# GENERAL TERMS & CONDITIONS

# FOR

# COMMERCIAL ITEMS

(CI 10/26 Rev. 6)

**"Pursuant to Department of Energy Prime Contract 89303322DEM000077, all occurrences of Nuclear Waste Partnership (NWP) within this document shall be construed and interpreted as referring to Salado Isolation Mining Contractors (SIMCO)."**

Waste Isolation
Pilot Plant
Carlsbad, New
Mexico

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# GENERAL TERMS & CONDITIONS FOR COMMERCIAL ITEMS

**(CI 10/26, Rev. 6 )**

## 1. APPLICABLE TO ALL TRANSACTIONS

### 1.1 DEFINITIONS

The following terms shall have the meanings below:

(a) "Government" means the United States of America and includes the U.S. Department of Energy (DOE) or any duly authorized representative thereof.

(b) "Company" means Nuclear Waste Partnership LLC (NWP), acting under Contract Number DE- EM0001971.

(c) "Seller" means Subcontractor or the person or organization that has entered into this agreement.

(d) "Agreement" means Purchase Order, Subcontract, Price Agreement, Basic Ordering Agreement, or modification thereof.

(e) "Subcontract Administrator" or "Buyer" means Company's cognizant Procurement Representative.

(f) "Item" means 'commercial item' as defined in FAR 2.102.

(g) "WIPP" shall mean the Department of Energy's Waste Isolation Pilot Plant located 26 miles southeast of Carlsbad, NM.

### 1.2 GENERAL

All references herein to the Department of Energy Acquisition Regulations (DEAR) or Federal Acquisition Regulations (FAR) are those in effect on the date of this Order.

### 1.3 RESOLUTION OF DISPUTES

(a) Seller and Company agree to make good-faith efforts to settle any dispute or claim that arises under this Agreement through discussion and negotiation. If such efforts fail to result in a mutually agreeable resolution, the parties shall consider the use of alternative disputes resolution (ADR). In the event non-binding mediation or arbitration is agreed upon the site of the proceedings shall be Carlsbad, New Mexico. The mediator or arbitrator shall allocate costs, except that there shall be no pre-decisional interest costs, and each part shall bear its discretionary costs. In the event that ADR fails or is not used, the parties agree that the appropriate forum for resolution shall be as follows:

(1) Subject to Order of Precedence (2) below, any litigation shall be brought and

prosecuted exclusively in Federal District Court for the State of New Mexico, Albuquerque, Bernalillo County.

(2) Provided, however, that in the event the requirements for jurisdiction in Federal District Court are not present, such litigation shall be brought in Eddy County, New Mexico, as appropriate.

(b) The parties agree that substantive issues presented for mediation, arbitration, dispute, claim, litigation, or other effort at resolution shall be determined in accordance with the laws of the State of New Mexico except for Federal Acquisition Regulation (FAR) and Department of Energy Acquisition Regulation (DEAR) clauses, which shall be determined in accordance with federal law.

(c) There shall be no interruption in the performance of the work, and Seller shall proceed diligently with the performance of this subcontract pending final resolution of any dispute arising under this subcontract between the parties hereto or between Seller and its subtier subcontractors.

## 1.4 ORDER OF PRECEDENCE

Any inconsistencies shall be resolved in accordance with the following descending order of precedence: (1) face of the Agreement, (2) special terms and conditions, (3) item description, and (4) general terms and conditions.

## 1.5 TITLE AND ADMINISTRATION

All property rights and interests resulting from this Agreement shall pass directly from Seller to the Government. Company shall make payments under this Agreement from funds advanced by the Government and agreed to be advanced by DOE, and not from its own assets. Administration of this Agreement may be transferred by NW P to the DOE or its designee, and in case of such transfer and notice thereof to Seller, Company shall have no further responsibilities hereunder.

## 1.6 ACCEPTANCE OF TERMS AND CONDITIONS

Seller, by signing this Agreement or delivering the items identified herein, agrees to comply with all the terms and conditions and all specifications and other documents that this Agreement incorporated by reference or attachment. Company hereby objects to any terms and conditions contained in the acknowledgment of this Agreement that are different from or in addition to those mentioned in this document. Failure of Company to enforce any of the provisions of this Agreement shall not be construed as evidence to interpret the requirements of this Agreement, nor a waiver of any requirement, nor of the right of Company to enforce each and every provision. All rights and obligations shall survive final performance of this Agreement.

## 1.7 WARRANTY

Seller warrants that items delivered under this Agreement shall be in accordance with Seller's affirmation, description, sample, or model and compliant with all requirements of the Agreement. Further, the services shall reflect the highest standard of performance, skill, and knowledge. The warranty shall begin upon acceptance or if services, upon completion of the performance of said services, and extend the manufacturer's warranty period or six months, whichever is longer, if Seller is not the manufacturer and has not modified the item;

or one year or the manufacturer's warranty period, whichever is longer, if Seller is the manufacturer of the item or has modified it. If any nonconformity with item appears within that time, Seller shall promptly repair or replace such items or perform services. Transportation of replacement items and return of nonconforming items and repeat performance of services shall be at Seller's expense. If the repair, replacement or performance of services is not timely, Company may elect to return the nonconforming items or repair, replace them, re-perform, or re-procure the services at Seller's expense.

## 1.8 ASSIGNMENT

The NW P may assign this Order, in whole or in part, to the DOE or to such party as the DOE may designate to perform the NWP's obligations hereunder. Upon receipt by the Seller of written notice that the DOE or a party so designated by the DOE has accepted an assignment of this Order, the NWP shall be relieved of all responsibility hereunder and the Seller shall thereafter look solely to such assignee for performance of the NW P's obligations. The Seller shall not assign or transfer this Order or any interest herein, or claims hereunder, without the prior written consent of the NWP or the NW P's assignee.

Seller shall not assign rights or obligations to third parties without the prior written consent of Company. However, Seller may assign rights to be paid amounts due or to become due to a financing institution of Company is promptly furnished written notice and a signed copy of such assignment.
Payments to an assignee shall be subject to setoff or recoupment for any present or futures claims of Company against Seller.

## 1.9 NEW MATERIALS

Unless otherwise specified in this Agreement, all items delivered shall consist of new materials. New is defined as previously unused which may include residual inventory or unused former Government surplus property. This does not exclude the use of recycled or recovered material as defined by the Environmental Protection Agency in 40 CFR 247.

