

***CONSTRUCTION SUBCONTRACT***

***EXHIBIT "B"***

***SPECIAL PROVISIONS***

***UNDER***

***U. S. DEPARTMENT OF ENERGY PRIME CONTRACT***

***NO. 89303322DEM000068***

***SAVANNAH RIVER MISSION COMPLETION LLC***

***SAVANNAH RIVER SITE***

***NEW ELLENTON, SC 29809***

SAVANNAH RIVER MISSION COMPLETION LLC

EXHIBIT "B"

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## **EXHIBIT "B"**

### **CONSTRUCTION SUBCONTRACT SPECIAL PROVISIONS**

#### **1. DEFINITIONS**

GOVERNMENT means the United State Department of Energy and all of its authorized representatives acting in their professional capacities.

CONTRACTOR means Savannah River Mission Completion LLC and all of its authorized representatives acting in their professional capacities.

SUBCONTRACTOR means the company, corporation partnership, individual or other entity to which this Subcontract is issued, its authorized representatives, successors and permitted assigns.

"Work" means all activities required by the Subcontract Documents to be performed by SUBCONTRACTOR. "Jobsite"

or "Site" means the location at which the construction activity shall be performed under this Subcontract. "Subcontract

Documents" means the Subcontract Agreement Form and all documents listed therein.

"Subcontract Schedule" means the time period set forth for performance of the Work under this Subcontract.

"Notice to Proceed" means the written notice given by CONTRACTOR to SUBCONTRACTOR authorizing the start of on-site performance.

"Mechanical Completion" shall mean when construction is sufficiently complete, in accordance with the Subcontract Documents, so CONTRACTOR or the GOVERNMENT can occupy or utilize the Work, or designated portions for the use for which it is intended. The warranty period for all equipment and materials starts at Mechanical Completion.

"Physical Completion" means completion of all Work in accordance with the Subcontract Documents.

#### **2. INSURANCE**

Unless otherwise specified in this Subcontract, SUBCONTRACTOR shall, at its sole expense, maintain in effect at all times during the performance of the Work insurance coverage with limits not less than those set forth below with insurers and under forms of policies satisfactory to CONTRACTOR. SUBCONTRACTOR shall deliver to CONTRACTOR no later than ten (10) calendar days after Subcontract award, but in any event prior to commencing the Work or entering the Jobsite, certificates of insurance as evidence that policies providing such coverage and limits of insurance are in full force and effect. Certificates shall be issued in the form provided by CONTRACTOR or if none is provided in a form and by an insurance carrier or broker acceptable to CONTRACTOR. Not less than thirty (30) calendar days advance written notice will be given to CONTRACTOR prior to cancellation, termination or material alteration of said policies of insurance. In addition, a copy of a policy endorsement in which CONTRACTOR and the GOVERNMENT are named Additional Insureds under Section A.3.c. below shall be submitted with the certificate(s). (A "blanket" endorsement naming contracting parties as an "Additional Insured" is acceptable.)

##### **A. Standard Coverage:**

1. Workers' Compensation as required by any applicable law or regulation of the state in which SUBCONTRACTOR is located. If there is an exposure of injury to SUBCONTRACTOR'S employees under the U.S. Longshoremen's and Harbor Workers Compensation Act, the Jones Act or

under laws, regulations or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

2. Employer's Liability of not less than:

\$1,000,000 each accident.

3. General Liability Insurance

a. Coverage

SUBCONTRACTOR shall carry Commercial General Liability Insurance covering all operations by or on behalf of SUBCONTRACTOR providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for:

- (1) Premises and Operations.
- (2) Products and Completed Operations.
- (3) Contractual Liability insuring the obligations assumed by CONTRACTOR in this Subcontract.
- (4) Broad form Property Damage (including Completed Operations).
- (5) Explosion, Collapse and Underground Hazards.
- (6) Personal Injury Liability.

The Commercial General Liability Insurance shall be the Occurrence Coverage Form, not "Claims Made".

b. Policy Limits

For SUBCONTRACTOR'S Commercial General Liability Insurance, the limits of liability for bodily injury, property damage and personal injury shall be not less than:

- |             |  |
|-------------|--|
| \$1,000,000 | Combined single limit for Bodily Injury and Property Damage each occurrence. |
| \$1,000,000 | Personal Injury Limit each occurrence.                                       |
| \$2,000,000 | Products-Completed Operations Annual Aggregate Limit.                        |
| \$2,000,000 | General Annual Aggregate Limit (other than Products-Completed Operations).   |

If the policy does not have an endorsement providing the General Annual Aggregate limits as indicated above SUBCONTRACTOR shall provide an endorsement entitled "Amendment of Limits of Insurance (Designated Project or Premises)." Such endorsement shall provide for a Products-Completed Operations Annual Aggregate Limit of not less than \$2,000,000 and a General Annual Aggregate Limit of not less than \$5,000,000. The required limits may be satisfied by a combination of a primary policy and an excess or umbrella policy.

c. Additional Insured

- (1) CONTRACTOR, the GOVERNMENT, and their officers, directors and employees shall be named as Additional Insureds under the Commercial General Liability Insurance policy but only with respect to liability arising out of the operations for CONTRACTOR and the GOVERNMENT by or for CONTRACTOR. Such insurance shall be primary as regards any other coverage maintained for or by the Additional Insured. A copy of the policy endorsement shall be submitted with the certificate of insurance.
- (2) In lieu of naming CONTRACTOR and the GOVERNMENT as Additional Insureds under the Commercial General Liability policy, SUBCONTRACTOR may provide owners and Contractors Protective Liability Insurance. If SUBCONTRACTOR carries

Owners and Contractors Protective Liability Insurance the policy shall have a combined single limit for Bodily Injury or Property Damage of not less than:

\$2,000,000 Each Occurrence and  
\$2,000,000 Annual Aggregate

If the policy covers more than one project, this Subcontract (the Work) shall be designated in the Policy Declarations.

The policy shall name CONTRACTOR and the GOVERNMENT, their officers, directors and employees, as Named Insured.

4. Automobile Liability Insurance including coverage for the operation of any vehicle to include, but not limited to, owned, hired and non-owned.

The combined single limit for Bodily Injury and Property Damage Liability shall be not less than \$1,000,000 for any one accident or loss. The required limits may be satisfied by a combination of a primary policy and an excess or umbrella policy.

SUBCONTRACTOR'S Automobile Liability Insurance shall include coverage for Automobile Contractual Liability.

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.

5. In the event SUBCONTRACTOR maintains insurance covering loss or damage to equipment or any other property of CONTRACTOR such insurance shall include an Insurer's waiver of subrogation in favor of CONTRACTOR, the GOVERNMENT and their subsidiaries and affiliates.

#### B. Special Operations Coverage

Should any of the Work:

1. Involve marine operations, SUBCONTRACTOR, shall provide or have provided coverage for liability arising out of such marine operations including contractual liability under its Commercial General Liability Insurance or Marine Hull and Machinery Insurance and Protection and Indemnity Insurance. In the event marine operations involve and SUBCONTRACTOR owned, hired, chartered, or operated vessels, barges, tugs or other marine equipment, SUBCONTRACTOR agrees to provide or have provided Marine Hull and Machinery Insurance and Protection and Indemnity Insurance and/or Charterer's Liability Insurance. The combined limit of the Protection and Indemnity Insurance and/or Charterer's Liability Insurance shall be no less than the market value of the vessel. The Protection and Indemnity and/or Charterer's liability and the Hull and Machinery coverages shall include coverage for contractual liability, wreck removal, towing liability if applicable; and full collision coverage and shall be endorsed:
  - a. To provide full coverage to CONTRACTOR, the GOVERNMENT and their subsidiaries and affiliates as Additional Insureds without limiting coverage to liability "as owner of the vessel" and to delete any "as owner" clause or other language that would limit coverage to liability of an insured "as owner of the vessel," and
  - b. To waive any limit to full coverage for Additional Insureds provided by any applicable liability statute.
2. Involve the hauling of property in excess of \$100,000, SUBCONTRACTOR shall also carry "All Risk" Transit Insurance, or "All Risk" Motor Truck Cargo Insurance, or such similar form of insurance that will insure against physical loss or damage to the property being transported, moved or

handled by SUBCONTRACTOR pursuant to the terms of this Subcontract. Such insurance shall provide a limit of not less than the replacement cost of the highest value single lift or highest value being moved, whichever is greater, and shall insure the interest of SUBCONTRACTOR, CONTRACTOR and the GOVERNMENT and the subsidiaries and affiliates of SUBCONTRACTOR, CONTRACTOR, and the GOVERNMENT as their respective interests may appear and shall include an insurer's waiver of subrogation rights in favor of each;

3. Involve aircraft (fixed wing or helicopter) owned, operated or chartered by the SUBCONTRACTOR, liability arising out of such aircraft shall be insured for a combined single limit not less than \$10,000,000 each occurrence and such limit shall apply to Bodily Injury (including passengers) and Property Damage Liability. Such insurance shall name CONTRACTOR and the GOVERNMENT and their subsidiaries and affiliates as Additional insured, include an Insurer's waiver of subrogation in a favor of the Additional Insureds, state that it is primary insurance as regards the additional insured and contain a cross-liability or severability of interest clause. If the aircraft is insured such insurance shall provide for an insurer's waiver of subrogation rights in favor of CONTRACTOR and the GOVERNMENT and their subsidiaries and affiliates. In the event SUBCONTRACTOR charters aircraft, the foregoing insurance and evidence of insurance may be furnished by the owner of the chartered aircraft, provided the above requirements are met.
4. Involve investigation, removal or remedial action concerning the actual or threatened escape of hazardous or toxic substances, SUBCONTRACTOR shall also carry Pollution Liability Insurance in an amount not less than \$5,000,000 per occurrence/annual aggregate. Such insurance shall provide coverage for both sudden and gradual occurrences arising from the Work performed under this Subcontract, and Completed Operation Coverage shall be for a period of not less than five (5) years. and shall name CONTRACTOR and the GOVERNMENT as Additional Insured.
5. Involve inspection, handling or removal of asbestos, SUBCONTRACTOR shall also carry Asbestos Liability Insurance in an amount not less than \$5,000,000 per occurrence/annual aggregate. The policy shall be written on an "Occurrence Basis" with no sunset clause. Such insurance shall name CONTRACTOR and the GOVERNMENT as Additional Insured.
6. Involve transporting hazardous substances, SUBCONTRACTOR shall also carry Business Automobile Insurance covering liability arising out of the transportation of hazardous materials in an amount not less than \$5,000,000 per occurrence. Such policy shall include Motor Carrier Endorsement MCS-90. NEITHER CONTRACTOR, NOR the GOVERNMENT IS TO BE NAMED AN ADDITIONAL INSURED FOR THIS POLICY.
7. Involve treatment, storage or disposal of hazardous wastes, SUBCONTRACTOR shall furnish an insurance certificate from the designated disposal facility establishing that the facility operator maintains current Environmental Liability Insurance in the amount of not less than \$5,000,000 per occurrence/annual aggregate.

C. Related Obligations

1. The requirements contained herein as to types and limits, as well as CONTRACTOR'S approval of insurance coverage to be maintained by SUBCONTRACTOR are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by SUBCONTRACTOR under this Subcontract.
2. The Certificates of Insurance must provide clear evidence that SUBCONTRACTOR'S Insurance Policies contain the minimum limits of coverage and special provisions prescribed in this clause.

D. CONTRACTOR or GOVERNMENT Furnished Insurance

Neither CONTRACTOR nor the GOVERNMENT is maintaining any insurance on behalf of SUBCONTRACTOR covering against loss or damage to the Work or to any other property of SUBCONTRACTOR unless otherwise specifically stated herein.

