

SRNS-MS-2008-00016
Revision 10
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GENERAL PROVISIONS
FOR THE SALE OF GOVERNMENT
PROPERTY
UNDER
U. S. DEPARTMENT OF ENERGY PRIME
CONTRACT NO. DE-ACO9-08SR22470

SAVANNAH RIVER NUCLEAR
SOLUTIONS, LLC
SAVANNAH RIVER SITE
AIKEN, SC 29808

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** Incorporated by reference to appropriate FAR clause (see <https://www.acquisition.gov/far/>) and DEAR (see <http://energy.gov/management/downloads/searchable-electronic-department-energy-acquisition-regulation>)*

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1. DEFINITIONS

As used herein, the following terms shall have the meaning set forth below:

- A. Small Business - A small business concern for the purpose of the sale of Government-owned property, other than timber, is a concern, including its affiliates, which is independently owned and operated, is not dominant in its field of operation, and can further qualify under the following small business classification criteria:
- (1) Manufacturers - Any concern which is primarily engaged in manufacturing is small if its number of employees does not exceed 500 persons: PROVIDED, HOWEVER, That a concern primarily engaged in SIC Industry 2911, Petroleum Refining, is small if its number of employees does not exceed 1000 persons and it does not have more than 30,000 barrels-per day crude-oil capacity from owned or leased facilities.
 - (2) Other Than Manufacturer - Any concern that is primarily not a manufacturer (except as specified in subparagraph (3) of this paragraph) is small if its annual sales or annual receipts for its preceding 3 fiscal years do not exceed \$5 million.

- (3) Purchasers. Any concern primarily engaged in the purchase of materials that are not domestic products. Purchaser is considered small if its average annual sales or annual receipts for its preceding 3 fiscal years do not exceed \$25 million.

2. INSPECTION

The Bidder is invited, urged, and cautioned to inspect the property prior to submitting a bid. Property will be available for inspection at the places and times specified in the Invitation.

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

3. CONDITION AND LOCATION OF PROPERTY

Unless otherwise specifically provided in the Invitation, all property listed therein is offered for sale "as is" and "where is". The description of the property is based on the best information available to SRNS. However, unless otherwise specifically provided in the Invitation, SRNS makes no warranty, express or implied, as to quantity, kind, character, quality, weight, size, or description of any of the property, or its fitness for any use or purpose and except as provided in Conditions No. 13 and 15 or other special conditions of the Invitation, no request for adjustment in price or for rescission of the sale will be considered. This is not a sale by sample.

4. CONSIDERATION OF BIDS

- A. Telegraphic or telephonic bids will not be considered.
- B. The Bidder agrees that his bid will not be withdrawn within the period of time specified for the acceptance thereof following the opening of bids (**90 calendar days** if no period be specified by SRNS or by the Bidder, but not less than 10 calendar days in any case) and that during such period his bid will remain firm and irrevocable. SRNS reserves the right to reject any or all bids, including bids under which a Bidder could take unfair advantage of SRNS or other Bidders, to waive any technical defects in bids, and unless otherwise specified by SRNS or by the Bidder, to accept any one item or group of

items in the bid, as may be in the best interest of SRNS. Unless otherwise provided in the invitation, bids may be submitted on any or all items. However, unless the Invitation otherwise provides, a bid covering any listed item must be submitted on the basis of the unit specified for that item and must cover the total number of units designated for that item.

5. FORMS OF BID DEPOSITS AND PAYMENTS

Unless otherwise provided in the Invitation, bid deposits (when required by the Invitation) and payments shall be in U. S. currency or any form of credit instrument other than promissory note, made payable on demand in U. S. currency: Provided, that uncertified personal or business checks must be first party instruments: PROVIDED FURTHER, That if in connection with any prior sale, the Bidder, Purchase tendered an uncertified personal or business check which was not paid by the drawee for any reason and the bidder, purchase, and the Drawer of the check were so notified in writing by the selling agency, uncertified personal or business checks will not be an acceptable form of bid deposit or payment. Bids submitted after the effective date specified in the written notification referred to which are not accompanied by the proper bid deposit (other than an uncertified personal or business check) will be summarily rejected.

6. BID PRICE DETERMINATION

- A. When bids are solicited on a unit price basis, Bidders will insert their unit prices and total prices in the space provided for each item.
- B. In the event the Bidder inserts a total price on the item but fails to insert a unit price, SRNS will determine the unit priced by dividing the total price by the quantity of the items set out in the Invitation. The unit price so determined shall be used for the purpose of bid evaluation, award and all phases of contract administration.

7. PAYMENT

The Purchaser agrees to pay for property awarded in accordance with the prices represented in the bid, subject to an adjustment made pursuant to other provisions of this Agreement. Payment of the full purchase price, after applying the total bid deposit, if any, must be made within 30 days prior to receipt of material. If an adjustment is made requiring

additional payment, such payment must be made immediately upon notice of such adjustment. In the absence of any debts owed to the selling agency, where the total sum becoming due to SRNS from the Purchaser on an agreement awarded under the Invitation is less than the total amount deposited with the bid, the difference will be promptly refunded and also, deposits accompanying bids which are not accepted will be properly refunded to the Bidder. No refunder demands will be made for any amount less than one dollar (\$1).

8. TITLE

Title to the property sold hereunder shall vest in the Purchaser as, and when, removal is effected, excepting only (A) and (B) below:

A. Upon written notice to the Purchaser while the aforesaid property remains in the possession of the Purchaser, SRNS may reclaim title to the property sold hereunder if SRNS determines:

- (1) that the aforesaid property does contain, or may contain, classified U.S. Government data (in any form), and/or technology sensitive to the national interest, or
- (2) that the aforesaid property is "Proliferation Sensitive Property", as defined in Article 41 of these General Provisions

SRNS and the Government are not liable to Purchaser for any costs associated with the inadvertent inclusion of such property in the sale. If payment has been made for any such property, the payment shall be refunded to the Purchaser. Any reshipment costs involved will be the responsibility of SRNS. Once notified by SRNS of its intent to reclaim the aforesaid property, the Purchaser agrees to take all reasonable measures to safeguard the aforesaid property until reclaimed by SRNS.

B. As otherwise provided in the Invitation. On all motor vehicles and motor-propelled or motor-drawn equipment requiring licensing by a State motor vehicle regulatory agency, a certificate of release will be furnished for each vehicle and piece of equipment.

9. DELIVERY, LOADING, AND REMOVAL OF PROPERTY

A. Unless otherwise provided on the Invitation, the Purchaser shall be entitled to obtain the property upon full payment therefore with delivery being made only from the exact

place where the property is located within the installation. The Purchaser must make all arrangement necessary for packing, removal, and transportation of property. SRNS will not act as liaison in any fashion between the Purchaser and Carrier, nor will SRNS recommend a specific common carrier. Loading will only be performed as set forth in Invitation, and unless otherwise provided in the Invitation, loading will not be performed on Saturdays, Sundays, SRNS holidays, or any day that the installation where the property is located is closed. Where it is provided that SRNS will load, SRNS will make the initial placement of the property on conveyance(s) furnished by the Purchaser and the initial placement on the Purchaser's conveyance shall be as determined by SRNS. Unless otherwise provided in the Invitation, SRNS will not block, chock, brace, lash, band, or in any other manner secure the cargo on such conveyance(s) furnished by the Purchaser.

B. Where it is provided in the Invitation that SRNS not load or that the Purchaser will load, the Purchaser will make all the arrangements and perform all work necessary to effect removal of the property. The Purchaser will make all arrangements and perform all work necessary to effect removal of the property. The Purchaser shall remove the property at his expense within the period of time allowed in the Invitation. If SRNS determines that the failure to remove the property within the period of time originally allowed arose out of causes beyond the control and without the fault or negligence of the Purchaser, such determination shall be reduced to writing, and a reasonable extension of time for removal shall be allowed. Such causes may include, but are not restricted to acts of God or of public enemy, acts of SRNS in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather. If the Purchaser is permitted to remove the property after the expiration of the time originally allowed for removal or any additional time allowed by SRNS pursuant to this clause, SRNS, without limiting any other right which it may have may require the Purchaser to pay a reasonable storage charge. The Purchaser shall reimburse SRNS for any damage to Government property caused during the removal

operations by the Purchaser or his authorized representative.