## 1.10 TRANSPORTATION

If transportation is specified "FOB Origin", (a) no insurance cost shall be allowed unless authorized in writing and (b) the bill of lading shall indicate that transportation is for DOE and the actual total transportation charges paid to the carrier(s) shall be reimbursed by the Company pursuant to its Prime Contract Number DE-EM0001971 with the DOE.

## 1.11 RISK OF LOSS

Where company is liable to Seller for loss of conforming items occurring after the risk of loss has passed to Company, Company shall pay Seller the lesser of (1) the agreed price of such items, or (2) Seller's cost of replacing such items. Such loss shall entitle Seller to an equitable extension in delivery schedule obligations.

## 1.12 PAYMENT

Unless otherwise provided, terms of payment shall be net 30 days from the latter of (1) receipt of Seller's proper invoice, if required, or (2) delivery of items/completion of work. Any offered discount shall be taken if payment is made within the discount period that

Seller indicates. Payments may be made either by check or electronic funds transfer, at the option of Company. Payment shall be deemed to have been made as the date of mailing or the date on which an electronic funds transfer was made.

## 1.13 COMPLIANCE WITH LAWS

Seller shall comply with all applicable federal, state, and local laws and ordinances and all pertinent lawful orders, rules, and regulations and such compliance shall be a material requirement of the Agreement. Seller warrants that each chemical substance constituting or contained in items furnished by this Agreement is on the list of substances published by the Administrator of the Environmental Protection Agency pursuant to the Toxic Substance Control Act as amended.

## 1.14 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA

(a) "Hazardous material," as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

(b) The offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such a National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet (MSDS) submitted under this contract.

| MATERIAL (If none, insert "None") | Identification No. |
|---|---|
| | |
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| | |

(c) This list must be updated during performance of the contract whenever the contractor determines that any other material to be delivered under this contract is hazardous.

(d) The apparently successful offeror agrees to submit, for each item as required prior to award, a MSDS, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the MSDS prior to award may result in the apparently successful offeror being considered non-responsible and ineligible for award.

(e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph
(f) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.

(g) Neither the requirements of this clause nor any act or failure to act by the

Government shall relieve the contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.

(h) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(i) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:

(1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to –

i) Appraise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;
ii) Obtain medical treatment for those affected by the material; and
iii) Have others use, duplicate, and disclose the data for the Government for these purposes.

(2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.

(3) The Government is not precluded from using similar or identical data acquired from other sources.

(j) This clause shall flow down to all lower-tier subcontracts.

## 1.15 TERMINATION FOR DEFAULT

(a) Company may terminate this agreement for default, in whole or in part, if Seller fails to comply with any of the terms of this Agreement or fails to provide adequate assurance of future performance. In that event, Company shall not be liable for any amount for items not accepted.

(b) If this Agreement is terminated for default, company may require Seller to deliver to Company any supplies and materials, manufacturing materials, and manufacturing drawings that Seller has specifically produced or acquired for the terminated portion of this Agreement. Company shall pay the agreed-upon price for completed items delivered and accepted. Company and Seller shall agree on the amount of payment for all other deliverables.

(c) Seller shall not be liable to Company for delays in performance occasioned by causes beyond Seller's reasonable control and without its fault or negligence, including but not limited to acts of God or of the public enemy, acts of the government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of Seller's suppliers at any tier. However the delays of Seller's suppliers at any tier must be proved to be beyond the control of both Seller and its suppliers and without fault or negligence of either.

(d) The rights and remedies of Company in this clause are in addition to any other right and remedies provided under this Agreement

## 1.16 TERMINATION FOR CONVENIENCE

Company reserves the right to terminate this Agreement, or any part hereof, for the convenience of itself or the Government. In the event of such termination, Seller shall immediately stop all work terminated and shall immediately cause any and all of its affected suppliers and subcontractors to cease work. Subject to the terms of this Agreement, Seller shall be paid a percentage of the price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Seller can demonstrate to the satisfaction of Company using its standard record keeping system, have resulted from the termination. Seller shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This clause does not give the Company or the Government the right to audit Seller's records. Seller shall not be paid for any work performed or costs incurred after notice of termination and which reasonably could have been avoided.

## 1.17 STATE OF NEW MEXICO GROSS RECEIPTS AND COMPENSATING TAX - FAR 52.229-10 (APR 2003)

By reason of NWP's Nontaxable Transaction Certificate, the Seller shall not include in the price any state and local taxes except those which were paid by the Seller to third parties in acquiring the items which are the subject matter of this Agreement. The price does include all applicable Federal Taxes.

## 1.18 SUSPECT COUNTERFEIT ITEMS

(a) A suspect item is one in which there is an indication by visual inspection, testing, or other information that it may not conform to established Government or industry-accepted specifications or national consensus standards. A counterfeit item is a suspect item that is a copy or substitute without legal right or authority or one whose material, performance, or characteristics are knowingly misrepresented by the vendor, supplier, distributor, or manufacturer. Such items may be labeled to represent a different class of parts, or used and/or refurbished parts, complete with false labeling, that are represented as new parts.

(b) Suspect/counterfeit items do not include non-conforming items resulting from inadequate design or production quality control. Such items shall be handled in accordance with Buyer's nonconforming item procedures.

(c) Materials and items furnished by the Seller to Company under this Agreement shall not include suspect/counterfeit parts nor shall such parts be used in performing any work under this Agreement whether on or off the WIPP site.

(d) The rights of the Company in this clause are in addition to any other rights provided by law or under this Agreement.

## 1.19 CHANGES

(a) Company may at any time, by written notice, make changes within the general scope of this Agreement in any one more of the following: 1) The amount of and/or description of the products/services to be purchased; 2) Quantities of items to be delivered; 3) Place of performance; or 4) the time or place of delivery, inspection or

acceptance. If any such changes causes a difference in the cost of, or the time required for performance, an equitable adjustment shall be made in the price and/or delivery schedule and other affected provisions. Such adjustment shall be made within 30 days from the date of receipt of Company's change notice, although Company in its sole discretion may receive and act upon any claim for adjustment at any time before final payment.

(b) Only the Subcontract Administrator is authorized on behalf of company to issue changes whether formal or informal. If Seller considers that any direction or instruction by Company personnel constitutes such a change, Seller shall not rely upon such instruction or direction without written confirmation from the Subcontract Administrator. Nothing in this clause, including any disagreement with Company about the equitable adjustment, shall excuse Seller from proceeding with the agreement as changed.

