

Appendix K -Indemnification Under Public Law 85-804

INDEMNIFICATION UNDER PUBLIC LAW 85-804

(a) The "Contractor's principal officials," as used in this Appendix, means directors, officers, managers, superintendents, or other representatives supervising or directing--

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operations at any one plant or separate location at which this contract is being performed; or

(3) A separate and complete major industrial operation in connection with the performance of this contract.

(b) Under Pub. L. 85-804 (50 U.S.C. §§ 1431-1435) and Executive Order 10789, as amended, and regardless of any other provisions of this contract, the Government shall, subject to the limitations contained in the other paragraphs of this Appendix, indemnify the Contractor against--

(1) Claims (including reasonable expenses of litigation or settlement) by third parties (including employees of the Contractor) for death; personal injury; or loss of, damage to, or loss of use of property;

(2) Loss of, damage to, or loss of use of Contractor property, excluding loss of profit; and

(3) Loss of, damage to, or loss of use of Government property, excluding loss of profit.

(c) This indemnification applies only to the extent that the claim, loss, or damage (1) arises out of or results from a risk defined in this contract as unusually hazardous or nuclear and (2) is not compensated for by insurance or otherwise. Any such claim, loss, or damage, to the extent that it is within the deductible amounts of the Contractor's insurance, is not covered under this Appendix. If insurance coverage or other financial protection in effect on the date the approving official authorizes use of this clause is reduced, the Government's liability under this Appendix shall not increase as a result.

(d) When the claim, loss, or damage is caused by willful misconduct or lack of good faith on the part of the Contractor's principal officials, the Contractor shall not be indemnified for--

(1) Government claims against the Contractor (other than those arising through subrogation); or

Appendix K -Indemnification Under Public Law 85-804

- (2) Loss or damage affecting the Contractor's property.
- (e) With the Contracting Officer's prior written approval, the Contractor may, in any subcontract under this contract, indemnify the subcontractor against any risk defined in this contract as unusually hazardous or nuclear. This indemnification shall provide, between the Contractor and the subcontractor, the same rights and duties, and the same provisions for notice, furnishing of evidence or proof, and Government settlement or defense of claims as this Appendix provides. The Contracting Officer may also approve indemnification of subcontractors at any lower tier, under the same terms and conditions. The Government shall indemnify the Contractor against liability to subcontractors incurred under subcontract provisions approved by the Contracting Officer.
- (f) The rights and obligations of the Parties under this Appendix shall survive this contract's termination, expiration, or completion. The Government shall make no payment under this Appendix unless the agency head determines that the amount is just and reasonable. The Government may pay the Contractor or subcontractors, or may directly pay parties to whom the Contractor or subcontractors may be liable.
- (g) The Contractor shall--
- (1) Promptly notify the Contracting Officer of any claim or action against, or any loss by, the Contractor or any subcontractor that may reasonably be expected to involve indemnification under this Appendix;
 - (2) Immediately furnish to the Government copies of all pertinent papers the Contractor receives;
 - (3) Furnish evidence or proof of any claim, loss, or damage covered by this Appendix in the manner and form the Government requires; and
 - (4) Comply with the Government's directions and execute any authorizations required in connection with settlement or defense of claims or actions.
- (h) The Government may direct, control, or assist in settling or defending any claim or action that may involve indemnification under this Appendix.
- (i) The cost of insurance (including self-insurance programs) covering a risk defined in this contract as unusually hazardous or nuclear shall not be reimbursed except to the extent that the

Appendix K -Indemnification Under Public Law 85-804

Contracting Officer has required or approved this insurance. The Government's obligations under this Appendix are--

- (1) Excepted from the release required under Clause 3.5, Payments and Advances; and
- (2) Not affected by Clause 3.4, Obligation of Funds.

(j) The term "a risk defined in this contract as unusually hazardous or nuclear" as used in this Appendix 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. § 2210) arising from actions or inactions in the course of the following work performed by the Contractor under this contract:

- (1) Participation in --
 - (i) DOE's Nuclear Emergency Search Team ("NEST") outside the United States,
 - (ii) DOE's Accident Response Group ("ARG") outside the United States,
 - (iii) DOE's Joint Technical Operations Team ("JTOT") outside the United States, or
 - (iv) other emergency response or nuclear proliferation threat activities outside the United States as requested or approved by the Secretary of Energy, the Deputy Secretary of Energy, or the Under Secretary of Energy,

to the extent participation in activities described in subparagraphs (i), (ii), (iii) or (iv) above involves nuclear activities involving real or suspected nuclear weapons, nuclear weapons components, or nuclear materials which can be readily utilized either (A) for the production or the fabrication of nuclear weapons without substantial further effort; or (B) for intentional widespread contamination or dispersal of harmful nuclear materials, whether or not such real or suspected weapons, components, or harmful nuclear materials are owned by the United States.

- (2) (i) Repairs and maintenance of United States-owned nuclear weapons, requested by the Department of Defense under DOE's Stewardship role for the United States nuclear weapons stockpile.

Appendix K -Indemnification Under Public Law 85-804

(ii) Repairs and maintenance of United Kingdom-owned nuclear weapons requested by the Ministry of Defense of the United Kingdom, as directed or approved by the President of the United States, the Secretary of Energy, the Deputy Secretary of Energy, or the Under Secretary of Energy.

(iii) Participation in DOE's Materials Protection Control and Accountability (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; and training in the design, use and assessment of MPC&A systems.

(iv) Participation in the U.S.-Russian Plutonium Disposition Program including cooperative work outside the United States on the demonstrations of alternative technologies for converting weapons-origin plutonium into forms unsuitable for direct weapons applications, and subsequently into forms suitable for ultimate disposition; technical support for the construction and demonstration of a pilot line for Russian plutonium conversion/disposition of weapons-origin plutonium; and technical support for the construction of a Russian production line for conversion and/or disposition of Russian weapons-origin plutonium.

(3) Other activities as requested or approved by the President of the United States, the Secretary of Energy, the Deputy Secretary of Energy, or the Under Secretary of Energy, to the extent such activities involve work located outside the United States, whether or not materials, equipment or weapons involved in such work belong to the United States, and provided in such case that the requesting or approving official determines that such work is of a kind appropriately managed or overseen by the Contractor-managers of Government-owned nuclear weapons facilities, and further provided that the request or approval for such work specifically makes the indemnification provided by this Appendix applicable thereto.