**Section H** **Special Contract Requirements**

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H.1 Key Personnel (DEC 2000)

a. The personnel listed below or elsewhere in this contract are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel, the Contractor must: (1) Notify the Contracting Officer reasonably in advance; (2) submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract; and (3) obtain the Contracting Officer's written approval. Notwithstanding the foregoing, if the Contractor deems immediate removal or suspension of any member of its management team is necessary to fulfill its obligation to maintain satisfactory standards of employee competency, conduct, and integrity under the clause at 48 CFR 970.5203-3, Contractor's Organization, the Contractor may remove or suspend such person at once, although the Contractor must notify Contracting Officer prior to or concurrently with such action.

b. The list of personnel may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel.

c. Key personnel requirements for the provision of services are as follows:

| Name | Title |
|---|---|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

H.2 Laws and Regulations

a. In performing work under this Contract, the Contractor shall comply with the requirements of Federal, State, and local laws and regulations, unless relief has been granted in writing by the appropriate regulatory agency.

b. The Contractor shall be responsible for compliance with the requirements made applicable to this Contract, regardless of the performer of the work. Consequently, the Contractor shall be responsible for flowing down the necessary provisions to subcontracts at any tier to which such requirements apply.

c. The Contractor shall incorporate the substance of this clause with respect to applicable Orders and Directives in applicable subcontracts and as directed by the Contracting Officer.

H.3 Systems/Ownership of Records

a. Government Records

Except as provided in Paragraph b. of this clause, all records acquired or generated by the Contractor in its performance of this contract shall be the property of the Government, and shall be delivered to the Government or otherwise disposed of by the Contractor either as the Contracting Officer may from time to time direct during the process of the work or, in any event, as the Contracting Officer shall direct upon completion or termination of the contract.

b. Contractor's Own Records

The following records are considered the property of the Contractor and are not within the scope of Paragraph a. above:

1. employment-related records as follows:

   a) personnel files maintained on current individual employees;
   b) files maintained on applicants;
   c) qualifications or suitability for employment;
   d) allegations, investigations, and resolution of employee misconduct;
   e) employee discipline;
   f) records on salary and employee benefits;
   g) labor negotiations records;
   h) employee concern program records;
   i) employee assistance program records;

2. Confidential Contractor financial information and correspondence between the Contractor and other segments of the Contractor located away from the DOE facility (i.e., the Contractor's corporate headquarters).

3. The following categories of records:

   i. executed license agreements (including exhibits or appendices containing information on royalties, royalty rates, other financial information, or commercialization plans) and all related documents, notes, and correspondence.

   ii. the Contractor's protected Cooperative Research and Development Agreement (CRADA) information and appendices to a CRADA that contain licensing terms and conditions, or royalty or royalty rate information.

   iii. patent, copyright, mask work, and trademark application files and related Contractor invention disclosures, documents, and correspondence, where the Contractor has elected rights or has permission to assert rights and has not relinquished such rights or turned such rights over to the Government.

c. Inspection, Copying, and Auditing of Records

All records acquired or generated by the Contractor to perform the services under this Contract shall be subject to inspection, copying, and audit by the Government at all

reasonable times, and the Contractor shall afford the Government or its designee reasonable facilities for such inspection, copying, and audit. Upon request by the Contracting Officer, the Contractor shall deliver such records to a location specified by the Contracting Officer for inspection, copying, and audit.

d. Applicability

The provisions of paragraphs b. and c. of this clause apply to all records described therein without regard to the date or origination of any such record.

e. Records Retention Standards

Special records retention standards, as described in the National Archives and Records Administration (NARA) General Records Schedule and the Department of Energy (DOE) Records Schedules (version in effect on effective date of contract), are applicable for the classes of records described therein whether or not the records are owned by the Government or the Contractor.

f. Flowdown

The Contractor shall include the requirements of this clause in all applicable subcontracts.

H.4 Assignment of This Contract

DOE reserves the right to assign this Contract to any Federal agency or onsite contractor for contract administration. The rights and obligations of the Contractor shall not be adversely affected in any material respect as a result of such assignment. Written notice will be provided to the Contractor if an assignment is made. No claim for additional costs will be considered by reason of any assignment under this provision.