## 1.20 PERMITS OR LICENSES

The subcontract/purchase order shall have all necessary permits or licenses and abide by all applicable laws, regulations, and ordinances of the United States and of the state, territory, and political subdivision in which the work under this Agreement is performed.

## 1.21 FOREIGN NATIONALS

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

(a) The Seller shall obtain the approval of the Subcontract Administrator, in writing, prior to any visit to a DOE or Company Operated facility by any Foreign National in connection with work being performed under this Agreement, in accordance with the requirements of DOE Order 142.3, Unclassified Foreign Visits and Assignments Program. Visits are normally for the purpose of technical discussions, orientation, observation of projects or equipment, training, subcontract service work, including delivery of materials, or for courtesy purposes. The term visit also includes officially-sponsored attendance at a DOE or Company event offsite from DOE/W IPP facility, but does not include offsite events and activities open to the general public. Seller should be aware that required forms and documents necessary for approval of visits by Foreign Nationals should be submitted to the Company Subcontract Administrator at least four (4) to six.

(b) Six (6) weeks prior to the visit, depending on the nationality of the individual and the areas to be visited. Forms can be obtained from the Subcontract Administrator.

(c) In addition, the Seller shall obtain the approval of the Company Subcontract Administrator, in writing, prior to the employment of, or participation by, any Foreign National in the performance of work under this Agreement or any lower tier Subcontract at off-site locations. Such approvals will be processed in accordance with the requirements of DOE Order 142.3.

(d) In the performance of offsite work, Foreign Nationals only incidentally involved with the subcontract work, and who have no knowledge that their activities are associated with the subcontract work, are exempt from the above provisions.

## 1.22 PRICE-ANDERSON AMENDMENTS ACT

(a) The Department of Energy has promulgated Nuclear Safety Rules in implementation of the Price- Anderson Amendments Act (PAAA) of 1988, Public Law 100-408, August 20, 1988. These rules govern the conduct of persons involved in DOE nuclear activities, and, in particular, are designed to achieve compliance with DOE nuclear safety requirements. Violation of the applicable rules may provide a basis for the assessment of civil and criminal penalties under the PAAA. Nuclear Safety Rules subject to enforcement under PAAA are 10 CFR 820, “Procedural Rules for DOE Nuclear Activities”, 10 CFR 830, “Nuclear Safety Management Subpart A.

(b) This Order is subject to the requirements of the above rules if the performance of work involves conducting activities (including providing items and services), that affects, or may affect, the safety of DOE nuclear facilities.

(c) Seller assumes full responsibility and shall indemnify, save harmless, and defend Company and its principal subcontractors, their agents, officers, employees, and directors from any civil or criminal liability under Sections 234A or 223 (c) of the Act or the implementing regulations at 10 CFR Sections 820, et seq., arising out of the activities of the Seller, its Lower Tier Subcontractors, suppliers, agents, employees, officers, or directors.

(d) Seller shall comply in all respects to Company’s program for noncompliance identification, tracking, and corrective system, established under the terms of its contract with the owner.

## 1.23 COMMERCIAL COMPUTER SOFTWARE LICENSE (DEC 2007) FAR 52.227-19

(a) Notwithstanding any contrary provisions contained in the Subcontractor’s standard commercial license or lease agreement, the Subcontractor agrees that the Government will have the rights that are set forth in paragraph (b) of this clause to use, duplicate or disclose any commercial computer software delivered under this subcontract. The terms and provisions of this subcontract shall comply with Federal laws and the Federal Acquisition Regulation.

(b) (1) The commercial computer software delivered under this subcontract may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b)(2) of this clause or as expressly stated otherwise in this contract.

(2) The commercial computer software may be—

(i) Used or copied for use with the computer(s) for which it was acquired, including use at any Government installation to which the computer(s) may be transferred;

(ii) Used or copied for use with a backup computer if any computer for which it was acquired is inoperative;

(iii) Reproduced for safekeeping (archives) or backup purposes;

(iv) Modified, adapted, or combined with other computer software, provided that the modified, adapted, or combined portions of the derivative software incorporating any of the delivered, commercial computer software shall be subject to same restrictions set forth in this subcontract;

(v) Disclosed to and reproduced for use by support service Subcontractors or their subcontractors, subject to the same restrictions set forth in this subcontract; and

(vi) Used or copied for use with a replacement computer.

(1) If the commercial computer software is otherwise available without disclosure restrictions, the Subcontractor licenses it to the Government without disclosure restrictions.

(c) The Subcontractor shall affix a notice substantially as follows to any commercial computer software delivered under this subcontract:

*Notice-Notwithstanding any other lease or license agreement that may pertain to, or accompany the delivery of, this computer software, the rights of the Government regarding its use, reproduction and disclosure are as set forth in Government Contract No.* ***DE-EM0001971****.*

## 1.24 DOE INDEPENDENT OVERSIGHT PROGRAM

The expectations in support of DOE Independent Oversight Program (DOE O 227.1) appraisal activities (i.e., assessment activities, reviews) conducted by the Office of Enterprise Assessment (EA) and Interface with the Defense Nuclear Facilities Safety Board (DNFSB) (DOE O 140.1), subcontractors are responsible for:

- Provide timely and adequate support to external oversight activity/request.
- Do not provide any DOE and/or contractor documentation to the DNFSB or its staff without prior DOE direction.
- Do not make commitments to or discuss potential actions related to DNFSB and/or DNFSB staff interactions, site reviews, etc., with the DNFSB or its staff.
- At the request of CBFO, comply with the personnel interview processes and procedures implemented by DNFSB representatives during a site visit.
- Request that interviews be scheduled at mutually convenient times when safety-related duties cannot be compromised.

# 2. APPLICABLE WHEN ITEMS INCLUDE SERVICES

## 2.1 APPLICATION OF UNIFORM COMMERCIAL CODE

For the purposes of products that include services, the Uniform Commercial Code Article 2, Parts 1,3,5,6, and 7 as adopted by the State of New Mexico shall apply to this agreement.

# 3. GOVERNMENT FLOWDOWN CLAUSES INCORPORATED BY REFERENCE

**(Applicable as noted in the tables below)**

## 3.1 SUPPLEMENTAL DEFINITIONS FOR FAR AND DEAR CLAUSES INCORPORATED BY REFERENCE

This Subcontract incorporates certain FAR and DEAR Clauses identified below by reference,

with the same force and effect as if they were given in full text. FAR clauses may be accessed electronically at https://www.acquisition.gov/far/. DEAR clauses can be found at http://www.management.energy.gov/DEAR.htm. Upon request, NWP will make their full text available.

