

Terms and Conditions—Construction

1. DEFINITIONS – The following definitions apply:
 - 1.1 **DOE** means the United States Department of Energy (or U.S. DOE).
 - 1.2 **Government** means the Federal Government of the United States of America.
 - 1.3 **Buyer** means S.M. STOLLER CORP. (STOLLER).
 - 1.4 **Seller** means the individual or organization to which this order is addressed.
 - 1.5 **Contracting Officer** means the Government official, or any duly appointed successor or representative, who executed the prime contract between DOE and STOLLER by which STOLLER is authorized to acquire services.
 - 1.6 **Procurement Representative** means the Buyer, Purchasing Agent, Contract Administrator, or any other delegated representative of the S.M. Stoller Corporation Contracts Department.
 - 1.7 **Order** means the subcontract or purchase order between Buyer and Seller.
 - 1.8 **(MFD)** means the clause is a Mandatory Flow Down and must be passed down to lower-tier subcontractors.
2. ACCEPTANCE & ENTIRE AGREEMENT
 - 2.1 This **Order** embodies the entire agreement between **Buyer** and **Seller** and supersedes all other writings. The parties shall not be bound by, or be liable for, any statement, representation, promise, inducement, or understanding not set forth herein. The contract resulting from the acceptance of this **Order** shall be construed according to the laws of the State of Colorado including the uniform Commercial Code as adopted in Colorado, and the common law of Federal Contracts.
 - 2.2 **Buyer** recognizes that the **Seller** may desire to utilize its own form of acknowledgement of this **Order**. All material and non-material provisions in **Seller's** form of acceptance which modify, conflict with, contradict, or are in addition to any provisions in this **Order** or any warranties or rights granted to **Buyer** under the Uniform Commercial Code are rejected by **Buyer** and shall be deemed to be waived by **Seller**, unless expressly agreed to in writing by **Buyer**.
 - 2.3 **Seller** warrants that it is fully experienced, properly qualified, registered, licensed, equipped, organized, and financed to perform the work under this **Order**.
3. ASSIGNMENT
 - 3.1 **Buyer** may assign this **Order** to **DOE** or to such contractor as **DOE** may designate to perform **Buyer's** obligation hereunder. Upon receipt by the **Seller** of written notice that **DOE** or a contractor so designated by **Buyer** or **DOE** has accepted an assignment of this **Order** and assumed such obligations, **Buyer** shall be relieved of all responsibility hereunder and the **Seller** shall thereafter look solely to such assignee for performance of the Contractor's obligations.
 - 3.2 The **Seller** shall not assign this **Order** or any interest therein, nor claims hereunder, without the prior written consent of **Buyer** or the assignee.
 - 3.3 Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15); if this **Order** provides for payment aggregating \$1,000.00 or more, claims for monies due or to become due to the **Seller** from **Buyer** under this **Order** may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this **Order** and not already paid and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party, as agent or trustee for two or more parties participating in such financing.
4. CHANGES – FIXED PRICE
 - 4.1 **Buyer** may at any time, by written notice, and without notice to the sureties, if any, make changes within the general scope of this **Order** in any one or more of the following:
 - 4.1.1 Description of work to be performed.
 - 4.1.2 Time of performance (i.e., hours of the day, days of the week, etc.).
 - 4.1.3 Place of performance of the work.
 - 4.2 If any such change causes an increase or decrease in the cost of, or the time required for the performance of any part of the work under this **Order** an equitable adjustment shall be made in the price or delivery schedule, or both, and this **Order** shall be modified in writing accordingly.
 - 4.3 Any claim by **Seller** for an adjustment shall be made in writing within 30 days of receipt of any such notice.
 - 4.4 Failure to agree to any adjustment shall be a dispute under the DISPUTES clause. However, nothing in this clause shall excuse the **Seller** from proceeding without delay to perform this **Order** as changed.