E. Notifications

In accordance with the submittal requirements outlined above, SUBCONTRACTOR shall deliver the original and two (2) copies of the Certificate(s) of Insurance required by this clause and all subsequent notices of cancellation, termination and alteration of such policies to:

Savannah River Mission Completion LLC  
Building 730 4B – (room)  
PO Box 790  
New Ellenton, SC 29809  
Attention: (name)  
Reference: Subcontract No. (number)

3. PAYMENT AND PERFORMANCE BONDS

***(The requirement for “Payment and Performance Bonds” under Paragraph A applies to subcontracts if the award amount is greater than \$100,000. For subcontracts awarded in an amount greater than \$30,000 but not greater than \$100,000, SUBCONTRACTOR is required to provide a form of “Payment Protection” in accordance with Paragraph B below.)***

A. Payment and Performance Bonds.

SUBCONTRACTOR shall, within ten (10) calendar days after award of this Subcontract, furnish to CONTRACTOR a performance Bond and a Payment Bond. Each of the Payment and Performance Bonds shall be in the amount of 100% of the total Lump Sum Price of this Subcontract.

Payment and Performance Bonds shall be in a form and format and by a company or corporation acceptable to CONTRACTOR. Such acceptability is based, in part, upon the surety company being named in the Department of Treasury Circular 570, “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies”. The cost of such bonds shall be included in the total lump sum price of the Subcontract.

B. Payment Protection.

***(The requirement for “Payment Protection” under this Paragraph B applies to small dollar value subcontracts where the award amount is greater than \$30,000, but not greater than \$100,000.)***

SUBCONTRACTOR shall within ten (10) calendar days after award of this Subcontract, furnish one of the following payment protections:

1. A payment bond.
2. An irrevocable letter of credit (*See FAR 52.228-14*).
3. A tripartite escrow agreement. SUBCONTRACTOR establishes an escrow account in a federally insured financial institution and enters into a tripartite escrow agreement with the financial institution, as escrow agent, and all of the suppliers of labor and material. The escrow agreement shall establish



the terms of payment under the contract and of resolution of disputes among the parties. CONTRACTOR makes payments to the SUBCONTRACTOR'S escrow account and the escrow agent distributes the payments in accordance with the agreement or triggers the disputes resolution procedures if required.

4. Certificates of deposit. SUBCONTRACTOR deposits certificates of deposit from a federally insured financial institution with CONTRACTOR, in an acceptable form, executable by CONTRACTOR.
5. United States bonds or notes (FAR 28.204-1) certificates or cashier's checks, bank drafts, money orders, or currency (FAR 28.204-2).

The payment protection shall in an amount equal to 100 percent of the Subcontract price and provide protection for the full Subcontract performance period plus a one-year period. The cost of such payment protection shall be included in the total lump sum price of the Subcontract.

Except for escrow agreements and payment bonds, which provide their own protection procedures, CONTRACTOR is authorized to access funds under the payment protection when it has been alleged in writing by a supplier of labor or material that a nonpayment has occurred, and to withhold such funds pending resolution by administrative or judicial proceedings or mutual agreement of the parties.

When a tripartite escrow agreement is used, the Subcontractor shall utilize only suppliers of labor and material that signed the escrow agreement.

- C. The SUBCONTRACTOR shall promptly furnish additional security required to protect CONTRACTOR and the GOVERNMENT and persons supplying labor or materials under this Subcontract if:
  1. any surety upon any bond furnished with this Subcontract becomes unacceptable to CONTRACTOR,
  2. any surety fails to furnish reports on its financial condition as required by CONTRACTOR, or
  3. the Subcontract price is increased so that the penal sum of any bond or other security furnished by SUBCONTRACTOR hereunder becomes inadequate in the opinion of CONTRACTOR.

#### **4. CONTRACTOR-FURNISHED DRAWINGS AND SPECIFICATIONS**

CONTRACTOR will furnish specifications and prints of engineering design drawings for each part of the Work under this Subcontract. Such drawings will give information required for the preparation of shop detail drawings by SUBCONTRACTOR. Drawings and sketches furnished by CONTRACTOR may not be to the scale indicated due to distortions and reductions in reproduction. SUBCONTRACTOR shall rely on dimensions and coordinates shown on the drawings and sketches to determine other dimensions and quantities. If dimensions and/or coordinates are not sufficient to make this determination, SUBCONTRACTOR shall contact Contractor's Procurement Representative for clarification.

SUBCONTRACTOR shall immediately, upon receipt thereof; check all specifications and drawings furnished and shall promptly notify CONTRACTOR of any omissions or discrepancies in such specifications or drawings.

All drawings listed in Exhibit "D" DRAWINGS are a part of this Subcontract. SUBCONTRACTOR shall perform Work only in accordance with drawings marked "Issued for Construction". Drawings issued by CONTRACTOR after execution of this Subcontract will be issued by Subcontract Change Notice and upon issuance become a part of the Subcontract, superseding or supplementing the original Subcontract drawings. If SUBCONTRACTOR considers such issue to be a change affecting cost or schedule, SUBCONTRACTOR must request an equitable adjustment in accordance with the General Provision titled "CHANGES".

SUBCONTRACTOR shall perform Work only in accordance with "Issued for Construction" drawings and any subsequent revisions thereto, and with CONTRACTOR reviewed drawings submitted by SUBCONTRACTOR in accordance with the Special Provision titled "SUBCONTRACTOR-FURNISHED DRAWINGS, DATA AND SAMPLES".

One (1) copy of such specifications and one (1) copy of such drawings will be furnished to SUBCONTRACTOR without charge.

#### **5. CONTRACTOR-FURNISHED SITE SERVICES**

CONTRACTOR will provide site services without cost to SUBCONTRACTOR as set forth in the SUBCONTRACTOR FIELD CONDITIONS FORM hereby incorporated into the Subcontract as Attachment "A" to Exhibit "B" SPECIAL PROVISIONS.

#### **6. CONTRACTOR-FURNISHED MATERIALS AND EQUIPMENT**

CONTRACTOR will furnish to SUBCONTRACTOR, AT CONTRACTOR'S warehouse or Jobsite storage area, the items listed below to be incorporated into or used in performance of the Work under this Subcontract. Such items will be furnished, without cost to SUBCONTRACTOR, provided that SUBCONTRACTOR shall, at its expense, accept delivery thereof, load, unload, transport to points of use and care for such items until final disposition thereof. At time of acceptance of any such item from CONTRACTOR, SUBCONTRACTOR shall sign a receipt therefor. Signing of such receipt without reservation therein shall preclude any subsequent claim by SUBCONTRACTOR that any such items were received from CONTRACTOR in a damaged condition and with shortages. SUBCONTRACTOR shall maintain records of all CONTRACTOR furnished materials. Such records will be made available to CONTRACTOR upon request. SUBCONTRACTOR agrees not to use the furnished materials for any purpose other than the performance of the Subcontract without CONTRACTOR'S written approval. If at any time after acceptance of any such item from CONTRACTOR any such item is damaged, lost, stolen or destroyed, such item shall be repaired or replaced at the expense of SUBCONTRACTOR. Items required to be replaced may, at its option, be furnished by CONTRACTOR. Upon completion of all the Work under this Subcontract, SUBCONTRACTOR shall, at its expense, return all surplus and unused items to CONTRACTOR'S warehouse or Jobsite storage area.

CONTRACTOR will exert every reasonable effort to make delivery of such materials and equipment so as to avoid delay in the progress of the Work. However, should CONTRACTOR, for any reason, fail to make delivery of any such item and a delay results the conditions of the General Provision titled "CHANGES" apply. SUBCONTRACTOR shall take all appropriate action to mitigate the consequences of such delay.

Materials to be furnished by CONTRACTOR: (list of materials)

CONTRACTOR will furnish construction tools and/or equipment to SUBCONTRACTOR the items listed below for use in contaminated areas at no cost to SUBCONTRACTOR. SUBCONTRACTOR shall release, defend, indemnify and hold CONTRACTOR harmless against any damages or claims that may arise from use of the tools or equipment.

CONTRACTOR provided equipment will be uniquely identified to prevent its removal from contaminated Areas. SUBCONTRACTOR will ensure that only qualified and experienced operators are assigned to operate the provided equipment. A current operation record is to be maintained for each piece of equipment.

In the event provided equipment is not available at the time or place the Work is to be performed, or the equipment is inoperable or retracted from SUBCONTRACTOR'S use an equitable adjustment will be made to the Subcontract.

Tools and/or equipment to be furnished by CONTRACTOR: (list of tools)

#### **7. CONTRACTOR-FURNISHED PERMITS**

The General Provision titled "PERMITS" notwithstanding, CONTRACTOR will without cost to SUBCONTRACTOR, furnish the permits listed below; however, SUBCONTRACTOR shall, as necessary, provide CONTRACTOR and the GOVERNMENT with assistance in obtaining such permits. SUBCONTRACTOR shall, in accordance with said General Provision titled "PERMITS", provide all other permits. All such CONTRACTOR- furnished permits are available for examination at the project office of CONTRACTOR during regular business hours.

Permits to be furnished by CONTRACTOR: As listed in the SUBCONTRACTOR FIELD CONDITIONS FORM as Attachment "A" to Exhibit "B" SPECIAL PROVISIONS.

**8. SUBCONTRACTOR-FURNISHED DRAWINGS, DATA AND SAMPLES**

SUBCONTRACTOR shall submit drawings, data and samples in accordance with Exhibit "E" SCOPE OF WORK AND TECHNICAL SPECIFICATIONS. Review and permission to proceed by CONTRACTOR does not constitute acceptance or approval of design details, calculations, analyses, test methods, certificates or materials developed or selected by SUBCONTRACTOR and does not relieve SUBCONTRACTOR from full compliance with contractual obligations.

**9. COMMENCEMENT, PROGRESS AND COMPLETION OF THE WORK**

SUBCONTRACTOR shall perform with its own organization Work equivalent to at least (number) percent of the total amount of Work (not including cost of materials) to be performed under this Subcontract. SUBCONTRACTOR shall not subcontract with any third party for the performance of all or any portion of the Work without the advance written approval of CONTRACTOR.

SUBCONTRACTOR will be given a written "Notice to Proceed" authorizing the start of on-site performance after receipt and acceptance of Insurance Certificates, Payment and Performance Bonds, Pre-job Building Trades Conference Certification, schedule for the first sixty days of work, approval of SUBCONTRACTOR'S Safety Management Plan and the Worker Protection Plan (WPP), authorization for electronic payments, and receipt of SUBCONTRACTORS designation of an Assigned Competent Person (ACP).

Delay in the receipt and acceptance of submittals required by this Subcontract is not an excusable delay under the General Provisions titled "EXCUSABLE DELAYS".

SUBCONTRACTOR shall complete the Work under the Subcontract to meet the following Subcontract Milestone Dates:  
Mechanical Completion: (date) Physical  
Completion: (date)

SUBCONTRACTOR'S site representative will be required to attend meetings, weekly, bi-weekly, monthly, or as often as required by CONTRACTOR to discuss schedule, safety, quality, design, delays, and/or other subjects relating to the Work.

SUBCONTRACTOR shall complete and submit to CONTRACTOR'S Subcontract Technical Representative (STR), on a daily basis, a daily log. The Log shall document all events occurring on the jobsite including any delay to the Work in progress, as well as, particular notice given to the amount, type, and number of workmen by trades. Lower- tier subcontractors, material, and equipment deliveries, equipment on site, equipment in use, Work in progress, inspection performed, tests performed, any construction activities that do not meet the technical requirements of the Subcontract Documents, corrective actions for unacceptable construction activities and significant problems affecting progress or quality of the Work. The Log shall also reflect activities as they relate to the construction schedule.

