of technical team.
(d) Demonstrated effectiveness of project management approach.

(e) Reasonableness of proposed delivery dates for items identified in Section C, Table C.5-1.1, Deliverables, and timeliness for supporting SPP program requirements and objectives.
(f) Realism of cost projections for Line Item 0002 and reasonableness of proposed fees.
(g) Financial risk accepted by the contractor for Phase II work.
(h) Establishment of project success oriented relationships with the site M&O contractor and DOE.
(i) Achievement of established small business subcontracting plan goals and reasonableness of proposed goals for the remainder of the project.

H.37 SMALL DISADVANTAGED BUSINESS PARTICIPATION TARGETS

Small Disadvantaged Business participation targets submitted by the Contractor in its proposal for purposes of evaluation for award is incorporated into this Contract as Section J, Attachment E, *Small Disadvantaged Business Partipation Program Targets.* To the extent that such concerns specifically were identified in the proposal, they are also incorporated into this Contract and the Contractor shall notify the Contracting Officer of any substitutions of firms. The Contractor's performance in meeting the targets contained in its proposal and its demonstrated commitment to maximizing the participation of Small Disadvantaged Business concerns in Contract performance will be assessed as part of the expected performance under this Contract.

H.38 PHASE II COST AND FEE PROPOSAL

Concurrent with submission of the final conceptual design under Line Item 0001A, the contractor shall submit, in accordance with the instructions provided in a letter from the Contracting Officer and FAR 15.408, Table 15-2, a cost and fee proposal for the work under Line Item 0002. Separate cost data is required for each element of work: Preliminary Design, Final Design, Construction, Commissioning and the Value Engineering Program.

The contractor shall provide the proposed delivery dates for the items identified in Section C, Table C.5-1.1, Deliverables required under Phase II of the contract. The contractor shall also complete the table in Section F.1(b) Milestones and in Section J, Attachment G, Annual Funding Requirements and shall submit a revised Small and Small Disadvantaged Business Subcontracting Plan with the proposal.

H.39 ALLOWABILITY FOR TRAVEL EXPENSES

The allowability of costs for travel and per diem expenses shall be governed by the policies set forth in Section J, Attachment B, TRAVEL COMPENSATION SCHEDULE FOR THE SAVANNAH RIVER SITE. Any exception to the policy shall require written approval from the Contracting Officer.

H.40 DEMOBILIZATION UNDER LINE ITEM 0001

(a) As described in Section B, this contract is comprised of two phases. Phase I is completion of the conceptual design work after which a downselection will occur between the two contractors submitting competing conceptual designs. The successful contractor will be authorized to commence work under Phase II (Line Item 0002). If the contractor is notified that it has not been selected to continue performance under Line Item 0002, the contractor shall immediately commence demobilization of its contract operations under Line Item 0001B. Such notification of nonselection shall constitute completion of work under Line Item 0001A. Non-selection for Phase II does not constitute termination for

convenience in accordance with FAR 52.249-6 (Cost Reimbursement), Alternate I. Therefore, the contractor that has not been selected for Phase II will not be entitled to termination settlement costs as a result of its non-selection. The contractor agrees that its sole means of recovering the expenses incident to winding down its operations under Phase I shall be the allocable and allowable costs billed to Line Item 0001B, subject to the limitations set forth in pargraphs (b) and (c) below.

(b) In view of the phased nature of the contract work, the contractor recognizes its obligations to the Government and the taxpayers to schedule its work, manage its workforce (including any subcontracts) and otherwise establish and conduct its operations in such a manner as to minimize demobilization costs. Although the cost principles and procedures in Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under Line Item 0001B; the reasonableness of such costs shall be guided by this principle of minimized demobilization costs. For example, demobilization expenses, such as but not limited to, costs associated with breaking long term facility leases, termination costs for subcontracts, severance payments for employees, significant relocation costs, etc. will be closely scrutinized, and may be determined unallowable, in whole or in part, based upon being unreasonable under the circumstances of this contract.

(c) The contractor shall be authorized a maximum of sixty (60) calendar days to complete demobilization under Line Item 0001B, unless a longer period is authorized by the Contracting Officer for extenuating circumstances, at which time the contract performance period shall expire. Upon completion of Line Item 0001B, the only costs allocable to the contract shall be costs associated with settlement of any claims, at any level, which have not been resolved, and settlement of any final indirect rate adjustments.

H.41 GUARANTEE OF PERFORMANCE

NOTE: The following clause is applicable if a Performance Guarantee was submitted as part of the Contractor's proposal leading to this contract.

(The Contractor or the Contractor's parent organization(s) has (have) provided a Performance Guarantee Agreement in a manner and form acceptable to the Contracting Officer assuring the performance, duties, and responsibilities of the Contractor, including repayment of fee, will be satisfactorily fulfilled. The Performance Guarantee Agreement dated TBD is incorporated herein by reference and made part of this Contract.

If the Contractor is a joint venture or other similar entity where more than one company is involved, the parent companies shall assume joint and several liability for the performance of the Contractor. In the event any of the signatories to the Guarantee of Performance enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer.