

SPECIAL PROVISIONS - COST REIMBURSEMENT CONTRACTS

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1.0 PREAMBLE

These Special Provisions are requirements of any contract in which this Special Provision document is incorporated. These Special Provisions are applicable in their entirety unless specifically deleted or amended in the Contract and are in addition to the General Provisions and other Special Provisions that apply to this Contract. In the event of a conflict between these Special Provisions and the General Provisions, these Special Provisions shall take precedence.

Contractor shall flowdown to its subcontractors at all tiers the applicable portions of these provisions and referenced Federal Acquisition Regulation (FAR) and Department of Energy Acquisition Regulation (DEAR) clauses. Referenced Clauses are available at: <https://www.acquisition.gov/content/regulations>

2.0 COSTS ASSOCIATED WITH WHISTLEBLOWER ACTIONS

A. Definitions

1. Adverse Determination means:
 - a. A judgment of liability against the Contractor and in favor of the employee in an action in a judicial forum;
 - b. A recommended decision under 29 CFR 24.6 by an Administrative Law Judge that the Contractor has violated the employee provisions of the statutes or executive orders for which the Secretary of Labor has been assigned enforcement responsibility;
 - c. An initial agency decision, under 10 CFR 708.10 that the Contractor has engaged in conduct prohibited by 10 CFR 708.5;
 - d. Any decision against the Contractor by the head of an executive agency under Section 6006 of the Federal Acquisition Streamlining Act, Pub. L. 103-355 (adding Section 315 of the Federal Property and Administrative Services Act of 1949 (41 U. S. C. 251, et seq.);
2. **Retaliatory or Discriminatory Acts** means(s) discharge, demotion, reduction in pay, coercion, restraint, threats, intimidation or other similar negative action taken against an employee by the Contractor during the term of this Contract as a result of activities protected by the statutes enumerated in 29 CFR 24.1(a) or

as a result of the employee's disclosure of information, participation in a proceeding or refusal to engage in illegal or dangerous activities as set forth in 10 CFR 708.5(a).

3. **Employee Action** means an action filed in Federal or state court for redress of retaliatory or discriminatory action by the Contractor, any administrative procedure brought by an employee or federal agency under 29 CFR Part 24, or any other complaint filed against the Contractor for retaliatory or discriminatory acts under 10 CFR Part 708 by an employee of any other Contractor or subcontractor which is cognizable under 10 CFR 708.
 4. **Litigation Costs** include attorney, consultant, and expert witness fees, but exclude costs of settlements and judgments.
- B. All costs incurred in the investigation and/or defense of an employee action under this Contract clause shall be differentiated and accounted for by the Contractor so as to be separately identifiable. Subsequent to an adverse determination, such costs, as well as costs associated with any interim relief that may be granted, may not be paid from any advanced funding provided pursuant to this Contract. Notwithstanding the foregoing, Buyer may, in appropriate circumstances, provide for conditional payment upon provisions of adequate security, or other adequate assurance, and agreements by the Contractor to repay all litigation costs incurred subsequent to an adverse determination, as well as any interim relief cost, plus interest, unless there is a final determination that the Contractor is not liable for any retaliatory or discriminatory acts. The allowance of such costs, notwithstanding any other provision of the Contract, will be determined in accordance with this clause.
- C. Litigation costs and settlement costs incurred in connection with the defense of, or a settlement of, an employee action is allowable if incurred by the Contractor before any adverse determination of the employee's claim, if approved as just and reasonable by Buyer and otherwise allowable under the Contract. Cost incurred in pursuit of mediation or other forms of alternative dispute resolution are allowable, if approved as just and reasonable by Buyer, and no adverse determination of the employee's claim has occurred. Additionally, Buyer may, in appropriate circumstances, reimburse the Contractor for litigation and costs of judgments and settlements, which, in aggregate, do not exceed any prior settlement offer approved by Buyer and rejected by the employee.
- D. Except as provided in paragraphs 2.0-C., 2.0-D. and 2.0-E., any other cost associated with an employee action (including litigation costs connected with, a judgment resulting from, or settlement subsequent to the employee action) are not allowable unless the Contractor receives a judgment or final determination favorable to the Contractor. In such event, reasonable litigation costs incurred by the Contractor are allowable, and the Contractor may submit a request for reimbursement for all such costs incurred subsequent to the adverse determination.
- E. Cost incurred by the Contractor as a result of an employee action for retaliatory or discriminatory acts that resulted from compliance with either (1) specific terms and conditions of the Contract or (2) written instructions from Buyer shall be allowable.
- F. Reasonable litigation costs and settlement costs incurred by, and judgments entered by the Office of Hearings and Appeals against, the Contractor as a result of an employee action for discrimination under 10 CFR 708 are allowable where the Office of Contractor Employee Protection has issued a proposed disposition denying the relief being sought by the employee and the employee requests a hearing by the Office of Hearing and Appeals.
- G. The provisions of this paragraph shall not apply to the defense of suits by employees or ex-employees of the Contractor under FAR 31.205-47.
- H. The Contractor shall insert or have inserted the substance of this clause in all cost reimbursement subcontracts, with respect to work performed at a DOE-owned or -leased facility where 10 CFR 708 is also applicable under provisions of the Contract clause entitled "Whistleblower Protection for Contractor Employees."