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- 4.5 **Buyer** shall not pay for any additional or extra work unless **Buyer's Procurement Representative** has specifically authorized such work.
- 4.6 No claim by the **Seller** for an equitable adjustment shall be allowed if asserted after final payment under this **Order**.
- 4A. CHANGES – TIME & MATERIAL OR LABOR HOUR
- 4A.1 **Buyer** may at any time, by written notice, and without notice to the sureties, if any, make changes within the general scope of this **Order** in any one or more of the following:
- 4A.1.1 Description of the work to be performed.
- 4A.1.2 Time of performance (i.e., hours of the day, days of the week, etc.).
- 4A.1.3 Place of performance of the work.
- 4A.2 If any such change causes an increase or decrease in the hourly rate, ceiling price, or the time required for the performance of any part of the work under this **Order**, or otherwise affects any other provision of this **Order**, an equitable adjustment shall be made in any one or more of the following, and this **Order** shall be modified accordingly:
- 4A.2.1 Ceiling price
- 4A.2.2 Hourly rates
- 4A.2.3 Equipment rental rates
- 4A.2.4 Completion date
- 4A.2.5 Other affected items
- 4A.3 Any claim by Seller for an adjustment must be made in writing within 30 days of receipt of any such notice.
- 4A.4 Failure to agree to any adjustment shall be a dispute under the DISPUTES clause. However, nothing in this clause shall excuse the Seller from proceeding without delay to perform this Order as changed.
- 4A.5 Buyer shall not pay for any additional or extra work unless Buyer's Procurement Representative has specifically authorized such work.
- 4A.6 No claim by the Seller for an equitable adjustment shall be allowed after final payment under this Order.
5. DISPUTES
- 5.1 In the event of any claim or controversy either Party may give a Notice of Action, and each Party agrees to attempt to negotiate a resolution in good faith within 30 calendar days following receipt of the Notice of Action.
- 5.2 If the Action is not resolved each party shall have 60 days to give notice. The Action will be settled through binding arbitration pursuant to the rules of the American Arbitration Association.
- 5.3 A sole arbitrator who is selected jointly by the parties will hold arbitration at a mutually agreeable location.
- 5.4 Each party shall bear the costs of preparation and presentment of its case, with arbitrator fees shared equally. All other costs shall be borne by the losing Party, unless the award defines otherwise.
6. TERMINATION
- 6.1 **Buyer** may, by written notice, terminate this **Order**, in whole or in part, without cause if it is in the best interests of the **Buyer** to do so. In such event, **Buyer** shall pay to **Seller** the price for goods or materials or services delivered or performed up to the date of termination, but shall have no further liability hereunder. Termination process as described in the appropriate portion of FAR Subpart 49.5 applies.
- 6.2 **Buyer** may, by written notice, terminate this **Order**, in whole or in part, with cause if the **Seller** fails to cure any material failure to perform, discharge or fulfill its obligations under this **Order** including, but not limited to, failure to make any shipment in accordance with the agreed shipping date or schedule or otherwise fails to observe or comply with any of the other instructions, terms and conditions, or warranties applicable to this **Order** within ten (10) days after receipt of a written cure notice from the **Buyer**. Termination process as described in the appropriate portion of FAR Subpart 49.5 applies and the **Seller** shall be liable for additional cost as defined in the FAR.
7. WARRANTY OF CONSTRUCTION
- 7.1 **Seller** warrants that work performed under this **Order** conforms to the requirements of this **Order** and is free of any defects and that this warranty shall continue for one (1) year from the date of final inspection and acceptance.
- 7.2 **Seller** shall remedy, at its expense, any failure to conform or any defect and any damage to **Buyer's/DOE** real property.
- 7.3 The provisions of this clause shall apply notwithstanding inspection, acceptance or any other provision of this **Order** and shall be in addition to any other rights and remedies of **Buyer** including, but not limited to, those for latent defects, fraud, or gross negligence.

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8. GRATUITIES

- 8.1 The **Buyer** prohibits their employees from using their official position for personal gain or from accepting any personal advantage that might reasonably be interpreted as an attempt to influence the recipients in the conduct of their duties.
- 8.2 The **Seller** shall not, under any circumstances which might reasonably be interpreted as an attempt to influence the recipients in the conduct of their duties, extend any gratuity or special favor to employees of the **Buyer** and shall not accept any gratuity or special favor from individuals or organizations with whom the **Seller** is doing business or proposing to do business in accomplishing work under this **Order**.

9. INVOICES/PAYMENT

- 9.1 Invoices shall be submitted to the address on the face of this **Order**. Invoices must contain this **Order** number and be compatible with this **Order**.
- 9.2 Payment will be made in accordance with the terms of payment stated in this **Order**, however **Seller's** deviations from these instructions may cause delay in payment, or the rejection and return of the invoice.
- 9.3 All payments are contingent on acceptance by the **Buyer**.

10. REMEDIES/WAIVER

- 10.1 The remedies provided in the **Order** shall be cumulative and in addition to any other legal or equitable remedies available to the **Buyer**.
- 10.2 No waiver by **Buyer** of a breach of any provision of this **Order** or of any right shall constitute a waiver of any breach of such provision or of any other provision or right.
- 10.3 No failure or delay by **Buyer** to exercise any right, power, or privilege hereunder shall operate as a waiver thereof.