- C. Items purchased under the Invitation will be released only to the Purchaser or his authorized representative. The authorization from the Purchaser to the Custodian of the property will be at the property location before any delivery or release will be made. When property is described as being boxed, packed, crated, skidded, or in containers, SRNS does not warrant that the property, as packaged, is suitable for shipment.
- D. Segregation culling or selection of property for the purpose of effecting partial or increment removals will not be permitted except as specifically authorized and prescribed by SRNS.

10. DEFAULT

If, after the award, the Purchaser breaches the agreement by failure to make payment within the time allowed by the Agreement as required by condition No. 7, or by failure to remove the property as required by condition No. 9, then SRNS may send the Purchaser a 15-day written notice of default (calculated from date of mailing), and upon Purchaser's failure to cure such default within that period (or such further period as SRNS may allow), the Purchaser shall lose all right, title and interest which he might otherwise have acquired in and to such property as to which a default has occurred. The Purchaser agrees that in the event he fails to pay for the property or remove the same within the prescribed period(s) of time, SRNS at its election and upon notice of a default shall be entitled to retain (or collect) as liquidated damages a sum equal to the greater of (a) 20% of the purchase price of the item(s) as to which the default has occurred or (b) \$25 or the purchase price of such item(s) if the purchase price less than \$25: PROVIDED, That in Bids, the amount to be charged if the minimum charge provided for in "b" above is applicable, shall be determined by the total purchase price reflected in the award documents: PROVIDED FURTHER, That maximum sum which may be recovered by SRNS as damages for failure of the Purchaser to pay for and remove the property shall be the formula amount. When SRNS exercises this election, it shall specifically apprise the Purchaser, either in its original notice of default (or in separate subsequent written notice), that upon the expiration of the period prescribed for curing the default, the formula amount will be retained (or collected) by SRNS as liquidated

damages. However, if the property was sold on a "per lot" basis and the Purchaser removes a portion of the lot but fails to remove the balance, no portion of the purchase price will be refunded. If the Purchaser otherwise fails in the performance of his obligations, SRNS may exercise such rights and may pursue such remedies as are provided by law or under the Agreement.

11. SETOFF OF REFUNDS

The Bidder or Purchaser agrees that the selling agency may use all or a portion of any bid deposit or refund due him to satisfy, in whole or in part, any debts arising out of prior transactions with selling agency.

12. INTEREST

Notwithstanding any other provision of this Agreement, unless paid within 30 calendar days from the date of first written demand, all amounts that become payable by the Purchaser to SRNS under this Agreement shall bear interest at the rate of 10% per annum from the date of first written demand until paid. Irrespective of the amount of the indebtedness, a minimum interest charge of five dollars (\$5) shall be due SRNS on any amount exceeding \$100 not paid within 30 calendar days from the date of first written demand. Interest on debts of \$100 or less will not be collected if such debts are liquidated without resort to litigation.

13. ADJUSTMENT FOR VARIATION IN QUANTITY OR WEIGHT

Except for term subcontracts, when property is sold by a unit other than "weight", SRNS reserves the right to vary the quantity tendered or delivered to the Purchaser by 50%; when the property is sold by "weight", SRNS reserves the right to vary the quantity tendered or delivered to the Purchaser by 50%; when the property is sold by "weight" SRNS reserves the right to vary the weight tendered to the Purchaser by 50%. The purchase price will be adjusted upwards or downwards in accordance with the unit price and on the basis of the quantity or weight actually delivered. Unless otherwise specifically provided in the Invitation, no adjustment for such variation will be made when property is sold on a "price for the lot" basis.

14. WEIGHTING, SWITCHING, AND SPOTTING

Where weighting is necessary to determine the exact purchase price, the Purchaser shall arrange

for and pay all expense of weighing the property (unless SRNS scales are available on the premises). All switching and spotting charges shall be paid by the Purchaser unless performed with Government-owned or Government-operated locomotives on Government property. When removal is by truck, weighing shall be under the supervision of SRNS and at its option on: (a) Government scales, (b) certified scales, or (c) other scales acceptable to both parties. When removal is by rail, weighing shall be on railroad track scales, or other means acceptable to the railroad for freight purposes.

15. RISK OF LOSS

Unless otherwise provided in the Invitation, SRNS will be responsible for the care and protection of the property subsequent to it being available for inspection and prior to its removal. Any loss, damage, or destruction occurring during such period will be adjusted by SRNS to the extent it was not caused directly or indirectly by the Purchaser, its agents, or employees. With respect to loss only, in the event the property is offered for sale by the "lot", no adjustment will be authorized under this provision unless SRNS is notified of the loss prior to removal from the installation of any portion of the lot with respect to which the loss is claimed.

16. LIMITATION ON LIABILITY

Except for reasonable packing, loading, and transportation costs when a return of property at SRNS cost is authorized, the measure of the SRNS /Government liability in any case where liability of the Purchaser has been established shall not exceed refund of such portion of the purchase price as SRNS may have received.

17. ORAL STATEMENTS AND MODIFICATIONS

Any oral statement or representation by any representative of SRNS, changing or supplementing the Invitation or Agreement or any Condition thereof, is unauthorized and shall confer no right upon the Bidder or Purchaser.

18. COVENANT AGAINST CONTINGENT FEES

Purchaser warrants that no person or agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial agencies maintained by the Purchaser for the

purpose of doing business. For breach of this warranty, SRNS shall have the right to annul this Agreement without liability or, at its option, to recover from the Purchaser the amount of such commission, percentage, brokerage, or contingent fee, in addition to the consideration herein set forth.

19. OFFICIALS NOT TO BENEFIT

No member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Agreement or to any benefit that may arise therefrom, unless it be made with a corporation for its general benefit.

20. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

- A. By submission of this bid or proposal, the Bidder certifies, and in the case of a joint bid or proposal each party thereto certifies as to its own organization, that in connection with this sale: (1) the prices in this bid or proposal have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices, with any other bidder or with any competitor; (2) unless otherwise required by law, the prices which have been quoted in this bid or proposal have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, in the case of a bid, or prior to award, in the case of a proposal, directly or indirectly to any other bidder or offeror or to any competitor; and (3) no attempt has been made or will be made by the Bidder to induce any other person or firm to submit or not to submit a bid or proposal for the purpose of restricting competition.
- B. Each person signing this bid or proposal certifies that: (1) they are the person in the Bidder's organization responsible within that organization for the decision as to the prices being bid or offered therein and that they have not participated, and will not participate, in any action contrary to (a) (1) through (a) (3), above; or (2)(i) they are not the person in the Bidder's organization responsible within that organization for the decision as to the prices being bid or offered herein but that they have been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to

(a) (1) through (a) (3), above, and as their agent does hereby so certify; and (ii) they have not participated, and will not participate, in any action contrary to (a) (1) through (a) (3), above.

- C. This certification is not applicable to a foreign Bidder submitting a bid or proposal for an Agreement which requires performance or delivery outside the United States, its possessions, and Puerto Rico.
- D. A bid or proposal will not be considered for award where (a) (1), (a) (3), or (b), above, has been deleted or modified. Where (a) (2), above, has been deleted or modified, the bid or proposal will not be considered for award unless the Bidder furnishes with the bid or proposal a signed statement which sets forth in detail the circumstances disclosure and the head of the selling agency, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

21. ASSIGNMENTS OF AGREEMENTS

Any Agreement awarded under the Invitation is subject to the provisions of 41 U.S.C. 15 which generally precludes assignment of such Agreement.