H.5 Reimbursable Expenses

a. Notwithstanding that this contract is fixed unit price, the Government will reimburse, subject to the total amount of funds obligated to this contract and with the prior written approval of the contracting officer or designee, the direct cost of subcontracts for:

1) pursuing and/or defending workers' compensation litigation actions (reference clause H.6);

2) outside professional services for investigations;

3) independent medical examinations;

4) professional services for vocational rehabilitation; and

5) other services as directed by the contracting officer.

b. The contracting officer or designee, by written notice to the contractor, may withdraw the approval to continue to incur expenses for the aforementioned subcontracts. All costs determined to be

allowable are reimbursable for actual costs only, with no overhead or surcharge adjustments. All costs covered by this clause are subject to audit by the DOE, its designated representative or the General Accounting Office. The standard for cost reasonableness determinations, one of the criteria for an allowability determination, is contained in the Federal Acquisition Regulation (FAR) 31.201–3. The FAR in full text is available at: http://farsite.hill.af.mil/. Specific categories of costs are unallowable and the contractor shall not be reimbursed. These unallowable costs are contained in the cost principles at FAR part 31 and Department of Energy Acquisition Regulation (DEAR) part 931. The DEAR in full text is available at: http://farsite.hill.af.mil/.

H.6 Workers' Compensation Litigation and Claims Support and Reimbursable Costs

a. Whenever necessary to effectively administer workers' compensation claims under this Contract, the Contractor may, with the prior written authorization of the Contracting Officer or designee, and shall, upon the written request of the Government, initiate litigation against third parties, including proceedings before administrative agencies, in connection with worker's compensation claims administered under this contract.

b. The contractor shall give the contracting officer immediate notice in writing of any action, including any proceeding before any administrative agency, filed regarding any workers' compensation claim administered by the contractor in the performance of this contract. Except as otherwise directed by the contracting officer in writing, the contractor shall furnish immediately to the contracting officer copies of all pertinent papers received by the contractor with respect to such action.

c. If any workers' compensation suit or action is filed or any claim is made, the Contractor shall:

(1) immediately notify the Contracting Officer and promptly furnish copies of all pertinent papers received;

(2) authorize Government representatives to collaborate with, (i) in-house or approved outside counsel in settling or defending the claim, or (ii) counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed exceeds the amount of coverage, unless precluded by the terms of the insurance contract; and,

(3) authorize Government representatives to settle the claim or to defend or represent the contractor in and/or to take charge of any litigation, if required by the DOE, when the liability is not insured or covered by bond. In any action against more than one DOE contractor, the DOE may require the contractor to be represented by common counsel. Counsel for the contractor may, at the contractor's expense, be associated with the DOE representatives in any such claim or litigation.

d. The contractor agrees to submit to the contracting officer, to the extent and in the manner directed by the contracting officer, any bonds and insurance maintained by the contractor in connection with the performance of this contract.

e. The contractor must submit an engagement letter to retained legal counsel expected to provide $25,000 or more in legal services for a particular matter and submit a copy of correspondence relating to the required elements below, including correspondence from retained legal counsel

addressing any of the issues/required elements to the contracting officer prior to initiating any expense. The engagement letter must require retained legal counsel to assist the contractor in complying with this clause. The required elements are as follows:

(1) A process for review and documented approval of all billing by a contractor representative, including the timing and scope of billing reviews.

(2) A statement that provision of records to the Government is not intended to constitute a waiver of any applicable legal privilege, protection, or immunity with respect to disclosure of these records to third parties. (An exemption for specific records may be obtained where contractors can demonstrate that a particular situation may provide grounds for a waiver.)

(3) A requirement that the contractor, DOE, and the General Accounting Office, have the right upon request, at reasonable times and locations, to inspect, copy, and audit all records documenting billable fees and costs.

(4) A statement that all records must be retained for a period of three (3) years after the final payment.

(5) The contractor must obtain the following information from the retained counsel:

(a) Identification of all attorneys and staff who are assigned to the matter and the rate and basis of their compensation (i.e., hourly rates, fixed fees, contingency arrangement) and a process for obtaining approval of temporary adjustments in staffing levels or identified attorneys.

(b) An initial assessment of the matter, along with a commitment to provide updates as necessary.

(c) A description of billing procedures, including frequency of billing and billing statement format.

(6) The contractor must obtain retained counsel's agreement to the following:

(a) That in significant matters a staffing and resource plan for the conduct of the matter must be submitted by the retained legal counsel to the contractor.

(b) That alternative dispute resolution must be considered at as early a stage as possible where litigation is involved.

(c) That retained counsel must comply with the cost guidelines included in this clause.

(d) That professional conflicts of interest issues must be identified and addressed promptly.

f. All costs determined to be allowable are reimbursable for actual costs only, with no overhead or surcharge adjustments. All costs covered by this clause are subject to audit by the DOE, its designated representative or the General Accounting Office. The standard for cost reasonableness determinations, one of the criteria for an allowability determination, is contained in the Federal Acquisition Regulation (FAR) 31.201–3. Travel and related expenses must at a minimum comply

with the restrictions set forth in FAR 31.205–46 to be reimbursable. The FAR in full text is available at: http://farsite.hill.af.mil/.

g. The following categories of costs are unallowable and the contractor shall not be reimbursed:

(1) Specific categories of unallowable costs are contained in the cost principles at FAR part 31 and Department of Energy Acquisition Regulation (DEAR) part 931. See also 41 U.S.C. 256(e). The DEAR in full text is available at: http://farsite.hill.af.mil/.