SUBCONTRACTOR shall give CONTRACTOR full information in advance as to its plans for performing each part of the Work. If at any time, SUBCONTRACTOR'S actual progress is inadequate to meet the requirements of this Subcontract, CONTRACTOR may notify SUBCONTRACTOR to take such steps as may be necessary to improve its progress. If within a reasonable period as determined by CONTRACTOR, SUBCONTRACTOR does not improve performance to meet the Subcontract milestones set forth above, CONTRACTOR may require an increase in SUBCONTRACTOR'S labor force, the number of shifts, overtime operations, additional days of work per week, expedited shipment(s) of equipment and materials, and an increase in the amount of construction plant and equipment, all without additional cost to CONTRACTOR. Neither such notice nor CONTRACTOR'S failure to issue such notice shall relieve SUBCONTRACTOR of its obligation to achieve the quality of work and rate of progress required by this Subcontract.

Noncompliance with CONTRACTOR'S instruction shall be grounds for CONTRACTOR'S determination that SUBCONTRACTOR is not prosecuting the Work with such diligence as will assure completion within the times specified. Upon such determination, CONTRACTOR may terminate this Subcontract pursuant to the General Provision titled "TERMINATION FOR DEFAULT."

## **10. CONSTRUCTION SCHEDULE**

### **(BAR CHART PROVISIONS OPTION)**

Within ten (10) calendar days after Subcontract Award, SUBCONTRACTOR shall prepare and submit to CONTRACTOR a detailed Bar Chart Schedule for the first sixty (60) calendar days of Work.

A completed Baseline Schedule shall be submitted for approval within thirty (30) days after Subcontract Award. No payments will be due SUBCONTRACTOR until the Baseline Schedule is approved by CONTRACTOR. The Baseline Schedule shall provide for the expeditious and practical execution of the work.

The Baseline Schedule shall:

1. display all elements of the Work including construction testing, manpower requirements and planned equipment usage;
2. be dollar value loaded for each activity. The sum of all activity dollar values shall equal the total amount of the Subcontract;
3. display all Milestone Dates identified in the Subcontract; and,
4. identify the restraints and interfaces between the SUBCONTRACTOR'S activities and the activities to be performed by any separate subcontractor or known lower-tier subcontractors or by CONTRACTOR (e.g., delivery of CONTRACTOR furnished equipment, approval of shop drawings).
5. display dates of planned high and medium hazard tasks as identified in the Subcontract Safety Checklists from Exhibit F, "Environmental, Safety and Health Provisions," Article ES&HP-2.

SUBCONTRACTOR is responsible for determining the sequence and duration of the detailed construction activities. Approval of the Subcontractor's Baseline Schedule by CONTRACTOR shall in no way constitute or be construed as an admission or representation by CONTRACTOR that the Schedule, as approved, is feasible or practical. SUBCONTRACTOR assumes the risk of the practicality and feasibility of the construction Schedule.

\*\*\*OR\*\*\*

### **(CPM PROVISIONS OPTION)**

#### Post Award Submittal and Approval

Within ten (10) calendar days after Subcontract Award, SUBCONTRACTOR shall prepare and submit to CONTRACTOR a detailed Critical Path Method (CPM) Schedule for the first sixty (60) calendar days of work.

A completed Baseline Schedule shall be submitted for approval within thirty (30) calendar days after Subcontract Award. The Schedule shall be based on a Critical Path Method (CPM) analysis.

No payments will be due SUBCONTRACTOR until the Baseline Schedule is approved by CONTRACTOR. The

Baseline Schedule shall include the following information:

1. A description of each activity, including shop drawings submittal and approval and the ordering and delivery of major materials and equipment to be incorporated into the Work. (The description for site activities should be in sufficient detail to identify the activities by location and/or elevation.)

2. The estimated duration for each activity (except for shop drawing approvals and material and equipment deliveries) shall not exceed twenty-one (21) calendar days. One (1) day shall be the smallest time unit used.
3. The early start, late start, early finish and late finish dates for each activity and the total float, if any, for each activity.
4. The manpower requirements for each activity.
5. The major construction equipment required for each activity.
6. The sequence, restraints and interfaces between and among SUBCONTRACTOR'S activities, as well as the sequence, restraints and interfaces between SUBCONTRACTOR'S activities and the activities of any separate subcontractor or known lower-tier subcontractors or by CONTRACTOR.
7. The Milestone Dates identified in the Subcontract.
8. The dollar value loading each activity. The sum of all activity dollar values shall equal the total amount of the Subcontract.
9. Commodity Curves for items selected by CONTRACTOR as follows: (Insert  

commodities as provided by STR and noted on Field Conditions)
10. Dates of planned high and medium hazard tasks as identified in the Subcontract Safety Checklists from Exhibit F, "Environmental, Safety and Health Provisions," Article ES&HP-2.

SUBCONTRACTOR shall schedule his work activities to early start and early finish dates.

All float belongs to all parties participating in the project severally and not to SUBCONTRACTOR exclusively.

SUBCONTRACTOR is responsible for determining the sequence and duration of the detailed construction activities. Approval of SUBCONTRACTOR'S Baseline Schedule by CONTRACTOR shall in no way constitute or be construed as an admission or representation by CONTRACTOR that the Schedule, approved, is feasible or practical. SUBCONTRACTOR assumes the risk of the practicality and feasibility of the Construction Schedule.

#### Maintenance and Updates

Upon approval by CONTRACTOR of SUBCONTRACTOR'S Baseline Schedule, SUBCONTRACTOR shall be responsible for maintaining such a Schedule. If at any time SUBCONTRACTOR'S Work is behind schedule, the SUBCONTRACTOR shall submit a recovery plan for getting the Work back on schedule. The plan shall be subject to review and approval by CONTRACTOR.

The approved Baseline Schedule shall be updated and reviewed monthly to reflect the current as-built status of the Work. This updated Schedule shall accompany the Application for Payment.

SUBCONTRACTOR shall highlight in the Monthly Updates any changes to SUBCONTRACTOR'S logic and/or critical path which will be subject to CONTRACTOR approval.

SUBCONTRACTOR shall submit to CONTRACTOR a monthly Progress Report. This report shall include a description of the current or potential problem areas that are affecting progress or could affect the succeeding month's Work including but not limited to potential late delivery of materials or equipment.

#### **\*\*\*FOUR WEEK WORK SCHEDULE (OPTION) \*\*\* (REQUIRED FOR CPM SCHEDULE)**

#### Four Week Work Schedule

SUBCONTRACTOR shall develop a Four Week Daily Work Schedule. This schedule shall be submitted to CONTRACTOR at the beginning of each work week and cover the current week and the following three (3) weeks in sufficient detail to identify the approach for completing individual items of Work. This schedule shall include:

1. Work activity and duration.

2. All restraints and interfaces with others.

The format shall be compatible with the Baseline Schedule and is subject to review by CONTRACTOR. Included with this Schedule shall be an estimate of the manpower and construction equipment required for the anticipated construction activities.

Notwithstanding any of the established CONTRACTOR, GOVERNMENT or SUBCONTRACTOR plans as required herein, SUBCONTRACTOR is responsible for maintaining proper safety and health, fire prevention, and security conditions at the Jobsite.

## **11. MEASUREMENT FOR PAYMENT**

### **(Alternate 1 for Progress Payments.)**

For the purpose of arriving at agreement on the basis for progress payments for items bid as lump sum, SUBCONTRACTOR shall, within fifteen (15) calendar days after Subcontract Award, submit a proposed breakdown of values by pay item of the various elements of the Work comprising the lump sum item. Such submittal shall also include a proposed schedule of monthly progress payments. The proposed breakdown and payment schedule shall be correlated with the schedule and reports required by the Special Provision entitled "CONSTRUCTION SCHEDULE". Such breakdown and payment schedule shall be subject to CONTRACTOR'S approval.

Written monthly estimates on or about the end of each month shall be prepared by SUBCONTRACTOR for CONTRACTOR'S approval covering the amount and value of Work satisfactorily performed by SUBCONTRACTOR up to the date of such estimate. Such estimate may be made by strict measurement, or by estimate, or partly by one method and partly by the other. Estimates shall not include materials or equipment not incorporated into the Work. The quantity of work to be paid for under any item for which a unit price is fixed shall be the number of CONTRACTOR approved units of work satisfactorily completed in accordance with the specified unit measurement for payment provisions of this Subcontract.

SUBCONTRACTOR shall make all surveys necessary for determining all quantities of work to be paid under this Subcontract. Copies of field notes, computations and the records made by SUBCONTRACTOR for the purpose of determining quantities shall be furnished to CONTRACTOR upon request. SUBCONTRACTOR shall notify CONTRACTOR prior to the time such surveys are made. CONTRACTOR, at its sole discretion, may witness and verify such surveys. Measurements and computations shall be made by such methods as CONTRACTOR may consider appropriate for the class of work measured and the estimate of quantities of work completed shall be compatible with the reporting requirements of the Special Provision titled "CONSTRUCTION SCHEDULE". The dividing limits, lines or planes between adjacent items or classes or excavation, concrete or other types of work where not definitely indicated on the drawings or in the specifications shall be as determined by CONTRACTOR.

CONTRACTOR shall review SUBCONTRACTOR'S monthly estimate and within ten (10) calendar days return an approved copy to SUBCONTRACTOR. Pursuant to the Special Provision titled "APPLICATION FOR PAYMENT AND PAYMENT," SUBCONTRACTOR shall prepare and submit to CONTRACTOR Application for Payment in accordance with approved monthly estimates.

### **(Alternate 2 for Milestone Payments in conjunction with Exhibit "C" Schedule of Quantities and Prices.)**

SUBCONTRACTOR shall submit an Application for Payment upon completion of each Payment Milestone. The work to be paid for under any Payment Milestone is fixed in this Subcontract and shall be the amount due and payable in accordance with the price set forth in Exhibit "C" Schedule of Quantities and Prices, and the applicable measurement for payment provisions of the Subcontract. SUBCONTRACTOR shall provide substantiation that the measurement for payment provisions have been met.

SUBCONTRACTOR shall make all necessary measurements and conduct all tests and performance demonstrations required to establish each Payment Milestone has been satisfactorily accomplished. SUBCONTRACTOR shall notify CONTRACTOR prior to the time such measurements, test or demonstrations are made or conducted.

CONTRACTOR, at its discretion, may arrange to have its representative witness and verify all such SUBCONTRACTOR measurements, tests or demonstrations. Copies of all SUBCONTRACTOR'S records made for the purpose of determining Payment Milestone completion shall be furnished CONTRACTOR upon request.

## **12. APPLICATION FOR PAYMENT AND PAYMENT**

SUBCONTRACTOR shall prepare and submit Application for Payments pursuant to the Special Provision titled "MEASUREMENT FOR PAYMENT".

Within thirty (30) calendar days after receipt of an acceptable Application for Payment, CONTRACTOR will pay SUBCONTRACTOR ninety percent (90%) of the approved Application for Payment amount retaining the balance (Retainage) pending Final Acceptance of the Work or as otherwise specified below.

After the estimated value of Work completed exceeds 50% of the Subcontract Sum, and provided SUBCONTRACTOR is progressing with the Work in the manner and time satisfactory to CONTRACTOR, CONTRACTOR may reduce the amount to be retained to five (5) percent, or to such lesser amount, including none, as may be decided upon by CONTRACTOR.