22. CLAIMS LIABILITY

The Bidder or Purchaser agrees to save SRNS and the Government harmless from any and all claims, demands, actions, debts, liabilities, judgments, costs and attorneys' fees arising out of, claimed on account of, or in any manner predicated upon loss of or damage to property of and injuries to or the death of any and all persons whatsoever, in any manner caused or contributed to by the Bidder or Purchaser, its agents, servants or employees, while in, upon or about the sale or the property site on which the property sold or offered for sale is located, or while going to or departing from such areas; and to save SRNS and the Government harmless from and on account of damages of any kind which SRNS and the Government may suffer as the result of the acts of the Bidder or Purchaser, its agents, servants, or employees while in or about the said sites.

23. WITHDRAWAL OF PROPERTY AFTER AWARD

SRNS reserves the right to withdraw for its use any or all of the property covered by this Agreement, if a bona fide requirement for the property develops or exists prior to actual

removal of the property from SRNS control. In the event of a withdrawal under this condition, SRNS shall be liable only for the refund of the Agreement price of the withdrawn property or such portion of the Agreement price as it may have received.

24. BIDDER'S WARRANTY OF CAPACITY

The Bidder warrants that they are not: (a) under 18 years of age; (b) an employee of an agency of the Federal Government (either as a civilian or as a member of the Armed Forces of the United States, including the United States Coast Guard, on active duty) prohibited by the regulations of that agency from purchasing property sold hereunder; (c) an agent or immediate member of the household of the employee in (b), above. For breach of this warranty, SRNS shall have the right to annul this Agreement without liability.

25. TIE-IN AND ALL OR-NONE BIDS

Except as otherwise specifically provided, qualified, tie-in, all-or-none or combination bids will not be acceptable and will be rejected as non-responsive. This includes bids conditioned upon the acceptance or non-acceptance bids on other items, except as otherwise specifically provided in the invitation.

26. STORAGE CHARGES/LATE REMOVAL CHARGES

In accordance with Condition No. 9, General Sale Terms and Conditions entitled "Delivery, Loading and removal of Property", if the Purchaser is permitted to remove the property after the expiration of the period prescribed herein for the removal or after the expiration of such additional time as SRNS may have granted, pursuant to Condition No. 9, SRNS will require the Purchaser to pay for storage/liquidated damages for such late removal. Unless otherwise specifically provided for elsewhere in the Invitation for Bids, storage charges/liquidated damages for property stored indoors will be completed and assessed at the rate of six cents (\$.06) per hundred pounds or fraction thereof, or .132 per hundred kilogram or fraction thereof per line item for each day or fraction thereof (including day of removal) for quantities or weights of property which have not been timely removed. Storage rates or liquidated damages for outdoor storage will be fifty percent (50%) of indoor rates. Provided, however, that with respect to term sales, SRNS will require the

Purchaser to pay storage charges or liquidated damages at the rate of 1/10th of 1% (.001) of the estimated total Agreement price for each day that the Purchaser is late in removing the property. In the event the Agreement term exceeds one year, the total Agreement price for the purpose of computing storage charges/liquidated damages under this clause shall be limited to the estimated Agreement price for one-year period. Five dollars (\$5) will be the Minimum charge at each holding activity cited in the Agreement. Unless removal is required on such days, storage charges/liquidated damages will not be assessed for Saturdays, Sundays, SRNS holidays, or any day that the installation at which the property is located is closed. The estimated weights when given in item descriptions will be used in computing storage charges/liquidated damages. In the event the property is sold by weight, adjustment for storage charges/liquidated damages will be made in accordance with the actual weight delivered. In all instances where storage charges/ liquidated damages are assessed. Payment therefore must be made by the Purchaser prior to the removal of the property unless otherwise authorized by SRNS. In no event, however, will storage charges/liquidated damages exceed 20% of the Agreement price of the property as to which the delay occurred, except that in those instances where 20% of the Agreement price is less than the minimum storage charge/liquidated damages the minimum charge will be assessed.

27. GUARANTEED DESCRIPTIONS

Notwithstanding any other provisions of this Invitation for Bids to the contrary, and subject to the limitations and conditions set out in subparagraphs a and b below, all of which are of the essence, SRNS guarantees to the original Purchaser of the property that the property delivered or offered for delivery under any Agreement resulting from this Invitation for Bids will be as described in the Invitation for Bids.

- A. That if a misdescription is determined to exist prior to removal of the property from SRNS control that the sole and exclusive remedy available to the Purchaser will be a refund of the purchase price of the property as to which such misdescription exists, or such portion thereof as SRNS may have received.
- B. That if a misdescription is determined to exist after removal of the property from SRNS control then SRNS will make an adjustment in the purchase price paid for the

property commensurate with the market value of the property actually received, provided, however, that:

- (1) No adjustment will be made for shortages of property offered for sale by the "lot", and
- (2) No adjustment will be made unless the Purchaser mails or otherwise furnishes to SRNS a written notice, within 30 calendar days from date of removal of the property, that the property is misdescribed and holds the property, sufficiently intact to permit identification by SRNS, PROVIDED FURTHER THAT SRNS DOES NOT WARRANT OR GUARANTEE ANY OF THE FOLLOWING:
 - (i) That the item description contains all specific characteristics or performance data pertaining to the item described.
 - (ii) The stated condition of the property, the total cost of the property, the estimated total weight, the estimated shipping dimensions, suggested uses of the property and the property's fitness for any use or purpose.
 - (iii) Estimates as to the "weight" of the property offered for sale by the "unit" or by the "lot"
 - (iv) Estimates as to the number of units of property offered for sale by "weight"
 - (v) In the event SRNS uses a manufacturer's part or reference number or a Federal Stock Number in addition to detailed descriptive data in the item description, the descriptive data applicable to such part or reference number or Federal Stock Number is not guaranteed if it is inconsistent with the detailed descriptive data applicable to the item description.
 - (vi) To the extent property is described solely by noun nomenclature, manufacturer's part or reference number and Federal Stock Number, the descriptive data applicable to the Federal Stock Number is not guaranteed if it is inconsistent with the descriptive date applicable to the manufacturer's part or reference number.

- (vii) In no event will the term "or interchangeable" following a manufacturer's part or reference number be construed to guarantee that the property described consists of the part reference number in whole or in part. Only functional interchangeability with the part or reference number is guaranteed.
- C. Notwithstanding any of the exceptions stated in subparagraphs B. (2) (i) through (vii) above, however, SRNS will accept return of any property determined to have been misdescribed, to a location specified by SRNS at the Purchaser's expense, and refund to the Purchaser the purchase price or such portion thereof as SRNS may have received, provided timely notice of the misdescription has been furnished to SRNS in accordance with the requirements of subparagraph B. (2) above.
- D. The foregoing guarantee is in lieu of all other guarantees, express or implied, and all other obligations on the part of SRNS to deliver or offer for delivery property as described in the Invitation for Bids and shall not entitle the Purchaser to any payment of loss of profits or any other money damages, special, direct, indirect, or consequential; nor shall any recovery of any kind against SRNS under this provision be greater in amount than refund of the purchase price of the specific material found to have been misdescribed.

28. DEMURRAGE AND OTHER STANDBY COSTS

Where it is provided in the Invitation for Bids that SRNS will load, it is agreed and understood that SRNS shall not be liable of any costs, direct or indirect, which may be incurred by a Purchaser as result of SRNS failure to load property in a timely manner. The sole and exclusive remedy for such a failure shall be an appropriate extension of the approval period.

29. RADIOACTIVE MATERIAL

Purchasers are warned that some property purchased hereunder such as, but not limited to, switches, circuit breakers, knobs, controls, pointers, instrument dials, markers, etc., may be capable of emitting ionized radiation in varying degrees. Various electron tubes may also be capable of emitting ionized radiation in varying degrees. SRNS assumes no liability for damages to the property of the Purchaser or for personal

injuries, disabilities or death to the Purchaser or the Purchaser's employees or to any other person arising from or incident to the purchase of this material nor its use or disposition. The Purchaser shall hold SRNS harmless from any or all such demands, suits, actions, or claims of whatsoever nature arising from or out of the purchase of this material. As a safety precaution, the Purchaser should also warn the future possessor or user of this property that it might be capable of emitting ionized radiation.

