

Part I - The Schedule
Section H
Special Contract Requirements
Table of Contents

H.1	Contract End Date.....	2
H.2	Phase II Scope of Work.....	2
H.3	Implementation of the Hanford Site Stabilization Agreement.....	2
H.4	Stop-Work and Shutdown Authorization.....	4
H.5	Occupational Health Records and Radiation Exposure Records	5
H.6	Incumbent Employees	5
H.7	Workers' Compensation	6
H.8	Administration of Subcontracts.....	7
H.9	Disposition of Intellectual Property - Failure to Complete Contract Performance	7
H.10	Determination of Appropriate Labor Standards	8
H.11	Age Discrimination in Employment.....	8
H.12	Other Government Contractors.....	8
H.13	Advance Understanding On Costs	9
H.14	Price-Anderson Amendments Act Non-Compliance.....	9
H.15	Contractor Acceptance of Notices of Violation or Alleged Violations, Fines, and Penalties	9
H.16	Allocation of Responsibilities for Contractor Environmental Compliance Activities	10
H.17	Payments and Advances	10
H.18	Financial Management System Requirements.....	13
H.19	Invoiced Amounts.....	14
H.20	Key Personnel.....	14
H.21	Responsible Corporate Official.....	15
H.22	Alternative Dispute Resolution	16
H.23	Displaced Employee Hiring Preference	16
H.24	Labor Relations.....	17
H.25	DOE Mentor Protégé Program.....	18
H.26	Small Business Fee Reduction	18
H.27	Cost Overruns for Building 324 and 327 D ⁴	19
H.28	Cost Overruns for ISS of 105-H, 105-D, and 105-F Reactors	19
H.29	Waste Volume Risk Assumption.....	19
H.30	ERDF Performance Warranty	19
H.31	Penalty for Failing to Meet Tri-Party Agreement Milestones.....	20
H.32	Penalty for Removal of Essential Personnel.....	20
H.33	Employee Incentive and Retention Programs	20
H.34	Technical Assistance	21
H.35	Parent Company G&A Cost Unallowability	21
H.36	Development of Labor Resources	21

Section H

Special Contract Requirements

H.1 Contract End Date

If the work as described in Section C, *Statement of Work*, is not completed within fifteen years from the date of contract award, the contract will be terminated in accordance with the applicable FAR Termination Clause contained in Section I.

H.2 Phase II Scope of Work

- (A) Within 30 months of completion of work under Phase I of this contract, DOE may elect to exercise its unilateral rights under this contract to enter into negotiations for all or any part of Phase II of the statement of work. Phase II is described in Section C of this contract. If DOE so determines, the Contracting Officer shall notify the contractor in writing of its intent to enter into negotiations for all or part of Phase II of this contract. The Contracting Officer's notification shall establish the parameters of the negotiation, including contract type and scope.
- (B) The Contractor shall submit a proposal within 90 days of receiving the Contracting Officer's notification to negotiate for part or all of Phase II scope of work. The parties agree to negotiate in good faith within any limitations set forth in the Contracting Officer's notification letter.
- (C) The decision to enter into negotiations for Phase II of the contract is at the unilateral discretion of the Government. The Contracting Officer's notification of intent to negotiate shall not obligate the Government to award a modification to incorporate any of the Phase II work scope if it is subsequently determined that it is not in the Government's best interest. The Contractor's proposal may be considered as part of the government's best interest determination. Award of Phase II of this contract will be subject to the requirements for justification of other than full and open competition as defined under 41 U.S.C.253(c).

H.3 Implementation of the Hanford Site Stabilization Agreement

- (A) The Site Stabilization Agreement for all construction work for the U.S. Department of Energy (DOE) at the Hanford Site (hereinafter referred to as "Site Stabilization Agreement"), which is referenced in this clause (H.3) consists of a Basic Agreement dated September 10, 1984, plus an appendix, both of which may be periodically amended. The Site Stabilization Agreement is hereby incorporated into this contract by reference. The contractor is responsible for obtaining the most current text from DOE.
- (B) This clause H.3 applies to employees performing work, under contracts (or subcontracts thereunder) administered by the Richland Operations Office of the U.S. Department of Energy (DOE-RL) which are subject to the Davis-Bacon Act, in the classifications set forth in the Site Stabilization Agreement for work performed at the Hanford Site.