CONTRACTOR shall, after receipt of evidence of full payment to the surety, reimburse SUBCONTRACTOR for the amount of premiums paid for Performance and Payment Bonds. SUBCONTRACTOR shall request such reimbursement with the first Application for Payment. The retainage provisions of this Special Provision do not apply to payment for bond premiums.

CONTRACTOR may, as a condition precedent to any payment, require SUBCONTRACTOR to submit for itself, its subcontractors, immediate and remote and all material suppliers, vendors, laborers and other parties acting through or under it, complete waivers and releases of all claims against CONTRACTOR or the GOVERNMENT arising under or by virtue of this Subcontract.

Any amounts otherwise payable under this Subcontract may be withheld, in whole or in part, if:

1. Any claims are filed against SUBCONTRACTOR by CONTRACTOR or third parties;
2. SUBCONTRACTOR is in default of any Subcontract condition including, but not limited to, the schedule, quality assurance and health and safety requirements;
3. SUBCONTRACTOR has not submitted:
  - a. Schedules as defined in the Special Provision titled "SUBCONTRACT SCHEDULE",
  - b. Proper insurance certificates, or not provided proper coverage or proof thereof,
  - c. Safety plan and
  - d. Required Performance and Payment Bonds or CONTRACTOR approved equivalent securities;
4. Adjustments are due from previous overpayment or audit result; or
5. Offsets in favor of CONTRACTOR in other transactions are asserted.

CONTRACTOR will pay such withheld payment if SUBCONTRACTOR:

1. Pays, satisfies, or discharges any claim of CONTRACTOR, OWNER or third parties against SUBCONTRACTOR under or by virtue of this Subcontract; or
2. Cures all defaults in the performance of this Subcontract.

If claims filed against SUBCONTRACTOR connected with performance under this Subcontract, for which CONTRACTOR may be held liable if unpaid (e.g., unpaid withholding and back taxes), are not promptly removed by SUBCONTRACTOR after receipt of written notice from CONTRACTOR to do so, CONTRACTOR may

remove such claims and deduct all costs in connection with such removal from withheld payments or other moneys due, or which may become due, to SUBCONTRACTOR. If the amount of such withheld payment or other moneys due SUBCONTRACTOR under this Subcontract is insufficient to meet such costs, or if any claim against SUBCONTRACTOR is discharged by CONTRACTOR after final payment is made, SUBCONTRACTOR and its surety or sureties, if any, shall promptly pay CONTRACTOR all costs incurred thereby regardless of when such claim arose or whether such claim imposes a lien upon the Project or the real property upon which the Project is situated.

In the event a lien is filed, SUBCONTRACTOR shall remove the lien, or see that it is removed or shall furnish a bond for the full amount thereof within seven (7) calendar days of notice by CONTRACTOR or as otherwise specified by applicable law. Upon SUBCONTRACTOR'S failure to promptly comply with the foregoing requirements CONTRACTOR may remove such liens. SUBCONTRACTOR shall reimburse CONTRACTOR for all costs in connection with the removal of such liens and CONTRACTOR may deduct such costs from payments or other moneys due, or which may become due, to SUBCONTRACTOR.

**(Alternate 1 for Progress Payments.)**

Upon receipt by SUBCONTRACTOR of CONTRACTOR'S Notice of Final Acceptance of the Work under this Subcontract, SUBCONTRACTOR shall prepare, as required above, an estimate of all remaining work satisfactorily completed under this Subcontract. Upon CONTRACTOR'S approval of such estimate, SUBCONTRACTOR shall prepare and submit its final Application for Payment in accordance with the approved estimate.

**(Alternate 2 for Milestone Payments.)**

Upon receipt by SUBCONTRACTOR of CONTRACTOR'S written notice of Final Acceptance of the Work under this Subcontract, SUBCONTRACTOR shall prepare a written statement for CONTRACTOR'S approval of the amount and value of all remaining Payment Milestones or other work satisfactorily completed under this Subcontract. Upon CONTRACTOR'S approval of such statement, SUBCONTRACTOR shall prepare and submit its final Application for Payment in accordance with the approved estimate.

**(Optional paragraph for Warranty Retention.)**

Upon completion and acceptance of the Work, CONTRACTOR shall retain \$10,000 to ensure that the requirements of the General Provisions entitled "Warranty" are followed. If a warranty issue arises and SUBCONTRACTOR fails to respond in a reasonable and timely manner, CONTRACTOR shall utilize these retained funds to remedy any defective work or product covered by the warranty. At the completion of the twelve-month warranty period, CONTRACTOR shall make final payment from this warranty retainage.

**(Include the following paragraph when there is a potential for contaminated equipment.)**

CONTRACTOR shall pay SUBCONTRACTOR for CONTAMINATED EQUIPMENT, if CONTRACTOR health physics (HP) determines SUBCONTRACTOR equipment or material cannot be decontaminated. The contaminated item will be purchased at the fair market depreciated value listed in Exhibit C, Schedule of Quantities and Prices. CONTRACTOR will only negotiate a fair market depreciated value for SUBCONTRACTOR equipment or material that was presented as a candidate for contamination prior to Subcontract award or agreed to by CONTRACTOR in writing after award.

**(End of Clause Options.)**

Unless otherwise specified by applicable law, CONTRACTOR shall, within sixty (60) calendar days following Final Acceptance of the Work and after submittal of such final Application for Payment, pay to SUBCONTRACTOR the amount then remaining due, provided that, SUBCONTRACTOR shall have furnished CONTRACTOR and the GOVERNMENT for itself, its subcontractors, immediate and remote, and all material suppliers, vendors, laborers and other parties acting through or under it, waivers and releases of all claims against CONTRACTOR or the GOVERNMENT arising under or by virtue of this Subcontract, except such claims, if any, as may with the consent



of CONTRACTOR and the GOVERNMENT, be specifically excepted by SUBCONTRACTOR from the operation of the release in stated amounts to be set forth therein.

No interest is payable to SUBCONTRACTOR for any claim or Application for Payment SUBCONTRACTOR may submit for payment except as specifically imposed by a Court on any judgment obtained by SUBCONTRACTOR or as otherwise provided herein.

No payments or Application for Payments or portions thereof shall at any time constitute approval or acceptance of Work under this Subcontract, nor be considered to be a waiver by CONTRACTOR or the GOVERNMENT of any of the terms of this Subcontract. However, title to all material and equipment for which payment has been made, whether or not the same has been incorporated in the Work, and title to all completed Work whether paid for or not, shall vest in CONTRACTOR or the GOVERNMENT as the case may be, and in any case shall not be part of SUBCONTRACTOR'S property or estate in the event SUBCONTRACTOR is adjudged bankrupt or makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of SUBCONTRACTOR'S insolvency.

Applications for Payment shall be certified, signed, and submitted in a format prescribed by CONTRACTOR. SUBCONTRACTOR shall certify each Application for Payment as follows:

I hereby certify, to the best of my knowledge and belief, that –

- (1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the Subcontract;
- (2) Payments to subcontractors and suppliers have been made from previous payments received under the Subcontract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontractor and supplier agreements; and
- (3) This request for progress payments does not include any amounts which CONTRACTOR intends to withhold or retain from SUBCONTRACTOR in accordance with the terms and conditions of the Subcontract.

SUBCONTRACTOR shall submit the original Application for Payment and two (2) copies to: Savannah River

Mission Completion LLC  
707-10B – (room)  
PO Box 790  
Aiken, SC 29809  
Attention:  
Reference: Subcontract No. (number)

### **13. TAX WITHHOLDING FOR NONRESIDENTS**

- A. Withholdings required by section 12-8-550 do not apply to payments on orders for tangible personal property when those payments are not accompanied by services to be performed within the state of South Carolina.
- B. Under Title 12 of the Code of Laws of South Carolina, section 12-8-550, two (2) percent of each and every payment made to subcontractors who are nonresidents of the State of South Carolina and are conducting a business or performing personal services of a temporary nature carried on within South Carolina Tax Commission. In cases where a subcontract exceeds or could reasonably be expected to exceed ten thousand dollars (\$10,000.00), CONTRACTOR will withhold as required by law.
- C. Under Title 12 of the Code of Laws of South Carolina, section 12-8-540, seven (7) percent (five (5) percent for corporations) of each and every payment of rentals or royalties to subcontractors who are nonresidents of the State of South Carolina must be withheld and forwarded to the South Carolina Tax Commission. In cases where the payments amount to twelve hundred dollars (\$1,200.00) or more a year, CONTRACTOR will withhold as required by law.

- D. The above withholdings will not be made provided the SUBCONTRACTOR presents the affidavit of registration with the South Carolina Department of Revenue or the South Carolina Secretary of State's Office, or proof of having posted the appropriate bond with the South Carolina Tax Commission.

#### 14. PRICING OF ADJUSTMENTS

When costs are a factor in any determination of a Subcontract adjustment pursuant to the General Provision titled "CHANGES", or any other provision of this Subcontract, such costs, upward or downward, shall be submitted by SUBCONTRACTOR in the form of a lump sum proposal on CONTRACTOR'S forms "Change Notice Proposal Summary" and "Proposal Detail Worksheet".

The proposal shall include an itemized breakdown of all increases or decreases in at least the following detail:

- A. Direct Labor. Charges for labor furnished and used by SUBCONTRACTOR shall be allowable for all manual classifications up to and including foremen. Charges shall not be included for superintendents, assistant superintendents, general foreman, surveyors, office personnel, timekeepers, a maintenance mechanics; these costs are recovered in the overhead and profit rates established by this clause. Labor rates used to calculate the costs shall be those rates in effect during accomplishment of the changes.

Direct labor costs shall include, in addition to direct payroll costs, payroll taxes, insurance, vacation allowance, subsistence, travel time, overtime premium and any other payroll additives required to be paid by SUBCONTRACTOR by law or labor agreement(s), e.g. Project Agreement, collective bargaining agreement(s), etc. Copies of certified pertinent payrolls shall be submitted to CONTRACTOR.

- B. Equipment. Charges shall be allowable for the rental and operation of all construction and automotive equipment furnished and used by SUBCONTRACTOR, except for equipment or tools with a new cost at point of origin of Five Hundred Dollars or less each, which are deemed to be covered in the overhead and profit rates established by this clause.

For SUBCONTRACTOR-owned construction equipment, reasonable equipment charges shall be allowed in accordance with the following:

1. rental rates as agreed upon in the Subcontract; or
2. rental rates not greater than seventy percent (70%) of "Rental Rate Blue Book by Equipment Watch" daily rental rates applicable for the period of performance of the change; and
3. appropriately discounted to stand-by rates for idle time reasonably required.

When the operated use of equipment is infrequent and, as determined by CONTRACTOR, such equipment need not remain at the work site continuously, charges shall be limited to actual hours of use. Equipment not operating but retained at the location of changes at CONTRACTOR'S direction shall be charged at the standby rate.

For Rental Equipment not owned by SUBCONTRACTOR, charges will be computed on the basis of actual invoice cost.

For the cost of both rented and owned to be allowable, SUBCONTRACTOR must justify and CONTRACTOR agree that the individual pieces of equipment are needed, are appropriate for the work, and that the mobilization costs are allocable to the change.

- C. Materials. Approved incurred costs for material incorporated into the changed Work or required for temporary construction facilities made necessary by the change shall be allowable at net cost delivered to the Jobsite.

- D. Overhead, Profit and All Other Costs. Overhead, profit and markup percentages included in the proposal, shall include, but not be limited to, insurance, use of small tools, incidental job burdens, and general home and field office expense. No percentages for overhead, profit or lower-tier markup will be allowed on employment taxes under FICA and FUTA. No percentage for profit will be allowed on delays.