30. FORM OF BID DEPOSITS AND PAYMENTS

- A. Unless otherwise provided in the Invitation, bid deposits (when required by Invitation) and payments shall be in U. S. currency or cashier's check, certified check, bank draft, postal money order, travelers check, or telegraphic money order made payable in U. S. dollars to the Treasurer of the United States.
- B. A check which is certified for payment for a limited period of time must be valid for at least 20 days after the date specified herein for the bid opening, if the check is submitted as a bid deposit, and for at least 20 days after the date the check is received by SRNS, if the check is offered as payment on account. Bank draft (i.e., checks drawn by one bank on another) need not be certified.

31. REPRESENTATION OF NONCOLLUSION

Bidder represents that the price or prices bid, the item or items bid upon, and the quantity of any item on which they bid have been arrived at unilaterally and without collusion. Bidder further represents that the intention to bid these prices, items, and quantities, and the contents of the bid submitted have not been communicated by the Bidder or any employee or agent of the Bidder to any person not an employee or agent of the Bidder, and will not be communicated to any such person before public disclosure of the bid by SRNS.

32. DISPOSAL

- A. Purchaser shall recycle, reclaim, reuse, or dispose of material as defined in the Scope of Work at the particular facility or facilities, referred to in the Sales Agreement. Seller shall utilize those general storage, treatment recycling, reclamation, reuse and disposal methods specified in the Sales Agreement; however, as between the parties, Seller shall

be solely responsible for determining the specific times and techniques for storage, processing, treatment recycling, reclamation, reuse, and disposal of the material. However, such processing, treatment recycling, reclamation, reuse, and disposal shall occur within a reasonable time, not to exceed the time specified, if any, in the Sales Agreement.

- B. Commodities purchased at this auction/sale are subject to U.S. Government export controls under Code of Federal Regulations Titles 10, 15, 22, and 31. Any export of these commodities contrary to U.S. law is prohibited and requires U.S. Export Agency approval.
- C. Purchaser shall not use, distribute or sell any of the material as defined in the Scope of Work or any component or residue thereof, specified in the Sales Agreement.
- D. If the Sales Agreement specifies that Purchaser may use, distribute or sell any of the material as defined in the Scope of Work or components or residue thereof, Seller agrees to indemnify and save harmless the Government and SRNS, their present and future officers or directors (or officials), employees and agents, from and against any and all liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits and costs and expenses incidental thereto (including, cost of defense, settlement and reasonable attorney's fees) which any or all of them may hereafter suffer, incur, be responsible for or pay out as a result of bodily injuries (including death) to any person, damage (including loss of use) *to any property (public or private)* contamination of or adverse effects on the environment, or any violation or alleged violation of statutes, ordinances, orders, rules or regulations of any governmental entity or agency caused by or arising out of the use, distribution or sale of the material as defined in the Scope Of Work.

33. TERM

This Agreement shall commence on the date written herein and shall continue in full force and effect for a period of one (1) year.

34. RIGHT TO TERMINATE

SRNS may terminate this Agreement or any individual Purchase Order, with respect to performance remaining, if, at any time after execution of the Agreement, the Facility

specified in any Purchase Order fails to obtain, or maintain as valid, any license permit or approval required to allow lawful acceptance and storage, treatment, processing recycling, reclamation, reuse, or disposal of the material as defined in the Scope of Work.

35. PURCHASER

A. Purchaser warrants and represents to SRNS that:

- (1) Purchaser understands the currently known hazards and risks which are presented to human beings, property and the environment in the handling, transportation, storage, treatment, processing, recycling, reclamation, reuse and disposal of the materials defined in the Scope of Work described by SRNS in the Invitation For Bids.
- (2) Purchaser is engaged in the business of transportation, storage, recycling, reclamation, reuse, and disposal of the materials defined in the Scope of Work, and has developed the requisite expertise for the handling, transportation, storage, treatment, processing, recycling, reclamation, and reuse and disposal of such; and,
- (3) Purchaser will handle, transport, store, treat, process recycling, reclamation, recycle, reuse, and dispose of the materials defined in the Scope of Work in a safe and workmanlike manner and in full compliance with all valid and applicable statutes, ordinances, orders, rules and regulations of the federal, state and local governments in whose jurisdictions such activities are performed under this Agreement; and,
- (4) Any and all vehicles or vessels, of the materials defined in the Scope of Work containers and personnel to be provided by Purchaser in the performance of this Agreement have obtained or will obtain prior to performance all permits, licenses, certificates, or approvals required to comply with valid and applicable statutes, ordinances, orders, rules and regulations of the federal, state and local governments; and,
- (5) The Purchaser's Facility (or Facilities) described in any Purchase Order has been issued, as of the date of execution of the Agreement, all permits, licenses, certificates or approvals, required by valid and applicable statutes,

ordinances, orders, rules and regulations of the federal, state and local governments in which such Facility is located, necessary to allow such Facility to accept and store, treat, process, recycle, reclaim, reuse and dispose of the material as defined in the Scope of Work as described by SRNS in the Invitation For Bids. In addition, if required by federal, state or local law, regulation or ordinance, Purchaser has filed with the appropriate governmental agency a notification of hazardous waste activity and/or an application to operate a hazardous waste storage, treatment or disposal facility and the storage, treatment or disposal facility described in any Purchase Order has achieved "interim status" as defined by federal and applicable state laws and regulations. Purchaser shall provide SRNS with reasonable advance notice if any such permit, license, certificate or approval is to expire and not be renewed during the term of the Agreement, or becomes the subject of judicial or administrative action seeking revocation or suspension. Such notice shall also be provided if Purchaser determines not to seek any necessary permit, license, certificate or approval which becomes required after execution of the Agreement.

- B. If during the term of this Agreement, Purchaser determines not to renew any existing permit, license, certificate or approval or not to seek any necessary permit, license, certificate or approval which becomes required after execution of the Agreement, SRNS shall retain all the rights and remedies it may have at law or equity.

36. LOADING AND TRANSPORTATION OF WASTE PRODUCTS

If the Sales Agreement specifies that Purchaser is to provide loading, including but not limited transportation services, Purchaser shall load and/or transport materials as defined in the Scope Of Work to the Facility herein specified. Purchaser shall be responsible for clean up and disposal of any materials as defined in the Scope of Work spilled during such loading or transportation and shall fully indemnify and hold the Government and SRNS harmless therefore.

37. SRNS'S RIGHTS OF INSPECTION

SRNS shall have the right, but not the obligation, to inspect and obtain copies of all written licenses, permits or approvals, issued by any governmental entity or agency to Purchaser or its Subcontractors/Suppliers which are applicable to the performance of this Agreement; to inspect transportation vehicles or vessels, containers or facilities provided by the Purchaser; and to inspect the handling, loading, transportation, storage, recycling, reclamation, reuse, resale or disposal operations conducted by Purchaser in the performance of this Agreement. Such inspections or lack of inspections shall not operate to relieve Purchaser of its responsibility or liability under this Agreement.

38. INDEPENDENT CONTRACTOR

Purchaser is and shall perform this Agreement as an independent contractor, and as such, shall have and maintain complete control over all of its employees, agents, and operations. Neither Purchaser nor anyone employed by it shall be, represent, act, purport to act or be determined to be the agent, representative, employee or servant of SRNS.

39. SPECIAL SEALED BID

A. Bid Deposits

All bids must be accompanied by a bid deposit which must be in the possession of SRNS by the time set for bid opening. Bid deposits shall be in the form prescribed in Condition No. 5, General Sale Terms and Conditions. Unless otherwise provided in the Invitation, a bid deposit of 20% of the estimated total Agreement price is required on sales not exceeding one year; sales exceeding one-year's duration will require a bid deposit computed at 20% of the total price estimated for one year's removal of property. Deposit Bond-Annual, sale of Government Personal Property (Standard Form 151) are not acceptable as bid deposits. In accordance with Condition No. 5 of the General Sale Terms and Conditions entitled "Payment", the 20% bid deposit submitted by the Purchaser will be retained by SRNS and applied against the last delivery effected under the Agreement. At the option of the successful Bidder, a Performance Bond may be substituted by the successful Bidder for bid deposit at any time after notification of award of the Agreement. Any bid which is not timely supported by a proper bid deposit may be rejected as non-

responsive in the same manner as late bids. The bid deposit or performance bond shall be held by SRNS for the entire term (3 years) of this Agreement and if a bid deposit is used it will be applied against the last delivery affected under this Agreement in the third year.