11. CONTRACTUAL DIRECTION

- 11.1 Sole authority to make changes or amendments to this **Order** and to effect deviations (by way of addition or deletion) from the work specified herein is hereby granted by **Buyer** to the **Procurement Representative** of this **Order**.
- 11.2 All contractual direction in order to be valid must be written and signed by the **Procurement Representative**.
- 11.3 The **Seller** shall bear all costs for any work performed outside the terms, conditions, or provisions of this **Order** not authorized in writing by the **Procurement Representative**.

12. CONDITIONS AFFECTING THE WORK

- 12.1 The **Seller** is responsible for ascertaining the nature and location of the work and the local conditions which may affect the work or the costs thereof, and the character, difficulty, quality, and quantity of surface and subsurface materials or obstacles to be encountered, including exploratory work by the **Buyer** as well as from drawings and specifications made a part of this **Order**. Failure by the **Seller** to do so does not relieve him from the responsibility for successfully performing the work at no additional expense. The **Buyer** assumes no responsibility for any understanding or representations concerning conditions unless expressly stated in the **Order**.

13. DIFFERING SITE CONDITIONS

- 13.1 The **Seller** shall promptly, and before such conditions are disturbed, notify the **Buyer** in writing of:
 - 13.1.1 Subsurface or latent physical conditions at the site differing materially from those indicated in the **Order**, or
 - 13.1.2 Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this **Order**. The **Buyer** shall promptly investigate the conditions, and if it finds that such conditions do materially so differ and cause an increase or decrease in the **Seller's** cost of, or the time required for performance of any part of the work under this **Order**, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the **Order** modified in writing accordingly.
- 13.2 No claim of the **Seller** under this clause shall be allowed unless the **Seller** has given the notice required in clause 13.1 above; provided, however, the time prescribed therefore may be extended by the **Buyer**.
- 13.3 No claim of the **Seller** for an equitable adjustment hereunder shall be allowed if asserted after final payment has been made.

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14. INSURANCE/LICENSES/PERMITS

- 14.1 **Seller** shall procure and maintain as a minimum the following insurance:
 - a. Comprehensive automobile – \$500,000.00 per occurrence combined single limit for bodily and property damage.
 - b. Comprehensive general liability shall have a \$500,000/\$500,000 limit per each occurrence aggregate, combined single limit for bodily injury and property damage.
 - c. Workman’s Compensation in statutory amounts.
- 14.2 Prior to **Seller** beginning work, it shall furnish to the **Buyer’s Procurement Representative** its Certificates of Insurance naming the **Buyer** and **DOE** as additional insured.
- 14.3 The **Seller** shall also provide Certificates of Insurance for its lower-tier subcontractors, if used.
- 14.4 The **Seller** indemnifies and holds harmless the **Buyer**, its employees, and agents from and against liability, demands, claims, damage, and expense by reason or on account of property damage, natural resource damage, underground utilities damage, injury or death to persons and/or livestock of whatsoever nature or kind arising out of, as a result of, or in connection with the performance of this **Order** which is occasioned by the actions or omissions of **Seller** or its suppliers or lower-tier subcontractors.
- 14.5 **Seller** shall be responsible for obtaining and paying for any licenses or permits required for the work under this **Order**, unless otherwise stated.

15. STOP WORK

- 15.1 **Buyer** may, at any time, by written order to the **Seller**, require **Seller** to stop all or any part of the work called for in this **Order** for a period of up to 90 days and for any further period to which the parties agree.
- 15.2 Upon receipt of the stop work order, the **Seller** shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the **Order** during the period of work stoppage.
- 15.3 At the expiration of the stop work order the **Buyer** shall either cancel the stop work order or terminate this **Order** as provided in the Termination Clause of these Terms and Conditions.
- 15.4 An adjustment shall be made for any increase in the cost of performance of this **Order** (excluding profit) if necessarily caused by the unreasonable suspension, delay, or interruption of the work caused by the **Buyer**.
- 15.5 No adjustment under this clause shall be made if;
 - 15.5.1 costs incurred are by the fault or negligence of the **Seller**.
 - 15.5.2 costs incurred are more than twenty (20) days before the **Seller** shall have notified the **Buyer** in writing of the act or failure to act involved.
 - 15.5.3 costs claimed after the date of final payment.
 - 15.5.4 costs incurred are due to OSHA noncompliance or other noncompliance with safety requirements of this **Order**.