(2) Costs incurred for entertainment or alcoholic beverages. See FAR 31.205–14 and 31.205–51 and 41 U.S.C. 256(e).

(3) Costs that are customarily or already included in billed hourly rates are not separately reimbursable.

(4) Interest charges that a contractor incurs on any outstanding (unpaid) bills from retained legal counsel are not reimbursable.

(5) Costs for which the contractor has failed to insure or to maintain insurance as required by law, this contract, or by written direction of the contracting officer.

h. Fees are determined to be unreasonable as follows:

(1) Whether the lowest reasonably achievable fees or rates (including any currently available or negotiable discounts) were obtained from retained legal counsel;

(2) Whether lower rates from other firms providing comparable services were available;

(3) Whether alternative rate structures such as flat, contingent, and other innovative proposals, were considered;

(4) The complexity of the legal matter and the expertise of the law firm in this area; and

(5) The factors listed in the legal management plan.

i. A legal management plan must be delivered to, and approved by, the contracting officer, within 60 days following contract award, (reference clause F.3) and will become Attachment J.7 to Section J. The approved plan must include the following items:

(1) A description of the legal matters that may necessitate handling by retained legal counsel.

(2) A discussion of the factors the contractor must consider in determining whether to handle a particular matter utilizing retained legal counsel.

(3) An outline of the factors the contractor must consider in selecting retained legal counsel, including:

(a) Competition;

(b) Past performance and proficiency shown by previously retained counsel;

(c) Particular expertise in a specific area of the law;

(d) Familiarity with the Department's activity at the Hanford Site and the prevalent issues associated with facility history and current operations;

(e) Location of retained legal counsel relative to:

(1) The Hanford Site,

(2) Any forum in which the matter will be processed, and

(3) Where a significant portion of the work will be performed;

(f) Experience as an advocate in alternative dispute resolution procedures such as mediation;

(g) Actual or potential conflicts of interest; and

(h) The means and rate of compensation (*e.g.,* hourly billing, fixed fee, blended fees, etc.).

(i) A description of:

(1) The system that the contractor will use to review each case to determine whether and when alternative dispute resolution is appropriate;

(2) The role of in house counsel in cost management;

(3) The contractor's process for review and approval of invoices from outside law firms or consultants;

(4) The contractor's strategy for interaction with, and supervision of, retained legal counsel;

(5) How appropriate interaction with the contracting officer and DOE/RL counsel will be ensured; and,

(6) The contractor's corporate approach to legal decision making.

j. Costs for the following require specific justification or advance written approval from the contracting officer to be considered for reimbursement:

(1) Computers or general application software, or non-routine computerized databases specifically created for a particular matter; (2) Charges for materials or non-attorney services exceeding $5,000;

(3) Secretarial and support services, word processing, or temporary support personnel;

(4) Attendance by more than one person at a deposition, court hearing, interview or meeting;

(5) Expert witnesses and consultants;

(6) Trade publications, books, treatises, background materials, and other similar documents;

(7) Professional or educational seminars and conferences;

(8) Preparation of bills or time spent responding to questions about bills from either the Department or the contractor;

(9) Food and beverages when the attorney or consultant is not on travel status and away from the home office; and

(10) Pro hac vice admissions.

k. Invoice format:

*Contractor Litigation and Legal Costs, Model Bill Certification and Format*

1. Certification. Bills or invoices should contain a certification signed by a representative of the retained legal counsel to the effect that:

"Under penalty of law, [the representative] acknowledges the expectation that the bill will be paid by the contractor and that the contractor will be reimbursed by the Federal Government through the U.S. Department of Energy, and, based on personal knowledge and a good faith belief, certifies that the bill is truthful and accurate, and that the services and charges set forth herein comply with the terms of engagement and the policies set forth in the Department of Energy's regulation and guidance on contractor legal management requirements, and that the costs and charges set forth herein are necessary."

2. Model Bill Format

| FOR FEES | | | | | |
|---|---|---|---|---|---|
| Date of Service | Description of Service | Name or Initials of Attorney | Approved Rate | Time Charged | Amount (Rate * Time) |
| See Note 1 | | | | | |

| FOR DISBURSEMENTS | | |
|---|---|---|
| Date | Description of Disbursement | Amount |
| See Note 2 | | |

Note 1—Description of Service:

All fees must be itemized and described in sufficient detail and specificity to reflect the purpose and nature of the work performed (*e.g.*, subject matter researched or discussed; names of participants of calls/meetings; type of documents reviewed).