3.0 ADVANCED UNDERSTANDING OF COSTS

Contractor recognizes, understands and agrees that costs and fees billed against this Contract will be submitted to the Department of Energy as charges in performance of the Buyer's prime contract. By submittal of an invoice, Contractor represents that the invoiced amounts are reasonable, allocable to the Contract and allowable charges to the government in accordance with FAR guidelines.

Accordingly, Contractor shall obtain Buyer approval before incurring Contract costs, which are not expressly authorized by the Contract or which have been identified by the Buyer as requiring preapproval. In addition to cost limitations specified elsewhere in this Contract, the following types of costs require advanced approval by Buyer, as indicated below:

1. Travel shall be in accordance with Federal Travel Regulations (FTR) and authorized in advance by the cognizant Buyer's Technical Representative (BTR)
2. Litigation and legal assistance must have Buyer Legal Counsel Consent and conform to the approved Buyer Legal Resource Management Plan and 10 CFR Part 719.
3. Conference attendance requires Buyer and Department of Energy authorization
4. Training must be Contract-directed and authorized in advance by the cognizant BTR
5. Raises and direct hourly pay increases which affect Contract costs, shall be in accordance with Contractor's compensation plan and agreed to in advance of the effective date by Buyer.

4.0 WITHDRAWAL OF WORK

- A. Buyer may, at its option and during the performance of this Contract unilaterally have any of the work contemplated in the Statement of Work of this Contract, performed by either another contractor or to have the work performed by Buyer or Buyer employees.
- B. Work may be withdrawn; (1) in order for Buyer to conduct pilot programs; (2) if the Contractor's estimated cost of the work is considered unreasonable; (3) for less than satisfactory performance by the Contractor; or (4) for any other reason deemed by Buyer to be in the best interests of Buyer.
- C. If the withdrawn work has been authorized under an annual Work Authorization Directive, the work shall be terminated in accordance with the procedures in the Contract clause entitled "Termination (Cost-Reimbursement)."
- D. If any work is withdrawn by Buyer, the Contractor agrees to fully cooperate with the new performing entity and to provide whatever support is required.

5.0 CONTRACTOR INVOICES

- A. The Contractor's invoice(s), as a minimum, shall identify the Contract, release and item number(s) (as applicable) for which payment is being requested. Invoice shall indicate the name(s) of the worker(s), number of hours of billable work by date, hourly rate, and a brief statement detailing the work performed. Invoiced rates and any ODCs must be specifically authorized by the Contract based on the Contract type. Any authorized travel shall be itemized within the invoice and supported with receipts in accordance with the requirements set forth under the "Reimbursement of Travel Expenses" clause herein or as otherwise identified under this Contract. Unauthorized deviations may result in disapproval of the invoice, or reduction in payment until the required support documentation is provided.
- B. Submittal of an invoice constitutes Contractor's certification that the materials, work and/or services have been delivered as specified on the invoice in accordance with the Contract. Submit the invoice and supporting documentation electronically via email to Buyer's Accounts Payable at CPCCAP@rl.gov with copy to the Contract Specialist, or via hard copy to the following address:

