

Purpose of Modification:

The purpose of this contract modification is to amend contract clause H-39, Definition of Unusually Hazardous or Nuclear Risk for FAR Clause 52.250-1 Indemnification Under Public Law-804, to include activities responding to the Japan Earthquake and Tsunami to the definition of unusually hazardous or nuclear risk for which the contractor has been provided Public Law 85-804 indemnification. This indemnity would apply to work that has been authorized in accordance with the Secretary of Energy's Memorandum dated March 31, 2011, "Secretarial Determination Authorizing Public Law 85-804 Indemnification for Contractors Engaged in Activities Responding to the Japan Earthquake and Tsunami." This contract modification incorporates into Clause H-39, Definition of Unusually Hazardous or Nuclear Risk for FAR Clause 52.250-1 Indemnification Under Public Law-804 those activities that shall be covered for work performed in and for efforts involving the Japan earthquake and tsunami.

Description of Modification:

The following changes are hereby incorporated into the contract:

1. Part I, Section H, Special Contract Requirements, Clause H-39, Definition of Unusually Hazardous or Nuclear Risk for FAR Clause 52.250-1 Indemnification Under Public Law 85-804 is paragraph A. (4) is added to the contract as follows:

H-39 DEFINITION OF UNUSUALLY HAZARDOUS OR NUCLEAR RISK FOR FAR CLAUSE 52.250-1 INDEMNIFICATION UNDER PUBLIC LAW 85-804

A. The term "a risk defined in this contract as unusually hazardous or nuclear" as used in FAR Clause 52.250-1 means the risk of legal liability to third parties (including legal costs as defined in paragraph (jj) of section 11 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §2014(jj), notwithstanding the fact that the claim or suit may not arise under section 170 of said Act, 42 U.S.C. §2010) arising from actions or inactions in the course of the following work performed by the Contractor under the Contract:

- (1) Providing assistance in implementing physical security at nuclear and radiological facilities worldwide to ensure effective safeguards and security of weapons-usable nuclear materials and high-risk radiological materials both domestically and internationally under Department of Energy's (DOE) Global Threat Reduction Initiative (GTRI). Supporting activities shall include vulnerability assessments; design and installation of physical security systems; material consolidation; secure transportation; materials disposition and conversion to less attractive forms; implementation of detection and measurement technologies; and security operations training.
- (2) Providing assistance in DOE's Material Protection Control and Accounting (MPC&A) program including cooperative work outside the United States on the design and implementation of MPC&A systems for facilities processing, handling, and storing nuclear materials, and the transportation of nuclear materials; provision of U.S.-manufactured equipment, and procurement of equipment for installation in facilities in order to implement the above systems; training in the design, use and assessment of MPC&A systems, export control, and facility transition support.

- (3) Participation in the DOE/National Nuclear Security Administration program(s) focusing on the complete denuclearization of the Democratic People's Republic of Korea (DPRK), including cooperative work outside the United States on the disablement and dismantlement of all declared and undeclared DPRK nuclear facilities and the verification of activities, equipment, and materials at said facilities; inspection, packaging, removal, securing in place, transportation, storage and disposition of spent nuclear fuel, nuclear materials (including uranium, highly-enriched uranium, and plutonium), and other radiological materials and equipment; and the conversion of any reactors using highly-enriched uranium fuel to low-enriched uranium fuel.
- (4) Participation in tasks or activities by the Contractor or its subcontractors on or after March 11, 2011 that is directed or authorized by the U.S. Department of Energy or the U.S. Department of Energy National Nuclear Security Administration as an element of activities taken in response to the Japanese earthquake and tsunami, including efforts to address and assess damage to nuclear power plants and potential radioactive releases from these plants now and into the future. **[M764]**
- (5) Other activities relating to nonproliferation, emergency response, anti-terrorism activities, or critical national security activities that involve the use, detection, identification, assessment, control, containment, dismantlement, characterization, packaging, transportation, movement, storage or disposal of nuclear, radiological, chemical, biological, or explosive materials, facilities or devices, provided such activities are specifically requested or approved, in writing, by the President of the United States, the Secretary of Energy, the Deputy Secretary of Energy, or an Under Secretary, and further provided that the request or approval specifically identifies the particular requested or approved activity and makes the indemnity provided by this clause applicable to that particular activity because it involves extraordinary risks.

B. The unusually hazardous or nuclear risks described above are indemnified only to the extent that they are not covered by the Price-Anderson Act (section 170d of the Atomic Energy Act of 1954, as amended 42.U.S.C. §2210d) or where the indemnification provided by the Price Anderson Act is limited by the restriction on public liability imposed by section 170e of the Atomic Energy Act of 1954, as amended, (42 U.S.C. §2210e) to an amount which is not sufficient to provide complete indemnification for the legal liability to which the Contractor is exposed.

(End of clause)

[M764]

(End of Contract Modification M764)