- (C) Contractors and subcontractors at all tiers who are parties to an agreement(s) for construction work with a Local Union having jurisdiction over DOE-RL construction work performed at the Hanford Site, or who are parties to a national labor agreement for such construction work, shall become signatory to the Site Stabilization Agreement and shall abide by all of its provisions, including its Appendix A. Subcontractors at all tiers who have subcontracts with a signatory contractor or subcontractor shall become signatory to the Site Stabilization Agreement and shall abide by all of its provisions, including its Appendix A.
- (D) Contractors and subcontractors at all tiers who are not signatory to the Site Stabilization Agreement and who are not required under paragraph C above to become signatory to the Agreement, shall pay not less and no more than the wages, fringe benefits, and other employee compensation set forth in Appendix A thereto and shall adhere, except as otherwise directed by the Contracting Officer, to the following provisions of the Agreement:
- | | | |
|-----|--------------|---|
| (1) | Article VII | Employment, <u>Section 2</u> only |
| (2) | Article XII | Non-Signatory Contractor Requirements |
| (3) | Article XIII | Hours of Work, Shifts, and Overtime |
| (4) | Article XIV | Holidays |
| (5) | Article XV | Wage Scales and Fringe Benefits, <u>Sections 1 and 2</u> only |
| (6) | Article XVII | Payment of Wages-Checking In & Out, <u>Section 3</u> only |
| (7) | Article XX | General Working Conditions |
| (8) | Article XXI | Safety and Health |
- (E) The Contractor agrees to make no contributions in connection with this contract to Industry Promotion Funds, or similar funds, except with the prior approval of the Contracting Officer.
- (F) The obligation of the Contractor and its subcontractors to pay fringe benefits shall be discharged by making payments required by this contract in accordance with the provisions of the amendments to the Davis-Bacon Act contained in the Act of July 2, 1964 (Public Law 88-349-78 Stat. 238-239), and the Department of Labor regulations in implementation thereof (29 CFR, Parts 1, 5).
- (G) The Contracting Officer may, from time to time, direct the Contractor to pay amounts for wages, fringe benefits, and other employee compensation as the Site Stabilization Agreement, including its Appendix A, may be modified by the parties thereto from time to time.
- (H)
- (1) In the event of failure to comply with paragraphs (C) (D) (E) (F) and (G) above, or failure to perform any of the obligations imposed upon the Contractor and its subcontractors hereunder, the Contracting Officer may withhold any payments due to the Contractor and may terminate the Contract for default.

- (2) The rights and remedies of the Government provided in this clause H.3 shall not be exclusive and are in addition to any other rights and remedies of the Government provided by law or under this Contract.
- (I) The requirements of this clause H.3 are in addition to, and shall not relieve the Contractor of, any obligation imposed by other clauses of this Contract, including those entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act - Overtime Compensation," "Payrolls and Basic Records," "Compliance with Copeland Act Requirements," "Withholding of Funds," and "Contract Termination - Debarment."
- (J) The Contractor agrees to maintain its bid or proposal records showing rates and amounts used for computing wages and other compensation, and its payroll and personnel records during the course of work subject to this clause H.3, and to preserve such records for a period of three years thereafter, for all employees performing such work. Such records will contain the name and address of each such employee, his correct classification, rate of pay, daily and weekly number of hours worked, and dates and hours of the day within which work was performed, deductions made, and amounts for wages and other compensation covered by paragraphs (C) (D) (E) (F) and (G) hereof. The Contractor agrees to make these records available for inspection by the Contracting Officer and will permit him/her to interview employees during working hours on the job.
- (K) The Contractor agrees to insert the provisions of this Clause H.3 including this paragraph (K) in all subcontracts for the performance of work subject to the Davis-Bacon Act.

H.4 Stop-Work and Shutdown Authorization

- (A) Imminent Health and Safety Hazard is a given condition or situation which, if not immediately corrected, could result in a serious injury or death, including exposure to radiation and toxic/hazardous chemicals. Imminent Danger in relation to the Facility Safety Envelope is a condition, situation, or proposed activity which, if not terminated, could cause, prevent mitigation of, or seriously increase the risk of (1) Nuclear Criticality, (2) Radiation Exposure, (3) Fire/Explosion, and/or (4) Toxic Hazardous Chemical Exposure.
- (B) Stop Work: In the event of an imminent health and safety hazard, identified by facility line management or operators or facility health and safety personnel overseeing facility operations, or other individuals, the individual or group identifying the imminent hazard situation shall immediately take actions to eliminate or mitigate the hazard (i.e., by directing the operator/ implementer of the activity or process causing the imminent hazard to stop work, or by initiating emergency response actions or other actions) to protect the health and safety of the workers and the public and to protect DOE facilities and the environment. In the event an imminent health and safety hazard is identified, the individual or group identifying the hazard should coordinate with an appropriate Contractor official, who will direct the shutdown or other actions, as required. Such mitigating action should subsequently be coordinated with the DOE and Contractor management. The suspension or stop work order should be promptly confirmed in writing from the Contracting Officer.
- (C) Shutdown: In the event of an imminent danger in relation to the Facility Safety Envelope or a non-imminent health and safety hazard identified by facility line managers, facility operators, health and