The applicability of each clause is determined in accordance with the dollar thresholds, and other criteria as may be set forth in each section. Supplemental definitions that apply to certain terms in these clauses are included in the following paragraphs.

"Contract" means this Subcontract or Purchase Order (except in instances when it is not applicable or appropriate) and includes changes and modifications to this Subcontract.

"CONTRACTOR" means the party to whom this Subcontract or Purchase Order is awarded (except in instances when it is not applicable or appropriate).

"Government" means CONTRACTOR. except that the term "Government" or its authorized representatives shall retain its original meaning where (1) the provision pertains to, addresses or governs rights and obligations in property (real, personal or intellectual), (2) a right, act, authorization or obligation can be granted or performed only by the Government (e.g., under the Nuclear Hazards Indemnity Agreement provision), (3) the intent of the provision is to provide benefit or protection to the Government, or (4) when access to the SUBCONTRACTOR'S proprietary financial or other data is required.

"Contracting Officer" means the CONTRACTOR'S Procurement Representative.

"Lower-Tier Subcontractor" means any party entering into an agreement with the SUBCONTRACTOR or any Lower Tier SUBCONTRACTOR for the furnishing of supplies or services required for performance of this Subcontract.

**The following clauses are applicable to <u>all Orders:</u>**

| CLAUSE | TITLE | INSTRUCTION |
|---|---|---|
| **FAR 52.203-17** | Contractor Employee Whistleblower Rights and Requirement To Inform Employees of Whistleblower Rights (APR 2014) | |
| **FAR 52.219-8** | Utilization of Small Business Concerns (MAY 2004) | |
| **FAR 52.222-50** | Combating Trafficking in Persons (FEB 2009) | |
| **FAR 52.222-26** | Equal Opportunity (MAR 2007) | |
| **FAR 52.222-36** | Affirmative Action for Workers with Disabilities (JUN 1998) | |
| **FAR 52.222-40** | Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) | |
| **FAR 52.222-90** | Addressing DEI Discrimination by Federal Contractors | |
| **FAR 52.225-1** | But American Act – Supplies (FEB 2009) | |
| **FAR 52.237-3** | Continuity of Services (JAN 1991) | |
| **FAR 52.242-13** | Bankruptcy (JUL 1995) | |
| **FAR 52.244-6** | Subcontracts for Commercial Items (DEC 2010) | |
| **DEAR 952.250-70** | Nuclear Hazards Indemnity Agreement (JUN 1996) | |

**The following clause is applicable to <u>Orders in excess of $3,000:</u>**

| CLAUSE | TITLE | INSTRUCTION |
|---|---|---|
| **AR 52.222-54** | Employment Eligibility Verification (JAN 2009) | This clause applies to subcontracts for services with a value in excess of $3,000, except it does not apply to commercial services that are part of the purchase of a COTS (Commercial Off The Shelf) item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item. Notwithstanding any other audit provisions contained within this subcontract, CONTRACTOR reserves the right, from time to time as CONTRACTOR deems appropriate, to request satisfactory proof of compliance from SUBCONTRACTOR and all Lower Tier Subcontracts. Therefore upon request, SUBCONTRACTOR must be able to provide, at every tier, satisfactory proof of compliance with this clause for its Lower Tier Subcontractors. |

**The following clauses are applicable to <u>Orders in excess of $100,000:</u>**

| CLAUSE | TITLE | INSTRUCTION |
|---|---|---|
| **FAR 52.222-35** | Equal Opportunity for Veterans (SEP 2010) | |

**The following clauses are applicable to <u>certain Orders as noted</u>:**

| CLAUSE | TITLE | INSTRUCTION |
|---|---|---|
| **FAR 52.203-13** | Contractor Code of Business Ethics and Conduct (APR 2010) | This clause applies if the value of this subcontract exceeds $5 million, and the performance period exceeds 120 days) |
| **FAR 52.204-9** | Personal Identity Verification of Contractor Personnel (SEP 2007) | This clause applies to subcontractors that require routine physical access to a Federally-controlled facility and/or routing access to a Federally-controlled information system. |
| **FAR 52.208-8** | Required Sources for Helium and Helium Usage Data | This clause applies if the subcontract involves a major purchase of helium greater than 200,000 cubic feet of gaseous helium or 7,500 liters of liquid helium delivered to a helium use location per year. |
| **FAR 52.222-41** | Service Contract Act of 1965 (NOV 2007) | This clause applies to orders in excess of $2,500 principally for services and that involve employment of service employees, as defined in DOL |

| | | |
|---|---|---|
| **FAR 52.222-62** | Paid Sick Leave Under Executive Order 13706 | This clause applies to subcontracts covered by the Service Contract Labor Standards (Service Contract Act) or the Wage Rate Requirements (Construction), formerly known as Davis-Bacon Act |
| **FAR 52.227-14** | Rights in Data – General (JUN 1987) – as modified pursuant to DEAR 927.409(a)(1) | This clause applicable to subcontracts in which technical data or computer software is expected to be produced, or in subcontracts for supplies that contain a requirement for production or delivery of data. |
| **FAR 52.245-1** | Government Property (AUG 2010) | This clause applies to subcontracts where Government property will be furnished to the Subcontractor for use in the performance of the subcontract. |
| **DEAR 952.203-70** | Whistleblower Protection for Contractor Employees | Applicable to subcontracts involving work performed on behalf of DOE directly related to activities at DOE-owned or leased sites. |
| **DEAR 952.204-2** | Security Requirements (AUG 2009) | This clause applies to any subcontract where subcontractor employees are required to possess access Authorizations (L or Q security clearances). |
| **DEAR952.204-70** | Classification/Declassificatio n (SEP 1997) | This clause applies to any subcontract where subcontractor employees are required to possess access authorizations (L or Q security clearances). |
| **DEAR 952.204-73** | Facility Clearance (MAY 2002) | This clause applies to any subcontract where subcontractor employees are required to possess access authorizations (L or Q security clearances). |
| **DEAR 952.209-72** | Organizational Conflicts of Interest Alternate I (AUG | This clause applies to subcontracts for Advisory and Assistance Services that exceed $150,000 |
| **DEAR 952.247-70** | Foreign Travel (JUN 2010) | Applicable if Foreign Travel is required in the performance of the work. |
| **DEAR 952.5204-1** | Counterintelligence (DEC 2010) | This clause applies to any subcontract where subcontractor employees are required to possess access authorizations (L or Q security clearances). |
| **DEAR 970.5223-1** | Integration of Environment, Safety, and Health into Work | This clause applies to any subcontract that requires performance of work on-site. |