16. HEALTH AND SAFETY

- 16.1 **(MFD) Seller** and its lower-tier subcontractors shall comply with all Occupational Safety and Health Administration (OSHA), **DOE**, other federal, state, and local agency regulations and standards.
- 16.2 **(MFD)** Applicable portions of Occupational Safety & Health Standards 29 CFR 1910, and Safety and Health Regulations for Construction 29 CFR 1926 apply to this **Order**.
- 16.3 **(MFD)** Worker Safety and Health Rule 10 CFR 851 applies to this **Order**. The **Seller** is responsible for tracking its employee’s hours at **DOE** sites so as to assure compliance with the fit-for-duty designation.
- 16.4 **(MFD) Seller** is required to participate in the **Buyer’s** Worker Safety and Health Program (WSHP) which implements 10 CFR 851 and has been approved by the U.S. Department of Energy (**DOE**).
- 16.5 There are severe penalties for non-compliance with 10 CFR 851. Should the **Buyer** be penalized as a result of the **Seller’s** negligence, indifference, or fraud the **Seller** could be liable for the penalty.

17. WORKMANSHIP

- 17.1 **Seller** shall employ only competent and skilled personnel to perform the work under this **Order**.
- 17.2 **Seller** warrants that all workmanship shall be first class and of the highest quality.
- 17.3 **Seller** shall, at the **Buyer’s** request, remove from the work any **Seller** personnel who are acting in violation of any provision of this **Order**, including but not limited to, health and safety or security rules and regulations, or at the **Buyer’s** sole discretion, determined to be undesirable or unfit for the work.
- 17.4 The **Seller** at all times shall keep the work site, including storage areas free from accumulations of waste material or rubbish and prior to completion of the work remove any rubbish from the premises and all tools, scaffolding, equipment, and materials not the property of the **Buyer**. Upon completion of the work the **Seller** shall leave the work site in a clean, neat, and workmanlike condition satisfactory to the **Buyer**.

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18. RETAINAGE

- 18.1 The **Buyer** may deduct from the partial/progress payments ten (10) percent of the value of the completed work, but not greater than five (5) percent of the amount of this **Order**. When the retainage has reached five (5) percent of the amount of this **Order** no further retainage will be made and the amount will be retained until final inspection and acceptance.
- 18.2 The retainage shall be paid to the **Seller** as part of the final payment, but only after the **Seller** provides to the **Buyer's Procurement Representative** proof in documentary form, that all claims, liens, or other obligations incurred by him and all of his lower-tier subcontractors in connection with the work under this **Order** have been properly paid and settled.

19. INSPECTION AND ACCEPTANCE

- 19.1 The **Buyer** and **DOE** through any authorized representatives shall have the right, at all reasonable times, to observe or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed. All inspections and evaluations will be conducted in such a manner as will not unduly delay the work.
- 19.2 Any inspection or evaluation does not constitute or imply acceptance so as to relieve the **Seller** or its lower-tier subcontractor from any responsibility regarding defects or other failures to meet the requirements of this **Order**.
- 19.3 The **Buyer** shall accept, as promptly as practicable after completion and inspection, all work under this **Order**, or that portion of the work the **Buyer** determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or **Buyer's** rights under any warranty or guarantee.

20. NON-SUPERVISION OF Seller EMPLOYEES AND STANDARDS OF CONDUCT

- 20.1 The **Buyer** will not exercise any supervision or control over **Seller's** employees performing services under this **Order**. The **Seller's** employees are accountable solely to the **Seller's** management, who in turn is responsible for performance to **Buyer**.
- 20.2 The **Seller's** employees shall maintain satisfactory standards of conduct and safety. They must be polite and courteous at all times when dealing with **DOE/Buyer** employees.

21. SUPERINTENDENCE BY Seller

- 21.1 The **Seller** shall have a competent foreman or superintendent, with authority to act for the **Seller**, and satisfactory to the **Buyer**, on the work site at all times during performance of this **Order** until the work is completed and accepted. The foreman or superintendent shall have full responsibility and authority for the **Seller's** safety program. The foreman or superintendent shall be designated in writing, along with any individuals having authority to act in the absence of the named foreman or superintendent.
- 21.2 The **Seller** shall be responsible for the superintendence of all lower-tier subcontractors and shall assume full responsibility for their actions, including compliance with all provisions of this **Order** having to do with lower-tier subcontractors. Further, the **Seller** shall assume full responsibility for ensuring the cooperation and coordination of lower-tiers and trades for the purpose of completing a professionally finished project within the requirements of this **Order**, including schedule.