The percentages for overhead and profit will be negotiated and may vary according to the nature, extent and complexity of the Work involved. The maximum percentage for the overhead, profit and markup shall not exceed those shown below.

For work subcontracted by SUBCONTRACTOR to a lower-tier subcontractor, the proposal submitted to CONTRACTOR shall only include one overhead percentage and one profit percentage in addition to SUBCONTRACTOR'S markup. No more than these three percentages will be allowed regardless of the number of tiers of subcontractors. The lower-tier's percentage of overhead and profit shall not exceed those shown below.

Allowable percentages on changes for direct hire work will not exceed the following: 10 percent overhead and 10 percent profit on the first \$20,000; 7.5 percent overhead and 7.5 percent profit on the next \$30,000; and 6.75 percent overhead and 6.75 percent profit on balance over \$50,000. Profit shall be computed by multiplying the profit percentage by the sum of the direct costs and computed overhead costs.

The SUBCONTRACTOR'S fee on work performed by lower-tier subcontractors will be based on the net increased cost to the SUBCONTRACTOR as applicable. Allowable fee on changes will not exceed the following: 8 percent fee on the first \$20,000; 5.5 percent fee on the next \$30,000; and 2 percent fee on balance over \$50,000.

## **15. APPLICABLE LAW**

Irrespective of the place of performance, the provisions in this Subcontract which adopt or adapt GOVERNMENT acquisition regulations shall be construed and interpreted according to the federal common law of GOVERNMENT contracts as enunciated and applied by federal judicial bodies, boards of contract appeals, and quasi-judicial agencies of the GOVERNMENT. To the extent that the federal common law of GOVERNMENT contracts is not dispositive, the laws of the State of South Carolina shall apply.

## **16. CONFIDENTIALITY OF INFORMATION (NONDISCLOSURE)**

To the extent that the work under this Subcontract requires that SUBCONTRACTOR be given access to confidential or proprietary business, technical or financial information belonging to the GOVERNMENT, CONTRACTOR or other companies, SUBCONTRACTOR shall, after receipt thereof, treat such information as confidential and agrees not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by CONTRACTOR or the Contracting Officer in writing. The foregoing obligations, however, shall not apply to:

1. Information which, at the time of receipt by SUBCONTRACTOR, is in public domain;
2. Information which is published after receipt thereof by SUBCONTRACTOR or otherwise becomes part of the public domain through no fault of SUBCONTRACTOR;
3. Information which the SUBCONTRACTOR can demonstrate was received by it from a third party that did not require the SUBCONTRACTOR to hold it in confidence;
4. Information which the SUBCONTRACTOR can demonstrate was in its possession at the time of receipt thereof and was not acquired directly or indirectly from CONTRACTOR, the GOVERNMENT or other companies.

SUBCONTRACTOR further agrees that it will not, without the prior written consent of CONTRACTOR or the GOVERNMENT, disclose to any third party any information developed or obtained by SUBCONTRACTOR in the

performance of this Subcontract except to the extent that such information falls within one of the categories described in 1, 2, or 3 above.

If so requested by CONTRACTOR or the GOVERNMENT, SUBCONTRACTOR further agrees to require its employees to execute a nondisclosure agreement prior to performing any Work under this Subcontract.

SUBCONTRACTOR shall obtain the written agreement, in a form satisfactory to CONTRACTOR, of each employee permitted access, whereby the employee agrees that he will not discuss, divulge or disclose any such information or data to any person or entity except those persons within the SUBCONTRACTORS organization directly concerned with the performance of the Subcontract.

SUBCONTRACTOR agrees, if requested by CONTRACTOR, or the GOVERNMENT, to sign an agreement identical, in all material respects, to the provisions of this Article, with each company supplying information to SUBCONTRACTOR under this Subcontract, and to supply a copy of such agreement to CONTRACTOR. From time to time upon request of CONTRACTOR, SUBCONTRACTOR shall supply CONTRACTOR with reports itemizing information received as confidential or proprietary and setting forth the company or companies from which SUBCONTRACTOR received such information.

SUBCONTRACTOR agrees that upon request by CONTRACTOR or DOE, it will execute a DOE-approved agreement, with any party whose facilities or proprietary data it is given access to or is furnished, restricting the use and disclosure of the data or the information obtained from the facilities. Upon request by CONTRACTOR or DOE such an agreement shall also be signed by SUBCONTRACTOR personnel.

#### **17. LIQUIDATED DAMAGES**

The parties hereby agree that the damages which CONTRACTOR or the GOVERNMENT will sustain as a result of SUBCONTRACTOR'S failure to meet key Subcontract Milestones are difficult or impossible to determine with certainty and, therefore, have in good faith estimated as fair compensation (and not as a penalty) the liquidated damages as set forth below. If SUBCONTRACTOR fails to deliver the equipment or materials or perform the services within the time frames specified in the Subcontract for the Subcontract Milestones listed below, or any extensions evidenced by a Change Notice or duly executed Subcontract Modification, the SUBCONTRACTOR shall pay to CONTRACTOR as fixed, agreed, and liquidated damages for each calendar day of delay the sum(s) specified below, which amounts shall be independently calculated for each Subcontract Milestone.

<u>NO.</u>	<u>SUBCONTRACT MILESTONE</u>	<u>AMOUNT OF DAILY LIQUIDATED DAMAGES</u>
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#### **18. AUTHORITY OF PERSONNEL**

A. The CONTRACTOR will designate a Procurement Representative who will be responsible for administering the Subcontract terms and conditions and who shall act as the CONTRACTOR'S authorized representative. Additionally, all correspondence shall be issued and received by the designated Procurement Representative. The only individual authorized to direct the SUBCONTRACTOR to deviate from the express, written terms of the Subcontract is the authorized Procurement Representative.

The Procurement Representative is: (name)

B. The CONTRACTOR will designate a STR who will be responsible for the technical aspects of the performance of the Subcontract. The STR may designate other personnel to oversee the performance of the Work, sign field tickets, etc. However, the designated STR retains ultimate authority over the technical aspects of the Work. Should the SUBCONTRACTOR and STR disagree over the technical requirements of the Subcontract, such matters will be immediately referred to the CONTRACTOR'S Procurement Representative for resolution. The STR does not possess authority, express or implied, to direct the SUBCONTRACTOR to deviate from the terms and conditions of the Subcontract.

The STR is: (name)

## 19. PROCUREMENT INTEGRITY

- A. The SUBCONTRACTOR warrants that it is familiar with and will comply with all the requirements of Section 27 of the Office of Federal Procurement Policy Act of 1988 (41 U.S.C. 423) as implemented in the Federal Acquisition Regulations (referred to in this clause as "the Act"), including, but not limited to: (1) prohibitions on giving or offering future employment, money or anything of value to a procurement official, (2) prohibitions on soliciting or obtaining from an agency, prior to award, any proprietary or source selection information regarding the procurement, and (3) limits on participation of former GOVERNMENT employees and officials in negotiation and performance of GOVERNMENT contracts. For a violation of the Act, the GOVERNMENT may reduce the fee or profit on the contract, terminate all or a portion of the contract for default, suspend or debar the contractor from future GOVERNMENT work, impose fines or imprisonment or pursue other legal remedies.
- B. In addition to any other remedies provided by law or herein, the SUBCONTRACTOR agrees to indemnify and hold CONTRACTOR harmless to the full extent of any loss (including any reduction in fee or profit), damages or expenses (including attorneys' fee) if any of the SUBCONTRACTOR'S actions, acting alone or in concert with any other person or entity, cause the GOVERNMENT to enforce the provisions of the Act or related regulations.
- C. The SUBCONTRACTOR agrees to include the substance of this clause, including this paragraph C, appropriately modified to reflect the identity and relationship of the parties, in all lower tier subcontracts in amounts exceeding \$100,000.

## 20. SMALL BUSINESS SUBCONTRACTING PLAN

*(This provision applies to subcontracts awarded to large businesses with revenues equal to or in excess of \$ 1,000,000.)*

It is a requirement of this Subcontract that a Subcontracting Plan be submitted and approved in accordance with FAR Clause 52.219-9 "Small Business Subcontracting Plan". The approved Subcontracting Plan is hereby established as an enforceable part of this Subcontract. The failure of SUBCONTRACTOR or its lower-tier subcontractor(s) to comply in good faith with the approved Subcontracting Plan shall be considered a material breach of the Subcontract.

SUBCONTRACTOR shall submit reports of lower-tier subcontract awards to small, small disadvantaged, woman owned, HUBZone, Veteran Owned, and Service-Disabled Veteran-Owned small business concerns electronically via the Electronic Subcontracting Reporting System (eSRS) at <http://www.esrs.gov>. The Subcontracting Report for Individual Contracts (formally the SF-294) shall be entered into eSRS semiannually and at Subcontract completion. The Summary Subcontract Report (formally the SF-295) shall be entered into eSRS annually.

## 21. CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS

*(This provision applies to subcontracts awarded in excess of the Simplified Acquisition Threshold of \$250,000 (\$1,000,000 for Construction))*

It is a requirement of this Subcontract, that Subcontractor comply with FAR Clause 52.203-17, "Contractor Employee Whistleblower rights and Requirements to Inform Employees of Whistleblower Rights" (Jun 2020)

## 22. RESERVED

## 23. WORK HOURS AND HOLIDAYS

Work Hours. Work scheduled at the Savannah River Site shall be in accordance with Exhibit "G" Project Agreement, Article XI, Hours of Work, Overtime, Shift Provisions. SUBCONTRACTOR shall inform STR of the intended weekly work schedule at the Pre-construction Meeting. Any change to this schedule or subsequent schedules shall be submitted by SUBCONTRACTOR in writing to the STR at least one week prior to desired start of the

proposed schedule. The STR shall authorize any approved weekly work schedule change in writing.

Holidays. Holidays at the Savannah River Site shall be in accordance with Exhibit "G" Project Agreement, Article XII, Holidays.

**24. RECEIPT OF SUBCONTRACTOR'S MATERIAL AND/OR EQUIPMENT ON-SITE  
(Supplements Article 22)**

SUBCONTRACTOR shall not schedule materials and/or equipment for delivery to the Jobsite until such time as it is mobilized to receive and accept property at the Jobsite. SUBCONTRACTOR shall certify all materials and/or equipment brought onto the site is free from any contamination. CONTRACTOR reserves the right to perform survey of any materials/equipment for presence of hazardous or radioactive material prior to bringing the materials/equipment into or from the Jobsite. Any deficiencies shall be corrected or material/equipment replaced at the expense of the SUBCONTRACTOR.

SUBCONTRACTOR is not permitted to use CONTRACTOR'S mailing address and in no case shall material or equipment be addressed in care of CONTRACTOR. It is recognized that special conditions may exist that would warrant assistance in the delivery of equipment or materials by CONTRACTOR. However, in these cases the SUBCONTRACTOR must have explicit prior written authorization from CONTRACTOR.

