

The purpose of this modification is to establish a new clause and revise a clause in Part I Section H, Special Contract Requirements, and to revise Part II, Section I, Contract Clause I.59, to read as listed in the Federal Acquisition Regulation.

Part I Section H, Special Contract Requirements, Clause H. 14, entitled “Work Force Transition and Human Resources Management”, part (c) (2) has been changed. The following has been removed:

Between the dates of February 1, 2005 and February 1, 2007

The change was approved by Letter (AS-CMD-IR-07-045), but was not updated in the contract.

Clause H.45 is added, entitled “Definition of Unusually Hazardous or Nuclear Risk for FAR Clause 52.250-1 Indemnification under Public Law 85-804” and reads as follows:

- (a) The term “a risk defined in this contract as unusually hazardous or nuclear” as used in FAR Clause 52.250-1(Contract Clause I.59) means the risk of legal liability to third parties (including legal costs as defined in paragraph jj. of Section 11 of the Atomic Energy Act of 1954, as amended, (42 U.S.C. Section 2014jj.), notwithstanding the fact that the claim or suit may not arise under section 170 of said Act) arising from actions or inactions in the course of the following performed by the Contractor under this contract:
- (1) Assistance in the redesign of research and test reactors outside the United States under the Reduced Enrichment for Research and Test Reactors (RERTR) program (including but not limited to that performed pursuant to the contract between the University of Chicago and Russian Research and Development Institute of Power Engineering (RRDIPE), dated January 17, 1995, and any extension thereto), so that the reactors can use low rather than high-enriched uranium and thus reduce the potential for the loss or diversion of high-enriched uranium.
 - (2) Assistance in nuclear materials protection, control and accounting technical support (MPC&A) to the DOE with respect to nonproliferation activities involving nuclear material outside the United States, such as establishing safeguard systems to prevent diversion of nuclear material or preventing the unauthorized import or export of nuclear material, including but not limited to:
 - a. The Department of Energy MPC&A activities in Ukraine under the Agreement Between the Department of Defense of the United States of America and the Ukraine State Committee on Nuclear and Radiation Safety Concerning Development of State Systems of Control, Accounting and Physical Protection of Nuclear Material to Promote the Prevention of Nuclear Weapons Proliferation from Ukraine, dated December 18, 1993, and any extension thereto;

- b. The Department of Energy's MPC&A activities in Belarus under the Agreement Between the Department of Defense of the United States of America and the Ministry of Defense of the Republic of Belarus Concerning Control, Accounting and Physical Protection of Nuclear Material to Promote the Prevention of Nuclear Weapons Proliferation, dated June 23, 1995, and any extension thereto;
 - c. The Department of Energy's MPC&A activities in Kazakhstan under the Agreement Between the Department of Defense of the United States of America and the Ministry of Defense of the Republic of Kazakhstan Concerning Control, Accounting and Physical Protection of Nuclear Material to Promote the Prevention of Nuclear Weapons Proliferation, dated December 13, 1993, and any extension thereto;
 - d. The Department of Energy's MPC&A activities in Russia under the Agreement Between the Department of Defense of the United States of America and the Ministry of the Russian Federation for Atomic Energy Concerning Control, Accounting and Physical Protection of Nuclear Material, dated September 2, 1993, and any extension thereto; and
 - e. The Department of Energy's MPC&A activities in the Baltic States of Latvia and Lithuania and in Uzbekistan under the Coordinated Technical Support Plans (CTSP), and any extension thereto for the states of the former Soviet Union as supported by the member states of the Atomic Energy Agency.
- (3) Assistance in the Department of Energy's activities under the Russian Research Reactor Fuel Return (RRRFR) Program to repatriate Russian-origin highly enriched uranium (HEU) nuclear materials from research reactors outside the United States, such as assistance with project planning and management, technical support, and contracting for the preparation, loading and transportation of HEU nuclear materials and spent nuclear fuel from countries outside the United States to the Russian Federation, and the processing, conditioning, and storage of HEU nuclear materials, spent nuclear fuel, and associated waste streams within the Russian Federation.
- (4) As requested or approved by the President of the United States, the Secretary of Energy, the Deputy Secretary of Energy, or the Under Secretary for Nuclear Security, non-proliferation, emergency response, antiterrorism and similar critical national security activities involving the use, detection, identification, assessment, control, containment, dismantlement, characterization, packaging, transportation, movement, storage, or disposal of nuclear, radiological, chemical, biological, or explosive materials, facilities and/or devices; provided that the activity relates to materials that are weapons usable or otherwise have the potential for mass destruction and further provided that the request or approval specifically makes the indemnity provided by this clause applicable to that particular activity.