safety personnel over-viewing facility operations, or by independent oversight organizations, the individual or group identifying the potential health and safety hazard may recommend facility shutdown in addition to any immediate actions needed to mitigate the situation. However, the recommendation must be coordinated with Contractor management, and the DOE-RL Manager. Any written direction to suspend operations shall be issued by the Contracting Officer, pursuant to clause F.5.

(D) Facility Representatives: DOE personnel designated as Facility Representatives (FR) provide the technical oversight of operations. The FR has the authority to “stop work,” which applies to the shutdown of an entire plant, activity, or job. This stop work authority will be used for an operation of a facility which is performing work the FR believes:

- (1) Poses an imminent danger to health and safety of workers or the public if allowed to continue;
- (2) Could adversely affect the safe operation of, or could cause serious damage to the facility if allowed to continue; or
- (3) Could result in the release of radiological or chemical hazards to the environment in excess of regulatory limits.

H.5 Occupational Health Records and Radiation Exposure Records

The Contract Clause entitled “Access to and Ownership of Records” is implemented as follows with respect to occupational health records and radiation exposure records:

All occupational health records generated during the performance of Hanford-related activities will be maintained by the Hanford Environmental Health Foundation (HEHF) and are the property of DOE. All radiation exposure records generated during the performance of Hanford-related activities will be maintained by the Pacific Northwest National Laboratory (PNNL) and are the property of DOE.

H.6 Incumbent Employees

(A) In filling employment positions other than management positions for work under the contract, the contractor and its team members (team as defined in Clause B.5) shall provide a right of first refusal for those positions to qualified incumbent employees. Management positions are defined as those above the first-line managerial/supervisory level and as those typically responsible for subordinate staff, budget oversight, and/or policy-making decisions. The number and type of positions to be established and the terms of such employment, including salary and benefits, are at the sole discretion of the contractor and its team members with the following exception. Employees of the preceding contractor and its integrated subcontractors who are offered and accept employment with the contractor or its team members will be paid base salary/pay rates equivalent to the base salary/pay rates they are being paid at the time of the offer if the position for which they are being hired entails duties and responsibilities substantially equivalent to the position last held with the preceding contractor and its integrated subcontractors. Integrated subcontractors under the current contract are Eberline Services Hanford, Inc., and CH2M HILL Hanford, Inc. In addition, any “sign-on” bonuses

offered or paid to incumbent employees as an employment inducement, will not be reimbursed as an allowable cost under this contract.

Employees hired from the previous contractor or its integrated subcontractors whose base salaries/pay fall above the maximum rate of the new salary/pay rate range, and who are placed in positions substantially equivalent to their existing position, will be placed in a “red circle” classification. The employees will continue to receive their most recent salary/pay rate paid by the prior contractor and its integrated subcontractors, but they shall receive no base salary/pay adjustments until such time as the rate range is increased to include their base salary/pay. They will then be eligible for increases that will result in being paid no more than the maximum of their range.

Employees hired from the previous contractor or its integrated subcontractors and whose salaries/pay fall below the minimum of the rate range, and who are placed in positions substantially equivalent to their existing positions shall have their salaries/pay rate increased to the minimum of the range.