SUBCONTRACTOR'S suppliers and equipment delivery shall access SRS at the Aiken Barricade located on South Carolina Highway 19, approximately one mile south of SC Highway 278. Access shall only be gained between 8:00 a.m. and 3:00 p.m., Monday through Friday. SUBCONTRACTOR shall notify STR one working day in advance of anticipated deliveries whenever possible, for this will help expedite the process. Delivery personnel who have a current SRS Photo Badge can go directly to the Aiken Barricade for access into the SRS Site Security Contractor perimeter guard will perform a security inspection at the barricade. If escort is required, SUBCONTRACTOR'S ACP is called. If delivery personnel do not have a current SRS Photo Badge they must report to the Badging Office located in Building 703-46A at SRS Road 1, approximately two miles east of SC Highway 125 in Jackson, SC, to obtain a temporary badge prior to reporting to the Aiken Barricade for entrance into the SRS. Following are the events that will occur after arrival at the Badging Office:

- Bill of Lading (include CONTRACTOR'S Subcontract number) shall be validated by the CONTRACTOR'S Representative at the Badging Office
- CONTRACTOR'S Representative issues "Visitor/Vendor Safety Briefing"
- CONTRACTOR issues temporary (Maroon) badge
- After obtaining temporary badge, driver can proceed to the Aiken Barricade for site access
- WSI perimeter guard performs security inspection
- Escort is called (SUBCONTRACTOR'S ACP)
- ACP escorts supplier to jobsite
- ACP relates specific safety measures for loading/unloading
- After delivery is completed, the ACP escorts supplier back to Aiken Barricade

**25. TITLE AND RISK OF LOSS**

Where SUBCONTRACTOR fabricates or purchases equipment, materials or other tangible items (Goods) for incorporation into the Work or any of its separate parts, the title of such Goods shall be vested in the GOVERNMENT when the first of the following events occurs:

1. the Goods or part thereof is first identifiable as being appropriated to the Subcontract,
2. when CONTRACTOR pays for the Goods or part thereof in accordance with the Subcontract, or
3. when the Goods or part thereof are dispatched to or from SUBCONTRACTOR'S fabrication yard or to the Jobsite.

However, such transfer of title in the Goods will be without prejudice of CONTRACTOR'S right to refuse the Goods in case of non-conformity with the requirements of the Subcontract.

Irrespective of transfer of title in the Goods, SUBCONTRACTOR shall remain responsible for risk of loss or damage to work in progress and all Goods until Final Acceptance.

SUBCONTRACTOR shall ensure that the above provisions are imposed upon its suppliers and subcontractors of any tier and shall execute all documents and take all steps necessary or required by CONTRACTOR to vest title as CONTRACTOR may direct.

Title to standard Goods of the type usually bought in bulk such as reinforcement bars, piping materials, non-tagged instruments and instrument installation material, cable and similar items which are not incorporated into the Work shall revert to SUBCONTRACTOR upon agreement by the CONTRACTOR that such Goods are not required for the Work.

## **26. COMPONENT WARRANTIES**

In addition to the General Provision titled "WARRANTY" SUBCONTRACTOR shall obtain or provide, for the benefit of CONTRACTOR, the GOVERNMENT and their successors in interest, warranties or guarantees for the equipment, materials and work furnished by lower-tier subcontractors and suppliers. Such warranties or guarantees are to run for the period set forth in the applicable specification of this Subcontract or, when not specified, that period customarily provided by the supplier. SUBCONTRACTOR shall use its best efforts to enforce such lower-tier warranties or guarantees on its own behalf or, if requested by CONTRACTOR or the GOVERNMENT, on behalf of CONTRACTOR or the GOVERNMENT. SUBCONTRACTOR shall provide warranty documentation by Final Acceptance or as otherwise required by this Subcontract.

## **27. SECURITY REQUIREMENTS**

### **A. GENERAL SECURITY REQUIREMENTS**

Citizenship - SUBCONTRACTOR employees and its subcontractors' employees who require authorization to have access to the Site must be a citizen of the United States and be able to provide proof of citizenship.

Property Passes - Property passes are necessary for the movement of GOVERNMENT property on or offsite.

### **B. ESCORTS**

#### **(Alternate 1.)**

CONTRACTOR will provide all Security Escorts required for the performance of Work under this Subcontract. The number of escorts to be provided by CONTRACTOR will be established in Section III, "Security and Escort Data" of the Subcontract Field Conditions, an attachment to these Special Provisions. CONTRACTOR shall provide and pay for escort services to support a reasonable level of staffing during regular working hours through to the contractual Physical Completion of the work. Should SUBCONTRACTOR require additional escorts due to higher staffing levels; or require escorts for overtime, weekends, or holiday work; or should the work extend past the contractual Physical Completion date at no fault of CONTRACTOR, the SUBCONTRACTOR will be responsible for the cost of such escort services.

#### **(Alternate 2.)**

SUBCONTRACTOR will provide all Security Escorts required for the performance of Work under this Subcontract.

#### **(Alternate 3.)**

Security escorts are not required for the performance of this Work.

### **C. SECURITY BADGING REQUIREMENTS**

1. Photo Badge

Employees may be issued a site access photo badge for a period not to exceed one year. To obtain a Photo Badge, SUBCONTRACTOR employees and any lower-tier subcontractor employees must be processed through CONTRACTOR'S Subcontract Badging Procedure and are subject to investigation by GOVERNMENT authorities. All badges must be returned or accounted for prior to final payment. All employees must be at least 18 years old.

SUBCONTRACTOR employees and any lower tier subcontractor employees shall complete Subcontractor 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 Federal Government form SF 85, "Questionnaire for Non-Sensitive Positions", and Federal Government form OF 306, "Declaration for Federal Employment". These forms are required for the GOVERNMENT'S use in conducting background investigations per Homeland Security Presidential Directive HSPD-12. Copies of these forms are available on the CONTRACTOR'S Internet Home Page at [www.srsimcc.com](http://www.srsimcc.com).

CONTRACTOR will observe the following badging procedure for processing the SUBCONTRACTOR employees through employment and security orientation:

- a. A minimum of two working days prior to the start of the badging and orientation process, SUBCONTRACTOR shall transmit the following information to the STR:
  - CONTRACTOR'S Subcontract Number
  - Employee name
  - Employee address
  - Employee Social Security Number
  - Employee Date of Birth
- b. SUBCONTRACTOR employee shall report to SRS Building 703-46A at SRS Road 1, approximately four miles east of SC Highway 125 in Jackson, South Carolina. Employee shall be given a temporary badge for travel to SRS Central Shops Area for Substance Abuse Program (SAP) Testing. (*See* Subcontract General Provisions article GP-48.) Since General Employee Training (GET) is only given on Mondays, it is recommended that SAP Testing be scheduled at least by Wednesday of the week prior to the scheduled GET.
- c. "General Employee Training (GET) for Subcontract Personnel" is required under this Subcontract, each employee must successfully pass the requirements prior to undergoing the badging procedure (*See* Subcontract General Provisions Article 48). GET requires eight (8) hours to complete. GET is only given on Monday of each week in the Jackson, SC municipal building, and should be scheduled well in advance of the desired date in order to assure placement.
- d. The orientation and badging process will take approximately four (4) hours.

The maximum duration that SUBCONTRACTOR employees will be issued a site access badge is one (1) year. SUBCONTRACTOR employees requiring a new badge will report to the Badge Office and repeat the badging process.

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.

2. Temporary Badge (typically for visitors and short-term personnel). These 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.

- a. Two working days prior to the need date, SUBCONTRACTOR shall transmit the following information to the STR:
  - CONTRACTOR'S Subcontract Number
  - Employee name
  - Employee address
  - Employee Social Security Number
  - Employee Date of Birth
- b. SUBCONTRACTOR'S ACP shall perform Task Analysis of scope to be performed and identify any applicable contractual task specific checklist(s).
- c. ACP shall provide advance copy of any task specific safety checklist(s) to personnel seeking temporary badges.
- d. Badge Office provides initial security briefing, issues registration card and obtains acknowledgement signature, issues "maroon" Visitors Badge for duration requested by STR
- e. ACP issues "Subcontractor Safety Handbook" and reviews any applicable checklist(s).
- f. Upon completion of scope, return badge to Badge Office upon exiting SRS.

3. Identity Verification.

- a. In order to receive a photo or temporary badge for entry to SRS, subcontractor/supplier employees, except delivery personnel (*see* subparagraph (b) 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 SRS Internet Home Page at [www.srsimcc.com](http://www.srsimcc.com). At least one of the documents selected from the list must be a valid State or GOVERNMENT-issued picture ID.
- b. 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 be escorted at all times to the delivery location and back to the entrance barricade by the Assigned Competent Person.

4. Suspension or Removal of Employees. If SUBCONTRACTOR or any lower-tier subcontractor should independently suspend or remove an employee from work at the Savannah River Site (SRS) for unsafe acts or behavior, SUBCONTRACTOR shall immediately notify the STR, return the employee's badge to the STR, and provide the STR with written notification of the employee's name and reason(s) for such suspension or removal.

D. VEHICLES

Vehicles to be used in performance of the Work must be individually authorized. Personal vehicles are not allowed at the Jobsite. A list of vehicles needed should be presented to the STR at the pre-construction meeting. CONTRACTOR reserves the right to reject certain vehicles that are deemed not required for the Work.

E. ALTERNATE SITE ACCESS

At any time during the performance of the Subcontract, the SUBCONTRACTOR and its lower-tier subcontractors, suppliers and vendors may, on one day's notice, be required to enter and exit the site by a specific gate to be designated by CONTRACTOR.

This designated gate will be open Monday through Friday (except holidays listed elsewhere), from 5:30 a.m. until 7:00 p.m. Any weekend and off-hour operation of this gate will be considered on a case by case basis and must be requested 48 hours in advance of need through the Procurement Representative.

Upon notice by CONTRACTOR, SUBCONTRACTOR personnel shall report to the Employment Office to be badged for entering and exiting this gate. This badge will be honored exclusively at the assigned gate. Personnel wearing this badge who attempt to enter or exit the site at locations other than the assigned gate will be denied passage and directed to the proper gate. CONTRACTOR will only compensate the SUBCONTRACTOR for the increased cost of being rebadged.

Personnel utilizing this gate may be required to sign in and out and their vehicles will be subject to inspection by the Site Security force.

F. TWO-WAY RADIOS AND CELLULAR TELEPHONES Two-

Way Radios

Subcontractors performing Work at the Savannah River Site and GOVERNMENT leased properties are permitted to use licensed two-way radios in performance of their duties. Registration of the units with the Local Frequency Coordinator (LFC) is required if the radio will be used on site, or leased facilities, for a period exceeding 24 hours. Cellular telephones, citizens band and amateur radios installed in vehicles are exempted from registration.

"SRS Vendor/Subcontractor Radio Registration Form" (Form No. OSR 18-92) shall be completed by SUBCONTRACTOR and the original submitted to the cognizant STR. A Copy of the registration form must also be sent to the cognizant Procurement Representative.

Cellular Telephones

Cellular telephones are permitted on General Site and in Property Protection Areas, but not in Secure Areas protecting classified activities (i.e., Limited Areas, Protected Areas, Material Access Areas, Exclusion Areas). Cellular telephones permanently installed in a vehicle will be allowed in secure areas. Cellular telephones which are not installed in vehicles will not be allowed in secure areas.

G. UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION (UCNI)

In the performance of this Subcontract, SUBCONTRACTOR is responsible for complying with the following requirements and for flowing down all requirements to lower-tier subcontractors.

1. SUBCONTRACTOR ensures that access to UCNI is provided to only those individuals authorized for routing or special access (*see* DOE O 471.1B). SUBCONTRACTOR may provide access to material of data containing Unclassified Controlled Nuclear Information (UCNI) utilized in the performance of this Subcontract only to employees who are citizens of the United States.
2. SUBCONTRACTOR ensures that matter identified as UCNI is protected in accordance with the instructions contained in DOE O 471.1B . Any material or data containing UCNI which is stored on computer systems must be protected, and the protective measures and/or policies must be

specified in a Computer Protection Plan approved by CONTRACTOR. Adherence to the Plan is required during the performance of this Subcontract.