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| **DEAR 970.5223-4** | Workplace Substance Abuse Programs at DOE Sites (DEC 2000) | This clause is applicable if subcontract amount exceeds $25,000 and the scope of work involves access to classified information or special nuclear materials; transportation of hazardous materials to or from a DOE site; or a high risk of danger to life, the environment, public health and safety, or national security. |

# 4. APPLICABLE WHEN SELLER'S PERSONNEL WORK ON DOE WIPP SITE COVERED WORKPLACES/ACTIVITIES

## 4.1 WORK ON GOVERNMENT PREMISES – SELLER'S RESPONSIBILITY

(a) As to the work to be done or performed by the Seller on premises owned or controlled by NWP, the Government, or the premises of other NW P subcontractors, the Seller assumes the entire responsibility and liability for losses, expenses, damages, demands, and claims in connection with or arising out of any injury (including death) or damage to property sustained in connection with, or to have arisen out of the acts or omissions of, the Seller or its lower-tier subcontractors, agents, or employees. The Seller shall indemnify and hold harmless NW P from and against any and all claims, demands, actions, causes of action, suits, damages, expenses (including attorney fees) and liabilities whatsoever resulting from or arising in any manner on account of or by reason of any injury to or death of any person or any damage to or loss of property attributable to the acts or omissions of the Seller or its lower-tier subcontractors, agents, or employees. Nothing in the foregoing shall be construed to require the Seller to indemnify and save harmless NW P from any liability arising out of or resulting from a nuclear incident.

(b) Unless otherwise specified in the Subcontract, Seller agrees that it shall obtain and maintain during the performance of any Work at the Facility Site and until the acceptance thereof, the insurance described below and shall be carried with insurance companies with at least a Best's "A" rating. Seller will furnish to Contractor three (3) copies of the certificate(s) evidencing such insurance prior to commencing performance or physically present on the Facility site under the

Subcontract.

(1) Worker's Compensation Insurance and Employer's Liability Insurance (including occupational disease) to cover statutory benefits and limits of the Worker's Compensation laws of any applicable jurisdiction in which the Work is to be performed hereunder, and Employers' Liability Insurance with limits of five hundred thousand dollars ($500,000) for trauma, each

accident; five hundred thousand dollars ($500,000) for disease, each person and five hundred thousand dollars ($500,000) disease, policy limit.

(2) Commercial General Liability Insurance written on the latest ISO occurrence form and including coverage for Contractual Liability and Products and Completed Operations (to remain in force for two (2) years following acceptance of the Work. The insurance required by this subparagraph 2 shall have the

following limits of liability:

i) Third Party Bodily Injury and Property Damage Liability: $1,000,000 combined single limit per occurrence and $2,000,000 combined single limit general aggregate, with such limits available to the Project.

(3) Business Automobile Liability insurance covering all owned, leased and non-owned vehicles used in connection with the Work, with not less than $1,000,000 combined single limit per occurrence for bodily injury and property damage.

(4) If professional services are involved, Professional Liability Insurance with not less than
$1,000,000 per occurrence with a 24 months discovery period after completion of the work.

(c) The following endorsements shall be included in the above insurance coverages:

(1) Thirty (30) days advance written notice in the event of cancellation, non-renewal or material change of any policy. Language referring to “endeavor to” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or
representatives” shall be stricken from the certificate of insurance.

(2) Contractor and Owner named as additional insureds (except on workers’ compensation and professional liability). The additional insured endorsement used shall in no event be less restrictive in terms of coverage provided to the additional insured than what is provide for in the standard ISO endorsement No. CG 20 10 11 85, "Additional Insured - Owners, Lessees, or Contractors (Form B.)"

(3) A waiver of subrogation in favor of Contractor and Owner.

(4) Severability of Interest or Separation of insureds.

(5) Seller’s insurance is primary and any insurance maintained by Contractor is considered excess and non-contributory.

(d) Seller shall insert the substance of this Article in lower tier subcontracts under the Subcontract that require work at the facility site and shall require lower-tier subcontractors to provide and maintain the insurance required in this Article or elsewhere in the subcontract.

(e) The Seller agrees to comply (and require its lower-tier subcontractors to comply) with all applicable laws, rules, and regulations with respect to state industrial insurance or worker's/workmen's compensation, occupational disease, occupational safety and health, or withholding and payment of social security and federal income taxes, and further agrees to indemnify NW P and the Government against, and to save and hold harmless NWP and the Government from, any and all liability and expense with respect to claims against NWP or the Government which may result from the failure or alleged failure of the Seller or of any of its lower- tier subcontractors to comply therewith.

## 4.2 ACCIDENT PREVENTION

(a) The Seller shall provide and maintain work environments and procedures which will (1) safeguard the public and NW P personnel, property, materials, supplies, and equipment exposed to Subcontractor operations and activities, (2) avoid interruptions

of NW P operations and delays in project completion dates, and (3) control costs in the performance of the Subcontract.

(b) For the purposes of paragraph (a) above on Subcontracts for construction or dismantling, demolition, or removal of improvements, the Seller shall:

(1) Provide appropriate safety barricades, signs, and signal lights;
(2) Comply with the standards issued by the Secretary of Labor at 29 CFR 1926 and 29 CFR Part 1910; and;
(3) Ensure that any additional measures NWP determines to be reasonably necessary for the purposes are taken.

(c) Whenever NWP becomes aware of any noncompliance with these requirements or any condition that poses a serious or imminent danger to the health or safety of the public or Government personnel, NWP shall notify the Seller verbally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the Seller or the Seller's representative at the work site, shall be deemed sufficient notice of the noncompliance and that the corrective action is required. After receiving the notice, the Seller shall immediately take corrective action. If the Seller fails or refuses to promptly take corrective action, NWP may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Seller shall not be entitled to any equitable adjustment of the Subcontract price or extension of the performance schedule on any stop work order issued under this article.