- (B) In the event the contractor becomes a “successor contractor,” the contractor and/or its team members agrees to recognize and bargain in good faith with the certified collective bargaining agent(s) for the incumbent represented workforce, subject to and in compliance with the National Labor Relations Act requirement with respect to successor contracts.
- (C) The contractor agrees to continue participation in the Hanford defined benefit pension programs for employees of the prior contractor and its integrated subcontractors who are currently participating in the Hanford defined benefit pension programs and who are hired under this contract as employees of the contractor or its team. In the case of work scope assumed from Fluor Hanford, Inc., “prior contractor” should be read as “continuing site management contractor.” The contractor and its team members may participate in the existing 401(k) savings plan of the prior contractor or may offer an Internal Revenue Service qualified defined contribution plan(s) for employees of the contractor and its team members that will accept employee account assets and liabilities from the 401 (k) plans of the incumbent contractor and its integrated subcontractors. The provisions of the plan(s) are at the sole discretion of the contractor and its team members.
- (D) The contractor and its team members agree to credit the length of service employees of the incumbent workforce who are hired for work under this contract toward the service period required for benefits of this contract relating to vacations, sick leave, health insurance, and other benefits. This includes accepting severance pay credits earned by the employees with the preceding contractor to the extent the employees have not exercised any severance pay rights with the prior contractor and its integrated subcontractors.

H.7 Workers’ Compensation

- (A) Pursuant to State of Washington Revised Code (RCW) Title 51, the Department of Energy (DOE), Richland Operations Office (RL) is a group self-insurer for purposes of workers’ compensation coverage. The coverage afforded by the workers’ compensation statutes shall, for performance of work under this contract at the Hanford Site, be subject to the following:

- (1) Under the terms of a Memorandum of Understanding with the Washington Department of Labor and Industries (L&I), DOE has agreed to perform all functions required by self-insurers in the State of Washington. The Contractor is not required to pay for Workers' Compensation coverage or benefits except as otherwise provided below or as directed by the Contracting Officer.
- (2) The Contractor shall submit to DOE (or other party as designated by DOE), for transmittal to the L & I, such payroll records as are required by Workers' Compensation laws of the State of Washington.
- (3) The Contractor shall submit to DOE (or other party as designated by DOE), for transmittal to the Department, the accident reports provided for by RCW Title 51, Section 51.28.010, or any other documentation requested by DOE or the L&I pursuant to the Workers' Compensation laws of the State of Washington.
- (4) The Contractor shall take such action, and only such action, as DOE requests in connection with any accident reports, including assistance in the investigation and disposition of any claim thereunder and, subject to the direction and control of DOE, the conduct of litigation in the Contractor's own name in connection therewith.
- (5) The Contractor shall be responsible for making all payments and submitting all reports required by RCW Title 51, Section 51.32.073.

H.8 Administration of Subcontracts

- (A) The administration of all subcontracts entered into and/or managed by the Contractor, including responsibility for payment hereunder, shall remain with the Contractor unless assigned at the direction of DOE.
- (B) The Government reserves the right to direct the Contractor to assign to the Government or another Contractor any subcontract awarded under this Contract.
- (C) The Contractor agrees to accept transfer of existing subcontracts as determined necessary by DOE for continuity of operations. The Contractor shall attempt to negotiate changes to the assigned subcontracts incorporating mandatory flow-down provisions at no cost. If the subcontractor refuses to accept the changes or requests price adjustments, the Contractor will notify the Contracting Officer in writing.

H.9 Disposition of Intellectual Property - Failure to Complete Contract Performance

The following provisions shall apply in the event the Contractor does not complete contract performance for any reason:

- (A) Regarding technical data and other intellectual property, DOE may take possession of all technical data, including limited rights data and data obtained from subcontractors, licensors, and licensees, necessary to complete the project, as well as the designs, operation manuals, flowcharts, software, information, etc., necessary for performance of the work, in conformance with the purpose of this contract. Proprietary data will be protected in accordance with the limited rights data provisions of the Rights in Data-Facilities clause.
- (B) The Contractor agrees to and does hereby grant to the Government an irrevocable, non-exclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice by the Contractor, and any other intellectual property, including technical data, which are owned or controlled by the Contractor, at any time through completion of this contract and which are incorporated or embodied in the construction of the facilities or which are utilized in the operation or remediation of the facilities or which cover articles, materials or products manufactured at a facility, (1) to practice or to have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of that facility. The acceptance or exercise by the Government of the aforesaid rights and license shall not prevent the Government at anytime from contesting the enforceability, validity or scope of, or title to, any rights or patents or other intellectual property herein licensed.
- (C) In addition, the Contractor will take all necessary steps to assign permits, authorizations, leases, and any licenses in any third party intellectual property for operations, remediation and closure of the facilities to DOE or such other third party as DOE may designate.

H.10 Determination of Appropriate Labor Standards

DOE shall determine the appropriate Labor Standards in accordance with the Davis-Bacon Act, which shall apply to work performed under this contract. Where requested by DOE, the contractor shall provide whatever information is relevant to labor standards determinations, in the form and timeframe required by DOE, as may be necessary by DOE to make such labor standards determinations. The Contractor will then be responsible for ensuring that the appropriate labor standards provisions are included in subcontracts.