- (b) The unusually hazardous or nuclear risks described above are indemnified only to the extent that they are not covered by the Price Anderson Act, section 170d. of the Atomic Energy Act of 1954, as amended, (42 U.S.C. Section 2210d.) or where the indemnification provided by the Price-Anderson Act is limited by the restriction on public liability imposed by section 170e. of the Atomic Energy Act of 1954, as amended, (42 U.S.C. Section 2210e.) to an amount which is not sufficient to provide complete indemnification for the legal liability to which the contractor is exposed.
- (c) For purposes of this Section H.45, the term “Contractor” means:
- a. Battelle Energy Alliance, LLC (“BEA”),
 - b. BEA’s member company: Battelle Memorial Institute,
 - c. BEA’s Teaming Subcontractors: BWX Technologies, Inc. and Washington Division of URS Corporation.

Clause I. 59, FAR 52.250-1 entitled “INDEMNIFICATION UNDER PUBLIC LAW 85-804 (APR 1984) ALTERNATE I (APR 1984)” is changed to read as follows:

- (a) “Contractor’s principal officials,” as used in this clause, means directors, officers, managers, superintendents, or other representatives supervising or directing—
- (1) All or substantially all of the Contractor’s business;
 - (2) All or substantially all of the Contractor’s operations at any one plant or separate location in which this contract is being performed; or
 - (3) A separate and complete major industrial operation in connection with the performance of this contract.
- (b) Under Public Law 85-804 (50 U.S.C. 1431-1435) and Executive Order 10789, as amended, and regardless of any other provisions of this contract, the Government shall, subject to the limitations contained in the other paragraphs of this clause, indemnify the Contractor against—
- (1) Claims (including reasonable expenses of litigation or settlement) by third persons (including employees of the Contractor) for death; personal injury; or loss of, damage to, or loss of use of property;

- (2) Loss of, damage to, or loss of use of Contractor property, excluding loss of profit; and
 - (3) Loss of, damage to, or loss to use of Government property, excluding loss of profit.
- (c) This indemnification applies only to the extent that the claim, loss, or damage
 - (1) arises out of or results from a risk defined in this contract as unusually hazardous or nuclear and
 - (2) is not compensated for by insurance or otherwise. Any such claim, loss, or damage, to the extent that it is within the deductible amounts of the Contractor's insurance, is not covered under this clause. If insurance coverage or other financial protection in effect on the date the approving official authorizes use of this clause is reduced, the Government's liability under this clause shall not increase as a result.
- (d) When the claim, loss, or damage is caused by willful misconduct or lack of good faith on the part of any of the Contractor's principal officials, the Contractor shall not be indemnified for-
 - (1) Government claims against the Contractor (other than those arising through subrogation); or
 - (2) Loss or damage affecting the Contractor's property.
- (e) With the Contracting Officer's prior written approval, the Contractor may, in any subcontract under this contract, indemnify the subcontractor against any risk defined in this contract as unusually hazardous or nuclear. This indemnification shall provide, between the Contractor and the subcontractor, the same rights and duties, and the same provisions for notice, furnishing of evidence or proof, and Government settlement or defense of claims as this clause provides. The Contracting Officer may also approve indemnification of subcontractors at any lower tier, under the same terms and conditions. The Government shall indemnify the Contractor against liability to subcontractors incurred under subcontract provisions approved by the Contracting Officer.
- (f) The rights and obligations of the parties under this clause shall survive this contract's termination, expiration, or completion. The Government shall make no payment under this clause unless the agency head determines that the amount is just and reasonable. The Government may pay the Contractor or subcontractors, or may directly pay parties to whom the Contractor or subcontractors may be liable.

(g) The Contractor shall--

- (1) Promptly notify the Contracting Officer of any claim or action against, or any loss by, the Contractor or any subcontractors that may reasonably be expected to involve indemnification under this clause;
- (2) Immediately furnish to the Government copies of all pertinent papers the Contractor receives;
- (3) Furnish evidence or proof of any claim, loss, or damage covered by this clause in the manner and form the Government requires; and
- (4) Comply with the Government's directions and execute any authorizations required in connection with settlement or defense of claims or actions.

(h) The Government may direct, control, or assist in settling or defending any claim or action that may involve indemnification under this clause.

(i) The cost of insurance (including self-insurance programs) covering a risk defined in this contract as unusually hazardous or nuclear shall not be reimbursed except to the extent that the Contracting Officer has required or approved this insurance. The Government's obligations under this clause are—

- (1) Excepted from the release required under this contract's clause relating to allowable cost; and
- (2) Not affected by this contract's Obligation of Funds clause.

Part I Section H, Special Contract Requirements, Table of Contents is deleted in its entirety and replace with the attached Table of Contents (2 pages)

Part II, Section I, Contract Clause, Table of Contents is deleted in its entirety and replace with the attached Table of Contents (3 pages)

All other terms and conditions remain unchanged.

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