22. LOWER-TIER SUBCONTRACTORS

- 22.1 The **Seller** shall furnish the **Buyer** with a copy of any or all lower-tier subcontracts for performance of work under this **Order** as requested by the **Buyer**.
- 22.2 If the **Buyer** determines that any lower-tier subcontractor is incompetent or undesirable, he will notify the **Seller** accordingly and immediate steps will be taken for cancellation of such lower-tier subcontract.
- 22.3 Nothing contained in this **Order** shall create a contractual relationship between any lower-tier subcontractor and the **Buyer**.
- 22.4 Lower-tier subcontractors are subject to all the provisions of this **Order**.

23. VARIATION IN ESTIMATED QUANTITY

- 23.1 The quantity of a unit-priced item in this **Order** is estimated. The final **Order** amount for unit-priced items shall be determined by multiplication of the offered price by the actual quantities. However, if the actual quantity of the unit-priced item varies more than 25 percent above or below the estimated quantity, either party may demand an equitable adjustment and the parties shall negotiate to determine if an adjustment to the unit price is appropriate. Any equitable adjustment shall be based solely upon any increase or decrease in costs due to the variation 25 percent above or below the estimated quantity. Unless otherwise negotiated, the **Seller** shall be reimbursed for all additional work at the original unit-price schedule.

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23.2 If the quantity variation is such as to cause an increase in the time necessary for completion, the **Seller** may request, in writing, an extension of time, to be received by the **Procurement Representative** within ten (10) days from the beginning of the delay, or within such further period as may be granted before the date of final settlement of the **Order**. Upon receipt of a written request for extension, the **Procurement Representative** shall ascertain the facts and make an adjustment for extending the completion date as, in the judgment of the **Procurement Representative**, is justified.

24. PROSECUTION OF WORK

- 24.1 Time is of the essence in all phases of the work to be performed by the **Seller** hereunder. **Seller** shall begin the work as stated in the **Order** and shall not thereafter interrupt its performance without the prior written approval of the **Procurement Representative**.
- 24.2 The **Seller** shall provide manpower, tools, and equipment sufficient to insure prosecution of the work to meet the schedule stated in the **Order**. If, in the opinion of the **Buyer**, the **Seller** is falling behind the schedule the **Buyer** may direct the **Seller** to increase hours, shifts, manpower, tools, or equipment in order to recover the schedule, at no additional cost to the **Buyer**.
- 24.3 Failure of the **Seller** to comply with the requirements of the **Buyer** under this provision may be cause for termination under the Termination Clause herein.

25. UTILIZATION OF SMALL BUSINESS CONCERNS

- 25.1 It is the desire of the **DOE/Buyer** to maximize the awarding of **Orders** to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns. The **Seller** shall, to the fullest extent, provide the opportunity for these types of concerns to be awarded lower-tier **Orders**.
- 25.2 The **Seller** shall have in place systems that ensure prompt payment to the above noted small business concerns. Further, the **Seller** agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the **DOE/Buyer** to determine the extent of the **Seller's** compliance with this clause.

26. ADDITIONAL PROVISIONS

This **Order** incorporates one or more clauses by reference, with the same force and effect as if they were given in full text, except where it says '**Government**' insert 'Contractor' (**Buyer**), and where it says 'Contractor' (**Buyer**) insert 'Subcontractor' (**Seller**). Upon request, the **Procurement Representative** will make their full text available. Also, the full text of a clause may be accessed electronically at:

Federal Acquisition Regulations (FAR) <http://www.arnet.gov/far/index.html>.
Department of Energy Regulations (DEAR) <http://farsite.hill.af.mil/VFdoe1.htm>.

27. APPLICABLE TO ALL Orders

- 27.1 **(MFD)** Audit and Records **FAR52.215-2**
- 27.2 Order of Precedence **FAR52.215-8**
- 27.3 Convict Labor **FAR52.222-3**
- 27.4 **(MFD)** Contract Work Hours and Safety Standards – Overtime Compensation **FAR52.222-4**
- 27.5 Davis-Bacon Act **FAR52.222-6**
- 27.6 Withholding of Funds **FAR52.222-7**
- 27.7 Payrolls and Basic Records **FAR52.222-8**
- 27.8 Apprentices and Trainees **FAR52.222-9**
- 27.9 Compliance with Copeland Regulations **FAR52.222-10**
- 27.10 Subcontracts (Labor Standards) **FAR52.222-11**
- 27.11 Contract Termination – Debarment **FAR52.222-12**
- 27.12 Compliance with Davis-Bacon and related Act Regulations **FAR52.222-13**
- 27.13 Disputes Concerning Labor Standards **FAR52.222-14**
- 27.14 Certificate of Eligibility **FAR52.222-15**
- 27.15 **(MFD)** Prohibition of Segregated Facilities **FAR52.222-21**
- 27.16 **(MFD)** Equal Opportunity **FAR52.222-26**
- 27.17 **(MFD)** Affirmative Action for Workers with Disabilities **FAR52.222-36**
- 27.18 **(MFD)** Service Contract Act of 1965 **FAR52.222-41**
- 27.19 **(MFD)** Fair Labor Standards Act and Service Contract Act – Price Adjustment **FAR52.222-43**
- 27.20 **(MFD)** Combating Trafficking in Persons **FAR52.222-50**