Central Plateau Cleanup Company
Accounts Payable Mail Stop: A4-03
P.O. Box 1464
Richland, WA 99352

- B. Buyer may withhold 5 percent of the amounts due under this Contract, but the total amount withheld shall not exceed \$50,000. The amounts withheld shall be retained until the execution and acceptance by the Buyer of a final release by the Contractor as provided below.
- D. Hourly Rate
 - 1. Unless specified otherwise, the invoiced amount shall be computed by multiplying the appropriate hourly rate prescribed in the Contract therein by the number of direct billable labor hours. Fractional parts of an hour shall be payable on a prorated basis. The Contractor shall substantiate invoices by evidence of actual payment for ODCs and by individual daily job timecards, or other substantiation approved by the Buyer.
- E. Other Direct Costs
 - 1. Allowable costs of ODCs shall be determined by the Buyer in accordance with FAR subpart 31.2 in effect on the date of this Contract.
 - 2. When approved in advance, reasonable and allocable material handling costs or general and administrative expenses may be included in the charge for material/ODCs to the extent they are clearly excluded from the hourly rate. Material handling costs are comprised of indirect costs, including, when appropriate, general and administrative expense allocated to direct materials in accordance with the Contractor's usual accounting practices consistent with FAR subpart 31.2.
 - 3. The Contractor will apply no element of profit to direct materials or ODCs.
 - 4. The Contractor shall be reimbursed for items and services purchased directly for the Contract only when cash, checks, or other forms of actual payment have been made for such purchased items or services.
 - 5. Reimbursable costs shall not include any costs arising for the letting, administration or supervision of performance of subcontracts, if the costs are included in the hourly rates identified in the Payment Schedule identified in this Contract.
 - 6. To the extent able, the Contractor shall obtain materials and services at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and obtain all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. Credit shall be given to the Buyer for cash and trade discounts, rebates, allowances, credits, salvage, the value of any appreciable scrap, commissions, and other amounts that have accrued to the benefit of the Contractor, or would have accrued except for the fault or neglect of the Contractor. The benefits lost without fault or neglect on the part of the Contractor, or lost through fault of the Buyer, shall not be deducted from gross costs.

6.0 REIMBURSEMENT OF TRAVEL EXPENSES AND EXTENDED PERSONNEL ASSIGNMENTS

- A. Travel Authorization: Only when authorized in advance by Buyer as part of the Contract, will Contractor personnel be reimbursed for travel expenses incurred in performance of this Contract. Expense reimbursement is limited to costs incurred for lodging plus meals and incidental expenses (M&IE) considered reasonable, allowable, and allocable, and that do not exceed the maximum per diem rates in effect at the time of travel as set forth in FTR. Contractor is expected to take reasonable steps to minimize the amount of travel expenses. Links to the FTR and current per diem rates can be found on the [GSA website](#).
- B. Eligibility: Expense reimbursements will only be allowed for Contractor personnel who travel from their permanent residence, if beyond a 100 mile radius of the temporary work location, for temporary assignment to the project site.
- C. Invoicing: Expense reimbursement requests shall be invoiced in accordance with Contract invoicing requirements in a timely manner, and shall identify the name of the traveler, destination, purpose and date of the travel as well as document any required Buyer pre-approval. Submittal of an invoice to Buyer that includes travel expenses signifies Contractor's certification to all requirements identified herein.
- D. Receipts: Unless agreed in advance by Buyer, invoices shall include original or legible copies of receipts to support the actual lodging and travel expenses incurred. Receipts for M&IE expenses are not typically required.