(d) The Seller shall take all reasonable precautions in the performance of the work under the Order to protect the safety and health of employees and of members of the public, and shall comply with all applicable safety and health regulations and requirements (including reporting requirements) of NWP. When required by either the subcontract's statement of work, special conditions, and/or the PO/Subcontract Deliverable Schedule, the Seller shall submit a Job Hazard Analysis (JHA) to NW P for review and approval; the JHA shall include an analysis of the significant hazards to life, limb, and property inherent in the Subcontract work performance and a plan for controlling these hazards. The JHA must be approved prior to the start of any on-site performance. NW P shall notify the Seller, in writing, of any noncompliance with the provisions of the article and the corrective action to be taken after receipt of such notice, and the Seller shall immediately take corrective action. In the event that the Seller fails to comply with said regulations or requirements of NW P, the Buyer, may without prejudice to any other legal or contractual rights of NW P, issue an order stopping all or any part of the work; thereafter, a start order for resumption of the work may be issued at the discretion of NW P. The Seller shall make no claim for an extension of time or for compensation or damages by reason of, or in connection with, such work stoppages.

(e) Before commencing the work, the Seller shall meet with a representative(s) of NWP to discuss and develop a mutual understanding relative to the administration of the overall work safety program under the Subcontract to accommodate the additional work, heeding any direction that may be provided by NW P. The Seller shall not commit or permit any act that will interfere with the performance of work by any other subcontractor or by Government employees.

(f) The Seller shall insert this article, including this paragraph (f), with appropriate changes in the designation of the parties, in all lower-tier subcontracts.

## 4.3 ENVIRONMENT, SAFETY, AND HEALTH – ON GOVERNMENT OWNED OR LEASED FACILITIES

(a) It is understood that it is the goal of both NW P and DOE to conduct a responsible and comprehensive program to assure that the W IPP is an environmentally acceptable installation and is operated in a safe and healthy manner. It is DOE policy to use its best efforts to provide the funds or other resources necessary to achieve this purpose and to continue cooperating, along with the Subcontractor, with Federal and State agencies having interest in environmental

matters to accomplish this purpose, and to maintain good relations with such agencies.

(b) Performance of the work under the Subcontract shall be conducted in a manner that is protective of the environment and the health and safety of employees and the public. The Subcontractor shall comply with all applicable environmental, safety, and health requirements (including applicable permitting and reporting requirements) including federal, state, and local laws and regulations and DOE requirements.

(1) NW P shall notify the Subcontractor, in writing, of any noncompliance with applicable requirements. After receipt of such notice, the Subcontractor shall immediately take corrective action. In the event that the Subcontractor fails to take corrective action, NW P may, without prejudice to any other legal or contractual rights of NW P, issue an order stopping all or any part of the work; thereafter, a start order for resumption of the work may be issued at the discretion of NW P. The Subcontractor shall not be entitled to an extension of time or additional fees or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.

(2) If at any time during the performance of the Subcontract work, the Subcontractor's acts or failure to act causes substantial harm or imminent danger to the health or safety of individuals or the environment, NW P may, without prejudice to any other legal or corrective rights of NWP, issue an order stopping all or any part of the work; thereafter, a start order for resumption of the work may be issued at the discretion of NW P. The Subcontractor shall not be entitled to an extension of time or additional fees or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.

(c) When specifically required by the Subcontract Statement of Work, Specification, or Schedule of Deliverables, the Subcontractor shall submit an environmental, safety, and health management program and implementation plan to NW P for review and approval. The plan shall describe the management systems to be employed to ensure that environmental, safety and health requirements are appropriately considered in all phases of Subcontract activities. The plan shall also include provisions for an internal environmental, safety, and health performance evaluation and corrective action system to provide management with a continuing assessment of the adequacy and implementation of the environmental, safety, and health programs and assurance the deficiencies are correct. The results of such evaluations shall be made available to NW P. When such a plan as described in the paragraph is required by the subcontract, the provision for Records as found in DEAR 970.5232-3 also applies.

(d) The Subcontractor shall include in all of its lower-tier subcontracts involving performance of work at the site, the provisions requiring subcontractors to comply with the Subcontractor's environmental, safety and health requirements. However, such provisions in the subcontracts shall not relieve the Subcontractor of its

obligations to assure compliance with the provisions of this clause for all aspects of the work.

(e) The Subcontractor shall submit for approval to NWP when required by either the subcontract, the statement of work, or its policies, procedures, and provisions for including appropriate environmental, safety, and health requirements, including reporting requirements, with respect to work to be performed on-site at a DOE-owned or leased facility in lower-tier Subcontracts. These environmental, safety and health requirements shall be in accordance with applicable DOE regulations, directives, and other DOE requirements. The Subcontract provisions shall provide that no claim shall be made for adjustment in the Subcontract amount or the performance schedule, or for damages, by reason of a stop work order issued for failure to comply with environmental, safety and health regulations or requirements of the DOE.

(f) The Subcontractor agrees, if it requires information from or access to the facilities of a third party, and if requested by the Government, to sign an agreement substantially identical in all material respects to the provisions of this clause, with any identified company supplying information to or furnishing access to its facilities to the Subcontractor under the Subcontract, and to supply a copy of such agreement to NWP. From time to time upon request of NWP, the Subcontractor shall supply NWP with reports itemizing information received as confidential or proprietary and setting forth the company or companies from which the Subcontractor received such information.

(g) In the event that the Subcontractor is required by law to disclose proprietary information it has developed under this clause to a government authority having appropriate jurisdiction, the Subcontractor shall have the right to do so, but shall provide the proprietary information owner with reasonably prompt notice of any such requirement and reasonably cooperate in efforts of the proprietary information owner to protect its proprietary information.

This clause shall flow down to all lower-tier subcontracts.

## 4.4 ENVIRONMENTAL COMPLIANCE

(a) Definitions. As used in the Subcontract, the following capitalized terms shall have the meaning set forth herein.

(1) “Hazardous Waste” shall mean any waste or constituent regulated under the Resource Conservation and Recovery Act (RCRA) as amended (42 U.S.C. 6901 et seq.), or as set forth in 40 CFR 260 et seq., or in any similar laws of any state or local governmental authority having jurisdiction over the place(s) where (a) the work under the Subcontract will be performed, or (b) any Hazardous Waste will be generated, shipped, stored, treated, or disposed of. Briefly, a waste is a Hazardous Waste if it exhibits a hazardous characteristic (ignitable, corrosive, reactive, or toxic), and/or it is listed in Subpart D of the RCRA regulations.