H.11 Age Discrimination in Employment

The Contractor shall not discriminate against any employee, applicant for employment, or former employee on the basis of age. The Contractor shall comply with the Age Discrimination in Employment Act, with any state or local legislation regarding discrimination based on age, and with all applicable regulations thereunder.

H.12 Other Government Contractors

The Government may undertake or award other contracts for additional work or services. The Contractor agrees to fully cooperate with such other Contractors and Government employees and carefully integrate its own work to such other work as may be directed by the Contracting Officer. The Contractor shall not

commit or permit any act which will interfere with the performance of work by any other Contractor or by Government employees. If DOE determines that the Contractor's activities may interfere with another DOE Contractor, the Contracting Officer shall so notify the Contractor and the Contractor shall comply with any instructions the Contracting Officer may provide.

H.13 Advance Understanding On Costs

- (A) The DOE and the Contractor will, within 60 days after contract award, reach advance understandings regarding certain costs under this Contract. Such advance understandings enable both DOE and the Contractor to determine the allocability, allowability, and reasonableness of such costs prior to their incurrence, thereby avoiding subsequent disallowances and disputes, and facilitating prudent expenditure of public funds. It is expected that costs covered by such advance understandings will include employee travel and relocation, corporate home office, employee compensation and benefits, and facilities capital costs of money. Generally, DOE expects the incurrence of costs to be consistent with the Contractor's corporate-wide policies consistently and uniformly applied throughout its domestic operations subject to the specific limitations, conditions, and exclusions of subpart 31.2 of FAR as supplemented by Department of Energy Acquisition Regulation (DEAR) 931.2. Advance understandings will be appended to the Contract in Section J, Appendix 6, *Advance Agreements, Personnel, and Related Costs*.
- (B) The maximum senior executive compensation allowable under this contract shall be governed by 65 Fed. Reg. 30640 (2000) and subsequent updates. The term "compensation" means the total amount of wages, salary, bonuses, and deferred compensation for the fiscal year, whether paid, earned, or otherwise accruing, as recorded in an employee's cost accounting records for the fiscal year.

H.14 Price-Anderson Amendments Act Non-Compliance

The Contractor shall establish an internal Price Anderson Amendments Act (PAAA) noncompliance identification, tracking and corrective action system and shall provide access to and fully support DOE reviews of the system. The Contractor shall also implement a PAAA reporting process which meets applicable DOE standards. The Contractor shall be accountable for ensuring subcontractors adhere to the PAAA requirements.

H.15 Contractor Acceptance of Notices of Violation or Alleged Violations, Fines, and Penalties

- (A) The Contractor shall accept, in its own name, service of notices of violation or alleged violations (NOVs/NOAVs) issued by Federal or State regulators to the Contractor resulting from the Contractor's performance of work under this Contract, without regard to liability. The allowability of the costs associated with fines and penalties shall be subject to the other provisions of this Contract.
- (B) The Contractor shall notify DOE promptly when it receives service from the regulators of NOVs/NOAVs and fines and penalties.

H.16 Allocation of Responsibilities for Contractor Environmental Compliance Activities

- (A) This clause allocates the responsibilities of DOE and the Contractor, referred to collectively as the “parties” for implementing the environmental requirements at facilities within the scope of the Contract. In this Clause, the term “environmental requirements” means requirements imposed by applicable Federal, State, and local environmental laws and regulations, including, without limitation, statutes, ordinances, regulations, court orders, consent decrees, administrative orders, or compliance agreements including the *Hanford Federal Facility Agreement and Consent Order*, consent orders, permits, and licenses.
- (B) Liability and responsibility for civil fines or penalties arising from or related to violations of environmental requirements shall be borne by the party causing the violation irrespective of the fact that the cognizant regulatory authority may assess any such fine or penalty upon either party or both parties without regard to the allocation of responsibility or liability under this Contract. This contractual allocation of liability for any such fine or penalty is effective regardless of which party signs permit applications, manifests, reports, or other required documents, is a permittee, or is the named subject of an enforcement action or assessment of a fine or penalty.
- (C) Regardless of which party to this contract is named subject of an enforcement action for noncompliance with environmental requirements by the cognizant regulatory authority, provisions of this contract related to allowable costs will govern liability for payment of any fine or penalty. If the named subject of an enforcement action or assessment of a fine or penalty is DOE and the fine or penalty would not otherwise be reimbursable under the allowable cost provisions of this contract if the Contractor was the named subject of the enforcement action, the Contractor will either pay the fine or penalty or reimburse DOE (if DOE pays the fine or penalty).