- E. Cancellation: When travel, arranged in accordance with these requirements, is cancelled in writing by Buyer, airline cancellation or rebooking charges may be invoiced and reimbursed provided that supporting documentation showing authorized travel and subsequent cancellation are provided.
- F. Short-Term Assignments: thirty (30) Days or Less): Lodging and M&IE will be paid in accordance with the rates established by the FTR unless otherwise specified in this Contract.
- G. Rates: Expenses will be reimbursed using the following guidelines:
1. Transportation Other than Airline: Reimbursement of transportation costs will be at the current FTR per mile rate, for travel by personal automobile, or actual fares for other public conveyance, reasonably incurred by Contractor's personnel in traveling by the shortest and most direct route from their home office to (Hanford Site) Richland, Washington, or to other such locations and return, at the request of Buyer. When travel is by automobile the most direct route shall be used. Local mileage costs while at the Hanford Site will not be reimbursed, unless specifically authorized in advance by Buyer.
 2. Transportation by Airline: Every reasonable effort shall be made to plan required travel to obtain the lowest advance-purchase fares available. Actual receipts shall accompany invoices for all airfare costs.
 3. Car Rental: Travelers shall use the least expensive compact car available. Should a compact or intermediate size vehicle not be available, use of a more expensive vehicle shall be approved in advance by the Buyer Contract Specialist and shall be limited only to the time necessary to obtain a lower cost alternative and include a certification by the employee of the effort made to obtain the compact vehicle. Actual receipts shall document all car rental and fuel costs. NOTE: A pre-paid refueling option and optional rental car insurance will not be reimbursed.
 4. Personally-Owned Vehicle: Instead of using a rental car, a personally-owned vehicle may be used if determined to be more cost effective. However, arrangements shall be pre-approved by the Buyer Contract Specialist. Buyer assumes no liability for accidents when personally owned or rental vehicles are used. Contractor retains all risks and liabilities associated with using personally-owned or rental vehicle.
 5. Lodging: Lodging will be reimbursed at the current FTR rate or at the actual cost if less than the allowable FTR rate. Actual receipts shall document all lodging costs being invoiced under this Contract. If Contractor employee moves from hotel lodging into residential accommodations earlier than 30 days, the lodging will be reduced to 55% of the FTR rate day effective date of establishing residential accommodations.
 6. M&IE: M&IE will be reimbursed at a flat rate per day; not to exceed the limits specified for the geographical location in the FTR. The daily living expense (M&IE) will be prorated per the FTR during the first and last day of travel, inclusive of weekend trips home. Weekend stay-over(s) are paid when continued work is required during the following week.
- H. Long-Term Temporary Work Assignments – (More than thirty (30) days, but less than three hundred sixty-five (365) Days). M&IE and lodging reimbursement limits will be reduced in accordance with DOE policy for extended travel assignments exceeding 30 days (ref. DOE-AL-2013-01 and DOE-H-2069).
1. Lodging: For the first 60 days and last 30 days of a long-term assignment, Buyer will reimburse costs associated with lodging at the lesser of actual cost or 100% of the FTR authorized rate at the assignment location. The intervening days will be reimbursed at the lesser of actual cost or 55% of the FTR rate.
 2. M&IE: For the first 30 days and last 30 days of the assignment, Buyer will reimburse costs associated with M&IE at the lesser of actual cost or 100% of the FTR M&IE rate for the assignment location. The intervening days will be reimbursed at the lesser of actual cost or 55% of the FTR rate. The M&IE will be prorated per the FTR during the first and last day of travel, inclusive of weekend trips home.
 3. Travel Home: When on a long-term work assignment (more than 30 consecutive days), one trip home, to the primary residence, after each four (4) consecutive weeks of assignment (on travel status) to the Contract will be reimbursed when approved in advance by Buyer as follows:
 - i. Travel home shall be booked via the most economical method and direct route in accordance with FTR guidance. If the project work assignment or an urgent situation prevents the

Contractor employee from obtaining a minimum of (14) day airfare rates; approval shall be obtained from Buyer prior to booking the airfare. If a personal vehicle is used to return to the primary residence, mileage will be paid at the current FTR rates up to a total not to exceed the fourteen (14) day advance airfare value.

- ii. While traveling and at home, lodging and M&IE expenses are not reimbursable.
 - iii. The trips home are neither “bankable,” transferable nor cumulative.
- I. Permanent Work Assignments: Unless pre-approved by Buyer, work assignments of more than three hundred sixty-five (365) consecutive days are considered permanent. All incurred travel and living expenses, after three hundred sixty-five (365) consecutive days, are not reimbursable without written pre-approval from Buyer. The consecutive-day count for Contractor personnel who change employment to another contractor or whose break between assignments is less than 120 calendar days will not restart, but continue from the original contract assignment date.