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- 27.21 Privacy Act **FAR52.224-2**
- 27.22 (MFD) Restrictions on Certain Foreign Purchases **FAR52.225-13**
- 27.23 Payments Under Fixed-Price Construction Contracts **FAR52.232-5**
- 27.24 Payments Under Time & Material & Labor Hour Contracts **FAR52.232-7**
- 27.25 Protection of Government Buildings, Equipment, and Vegetation **FAR52.237-2**
- 27.26 Continuity of Services **FAR52.237-3**
- 27.27 (MFD) Printing **DEAR952.208-70**
- 27.28 Laws and Regulations **DEAR970.5204-2**
- 27.29 Affirmative Procurement of Biobased Products **FAR52.223-2**
- 27.30 Energy Efficiency in Energy Consuming Products **FAR52.223-15**

28. APPLICABLE TO Orders REQUIRING ACCESS TO DOE OWNED AND/OR CONTROLLED PROPERTY

- 28.1 (MFD) Whistleblower Protection for Contractor Employees **DEAR952.203-70**
- 28.2 (MFD) The performance of this **Order** requires that employees of the **Seller** have physical access to **DOE**-owned or leased facilities; however, this clause does not control requirements for employees obtaining a security clearance. The **Seller** understands and agrees that **DOE/Buyer** have a prescribed process with which the **Seller** and its employees must comply in order to receive a security badge that allows such physical access. The **Seller** further understands that it must propose employees whose background offers the best prospect of obtaining a security badge approval for access, considering the following criteria, which are not all inclusive and may vary depending on access requirements:
 - (1) is, or is suspected of being a terrorist;
 - (2) is the subject of an outstanding warrant;
 - (3) has deliberately omitted, concealed, or falsified relevant material facts from any Questionnaire for the National Security Position (SF-86), Questionnaire for Non-Sensitive Positions (SF-85), or similar form;
 - (4) has presented false or forged identity source documents;
 - (5) has been barred from federal employment;
 - (6) is currently awaiting a hearing or trial or has been convicted of a crime punishable by imprisonment of six (6) months or longer;
 - (7) is awaiting or serving a form of pre-prosecution probation, suspended or deferred sentencing, probation or parole in conjunction with an arrest or criminal charges against the individual for a crime that is punishable by imprisonment of six (6) months or longer.

The **Seller** shall assure:

- (1) In initiating the process for gaining access, (i) compliance with procedures established by **DOE/Buyer** in providing its employee(s) with any forms directed by **DOE/Buyer**, (ii) that the employee(s) properly completes any forms, and (iii) that the employee(s) submits the forms to the person designated by **DOE/Buyer**.
 - (2) In completing the process for gaining physical access, that its employee (i) cooperates with the **DOE/Buyer** officials responsible for granting access to **DOE**-owned or leased facilities and (ii) provides additional information, requested by those **DOE/Buyer** officials.
 - (3) The **Buyer** understands and agrees that **DOE/Buyer** may unilaterally deny a security badge to an employee and that the denial remains effective for that employee unless **DOE/Buyer** subsequently determines that access may be granted. Upon notice from **DOE/Buyer** that an employee's application for a security badge is or will be denied, the **Seller** shall promptly identify and submit the forms referred to in subparagraph (b)(1) of this clause for the substitute employee. The denial of a security badge to individual employees by **DOE/Buyer** shall not be cause for extension of the period of performance of this **Order** or any **Seller** claim against **DOE/Buyer**.
 - (4) The **Seller** shall return to the **DOE/Buyer** or designee the badge(s) or other credential(s) provided by **DOE/Buyer** Pursuant to this clause, granting physical access to **DOE**-owned or leased facilities by the **Seller's** employee(s), upon (1) the termination of this **Order**; (2) the expiration of this **Order**; (3) the termination of employment on this **Order** by an individual employee; or (4) demand by **DOE/Buyer** for return of the badge.
 - (5) The **Seller** shall include this clause, including this paragraph, in any lower-tier subcontract, awarded in the Performance of this **Order**, in which an employee(s) of the lower-tier subcontractor will require physical access to **DOE**-owned or leased facilities.
- 28.3 Only legal citizens of the United States are authorized access to **DOE** owned and/or controlled property. Use of illegal citizens or aliens by the **Seller** will result in their immediate removal, and possible termination for default.
 - 28.4 (MFD) Personal Identity Verification of Contractor Personnel **FAR52.204-9**