H.17 Payments and Advances

- (A) Payment of fee amounts. Fee payments shall be made by direct payment as determined by the Contracting Officer (see Section B.9). The Contracting Officer may offset against any such fee payment the amounts owed to the Government by the Contractor, including any amounts owed for disallowed costs under this contract. No fee payments may be withdrawn against the payments cleared financing arrangement without prior written approval of the Contracting Officer.
- (B) Payments on Account of Allowable Costs. The contracting officer and the contractor shall agree as to the extent to which payment for allowable costs or payments for other items specifically approved in writing by the contracting officer (for example, negotiated fixed amounts) shall be made from advances of Government funds. When pension contributions are paid by the contractor to the retirement fund less frequently than quarterly, accrued costs therefor shall be excluded from costs for payment purposes until such costs are paid. If pension contribution are paid on a quarterly or more frequent basis, accrual therefor may be included in costs for payment purposes, provided that they are paid to the fund within 30 days after the close of the period covered. If payments are not made to the fund within such 30-day period, pension contribution costs shall be excluded from cost for payment purposes until payment has been made.

- (C) Special financial institution account-use. All advances of Government funds shall be withdrawn pursuant to a payments cleared financing arrangement prescribed by DOE in favor of the financial institution or, at the option of the Government, shall be made by direct payment or other payment mechanism to the contractor, and shall be deposited only in the special financial institution account referred to in the Special Financial Institution Account Agreement, which is incorporated into this contract in Section J, Appendix 7. No part of the funds in the special financial institution account shall be commingled with any funds of the contractor or used for a purpose other than that of making payments for costs allowable and, if applicable, fees earned under this contract, negotiated fixed amounts, or payments for other items specifically approved in writing by the contracting officer. If the contracting officer determines the balance of such special financial institution account exceeds the contractor's current needs, the contractor shall promptly make such disposition of the excess as the contracting officer may direct.
- (D) Title to funds advanced. Title to the unexpended balance of any funds advanced and of any special financial institution account established pursuant to this clause shall remain in the Government and be superior to any claim or lien of the financial institution of deposit or others. It is understood that an advance to the contractor hereunder is not a loan to the contractor, and will not require the payment of interest by the contractor, and that the contractor acquires no right, title or interest in or to such advance other than the right to make expenditures therefrom, as provided in this clause.
- (E) Financial settlement. The Government shall promptly pay to the contractor the unpaid balance of allowable costs (or other items specifically approved in writing by the contracting officer) and fee upon termination of the work, expiration of the term of the contract, or completion of the work and its acceptance by the Government after:
- (1) Compliance by the contractor with DOE's patent clearance requirements, and
 - (2) The furnishing by the contractor of:
 - (a) An assignment of the contractor's rights to any refunds, rebates, allowances, accounts receivable, collections accruing to the contractor in connection with the work under this contract, or other credits applicable to allowable costs under the contract;
 - (b) A closing financial statement;
 - (c) The accounting for Government-owned property required by the clause entitled "Property"; and
 - (d) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract subject only to the following exceptions:
 - (i) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible to exact statement by the contractor;
 - (ii) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the contractor to third parties arising out of the performance of this contract; provided that such

- claims are not known to the contractor on the date of the execution of the release; and provided further that the contractor gives notice of such claims in writing to the contracting officer promptly, but not more than one (1) year after the contractor's right of action first accrues. In addition, the contractor shall provide prompt notice to the contracting officer of all potential claims under this clause, whether in litigation or not (see also Contract Clause--, DEAR 970.5228-1, "Insurance-Litigation and Claims");
- (iii) Claims for reimbursement of costs (other than expenses of the contractor by reason of any indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the contractor under the provisions of this contract relating to patents; and
 - (iv) Claims recognizable under the clause entitled, Nuclear Hazards Indemnity Agreement.
- (3) In arriving at the amount due the contractor under this clause, there shall be deducted,
- (a) Any claim which the Government may have against the contractor in connection with this contract, and
 - (b) Deductions due under the terms of this contract, and not otherwise recovered by or credited to the Government. The unliquidated balance of the special financial institution account may be applied to the amount due and any balance shall be returned to the Government forthwith.
 - (F) Claims. Claims for credit against funds advanced for payment shall be accompanied by such supporting documents and justification as the contracting officer shall prescribe.
 - (G) Discounts. The contractor shall take and afford the Government the advantage of all known and available cash and trade discounts, rebates, allowances, credits, salvage, and commissions unless the contracting officer finds that action is not in the best interest of the Government.
 - (H) Collections. All collections accruing to the contractor in connection with the work under this contract, except for the contractor's fee and royalties or other income accruing to the contractor from technology transfer activities in accordance with this contract, shall be Government property and shall be processed and accounted for in accordance with applicable requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of this contract and, to the extent consistent with those requirements, shall be deposited in the special financial institution account or otherwise made available for payment of allowable costs under this contract, unless otherwise directed by the contracting officer.
 - (I) Direct payment of charges. The Government reserves the right, upon ten days written notice from the contracting officer to the contractor, to pay directly to the persons concerned, all amounts due which otherwise would be allowable under this contract. Any payment so made shall discharge the Government of all liability to the contractor therefor.