B. Modification or Withdrawal of Bids

Bids may be modified or withdrawn by written or telegraphic notice and a bid also may be withdrawn in person by the Bidder or authorized representative, provided identity is made known and the Bidder signs a receipt for the bid. Any bid modification which increases the amount of a bid already submitted or which submits bids on items not previously bid on must provide for an increased bid deposit.

C. Consideration of Late Bids, Modifications, or Withdrawals

Bids and modifications or withdrawals thereof, must be in the possession of SRNS by the time set for bid opening. Any bid, modification, or withdrawal received after the time set for bid opening will not be considered unless received by SRNS prior to award, was mailed (or telegraphed where authorized) and in fact delivered to the address specified in the Invitation for Bids in sufficient time to have been received by SRNS by the time and date set forth in the Invitation for the bid opening, and, except for delay attributable to personnel of the sales office or their designees, would have been received on time. In no event will hand-carried bids or withdrawals be considered if delivered to SRNS after the exact time and date set for bid opening. However, a modification which makes the terms of the otherwise successful bid more favorable to SRNS will be considered at any time it is received prior to award and may be accepted.

D. Termination

Unless otherwise provided in the Invitation, this Agreement may be terminated by SRNS without cost to SRNS upon 30 days written notice to the Purchaser, to be calculated from the date the notice is mailed.

E. Failure To Perform

In the event the Purchaser fails to make payment as required by Condition No. 7, General Sale Terms and Conditions, or fails to remove the property as required by Condition No. 9, General Sale Terms and Conditions, and fails to cure the default

within the time allowed by the notice given in accordance with Condition No. 10, General Sale Terms and Conditions, the Purchaser will lose all right, title and interest which he might otherwise have acquired in and to the property as to which the default occurred and said Condition No. 10, is modified to provided that SRNS shall be entitled to retain or collect as liquidated damages sum equal to 20% of the Agreement price for the quantity estimated to be generated within a 30-day period.

F. Award of Agreement

The Agreement will be awarded to that responsible Bidder whose bid conforming to the Invitation will be most advantageous to SRNS, price and other factors considered. A written award mailed (or otherwise furnished) to the successful Bidder within the time for acceptance provided in the Invitation shall be determined to have resulted in a binding Agreement without any further action by either party.

40. EXPORT CONTROL

A. U. S. Government property purchased or acquired under this order may or may not be authorized for export from the U.S. to a foreign country. If export is allowed, the Purchaser is solely responsible for obtaining all required clearances or approvals. The Purchaser also is required to pass on this information and any other DOE-provided export control guidance if the property is resold (including domestic re-transfers) or otherwise disposed.

B. The use, disposition, export and re-export of the property is subject to all applicable U.S. laws and regulations, including the Atomic Energy Act of 1954, as amended; the Arms Export Control Act (22 USC 2751 et seq.); the Export Administration Act of 1979 (560 USC Append 2401 et seq.); DOE Regulations (10 CFR Part 810); International Traffic in Arms Regulations (22 CFR 120 et seq.); Export Administration Regulations (15 CFR 730et seq.); Foreign Assets Control Regulations (31 CFR 500 et seq.); and the Espionage Act (37 USC 791 et seq.) which among other things, prohibit:

(1) The making of false statement and concealment of any material information regarding the use or disposition, export or re-export of the property; and

- (2) Any use of disposition, export or re-export of the property which is not authorized in accordance with the provisions of this Agreement.

41. PROLIFERATION SENSITIVE PROPERTY ACKNOWLEDGMENT

In the event that proliferation sensitive property, as identified on the U. S. Munitions List (22 CFR 121) or the International Atomic Energy Agency Information Circular (INFCIRC) 254 Part 1 (the Trigger List), is inadvertently included in this sale, the Purchaser agrees that the part of the sale involving the property is void, and, if such property has been received by the Purchaser, that Purchaser will return the property to DOE-Savannah River Operations. (See Article No. 8 regarding title to property). Once notified by SRNS of its intent to reclaim the aforesaid property, the Purchaser agrees to take all reasonable measures to safeguard the property until its return to SRNS.

42. DISPUTES

- A. Purchaser shall not be entitled to and neither SRNS nor the Government shall be liable to the Purchaser or its Subtier Subcontractors/Suppliers for damages in tort (including negligence), or contract, or otherwise, except as specifically provided in this Agreement.
- B. The Parties shall attempt to settle any claim or controversy arising from this Agreement through consultation and negotiations in good faith and a spirit of mutual cooperation. If those attempts fail, then the dispute will be mediated by a mutually acceptable mediator chosen by the Parties within thirty (30) days after written notice by one party demanding mediation. Neither Party may unreasonably withhold consent to the selection of a mediator, and the Parties will share the costs of the mediation equally. Any dispute which cannot be resolved between the Parties through negotiation or mediation shall be resolved by litigation in a court of competent jurisdiction located in the State of South Carolina. Determination of any substantive issue of law shall be according to the Federal common law of Government contracts as enunciated and applied by Federal judicial bodies and boards of contract appeals of the Federal Government; if there is no applicable Federal Government contract law, the law of

the State of South Carolina shall apply in the determination of such issues.

- C. During the tendency of a dispute, the Purchaser shall proceed diligently with performance of all terms of this Agreement. The Purchaser's consent to proceed shall not restrict or otherwise affect the Purchaser's right to contest any claim.

43. FOREIGN NATIONALS

As used in this Article, the term "Foreign National" is defined to be a person who was born outside the jurisdiction of the United States; is a citizen of a foreign government and has not been naturalized under U.S. law.

- A. The Subcontractor/Supplier shall obtain the approval of SRNS, in writing, prior to any visit to a DOE or SRNS facility by any Foreign National in connection with work being performed under this Order, in accordance with the requirements of DOE Order 142.3, Unclassified Foreign Visits and Assignments Program. Visits are normally for the purpose of technical discussions, orientation, observation of projects or equipment, training, subcontract service work, including delivery of materials, or for courtesy purposes. The term "visit" also includes officially-sponsored attendance at a DOE or SRNS event off-site from the DOE/SRNS facility, but does not include off-site events and activities open to the general public. Subcontractors/Suppliers should be aware that required forms and documents necessary for approval of visits by Foreign Nationals should be submitted to the SRNS Purchasing Representative at least four (4) to six (6) weeks prior to the visit, depending on the nationality of the individual and the areas to be visited. Forms can be obtained from the SRNS Purchasing Representative.
- B. If the statement of work is accompanied by an approved Exception from Foreign National Information Requirements form, this Subcontract does not require the Subcontractor to provide foreign national information that would otherwise be required by DOE Order 142.3a.

44. WORKPLACE SUBSTANCE ABUSE PROGRAMS

- A. Fitness for Duty
- (1) Subcontractor/Supplier and its Subtier Subcontractors/Suppliers are required to comply

with this Workplace Substance Abuse Program article, which addresses the Subcontractor/Supplier portion of SRNS "Workplace Substance Abuse Program Plan." The Subcontractor/Supplier shall advise employees and Subtier Subcontractors/Suppliers that it is the policy of SRNS to prohibit the use, possession, sale and distribution of alcohol, drugs or other controlled substance within the limits of the Savannah River Site (SRS), and/or any SRS off-site facilities, and to prohibit the presence of individuals who have such substances in the body for non-medical reasons. In order to ensure that SRNS work sites are free of illegal drugs and alcohol, all personnel and Subcontractor/Supplier employees shall be tested in accordance with the requirements of DEAR 970.5223-4 and 10 CFR 707, "Workplace Substance Abuse Program at DOE Sites". Testing includes initial "Pre-Access" testing and "Random" testing for the presence of illegal drugs and alcohol. Any Subcontractor/Supplier employee who is found in violation of the policy may be removed or barred from the site.