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29. APPLICABLE TO Orders CONTAINING CLASSIFIED/CONFIDENTIAL/PROPRIETARY INFORMATION

- 29.1 (MFD) Classify/Declassify **DEAR952.204-70**
- 29.2 (MFD) Security Requirements **DEAR952.204-2**
- 29.3 Except as specifically authorized by this **Order**, or as otherwise approved by the **Buyer**, information and other data developed or acquired by or furnished the **Seller** in the performance of this **Order**, shall be used only in connection with the work under this **Order**.
- 29.4 (MFD) CONFIDENTIALITY OF INFORMATION – To the extent that the work under this **Order** requires that the **Seller** be given access to or be furnished with confidential or proprietary business, technical, or financial information or data belonging to the **DOE/Buyer** or other entities that is clearly marked as confidential or proprietary, the **Seller** shall, after receipt thereof, treat such information in confidence and agree not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized in writing by the **Buyer**. The foregoing obligations, however, shall not apply to:
 - (1) Information or data that is in the public domain at the time of receipt by the **Seller**;
 - (2) Information or data which is published after receipt thereof by the **Seller** or otherwise becomes part of the public domain through no fault of the **Seller**;
 - (3) Information or data that the **Seller** can demonstrate was already in its possession at the time of receipt thereof and was not acquired directly or indirectly from the **DOE/Buyer** or other companies; or
 - (4) Information or data that the **Seller** can demonstrate was received by it from a third party that did not require the **Seller** to treat it in confidence.

The **Seller** agrees to enter into an agreement, identical in all material respects to the requirements herein, with each entity supplying such confidential or proprietary information or data to the **Seller** under this **Order** and to supply a copy of such agreement to the **Buyer's Procurement Representative**. Upon request of the **Buyer's Procurement Representative**, the **Seller** shall furnish reports that specify any information or data received as confidential or proprietary and that identify the entity or entities who supplied the **Seller** with such information or data.

The **Seller** shall obtain the written agreement of each employee permitted access to or furnished with confidential or proprietary business, technical, or financial information or data, whereby the employee agrees that such information or data that the **Seller** is obligated to treat in confidence will not be discussed, divulged or disclosed except to those persons within the **Seller's** organization directly concerned with the performance of this **Order**. Notwithstanding the foregoing **Seller**-employee agreement, upon request of the **Buyer's Procurement Representative** the **Seller** agrees to obtain from each employee a confidentiality agreement acceptable to the **Buyer's Procurement Representative**.

This clause, including this paragraph shall be included in lower-tier **Orders** if there is a requirement or there becomes a requirement that the **Seller** be given access to or be furnished with confidential or proprietary business, technical, or financial information or data.

30. APPLICABLE TO Orders INVOLVING GOVERNMENT FURNISHED PROPERTY

- 30.1 (MFD) Government Property **FAR52.245-1**
- 30.2 (MFD) Use and Charge **FAR52.245-9**

31. APPLICABLE TO Orders EXCEEDING \$100,000.00

- 31.1 (MFD) Anti Kick-Back **FAR52.203-7**
- 31.2 (MFD) Authorization and Consent **FAR52.227-1**
- 31.3 Certification of Independent Price Determination **FAR52.203-2**
- 31.4 (MFD) Contract Work Hours and Safety Standards Act – Overtime Compensation **FAR52.222-4**
- 31.5 Covenant Against Contingent Fees **FAR52,203-5**
- 31.6 Drug Free Workplace **FAR52.223-6**
- 31.7 (MFD) Employment Reports on Special Disabled Veterans of the Viet Nam era and Other Eligible Veterans **FAR52.222-37**
- 31.8 (MFD) Equal Opportunity for Special Disabled Veterans of the Viet Nam era and Other Eligible Veterans **FAR52.222-35**
- 31.9 Federal, State and Local Taxes **FAR52.229-3**
- 31.10 Gratuities **FAR52.203-3**
- 31.11 (MFD) Limitation on Payments to Influence certain Federal Transactions **FAR52.203-12**
- 31.12 (MFD) Notice and Assistance regarding Patent and Copyright Infringement **FAR52.227-2**
- 31.13 (MFD) Notification of Employee Rights Concerning Payment of Union Dues **FAR52.222-39**
- 31.14 Organizational Conflict of Interest **DEAR952.209-72**