- (J) Determining allowable costs. The contracting officer shall determine allowable costs in accordance with the Federal Acquisition Regulation subpart 31.2 and the Department of Energy Acquisition Regulation subpart 48 CFR 970.31 in effect on the date of this contract and other provisions of this contract.

H.18 Financial Management System Requirements

- (A) The Contractor shall operate and maintain a financial management system that (1) conforms with Generally Accepted Accounting Principles, Federal Financial Accounting Standards, and Cost Accounting Standards, except as modified by DOE requirements; (2) provides accurate, reliable, and auditable financial and statistical data on a timely basis; (3) ensures accountability for all assets; (4) supports financial planning and budget formulation, validation, execution, and the recasting or changing of DOE funding or task codes such as BRC Numbers, Program Task Numbers, and local projects/tasks; (5) maintains proper funding authorization; (6) provides sufficient management controls per DEAR 970.5203-1 Management Controls, and internal controls; (7) integrates and reports the financial information for subcontractors; and (8) provides all other necessary financial reports, which shall include accumulating and reporting indirect and support costs by function. The Contractor may be requested, periodically, to provide detail cost element information at the institutional level using standard definitions and applications.
- (B) The Contractor shall provide monthly electronic invoices (or data supporting payments cleared financing arrangement drawdowns), and cost accrual and accrual reversal records to the Contracting Officer. Within the electronic invoice submission, the contractor shall provide all invoice data elements required to:
- (1) Determine that all costs invoiced by the contractor were necessary and reasonable per the terms and conditions of the contract. This includes but is not limited to invoice number, billing period, Work Breakdown Structure number, purchase order number and line item, quantity/hours, description of goods or services provided, cost type, cost categories, unit price, amount, adders.
 - (2) Properly record all contract costs and payments in the DOE accounting system. This includes, but is not limited to: Reporting Entity, Financial Plan, Local Organization, Fund-Code, Control Program Number (i.e. Budget and Reporting Numbers), Program Task Number, Project Baseline Summaries (PBS) numbers, the fiscal year the funds were provided, the project/task number, Object Class, sub-object classes, Other Party Identifiers, and Budget Reference Numbers for plant and equipment line item number (if applicable).

Upon request, the contractor shall also provide written documentation to support the electronic invoices to the Contracting Officer or his designate.

- (C) Centralized Business Management System (BMS) services are available from the assigned provider on a cost reimbursable basis. If a determination is made that said services will not be used, the contracting officer shall be notified within 60 days after contract award. DOE reserves the right to direct utilization of Central BMS services at any time.

(D) The Contractor shall submit a plan for Contracting Officer approval of any substantive change to the financial management system or subsystems at least 60 days in advance of implementation. This plan must identify the cost and schedule for changing from the existing financial systems, and provide a comparison of the capabilities of the new system(s) to the existing system(s). Any new system modifications are subject to review and audit.

H.19 Invoiced Amounts

In addition to the information required by other sections of this contract, the Contractor shall provide incurred cost data coded in a DOE defined format via computer. This incurred cost data must be fully edited against DOE codes such as BCR codes. The Contractor shall deliver the fully edited incurred cost data to DOE on the same day the payment is requested unless directed otherwise by DOE.