Note 2—Description of Disbursement:

Description should be in sufficient detail to determine that the disbursement expense was in accordance with all applicable Department policies on reimbursement of contractor legal costs and the terms of engagement between the contractor and the retained legal counsel. The date the expense was incurred or disbursed should be listed rather than the date the expense was processed. The following should be itemized: copy charge (*i.e.*, number of pages times a maximum of 10 cents per

page); fax charges (date, phone number and actual amount); overnight delivery (date and amount); electronic research (date and amount); extraordinary postage (*i.e.,* bulk or certified mail); court reporters; expert witness fees; filing fees; outside copying or binding charges; temporary help (assuming prior approval).

Note 3—Receipts:

Receipts for all expenses equal to or above $75 must be attached.

H.7 DOE's Claimant Benefit Payment Account

The Contractor will make payments to or on behalf of claimants from a special bank account, letter of credit or other form of Government financing. The Contractor will not be required to provide funds to cover these payments. The specific method used will be prescribed by and subject to revision by the Contracting Officer. If, in the Contractor's judgment, the total amount of payments that will be disbursed from the account within the next 30 days will exceed the total funds available, the Contractor shall notify the Contracting Officer in writing. In no case will the Contractor issue checks in excess of the funds available.

H.8 Interface with the Hanford Site Occupational Medical Services Provider

The occupational medical services provider for the Hanford Site may assist with case management services, nursing, vocational rehabilitation, work hardening, physical examinations, return-to-work determinations, first aid, and other occupational medical services. The occupational medical services provider may serve as the medical liaison between the Contractor, the employee, the employee's personal physician and the employer.

The Contractor shall refer the injured or ill employee to the occupational medical services provider for evaluation of their illness or injury after a claim has been filed with the State of Washington. DOE directives and Orders require employees who experience lost time injuries or illnesses to receive a medical clearance evaluation through the occupational medical services provider prior to their return to work.

H.9 Government-Furnished Property/Services

All Government-furnished property/services are strictly limited to use for the performance of this Contract. A government furnished microfiche machine will be available for use at the contractor's facility. Automated Data Processing (ADP) and Telecommunications Equipment Standards are provided through Lockheed Martin Services, Inc. (LMSI) as the designated Hanford prime contractor. Detail information for each service can be obtained from LMSI. These services are direct billed under this contract based on usage. The contractor will be required to provide its own ADP equipment to connect to the Hanford Local Area Network (HLAN) access where the database for workers' compensation claim information shall be maintained.

Renaissance software provided by David Corporation is the current software database for administration of the workers' compensation claims. This will be available under a DOE prime contract until Feb 2005. At that time, the contractor will either continue to utilize Renaissance or commercially available interactive claims management software. Any alternate software must be

submitted to and approved by the Contracting Officer. If approved, this alternate software will be purchased by the Government and furnished as Government provided equipment.

Connection to HLAN can be made via direct connection from a Hanford Facility or by Virtual Private Networking (VPN). VPN is a high speed, Internet based connection for those users who need full HLAN access from remote locations. This service requires the user to have a high-speed Internet service such as DSL, cable-modem or similar technology. VPN is provided for HLAN users under specific conditions.

Reference Section J, Attachment J.3, Hardware and Software System Requirements, for contractual requirements, including rates as of March 23, 2004, for VPN or HLAN direct access. Reference Section J, Attachment J.4, for the Memorandum of Understanding which is required upon contract award.

H.10 Incumbent Employees Hiring Preferences

The Contractor shall use the transition period to make hiring decisions and to establish the management structures necessary to conduct an employee relations program. In establishing the initial work force, and through the first six months after contract award, the Contractor shall give a first preference in hiring for vacancies in non-managerial positions under this contract to qualified employees employed by the incumbent contractor at contract award. It does not apply to the contractor's hiring of management staff (i.e., first line supervisors and above).

H.11 Certifications and Other Statements of the Offeror

The Representations, Certifications, and Other Statements of the offeror submitted with the offer for this contract are, by reference, hereby incorporated in and made a part of this contract.

H.12 Fines and Penalties Assessed Against DOE

In the event DOE is assessed a fine or penalty by the State of Washington pursuant to the Revised Code of Washington (RCW) Chapter 51.48, and DOE determines that the penalty was assessed because of action or inaction on the part of the Contractor, the Contractor shall be liable to DOE for the penalty amount. The Contractor shall either reimburse DOE for the amount of the penalty, or DOE shall have the right to off-set the amount of penalty against any amounts due under Clause H.5 of this contract.