(2) For this document, the term “Hazardous Substance” shall be used generically to include any “Hazardous Substance” as defined in the Comprehensive Environmental Response, Compensations and Liability Act as amended (42 U.S.C. 9601 et seq.), any “Hazardous Material” as regulated under the Hazardous Materials Transportation Act as amended (49 U.S.C. 1801 et seq.), or Occupational Safety and Health Act (OSHA) 29 CFR 1910 Subpart H, “Oil” as defined in or under the Clean Water Act as amended (33 U.S.C. 1251 ET SEQ.), any “Chemical or Toxic or Hazardous Substance or Material" as defined in the Toxic Substance control Act (TSCA) (15 U.S.C. 2601 et

seq.), and, without limitation, any other substance or material identified as a toxic or hazardous substance, chemical, or material, as such terms may be defined in or under any other applicable local, state, or federal law, statute, ordinance, code, rule, or regulation. The term “Hazardous Substance” shall also include any container, device, material, component, and/or item, of which a Hazardous Substance as defined above is a constituent, or in which a Hazardous Substance as defined above is contained.

(3) “Environmental Procedure” shall mean a document or series of documents published by NWP and incorporated into the Order by reference, which set forth and establish the policy for compliance with environmental laws and regulations by Subcontractors and suppliers to NWP, including lower-tier subcontractors and suppliers at any tier.

(4) A “Preexisting Hazardous Substance” shall mean a Hazardous Substance(s) and/or Hazardous Waste that are already present at a WIPP facility through no act or omission of the Seller or its representatives.

(5) Environmental Compliance. In addition to and without limitation on the general duty of the
Seller, the Seller shall comply with all applicable laws and regulations as indicated below:

(b) The Seller and all of its lower-tier subcontractors and suppliers of any tier, and its and their employees and/or agents (hereinafter called “representatives”) shall comply with all health, safety, and environmental laws, statutes, ordinances, rules, regulations, permits, and order regulating or dealing with a Hazardous Substance(s) or Hazardous Waste that are or become applicable during the term of the Order.

(c) During the term of the Order, the Seller shall obtain and maintain all permits, licenses, certificates, approvals, and other authorities required to conduct the work and perform the services specified under the Order.

(d) Management of Hazardous Substances and Hazardous Waste.

(1) The Seller shall notify NW P immediately if and when it encounters a preexisting Hazardous Substance(s) or preexisting Hazardous Waste in the performance of the work. Such notice shall identify the location and time of the encounter and shall specify, to the extent known or suspected by the Seller or its representatives, the nature and extent of the contamination. The Seller shall take no action with respect to such preexisting Hazardous Substances(s) without the written consent of NW P. The foregoing shall not apply (a) to a preexisting Hazardous Substance(s) identified in the Order or as otherwise formally identified by NWP to be encountered in the performance of the work, or (b) if the Order calls for the remediation or removal of the preexisting Hazardous Substance(s) or areas contaminated therewith, in either of which events the Seller shall be finally responsible for the proper and safe handling and management of the preexisting Hazardous Substance(s). The Seller and its representatives shall cooperate with NW P or its designee regarding such preexisting Hazardous Substance(s) and make available it records and personnel with respect thereto.

(2) In no event shall the Seller or any of its representatives bring or allow the bringing of Hazardous Waste on or into the work site unless specifically allowed

by the Order or otherwise formally approved by NWP. In the event that the Seller or any of its representative introduce or allow a Hazardous Substance(s) or Hazardous Waste to be introduced on or into the site, generate any Hazardous Waste(s), or handle a preexisting Hazardous Substance(s) or areas contaminated therewith as part of its obligations under the Order, at the work site or in connection with the work or services, the Seller shall be solely responsible for all costs and liabilities associated with such Hazardous Substance(s) or hazardous Waste and hall handle, manage, store, treat, or dispose of such Hazardous Substance(s) or Hazardous Waste in strict compliance with all applicable laws, statutes, ordinances, rules, regulations, permits, orders, and environmental procedures. Without limiting the generality of the foregoing, the Seller shall provide:

i) Perform and maintain all required record keeping, reporting, manifesting, labeling, and other documentation,

ii) Provide all required safety and health devices or equipment and training, and

iii) Ensure that all such Hazardous Substance(s) or Hazardous Waste is managed, transported, treated, stored, or disposed of at lawfully permitted or licensed facilities in accordance with all applicable laws, regulations, and ordinances.

iv) This clause shall flow down to all lower-tier subcontracts.

(3) The provisions of this article relating to Hazardous Substances shall not apply to such material or substances wholly and routinely contained within equipment or materials utilized by the Seller in the performance of the work, provided that there is no leak, spill, discharge, or release of the Hazardous Substance (e.g., sulfuric acid in batteries).

(e) Liability. The Seller shall indemnify and defend NW P against any and all costs, damages, expenses, and liability due to any personal injury, death, property damage, environmental harm, environmental impairment, fines, penalties, or otherwise, arising or resulting from:

(1) The failure of the Seller or any of its representatives to comply with the provisions of this article.

(2) The receipt, handling, transportation, treatment, storage, or disposal of a Hazardous Substance(s) or Hazardous Waste where it is the responsibility of the Seller or its representatives as included under the Order or applicable law.

(3) The negligent or intentionally tortuous conduct of the Seller or its representatives regarding or in connection with a Hazardous Substance(s) or Hazardous Waste.

## 4.5 SUSPENSION

NW P may for any reason, direct the Seller to suspend performance of any part or all of the performance of this Agreement for an indefinite period of time. If any such suspension significantly delays the progress of or causes the Seller additional direct expenses in the performance of this Agreement, not due to the fault or negligence of the Seller, the compensation to the Seller shall be adjusted by a modification to this Agreement on the basis of the additional direct expenses of the Seller to perform the Agreement and the time of performance of the Agreement shall be extended by the actual of the suspension.

Any claim by the Seller for compensation of a schedule extension must be supported by an appropriate document asserted within ten (10) days from the date an order is given to the Seller to resume the performance of the Agreement.

## 4.6 SITE ACCESS AND SECURITY REQUIREMENTS

(a) Foreign Nationals:

Access or entry by a foreign national (not a citizen of the United States) to the W IPP Site, DOE Skeen-Whitlock Building (SWB) or any other Government leased building is not allowed without first being approved by CBFO Security and the CBFO Manager. All unclassified visits (30 days or less) and assignments (more than 30 days) of foreign nationals will be managed consistent with the Department of Energy Notice and Policy 142.1.