- (2) The Subcontractor/Supplier agrees to advise its employees and Subtier Subcontractors/Suppliers of the above policy prior to assignment to the Site and to maintain documentation that such advice has been given.

B. Substance Testing

- (1) SRNS will collect urine specimens when Subcontractor/Supplier employees are processed for badging. SRNS will send these specimens to a certified laboratory for testing and verification. The testing process may take up to five (5) days to obtain results. In the event of "positive" findings, the Subcontractor/Supplier will be notified and shall arrange for an "Exit Conference". The Subcontractor/Supplier then agrees to promptly remove such individual from the Savannah River Site (SRS) and return the badge to the SRNS Badge Office.
- (2) A Breath Alcohol Test will be given during the initial badging process and the results will be available immediately. In the event of "positive" findings, the Subcontractor/Supplier will be notified and shall arrange for an "Exit Conference". The Subcontractor/Supplier then agrees to promptly remove such individual from the Savannah River Site (SRS) and return the badge to the SRNS Badge Office.

- (3) The Subcontractor/Supplier agrees to advise its employees and Subtier Subcontractors/Suppliers that it is the policy of SRNS that: (1) the manufacture, dispensation or sale, offer for sale, purchase, use, transfer, or possession of alcohol and illegal drugs on SRS or US Department of Energy (Owner) premises is prohibited; (2) employees, while on the SRS premises, are prohibited from being under the influence of alcohol ("Under the Influence" means the employee is affected by alcohol in any detectable manner) or impaired by drugs; (3) entry onto the SRS premises constitutes consent to an inspection of the employee and his or her vehicle as well as their personal effects while entering, on, or leaving premises; (4) any employee who is found in violation of this policy or who refuses to permit an inspection may be removed or barred from the SRS premises at the discretion of SRNS. As used herein, "SRS premises" means the property, leased or otherwise, including owned project site locations in which SRNS business is being conducted, and owned or rented vehicles and/or equipment is being operated.

The Subcontractor/Supplier agrees to secure the written consent of employees to release results of substance abuse tests (breath alcohol and urine) to the designated SRNS representative.

- (4) The Subcontractor/Supplier agrees to comply with and secure the compliance of its employees and Subtier Subcontractors/Suppliers of random, occurrence and/or for cause substance abuse testing. In the event of "positive" findings, the Subcontractor/Supplier will be notified and shall arrange for an "Exit Conference". The Subcontractor/Supplier then agrees to promptly remove such individual from the Savannah River Site (SRS) and return the badge to the SRNS Badge Office. Any positive finding will result in denial of site access for 12 months for the Subcontract/Supplier employee. In the event of a refusal, the Subcontractor's employee may be terminated for cause and the individual will be refused access to the site.

Occurrence testing additionally requires the following:

If an injury /illness is the result of an occupational incident that requires recordable medical treatment, as defined by OSHA, then drug and alcohol testing is required. In addition, if an occupational incident involves damage to government

vehicle or property or Subcontractor equipment then drug and alcohol testing is required. SRNS will require the Subcontractor/Supplier to have their employee's drug and alcohol tested on the day of the injury, illness or incident.

- (5) Subcontractor's/Supplier's employees who are required to obtain a security clearance may be required to successfully pass an additional alcohol and drug screening as required in the Security Requirements article of this order.

C. Suitability for Employment

- (1) Subcontractor/Supplier employees, including Subtier Subcontractors/Suppliers, who are to be badged to permit SRS access, must successfully complete the Suitability for Employment process. As part of this process, the Subcontractor/Supplier agrees to advise its employees and Subtier Subcontractors/Suppliers that they will be required to complete certain forms, which authorize background investigations. These forms shall be submitted during the badging process.

- (2) Subcontractor/Supplier employees will be issued a photo badge and allowed site access on the first reporting day. In the event a Subcontractor/Supplier employee subsequently fails to complete successfully the background investigation, the Subcontractor/Supplier agrees to remove promptly such individual from the site and to return the badge to the SRNS Badging Office.

- (3) Subcontractor/Supplier agrees to advise its employees of the above requirement prior to assignment to the SRS and to maintain documentation that such advice has been given.

45. BADGING REQUIREMENTS

A. Photo Badge

- (1) Subcontractor/Supplier may be issued a site access photo badge for a period not to exceed one year. To obtain a Photo Badge, Subcontractor/Supplier employees and any Subtier Subcontractor/Supplier employees must be processed through SRNS's Badging Procedure and are subject to investigation by Governmental authorities. All badges must be returned or accounted for prior to final payment. All employees must be at least 18 years old. The Subcontractor shall ensure that any/all SRS-issued site security badges are returned to the Badge Office (703-46A) within 10 calendar days after

badge expiration date (or subcontract/subcontractor employee termination date, whichever occurs first). Failure to do so may result in withholding of invoice payments until such time that the badge(s) is returned.

- (2) Subcontractor/Supplier employees and any Subtier Subcontractor/Supplier employees shall complete Subcontractor/Supplier Employee Data Sheet and Fingerprint Cards. If a long term badge is required (period greater than six (6) months) the employee will also be required to complete form SF 85, "Questionnaire for Non-Sensitive Positions", and form OF 306, "Declaration for Federal Employment". These forms are required for the Governments use in conducting background investigations per Homeland Security Presidential Directive HSPD-12. Copies of these forms are available on the SRNS Internet Home Page

at http://www.srs.gov/general/busiops/PMMD/SRNS_general_provisions.htm.

- (3) Subcontractor/Supplier will observe the following badging procedure for processing employees through employment and security orientation:

- (i) A minimum of two working days prior to the start of the badging and orientation process, Subcontractor/Supplier shall transmit the following information to the STR/End User:

- Subcontract Number
- Subcontractor/Supplier Employee name
- Subcontractor/Supplier Employee address
- Subcontractor/Supplier Employee Social Security Number
- Subcontractor/Supplier Employee Date of Birth
- Subcontractor/Supplier Employee's Phone Number

- (ii) Subcontractor/Supplier employees shall report to SRS Building 703-46A at SRS Road 1, approximately two miles east of SC Highway 125 in Jackson, SC.

- (iii) Each employee must successfully pass General Employee Training (GET) prior to undergoing the Photo Badging procedure. See Article titled "General Employee Training and Annual Refresher Training for Subcontract Employees". GET is given on Monday of each week in the Jackson, SC

municipal building, and should be scheduled through the STR or End-user well in advance of the desired date in order to assure placement.

- (iv) The orientation and badging process will take approximately four (4) hours.
- (4) The maximum duration that Subcontractor/Supplier employees will be issued a site access badge is one (1) year. Subcontractor/Supplier employees requiring a new badge will report to the Badge Office and repeat the badging process.
- (5) If Work under this Subcontract is to be performed in security areas, all personnel will be required to sign in and out at security gates and are subject to a search of their person and belongings at entrances to or exit from the area.
- B. **Temporary Badge** (typically for visitors and short term personnel).
- (1) Temporary badges are valid for a maximum of 10 calendar days per person in a calendar year. To avoid unnecessary expiration, these badges should be returned to the badge office immediately upon completion of need.
- (2) Two working days prior to the need date, Subcontractor/Supplier shall transmit the following information to the STR/End User:
- Subcontract Number
 - Subcontractor/Supplier Employee name
 - Subcontractor/Supplier Employee address
 - Subcontractor/Supplier Employee Social Security Number
 - Subcontractor/Supplier Employee Date of Birth
 - Subcontractor/Supplier Employee's Phone Number
- (3) The Assigned Competent Person (ACP) (Subcontractor/Supplier or SRNS employee) shall perform Task Analysis of scope to be performed and identify any applicable contractual task specific checklist(s) from the Subcontractors/Suppliers accepted Worker Protection Plan or SRNS's Focused Observation Database if a WPP is not required by the terms of this order.
- (4) ACP shall provide advance copy of any task specific safety checklist(s) to personnel seeking temporary badges.
- (5) Badge Office provides initial security briefing, issues registration card and obtains acknowledgement signature, issues

“maroon” Visitors Badge for duration requested by STR/End User.