7.0 CONTRACTOR TIMEKEEPING RECORD SIGNATURE REQUIREMENT

Contractor shall maintain adequate timekeeping procedures, controls and processes for billing work to the Buyer. Contractor shall provide monthly to the Buyer all timecards for Contractor and lower-tier subcontractor employees that perform work and charge time under this Contract.

- A. Timekeeping Records shall be provided with each invoice submittal or as otherwise directed by the Buyer.
- 1. In the event the Contractor is utilizing the Buyer’s Contracted Labor Time Recording System, Contractor timecards shall be submitted to a specific Buyer-designated location electronically no later than the 28th of each month.
 - 2. Timekeeping records submitted may be a system-generated document, or equivalent, that identifies the project (job) number, employee name, dates worked and all associated daily hours and totals.
 - 3. Timekeeping records shall be signed by the Contractor employee or, when applicable, lower-tier subcontractor employee and certified by the Contractor or lower-tier subcontractor employee’s supervisor.
 - 4. Timekeeping records shall be provided for each Contract or Contract Release until all Contractor invoices are received and Work is complete.
- B. Submitting timecard records is a condition of payment under this Contract. Failure to provide timekeeping records as specified shall be a basis for Buyer to withhold Contractor payments.
- C. Consistent with the Accounts, Records, and Inspection clause of this Contract, all books of account and records relating to this Contract shall be subject to inspection and audit by Buyer, DOE, or a designee, at all reasonable times until a minimum of three years after the final payment has been made.

The Contractor shall include this clause in all cost-reimbursement, time and material, fixed hourly rate, and other non-fixed price lower-tier subcontracts where hours are billed directly to the Buyer.

8.0 REFUNDS

The Contractor agrees that any refunds, rebates, or credits (including any related interest) accruing to or received by the Contractor or any assignee, that arise under the materials portion of this Contract and for which the Contractor has received reimbursement, shall be paid by the Contractor to the Buyer.

9.0 FINAL RELEASE AND CLOSEOUT

- A. All invoices and charges against this Contract must be submitted within 60 days of completion of the work unless a longer period of time is authorized by the Buyer. Unless otherwise notified and agreed in advance, the

Buyer will begin the closeout process for this Contract at the end of this 60-day period and no additional invoices or charges shall be submitted.

- B. The Contractor shall, following final payment under this Contract, execute and deliver a [final release](#) discharging the Buyer, the Government and their officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this Contract.

10.0 CLAUSES INCORPORATED BY REFERENCE

The following FAR and DEAR clauses are hereby incorporated by reference to this Contract. Unless a revision is indicated, the full text of the clause as written in the regulation is invoked.

FAR/DEAR REFERENCE	CLAUSE TITLE
FAR 52.215-16	Facilities Capital Cost of Money (Jun 2003)
FAR 52.215-17	Waiver of Facilities Capital Cost of Money (Oct 1997)
FAR 52.215-23	Limitation on Pass-Through Charges (Oct 2009) Alternate I (Oct 2009)
FAR 52.216-7	Allowable Cost and Payment (Aug 2018) as modified by DEAR 952.216-7 (a)(3) 30th (cost invoices and fee invoices)
FAR 52.216-8	Fixed Fee (Jun 2011)
FAR 52.216-9	Fixed Fee – Construction (Jun 2011)
FAR 52.216-10	Incentive Fee (Jun 2011)
FAR 52.216-11	Cost Contract – No Fee (Apr 1984)
FAR 52.242-1	Notice of Intent to Disallow Costs (Apr 1984)
FAR 52.242-3	Penalties for Unallowable Costs (May 2014)
FAR 52.242-4	Certification of Final Indirect Costs (Jan 1997)
FAR 52.243-2	Changes – Cost-Reimbursement (Aug 1987), Alternate I (Apr 1984) – for services only, Alternate II (Apr 1984) – for services and supplies, or Alternate II (Apr 1984) – for construction
FAR 52.249-6	Termination (Cost-Reimbursement) (May 2004) Alternate I (Sep 1996)
DEAR 950.251-70	Contractor Employee Travel Discounts (Aug 2009)