A minimum of 45 days advance notice is required for indices checks of all foreign nationals that are citizens of a sensitive country, require access to a security area, or access to a sensitive subject. A Security Plan is required for unclassified foreign visits and assignments. Contact WIPP Security for required forms and guidelines. At a minimum, the following information must be provided:

1 Biographical and personal information, including date and place of birth, place/nature of employment.
2 Passport, visa and/or PRA Card (Immigration and Naturalization Service information, as required).
3 Purpose of visit; actual dates, subjects and areas to be visited.
4 Identification of host group and escort responsibilities. (The host will be required to prepare and process all forms and provide the Security Plan and the Host Report).
5 For delivery activities, the WIPP Site main Warehouse will act as the host group and Warehouse personnel will escort the foreign national(s). The Buyer will notify the supplier once the indices check and approvals have been completed.

(b) Operating Condition of Delivery Vehicles and Equipment:

Delivery vehicles and equipment entering the W IPP Site, or the SW B or any other Government leased facility, must be in a safe operating condition. Vehicles and equipment must have no

leaks, dripping fluids, or any other defects that pose a hazard to personnel and/or the environment. Defective vehicles will not be allowed to enter the W IPP Site or the SW B receiving areas and must be repaired before access is granted.

(c) Property Searches:

WIPP Security Officers will inspect all vehicles entering and leaving the W IPP Site. Upon entering the W IPP Site, searches are conducted to prevent bringing the following items onto the site:

- Weapons
- Ammunition
- Explosives
- Illegal drugs
- Alcohol
- Other dangerous instruments or material that could harm or damage people, property or the environment

- Animal companions

Upon leaving the WIPP Site and the SWB, searches may be conducted to prevent the unauthorized removal of government property.

(d) Security Badges and GFE/GFP Property:

Subcontractors are responsible for all WIPP issued security badges and entry key cards for all of their employees who have access to the WIPP Site, SWB or other Government leased facilities. The Subcontractor will provide to NWP, a listing of all employees who will need access to the

WIPP Site or other satellite facilities. This listing will be provided to and approved by the NW P Procurement Buyer who will present the listing to W IPP Security prior to Subcontractor employees gaining access to the W IPP site. The listing will contain the Subcontractor's company name, name of the employee(s) and the NW P Subcontract Technical Representative name.

WIPP Security reserves the right to collect picture badges on a daily basis from those Subcontractors that demonstrate inability to adequately control their security badge(s).

Prior to final payment, any and all security badges, Government Furnished Equipment or Government Furnished Property must be returned and accounted for. NW P reserves the right to withhold final payment pending adequate disposition of security badges and property.

The Subcontractor will immediately report, within 24 hours, to W IPP Security any lost or mis- placed security badge or key card. The security badges and the key cards are the property of the U.S. Department of Energy. Subcontractor personnel will maintain and display their badges in accordance with WIPP policies and procedures.

(e) WIPP Site Access Requirements:

30 days or less for Subcontractor Employees: Subcontractor personnel who are required to work on W IPP Property for 30 days or less unescorted will be required to complete GET-300. GET- 300 consists of completing a video presentation followed by an examination administered by the Security Department. Upon successful completion of the examination, the Subcontractor employee will be issued a contractor badge and will be allowed to access the W IPP site unescorted during normal work hours for a period of 30 days. To obtain the badge each day, the Subcontractor employee will show Security picture identification and then pick up their badge at the main Guard & Security Building. ***The Subcontractor employee will be required to turn in his/her badge at the gatehouse each day upon leaving the site***. Completion of this training does not allow the Subcontractor personnel access to the SW B unescorted.

30 days or more: Subcontractor personnel who are required to work on W IPP Property for 30 days or more must complete the GET Initial Training within 30 days of being assigned to the

WIPP. GET training consists of a two day instruction program, with an examination being given at the end of the session. Upon successful completion of the examination, the Subcontractor employee will be issued a contractor picture badge good for a period of one year. Upon completion of the assignment, the Subcontractor personnel will surrender their badge to security.

(f) Skeen-Whitlock Building Access Requirements:

30 days or less for Subcontractor Employees: Subcontractor personnel who are required to work at the SW B for 30 days or less unescorted will be required to complete GET-301. GET-301 consists of reading the safety brochure and watching the SW B safety orientation video followed by an examination administered by the SW B Receptionist. Upon successful completion of the examination, the Subcontractor employee will be issued a “T” badge and will be allowed to access the SW B unescorted during normal work hours for a period of 30 days. Upon completion of the assignment, the Subcontractor employee will surrender their badge to security. Completion of this training does not allow Subcontractor personnel access to the W IPP site unescorted.

30 days or more: Same requirements as noted above for WIPP Site Access.

## 4.7 WORKER SAFETY AND HEALTH PLAN

The Department of Energy has promulgated procedures/rules for the implementation of a Worker Safety and Health Program, Title 10 CFR 851 (“851”). NW P has integrated 851 as a NW P Worker Safety and Health Plan along with the Integrated Safety Management System (ISMS) description, and the NW P Voluntary Protection Program (VPP). Together, those documents serve as the overall plan for worker safety and health at W IPP. Upon implementation of 851 effective February 9, 2007, these rules govern the conduct of any entity including affiliated entities, such as a parent corporation, under contract with DOE, or a subcontractor at any tier, that has responsibilities for performing work at a covered DOE site in furtherance of a DOE mission. Violation of the applicable rules provides a basis for the assessment of civil and or criminal penalties under 851.

Indemnification of NWP:

To the extent permitted by law, the subcontractor assumes full responsibility and shall indemnify, save harmless, and defend NW P and its principal subcontractors, their agents, officers, employees and directors from any civil and or criminal penalties or liabilities under 851 et seq., arising out of activities of the subcontractor, its lower-tier subcontractors, suppliers, agents, employees, officers, or directors. The subcontractor’s obligation to indemnity and hold harmless shall expressly include attorney’s fees and other reasonable costs of defending any action or proceeding instituted under 851 or its implementing regulations.

A copy of 851, NWP’ implementing Worker Safety and Health Plan, and *The General Safety Rules for Contractors and their Subcontractors* is available at our web site: http://www.wipp.energy.gov/proc/html/business.htm.