- (6) ACP reviews any applicable checklist(s) and performs focused observations as directed by the STR/End User.
- (7) Upon completion of scope, return badge to Badge Office upon exiting SRS.
- C. **Identity Verification.**
- (1) In order to receive a photo or temporary badge for entry to SRS, Subcontractor/Supplier employees, except delivery personnel (see subparagraph (2) below), will be required to present two specific forms of identification from the “List of Acceptable Documents” (Department of Homeland Security Form I-9, copy available on the SRNS Internet Home Page at http://www.srs.gov/general/busiops/PMMD/SRNS_general_provisions.htm). At least one of the documents selected from the list must be a valid State or Federal government-issued picture ID.
- (2) **Vendor Delivery Personnel.** Unbadged personnel seeking a temporary badge for material/equipment deliveries will be required to present one form of picture identification that will verify their identity, such as a valid state driver's license that includes a photograph. Delivery personnel shall enter the site at the Aiken Barricade located approximately one (1) mile south of SC Highway 278, and will be escorted at all times to the delivery location and back to the entrance barricade by Centerra Group, LLC assigned escorts, or by Assigned Competent Persons (SRNS or Subcontractor/Supplier).
- D. If the Subcontractor/Supplier or any Subtier Subcontractor/Supplier should independently suspend or remove an employee from work at the Savannah River Site (SRS) for unsafe acts or behavior, the Subcontractor/Supplier shall immediately notify the STR/End User, return the employee's badge to the STR/End User, and provide the STR/End User with written notification of the employee's name and reason(s) for such suspension or removal.

46. ACCESS TO DOE-OWNED OR LEASED FACILITIES

(Article applies if employees of Purchaser will require physical access to DOE-owned or leased facilities)

- A. The performance of this Agreement requires that employees of the Purchaser have physical access to DOE-owned or leased facilities. The

Purchaser understands and agrees that DOE has a prescribed process with which the Purchaser and its employees must comply in Agreement to receive a security badge that allows such physical access. The Purchaser shall propose employees whose background offers the best prospect of obtaining a security badge approval for access. This clause does not control requirements for an employee obtaining a security clearance.

- B. The Purchaser shall assure:
- (1) Compliance with procedures established by DOE and SRNS in providing its employees with any forms directed by DOE or SRNS;
 - (2) Employees properly complete any forms;
 - (3) Employees submit the forms to the person designated by the SRNS Procurement Representative;
 - (4) Employees cooperate with DOE and SRNS officials responsible for granting access to DOE-owned or leased facilities; and
 - (5) Employees provide additional information requested by those DOE/SRNS officials.
- C. The Purchaser understands and agrees that DOE may unilaterally deny a security badge to an employee and that the denial remains effective for that employee unless DOE subsequently determines that access may be granted. Upon notice from DOE or SRNS that an employee's application for a security badge is or will be denied, the Purchaser shall promptly identify and submit the appropriate forms for the substitute employee. The denial of a security badge to individual employees by DOE shall not be cause for extension of the period of performance of this Agreement or any Purchaser claim against DOE or SRNS.
- D. The Purchaser shall return to the SRNS Procurement Representative, or designee, the badge(s) or other credential(s) provided by DOE pursuant to this clause, granting physical access to DOE-owned or leased facilities by the Purchaser's employee(s) upon:
- (1) Termination of this Agreement;
 - (2) Expiration of this Agreement;
 - (3) Termination of employment on this Agreement by an individual employee; or
 - (4) Demand by DOE/SRNS for return of the badge
- E. The Purchaser shall include this clause, including this paragraph E. in any Lower-tier Subcontract, awarded in the performance of this Agreement, in which an employee(s) of the Subtier Subcontractor/Supplier will require physical access to DOE-owned or leased facilities

47. GENERAL

Subcontractors/Suppliers are required to register and maintain an active DUNS number and a current registration in the System for Award Management (SAM), formerly known as Central Contractor Registration (CCR), in compliance with FAR 52.204-7 and Subpart 42.12 of the FAR. In addition, a Subcontractor/Supplier Information Form (SIF) must be completed and submitted with the supplier's solicitation response.

48. SUPPLEMENTAL DEFINITIONS FOR FAR AND DEAR CLAUSES INCORPORATED BY REFERENCE

- A. "Contract" means this Agreement or Order (except in instances when it is not applicable or appropriate), and includes Changes Orders and modifications to this Agreement.
- B. "Contractor" means the party to whom this Agreement or Order is awarded (except in instances when it is not applicable or appropriate).
- C. "Government" means SRNS (except in instances when it is not applicable or appropriate).
- D. "Contracting Officer" means the Procurement Representative of SRNS.
- E. "Subtier Subcontractor/Supplier" means any party entering into an agreement with the Subcontractor/Supplier or any Subtier Subcontractor/Supplier for the furnishing of supplies or services required for performance of this Subcontract.

This Agreement or Order incorporates the Clauses identified below by reference, with the same force and effect as if they were given in full text. Upon request, SRNS will make their full text available.

***49. EQUAL OPPORTUNITY (APR 2002)**

FAR 52.222-26

50. SECURITY REQUIREMENTS (JUNE 2009)

DEAR 952.204-2

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

likely to involve classified information or special nuclear material.

- A. **Responsibility.** It is the Subcontractor's/Supplier's duty to protect all classified information, special nuclear material and other DOE property. The Subcontractor/Supplier shall, in accordance with DOE security regulations and requirements, be responsible for protecting all classified information and all classified matter (including documents, material and special nuclear material) which are in the Subcontractor's/Supplier's possession in connection with the performance of work under this Subcontract against sabotage, espionage, loss or theft. Except as otherwise expressly provided in this Subcontract, the Subcontractor/Supplier shall, upon completion or termination of this Subcontract, transmit to DOE any classified matter or special nuclear material in the possession of the Subcontractor/Supplier or any person under the Subcontractor's/Supplier's control in connection with performance of this Subcontract. If retention by the Subcontractor/Supplier of any classified matter is required after the completion or termination of the Subcontract, the Subcontractor/Supplier shall identify the items and classification levels and categories of matter proposed for retention, the reasons for the retention, and the proposed period of retention. If the retention is approved by the DOE Contracting Officer, the security provisions of the Subcontract shall continue to be applicable to the classified matter retained. Special nuclear material shall not be retained after the completion or termination of the Subcontract.
- B. **Regulations.** The Subcontractor/Supplier agrees to comply with all security regulations and Subcontract requirements of DOE in effect on the date of award.
- C. **Definition of Classified Information.** The term *Classified Information* means information that is classified as Restricted

Data or Formerly Restricted Data under the Atomic Energy Act of 1954, or information determined to require protection against unauthorized disclosure under Executive Order 12958, *Classified National Security Information*, as amended or prior executive Orders, which is identified as *National Security Information*.

- D. **Definition of Restricted Data.** The term *Restricted Data* means all data concerning design, manufacture, or utilization of atomic weapons; production of special nuclear material; or use of special nuclear material in the production of energy, but excluding data declassified or removed from the Restricted Data category pursuant to 42 U.S.C. 2162 [Section 142, as amended, of the Atomic Energy Act of 1954].
- E. **Definition of Formerly Restricted Data.** The term "*Formerly Restricted Data*" means information removed from the Restricted Data category based on a joint determination by DOE or its predecessor agencies and the Department of Defense that the information: (1) relates primarily to the military utilization of atomic weapons; and (2) can be adequately protected as National Security Information. However, such information is subject to the same restrictions on transmission to other countries or regional defense organizations that apply to Restricted Data.
- F. **Definition of National Security Information.** The term "*National Security Information*" means information that has been determined, pursuant to Executive Order 12958, *Classified National Security Information*, as amended, or any predecessor Order, to require protection against unauthorized disclosure, and that is marked to indicate its classified status when in documentary form.
- G. **Definition of Special Nuclear Material.** The term "*special nuclear material*" means: (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any

other material which, pursuant to 42 U.S.C. 2071 [section 51 as amended, of the Atomic Energy Act of 1954] has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

H. Access authorizations of personnel.

a. The Subcontractor/Supplier shall not permit any individual to have access to any classified information or special nuclear material, except in accordance with the Atomic Energy Act of 1954, and the DOE's regulations and Subcontract requirements applicable to the particular level and category of classified information or particular category of special nuclear material to which access is required.

b. The Subcontractor/Supplier must conduct a thorough review, as defined at 48 CFR 904.401, of an uncleared applicant or uncleared employee, and must test the individual for illegal drugs, (SRNS to provide this testing), prior to selecting the individual for a position requiring a DOE access authorization.