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- 31.15 Performance and Payment Bonds – Construction **FAR52.228-15**
- 31.16 **(MFD)** Restrictions on Subcontractor Sales to the Government **FAR52.203-6**
- 31.17 Utilization of Small Business Concerns **FAR52.219-8**
- 31.18 **(MFD)** Value Engineering – Construction **FAR52.248-3**

- 32. APPLICABLE TO Orders EXCEEDING \$500,000.00

(MFD) Displaced Employees Hiring Preference **DEAR952.226-74**

- 33. APPLICABLE TO Orders EXCEEDING \$650,000.00 (Not applicable if competition or commercial)

 - 33.1 Price Reduction for Defective Cost or Pricing Data **FAR52.215-10**
 - 33.2 Price Reduction for Defective Cost or Pricing Data – Modifications **FAR52.215-11**
 - 33.3 **(MFD)** Subcontractor Cost or Pricing Data **FAR52.215-12**
 - 33.4 Subcontract Cost or Pricing Data – Modifications **FAR52.215-13**
 - 33.5 **(MFD)** Requirement for Cost or Pricing Data of Information other than Cost or Pricing Data-Modifications **FAR52.215-21**

- 34. APPLICABLE TO Orders INVOLVING HAZARDOUS MATERIALS

 - 34.1 Radiation Protection
 - 34.1.1 The **Seller** and all lower-tier subcontractors shall comply with applicable provisions of the **Buyer's** Radiation Protection Program (RPP) as incorporated in site specific Radiological Work Permits (RWP), the **Buyer's** Health and Safety personnel will enforce radiological safety and health provisions pursuant to the requirements of this **Order**.
 - 34.1.2 Actions resulting in noncompliance with this section shall be addressed and may be cause for suspension of work.
 - 34.1.3 **Seller** personnel assigned to work in radiological areas shall be trained by the **Buyer** on the requirements of the Radiation Protection Program.
 - 34.1.4 All items, including vehicles and equipment leaving the jobsites that are posted as Contamination Areas shall be subject to a **Buyer** survey for radiological contamination prior to release. Advance notice to the **Buyer** of four (4) hours is required for large items and equipment. Delays and/or postponements may result because of inadequate conditions.
 - 34.2 Hazardous Substance/Hazardous Waste
 - 34.2.1 Should a reportable release of hazardous substance occur during work under this **Order** the **Seller** shall notify the National Response Center as required by 40 CFR Part 302, and shall also immediately notify **Buyer**.
 - 34.2.2 If at any time while performing work under this **Order** the **Seller** encounters materials defined in the Environmental Protective Agency regulation 40 CFR Part 261, and/or Colorado regulation 6 CCR 1007-3 the **Seller** shall not handle or disturb such material without instructions from the **Buyer**. The **Seller** shall not handle or disturb any hazardous material unless specifically authorized in writing to do so by the **Buyer**.
 - 34.2.3 If the work under this **Order** involves the handling or removal of material containing both radioactive materials and hazardous waste or hazardous substances, the **Seller** shall not perform the work until the **Buyer** arranges for disposal or treatment of such material in accordance with applicable law.
 - 34.3 Hazardous Material Identification and Material Safety Data
 - 34.3.1 The **Seller** agrees to submit a Material Safety Data Sheet to the **Buyer's Procurement Representative** (Department of Labor Form OSHA-20) for each chemical used on the site five (5) days before delivery of the material. This obligation applies to all materials delivered under this **Order**, which will involve exposure to hazardous materials or items containing these materials.
 - 34.3.2 Neither the requirements of this clause nor any act or failure to act by the **Buyer** shall relieve the **Seller** of any responsibility or liability for the safety of **DOE/Buyer**, or other personnel or property.
 - 34.3.3 Nothing contained in this clause shall relieve the **Seller** from complying with applicable federal, state, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

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- 34.4 (MFD) Toxic Chemical Release Reporting **FAR52.223-14**
- 34.5 (MFD) Nuclear Hazards Indemnity Agreement **DEAR952.250-70**

- 35. APPLICABLE TO Orders IN WHICH THERE IS: i – access to or handling of classified information or special nuclear materials; or ii – high risk of danger to life, the environment, public health and safety, or national security; or iii – transportation of hazardous materials to or from a DOE site.
- 35.1 (MFD) Workplace Substance Abuse Programs at DOE Sites **DEAR970.5223-4**