3. Material or data containing UCNI shall be disposed of in a manner as described in DOE O 471.1B. At a minimum, UCNI matter must be destroyed by using strip cut shredders that result in particles of no more than 1/4-inch wide strips. Documents containing UCNI may also be disposed of in the same manner that is authorized for SUBCONTRACTOR disposition of other classified material or data. If the above disposal

methods are not available to the SUBCONTRACTOR, the SUBCONTRACTOR may return the UCNI matter to the STR for disposition, with the prior approval of the STR.

4. SUBCONTRACTOR shall report to the CONTRACTOR'S Procurement Representative any incidents involving the unauthorized disclosure of UCNI.
5. If performance of work under this Subcontract results in the generation of unclassified documents that contain UCNI, SUBCONTRACTOR shall have a sufficient number of trained UCNI review personnel to ensure the prompt and proper review of generated material or data determined to contain UCNI. SUBCONTRACTOR'S Reviewing Officials shall apply or authorize the application of UCNI markings to any unclassified matter that contains UCNI in accordance with the instructions contained in DOE O 471.1B.
6. If SUBCONTRACTOR has a formally designated Classification Officer, the Classification Officer-
  - a. Serves as a Reviewing Official for information under his/her cognizance.
  - b. Trains and designates other Reviewing Officials in his/her organization subordinate organization, and lower-tier subcontractors and maintains a current list of all Reviewing Officials; and
  - c. May overrule UCNI determinations made by Reviewing Officials under his/her cognizance.
7. If SUBCONTRACTOR has no formally designated Classification Officer, SUBCONTRACTOR submits a request for the designation of Reviewing Officials to the local Federal Classification Officer in accordance with the instructions contained in DOE O 471.1B.

#### H. SUBCONTRACTOR USE OF ELECTRONIC EQUIPMENT/COMPUTERS

Use of handheld computers, organizers, databank watches, cell phones, beepers, cameras, recording equipment and any other similar devices which might be used for business information communications, processing or data storage in the performance of this Subcontract is strictly limited. Prior to using any of the foregoing in the performance of work at the SRS site, SUBCONTRACTOR shall provide to CONTRACTOR'S Representative for approval a listing of such equipment, together with an explanation of the need for such equipment in the performance of the work. Employee-owned devices may be brought on the general site as long as they remain in the employee's vehicles. They may not be brought into any site facility or property protected area. All such devices are subject to inspection by authorized SRS personnel. In no event may any of the foregoing be used in violation of SRS security requirements.

#### 28. QUALITY ASSURANCE

CONTRACTOR utilizes a work-specific Quality Assurance system to assure the quality of work performed under this Subcontract. A primary requirement of this Quality Assurance system is that SUBCONTRACTOR has the full responsibility for assuring that all work (which term included but is not limited to submittals, materials, workmanship, manufacturing or manufacture and fabrication of components) performed by it or its lower-tier is in strict compliance with the Subcontract Documents. SUBCONTRACTOR shall select the methods used to satisfy this requirement and the methods selected shall be subject to review by CONTRACTOR.

If this Subcontract includes work that CONTRACTOR considers to be of a special nature, specific Quality Assurance requirements that are in addition to and supplement the primary requirements shall be included in Exhibit "E" Scope of Work and Technical Specifications.

#### 29. USE OF CONTRACTOR FACILITIES AND EQUIPMENT (supplements GP-24)

SUBCONTRACTOR personnel will not be permitted to use Site facilities, cafeterias, lunchrooms, restrooms, or change rooms, unless stated otherwise.

SUBCONTRACTOR must furnish its own drinking water which meets the requirements of Federal and the State of South Carolina laws. CONTRACTOR will furnish sanitary facilities and will be coordinated by the STR.

CONTRACTOR will not furnish any enclosed storage areas unless stated otherwise. If SUBCONTRACTOR provides his own such facilities, the location shall be approved by CONTRACTOR.

CONTRACTOR will not provide flammable storage facilities. If SUBCONTRACTOR provides his own such facility, the location and details of construction must be approved by CONTRACTOR, and shall comply with OSHA, DOT, and SCDHEC requirements.

CONTRACTOR may be tasked to use GOVERNMENT-owned equipment (e.g., telecommunications equipment, computers) as part of the Subcontract scope of work. CONTRACTOR employees shall not use any GOVERNMENT-owned equipment for personal use.

**30. WELDING REQUIREMENTS**

All welding performed within the confines of the Savannah River Site under this Subcontract shall be in strict accordance with the applicable codes, technical specifications, design drawings, and all other specified design documents stated within the body of the Subcontract. "Welding" shall be defined but not be limited to the acts of welding, brazing, bonding, and soldering. The SUBCONTRACTOR, as allowed by governing codes, has the option of using SRS' welding program in accordance with "WSRC-TM-95-1 SRS Engineering Standards Manual-W-SPP-G-00013, SRS Subcontractor Welding Performance. Per Specification W-SPP-G-00013, Subcontractors, electing to use the Site welding program, as allowed by ASME B31.3, Par. 328.2.2, shall complete form "Subcontractors Acceptance of Site WPS(s)" accepting responsibility for the use of the WPS prior to performing welding. (Note: "Subcontractors Acceptance of Site WPS(s)" form is Attachment 5.1 in the specification)

Subcontractors electing not to use the site welding program shall submit their own qualified WPS(s) and supporting Procedure Qualification Record (PQR) for approval prior to welding. The SUBCONTRACTOR'S welding program shall be reviewed and approved prior to welding activities being performed onsite.

SUBCONTRACTOR and its individual employees agree that off-site use of SRS Welding Procedures and Welder Qualifications obtained at SRS shall be at the sole risk and responsibility of the SUBCONTRACTOR, and SUBCONTRACTOR shall indemnify and save CONTRACTOR and the GOVERNMENT harmless from any and all claims, demands, actions or causes of action, and for any expense or loss by reason of SUBCONTRACTOR'S and their employees' possession and use of SRS procedures and qualifications.

**31. DAVIS-BACON ACT REQUIREMENTS**

This Subcontract is subject to the Davis-Bacon Act. The following describes some of the basic requirements of the Act. CONTRACTOR in no way warrants that this Special Provision represents SUBCONTRACTOR'S total obligations under the Act. SUBCONTRACTOR has the sole responsibility to ensure that it fully complies with the Act and the regulations at 29 CFR Part 5 which implements the Act and the Department of Labor's wage determination found as Attachment "B" to Exhibit "G" PROJECT AGREEMENT. Failure to comply with the Act shall constitute a breach of this contract as well as a violation of the Act. A local office of the United States Department of Labor should be contacted if you have specific questions on the requirements of the Act.

Those Offices are:	Augusta, GA	(706)	860-6557
	Atlanta, GA	(404)	893-4600
	Columbia, SC	(803)	765-5981

CLASSIFICATION OF WORKERS

The wage determination incorporated in this Subcontract lists several classifications of workers. Selecting the appropriate classification is the responsibility of SUBCONTRACTOR, based upon a review of the duties required in the Subcontract Documents and the type of work performed by the employee. The prevailing work practices at the

Savannah River Site may differ from industry standards. No adjustments to this Subcontract will be granted for SUBCONTRACTOR'S failure to properly classify employees. If SUBCONTRACTOR employs any apprentices, CONTRACTOR will request a copy of the program registration for that employee. Failure to obtain and submit such registration will result in a requirement to pay journeymen rates for such apprentices.

## DISPUTES CONCERNING LABOR STANDARDS

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures. Disputes within the meaning of this Special Provision include disputes between SUBCONTRACTOR or any of its lower-tier subcontractors and CONTRACTOR, the United States Department of Labor, or their employees or representatives.

The wage rates stipulated in the Department of Labor's wage determination are the hourly rates for work at the Site. SUBCONTRACTOR is responsible for paying the prevailing rate to the worker for the classification of work actually performed.

Overtime must be paid at time and one-half the basic rate or the regular rate, whichever is higher, and the designated fringe benefits rate must be paid for all hours worked under this Subcontract. The hours worked by an employee on both CONTRACTOR and non-CONTRACTOR work are to be included in the calculation of hours worked for overtime purposes.

Construction workers employed under this Subcontract are entitled to receive the fringe benefits stipulated in the wage determination. SUBCONTRACTOR may discharge its obligations under this provision by 1) providing bona fide plans, funds, or programs, the minimum value of which is the monetary amounts shown in the wage determination; 2) providing plans, funds, or programs of a lesser value and paying the difference in wages to the employee; 3) paying a cash equivalent to the employee. SUBCONTRACTOR may be required to provide justification for the differential of fringe benefits.

SUBCONTRACTOR is required to submit payrolls for its covered employees and all lower-tier subcontractor employees to the Procurement Representative within seven (7) days of close of the pay period. The payrolls must be accompanied by a signed "Statement of Compliance," certifying the information is correct and complete. SUBCONTRACTOR is responsible for compliance with 29 CFR Part 3.

The minimum information required on all payrolls is shown on CONTRACTOR form, "Subcontractor Payroll Certification" found as Attachment "B" to Exhibit "B" SPECIAL PROVISIONS. The following provides guidance for some of the items on the form:

1. Item 3 is the employee's work classification as listed in the wage determination. A company code or other abbreviations are not acceptable.
2. Item 4 is for the hours worked each day while under this Subcontract. Hours worked on other jobs shall not be listed on payrolls submitted under this Subcontract.
3. Item 5 should only include the total hours worked under this Subcontract.
4. Item 6 is for the rate of pay for the work classification listed in item 3 of the payroll.
5. On the back of the form, item 4, one or both of the blocks must be checked, as applicable. As part of the certification, the payrolls must state how the fringe benefits are accounted for.

If the SUBCONTRACTOR fails to submit the required certified payroll records for its covered employees to the Procurement Representative within seven (7) days of close of the pay period, the CONTRACTOR may, after written notice to the SUBCONTRACTOR suspend any further payment, advance, or guarantee of funds regarding this contract.

If the SUBCONTRACTOR fails to assure the required certified payroll records for all covered employees of all its lower-tier subcontractor employees are submitted to the Procurement Representative within seven (7) days of close of the pay period, the CONTRACTOR may, after written notice to the SUBCONTRACTOR suspend any further payment, advance, or guarantee of funds regarding this contract.

SUBCONTRACTORS that are found to be in willful violation of the Davis-Bacon requirements may also be debarred –

ineligible to participate in any DBA/DBRA contracts – for up to three years. Debarment applies to any firm, corporation, partnership or association in which the subcontractor or its lower-tiers has a substantial interest. Debarment proceedings are described in 29 CFR 5.12.

#### STATEMENT AND ACKNOWLEDGMENT FORM

SUBCONTRACTOR is required to deliver to the Procurement Representative, ten days after award, a completed "Statement and Acknowledgment Form" (SF 1413), copy available on the SRS Internet Home Page, for each lower-tier subcontract

#### CRAFTS PERSONNEL REQUISITION FORM

SUBCONTRACTOR shall utilize the "Crafts Personnel Form", Attachment C, to request craft personnel from the Union Halls.