I. A review must: verify an uncleared applicant's or uncleared employee's educational background, including any high school diploma obtained within the past five years, and degrees or diplomas granted by an institution of higher learning; contact listed employers for the last three years and listed personal references; conduct local law enforcement checks when such checks are not prohibited by state or local law or regulation and when the uncleared applicant or uncleared employee resides in the jurisdiction where the Subcontractor/Supplier is located; and conduct a credit check and other checks as appropriate.

a. Subcontractor/Supplier reviews are not required for an applicant for DOE access authorization who possesses a current access authorization from DOE or another Federal agency, or whose access authorization may be reapproved without a federal background investigation pursuant to Executive Order 12968, Access to Classified Information (August 4, 1995), Sections 3.3(c) and (d).

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

c. In addition to a review, each candidate for a DOE access authorization must be tested to demonstrate the absence of any illegal drug (SRNS to provide this testing), as defined in 10 CFR Part 707.4. All positions requiring access authorizations are determined to be *testing designated positions* in accordance with 10 CFR Part 707. All employees

possessing access authorizations are subject to applicant, random or for cause testing for use of illegal drugs. DOE will not process candidates for a DOE access authorization unless their tests confirm the absence from their system of any illegal drug.

- d. When an uncleared applicant or uncleared employee receives an offer of employment for a position that requires a DOE access authorization, the Subcontractor/Supplier shall not place that individual in such a position prior to the individual's receipt of a DOE access authorization, unless an approval has been obtained from the head of the cognizant local security office. If the individual is hired and placed in the position prior to receiving an access authorization, the uncleared employee may not be afforded access to classified information or matter or special nuclear material (in categories requiring access authorization) until an access authorization has been granted.
- e. The Subcontractor/Supplier must furnish to the head of the cognizant local DOE Security Office, in writing, electronically, the following information concerning each uncleared applicant or uncleared employee who is selected for a position requiring an access authorization:
 - i. The date(s) each Review was conducted;
 - ii. Each entity that provided information concerning the individual;
 - iii. A certification that the review was conducted in accordance with all

applicable laws, regulations, and Executive Orders, including those governing the processing and privacy of an individual's information collected during the review;

- iv. A certification that all information collected during the review was reviewed and evaluated in accordance with the Subcontractor's/Supplier's personnel policies; and
- v. The results of the test for illegal drugs (SRNS to provide this testing).

- 1. **Criminal liability.** It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to protect any classified information, special nuclear material, or other Government property that may come to the Subcontractor/Supplier or any person under the Subcontractor's/Supplier's control in connection with work under this Subcontract, may subject the Subcontractor/Supplier, its agents, employees, or Subcontractors/Suppliers to criminal liability under the laws of the United States (see the Atomic Energy Act of 1954, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794).

- J. **Foreign Ownership, Control, or Influence.**
 - (1) The Subcontractor/Supplier shall immediately provide the cognizant security office written electronic notice of any change in the extent and nature of foreign ownership, control or influence over the

Subcontractor/Supplier which would affect any answer to the questions presented in the Standard Form (SF) 328, *Certificate Pertaining to Foreign Interests*, executed prior to award of this Subcontract. In addition, any notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice, shall also be furnished concurrently to the Contracting.

- K. If a Subcontractor/Supplier has changes involving foreign ownership, control, or influence, DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, DOE will consider proposals made by the Subcontractor/Supplier to avoid or mitigate foreign influences.
- L. If the cognizant security office at any time determines that the Subcontractor/Supplier is, or is potentially, subject to foreign ownership, control, or influence, the Subcontractor/Supplier shall comply with such instructions as the DOE Contracting Officer shall provide in writing, electronically, to protect any classified information or special nuclear material.
- M. The DOE Contracting Officer may terminate this Subcontract for default either if the Subcontractor/Supplier fails to meet obligations imposed by this clause or if the Subcontractor/Supplier creates a foreign ownership, control, or influence situation in order to avoid performance or a termination for default. The DOE Contracting Officer may terminate this Subcontract for convenience if the Subcontractor/Supplier becomes subject to foreign ownership, control, or influence and for reasons other than avoidance of performance of the Subcontract, cannot, or chooses not to, avoid or mitigate the foreign ownership, control, or influence problem.

N. **Employment announcements.** When placing

announcements seeking applicants for positions requiring access authorizations, the Subcontractor/Supplier shall include in the written electronic vacancy announcement, a notification to prospective applicants that reviews, and tests for the absence of any illegal drug as defined in 10 CFR 707.4, will be conducted by the employer and a background investigation by the Federal government may be required to obtain an access authorization prior to employment, and that subsequent reinvestigations may be required. If the position is covered by the Counterintelligence Evaluation Program regulations at 10 CFR 709, the announcement should also alert applicants that successful completion of a counterintelligence evaluation may include a counterintelligence-scope polygraph examination.

O. Flow down to any Subcontractor/Supplier at any tier. The Subcontractor/Supplier agrees to insert terms that conform substantially to the language of this clause, including this paragraph, in all Subcontracts under its Subcontract that will require any Subcontractor/Supplier (at any tier) employees to possess access authorizations. Additionally, the Subcontractor/Supplier at any tier must require such Subcontractors/Suppliers to have an existing DOD or DOE facility clearance or submit a completed SF 328, *Certificate Pertaining to Foreign Interests*, as required in DEAR 952.204-73 and obtain a foreign ownership, control and influence determination and facility clearance prior to award of a subcontract. Information to be provided by a Subcontractor/Supplier (at any tier), pursuant to this clause may be submitted directly to the DOE Contracting Officer.

P. (End of Clause)

Q. [49 FR 12042, Mar. 28, 1984; 49 FR 38951, Oct. 2, 1984, as amended at 52 FR 38425, Oct. 16, 1987; 62 FR 2310, Jan. 16, 1997; 62 FR 42072, Aug. 5, 1997; 67 FR 14873, Mar. 28, 2002, 74 FR23120, May 18, 2009].

**51. DOE O 442.2 – DIFFERING
PROFESSIONAL OPINIONS FOR
TECHNICAL ISSUES INVOLVING
ENVIRONMENT, SAFETY AND
HEALTH**

Subcontractors/Suppliers and any Subtier Subcontractor/ Supplier are responsible for flowing down the requirements of the Contractor Requirements Document (CRD) identified in DOE O 442.2 to the extent necessary to ensure compliance with this requirement. The Subcontractors/ Suppliers and any Subtier must:

- (1) Ensure that all Subcontractor/Supplier and any Subtier Subcontractor/ Supplier employees are notified quarterly that they have the right to report environment, safety and health technical concerns that have not been resolved through routine work processes through the Department of Energy Differing Professional Opinion (DPO) process (the DOE DPO process can be found in Attachment 2 to DOE O 442.2 and at <http://www.hss.doe.gov/nuclearsafety/qa/dpo.html>). The notification must provide points of contact (name, phone number and email addresses of DPO Managers) as listed on the DOE DPO web page, as well as the DOE DPO web page address.
- (2) Protect Subcontractor/Supplier and any Subtier Subcontractor/ Supplier employees from reprisal or retaliation for reporting a DPO.
- (3) Provide Subcontractor/Supplier and any Subtier Subcontractor/ Supplier employees' reasonable time and resources to use the DPO Process.
- (4) Assist DOE as requested in the resolution of DPOs.
- (5) Report to the DOE when requested on the status of assigned implementation actions resulting from the DPO resolution and on the closure of these implementations actions.