### **32. LIMITATION OF FUNDS**

- A. Of the total price of this Subcontract, the sum of \$\_\_\_\_ is presently available for payment and allotted to this Subcontract. It is anticipated that additional funds will be allocated to the Subcontract in accordance with the schedule noted below until the total price of the Subcontract is funded.
- B SUBCONTRACTOR agrees to perform or have performed work on this Subcontract up to the point at which, if this Subcontract is terminated pursuant to the Termination provisions of this Subcontract, the total amount payable by CONTRACTOR (including amounts payable for subcontracts and settlement costs) pursuant to the Termination provisions would, in the exercise of reasonable judgment by SUBCONTRACTOR, approximate the total amount at the time allotted to the Subcontract. SUBCONTRACTOR is not obligated to continue performance of the work beyond that point. CONTRACTOR is not obligated in any event to pay or reimburse SUBCONTRACTOR more than the amount from time to time allotted to the Subcontract, anything to the contrary in the Termination provisions notwithstanding.
- C. 1. It is contemplated that funds presently allotted to this Subcontract will cover the work to be performed until \_\_\_\_\_.
2. If funds allotted are considered by SUBCONTRACTOR to be inadequate to cover the work to be performed until that date, or an agreed date substituted for it, SUBCONTRACTOR shall notify CONTRACTOR in writing when within the next 60 days the work will reach a point at which, if SUBCONTRACTOR is terminated pursuant to the Termination provisions of the Subcontract, the total amount payable by CONTRACTOR (including amounts payable for subcontracts and settlement costs) pursuant to the Termination Article will approximate 75 percent of the total amount then allotted to the Subcontract.
3. (i) The notice shall state the estimated date when the point referred to in subparagraph C.2 of this clause will be reached and the estimated amount of additional funds required to continue performance to the date specified in subparagraph C.1 of this clause, or an agreed date substituted for it.
- (ii) SUBCONTRACTOR shall, 60 days in advance of the date specified in subparagraph C.1 of this clause, or an agreed date substituted for it, advise CONTRACTOR in writing as to the estimated amount of additional funds required for the timely performance of the Subcontract for a further period as may be specified in the Subcontract or otherwise agreed to by the parties.
4. If, after the notification referred to in subdivision C.3.(ii) of this clause, additional funds are not allotted by the date specified in subparagraph C.1 of this clause, or an agreed date substituted for it, CONTRACTOR shall, upon SUBCONTRACTOR'S written request, terminate this Subcontract on that date or on the date set forth in the request, whichever is later, pursuant to the Termination provision.
- D. When additional funds are allotted from time to time for continued performance of the work under this Subcontract, the parties shall agree on the applicable period of Subcontract performance to be covered by these

funds. The provisions of paragraphs B and C of this clause shall apply to these additional allotted funds and the substituted date pertaining to them, and the Subcontract shall be modified accordingly.

- E. If, solely by reason of CONTRACTOR failure to allot additional funds in amount sufficient for the timely performance of this Subcontract, SUBCONTRACTOR incurs additional costs or if delayed in the performance of the work under this Subcontract, and if additional funds are allotted, an equitable adjustment shall be made in the price or prices (including appropriate target, billing and ceiling prices where applicable) of the work to be performed.
- F. CONTRACTOR may at any time before termination, and with the consent of SUBCONTRACTOR, after notice of termination, allot additional funds for the Subcontract.
- G. The provisions of this clause with respect to termination shall in no way be deemed to limit the right of CONTRACTOR under the Default Article of this Subcontract. This clause shall become inoperative upon the allotment of funds for the total price of the work under this Subcontract except for rights and obligations then existing under this clause.

### 33. SUSPECT/DEFECTIVE/COUNTERFEIT PARTS IDENTIFICATION

SUBCONTRACTOR'S shall supply products at Savannah River Site that are not and do not contain suspect/defective/counterfeit parts. SUBCONTRACTOR shall establish a Suspect/Defective/Counterfeit Parts Identification Program that provides identification, notification, and disposition of suspect/defective/counterfeit parts.

#### Procurement Documents

SUBCONTRACTOR shall ensure that procurement documents executed in the acquisition of products under this Subcontract include these Suspect/Defective/Counterfeit Parts Identification Program requirements and exclude identified suspect/defective/counterfeit parts from the procurement process and subsequent installation.

#### Identification

A defective part is any part that has recognized, common manufacturing flaw. A suspect/counterfeit part is any item who's characteristic or identity does not appear to be authentic and is verified to be either counterfeit or fraudulent; or is refurbished, remanufactured, or has material substitutions as determined by the following definitions:

- **counterfeit** – forgery, or an imitation with the intent to deceive
- **fraudulent** – deliberate intent to misrepresent the actual characteristics of an item
- **material substitution** – occurs when a change to specified material of an item is made (failure by the supplier to document the material substitution is considered to be fraud, and the item then becomes suspect/counterfeit)
- **refurbished** - item that is taken part, cleaned, adjusted, inspected, or cosmetically enhanced (failure by the supplier to identify that the part is refurbished is considered to be fraud, and the item then becomes suspect/counterfeit)
- **remanufactured** – item that is refurbished, physically modified, or where its subcomponents were replaced (failure by the supplier to identify that the part is remanufactured is considered to be fraud, and the item then becomes suspect/counterfeit).

SUBCONTRACTOR identification program shall monitor these characteristics particularly at receipt inspection and at time of installation

#### Notification

Immediately upon determination that a part is or may be suspect/defective/counterfeit, notify the CONTRACTOR STR for disposition, if it is determined that a suspect/defective/counterfeit part has been supplied, CONTRACTOR will then

notify the local Department of Energy Office of Inspector General.

#### **34. VARIATION IN ESTIMATED QUANTITY**

If the quantity of a unit-priced item in this Subcontract is an estimated quantity and the actual quantity of the unit-priced item varies more than 15 percent above or below the estimated quantity, an equitable adjustment in the Subcontract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above 115 percent or below 85 percent of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, SUBCONTRACTOR may request, in writing, an extension of time, to be received by CONTRACTOR WITHIN 10 days from the beginning of the delay, or within such further period as may be granted by CONTRACTOR before the date of final settlement of the Subcontract. Upon the receipt of a written request for an extension, CONTRACTOR shall ascertain the facts and make an adjustment for extending the completion date as, in the judgment of CONTRACTOR, is justified.

#### **35. TRAVEL**

Travel, per diem and lodging costs are not reimbursable under this Subcontract.

#### **36. VALUE ENGINEERING**

During the execution of this Subcontract, SUBCONTRACTOR is encouraged to develop, prepare, and submit Value Engineering Change Proposals (VECPs) for the purpose of reducing the cost of this Subcontract without impairing essential functions or characteristics specified under this Subcontract. SUBCONTRACTOR may submit VECPs whenever potential savings or improvements are identified. In accordance with the procedures described below, SUBCONTRACTOR shall share in any Subcontract savings realized from CONTRACTOR'S acceptance of submitted VECPs.

Definitions:

"Collateral costs", as used in this clause, means costs of operation, maintenance, logistic support, or GOVERNMENT furnished property.

"SUBCONTRACTOR'S development and implementation costs," as used in this clause, means those costs SUBCONTRACTOR incurs on a VECP, as well as those costs SUBCONTRACTOR incurs to make the contractual changes required by CONTRACTOR acceptance of a VECP.

"CONTRACTOR cost", as used in this clause, means those costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistic support. The term does not include the normal administrative costs of processing the VECP.

"Instant Subcontract savings," as used in this clause, means the estimated reduction in SUBCONTRACTOR cost of performance resulting from acceptance of the VECP, minus allowable SUBCONTRACTOR development and implementation costs.

"Value Engineering Change Proposal (VECP) means a proposal that,

1. Requires a change to this, the instant Subcontract, to implement; and
2. Results in reducing the Subcontract price or estimated cost without impairing essential functions or characteristics; provided, that it does not involve a change,
  - a. In deliverable end item quantities only; or
  - b. To the Subcontract type only.

For a VECP to be considered, SUBCONTRACTOR shall submit at a minimum the following information to the Contractor's Procurement Representative:



- Description of the difference between the existing Subcontract requirements and that proposed, and the comparative advantages and disadvantages of each.
- A list and analysis of the Subcontract requirements that must be changed if the VECP is accepted, including any suggested specification or drawing revisions.
- Detailed cost estimate including the following:
  1. Cost estimate for the existing Subcontract requirements compared to SUBCONTRACTOR’S cost estimate for the proposed changes.
  2. Cost estimate for SUBCONTRACTOR development, submittal and implementation of the proposed changes, and
  3. Cost estimate for CONTRACTOR may incur in implementation of the VECP, such as evaluation, test, operation, and support costs. SUBCONTRACTOR’s profits shall not be considered part of the cost.
- A prediction of any effects the proposed change would have on collateral costs of operation, maintenance, logistic support, or GOVERNMENT furnished property.
- Statement of time by which a Change Order adopting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the Subcontract completion schedule.

CONTRACTOR shall process VECPs expeditiously but shall not be liable for any delay in acting upon a VECP. SUBCONTRACTOR may withdraw any VECP, in whole or in part, at any time before it is accepted. If the VECP is not accepted, CONTRACTOR shall notify SUBCONTRACTOR in writing, explaining the reasons for rejection.

CONTRACTOR may accept a VECP, in whole or in part, only through the issuing of a Change Order to the Subcontract. Until a Change Order is issued on a VECP, SUBCONTRACTOR shall remain obligated to perform in accordance the existing Subcontract Documents. CONTRACTOR’s decision to accept or reject all or part of any VECP shall be final and not subject to the General Provision titled “DISPUTES”.

For VECPs that are accepted by CONTRACTOR the Subcontract price shall be adjusted in accordance with the following:

- The Subcontract price shall be reduced by an amount equal to 45% of the estimated “Net Savings”.
- The “Net Savings” is the estimated reduction in SUBCONTRACTOR’s cost of performance resulting from acceptance of the VECP; minus the estimated cost for SUBCONTRACTOR to development, submit and implement the VECP, minus the CONTRACTOR’s estimated costs for developing and implementing the VECP.

In the event that CONTRACTOR and SUBCONTRACTOR are unable to negotiate the amount of the “Net Savings”, CONTRACTOR may unilaterally accept the VECP and reduce the price of this Subcontract. Any such unilateral reduction shall be subject to the General Provision titled “DISPUTES”.

SUBCONTRACTOR is not entitled to share in either collateral or future Subcontract savings. The term “collateral savings” means those measurable net reductions in operating costs, maintenance, logistic support, or GOVERNMENT furnished property resulting from the VECP. The term “future subcontract savings” means those reductions in the cost of performance of future construction subcontracts for essentially the same item related to a VECP submitted by SUBCONTRACTOR.

Data:

SUBCONTRACTOR may restrict CONTRACTOR'S right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:

“This data, furnished under the Value Engineering provision of Subcontract \_\_\_\_\_, shall not be disclosed or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate the value engineering change proposal submitted. This restriction does not limit Contractor's right to use information contained in this data if it has been obtained or is otherwise available from SUBCONTRACTOR or from another source without limitations.”

If a VECP is accepted, SUBCONTRACTOR hereby grants CONTRACTOR and the GOVERNMENT “unlimited rights” in the VECP and supporting data, except with respect to data qualifying and submitted as “limited rights” technical data. CONTRACTOR and the GOVERNMENT shall have the rights specified in the Subcontract modification implementing the VECP and shall appropriately mark the data. (The terms “unlimited rights” and “limited rights” are defined in Part 27 of the Federal Acquisition Regulations.)

**37. CONTRACTOR RIGHTS IN DESIGN DOCUMENTS (UNLIMITED)**

*(Include the following in subcontracts for design/build projects.)*

CONTRACTOR shall have unlimited rights in all drawings, designs, specifications, notes and other works developed in the performance of this Subcontract, including the right to use same on any other CONTRACTOR or GOVERNMENT design or construction without additional compensation to the SUBCONTRACTOR. SUBCONTRACTOR hereby grants to CONTRACTOR or the GOVERNMENT a paid-up license throughout the world to all such works to which SUBCONTRACTOR may assert or establish any claim under design patent or copyright laws. SUBCONTRACTOR for a period of three (3) years after completion of the project agrees to furnish the original or copies of all such works on the request of the CONTRACTOR.