H.20 Key Personnel

Key personnel are considered to be essential to the work being performed on this contract. Prior to diverting to other positions or substituting any of the specified Key individuals, or proposing them as a Key person under another contract, the Contractor shall notify the Contracting Officer in writing at least thirty (30) days in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the work being performed under this contract. No diversion or substitution shall be made by the Contractor without the written consent of the Contracting Officer, provided that the Contracting Officer may ratify in writing such diversion or substitution and such ratification shall constitute the consent of the Contracting Officer required by this clause. Unless approved in writing by the Contracting Officer, no key personnel position will remain unfilled by a permanent replacement for more than 60 days. The key personnel list shall be amended during the course of the contract to add or delete key personnel as appropriate and approved by the Contracting Officer.

Anytime the overall RC Project Manager is replaced or removed for any reason under the Contractor's control within two (2) years of being placed in the position, fee will be reduced by \$1,000,000. In addition, each time any of the other Key Personnel proposed are replaced or removed for any reason under the Contractor's control within two (2) years of being placed in the position, fee will be reduced by \$500,000 for each removed or replaced individual.

The Contractor may request, in writing, that the Contracting Officer waive all or part of a reduction, if special circumstances exist. The Contracting Officer shall have sole unilateral discretion to waive or not waive all or part of a reduction.

The following is a list of key personnel for this contract:

<u>Name</u>	<u>Position</u>
Patrick L. Pettiette	Project Manager
John Greg Meyer	ESH&Q Manager
Linda Guinn	Regulatory Strategy Manager

John G. McKibbin	Buildings 324/327 Field Project Manager
Dennis E. Reese	100 Area D ⁴ /ISS Field Project Manager
Carrie L. Taylor	300 Area D&D Field Project Manager
John E. Shaler, PE	Waste Sites Field Project Manager
John E. Law, PE	Burial Grounds Field Project Manager
Janice Williams	Waste Management and ERDF Operations Field Project Manager
Robert M. Nichols, Jr.	Closure Planning, Integration and Controls Manager
Jim L. Jacobsen	Business Administration Manager

H.21 Responsible Corporate Official

The Contractor shall provide a Guarantee of performance from its parent company in the form set forth in Section J, Appendix 1. If the Contractor is a joint venture, newly-formed L.L. Co., or other similar entity where more than one company is involved in a business relationship created for the purpose of this procurement, the parent companies of all the entities forming the new entity shall all provide Guarantees, which Guarantees shall provide for joint and severable liability for the performance of the Contractor. In the event any of the signatories to the Guarantee of performance enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer. Notwithstanding the provisions of this clause, the Government may contact, as necessary, the single responsible corporate official identified below, who is at a level above the Contractor and who is accountable for the performance of the Contractor, regarding Contractor performance issues. Should the responsible corporate official change during the period of the contract, the Contractor shall promptly notify the Contracting Officer in writing of the change in the individual to contact.

Name: Stephen G. Hanks

Position: CEO, Washington Group International

Company/Organization: Washington Group International

Address: P.O. Box 22, Boise, Idaho 83729

Phone: (208) 386-6176

Facsimile: (208) 386-5298

Email: Steve.Hanks@wgint.com

H.22 Alternative Dispute Resolution

- (A) The U.S. Department of Energy (DOE) and the Contractor both recognize that methods for fair and efficient resolution of significant disputes are essential to the successful and timely achievement of critical milestones and completion of all Contract requirements. Accordingly, the parties agree to:
- (1) Participate in a partnering workshop to be conducted by an experienced professional jointly agreed upon by the parties and,
 - (2) Jointly select a “standing neutral” within 30 days of completion of the partnering workshop. The “standing neutral” will be available to help resolve disputes as they arise. Such “standing neutral” can be an individual, a board comprised of three independent experts, or a company with specific expertise in the Contract area. If a “standing neutral” cannot be agreed upon, the DOE Office of Dispute Resolution will make a selection. The specific ADR processes and procedures, as well as the processes for selecting the “standing neutral” will be determined at the partnering workshop.
- (B) The parties agree the following provision may be invoked for significant disputes upon mutual agreement of the DOE and the Contractor:
- (1) DOE and the Contractor shall use their best efforts to informally resolve any dispute, claim, question, or disagreement by consulting and negotiating with each other in good faith, recognizing their mutual interests and attempting to reach a just and equitable solution satisfactory to both parties. If any agreement cannot be reached through informal negotiations within 30 days after the start of negotiations, then such disagreement shall be referred to the “standing neutral,” pursuant to the procedures jointly developed in the partnering workshop.
 - (2) The “standing neutral” will not render a decision, but will assist the parties in reaching a mutually satisfactory agreement. In the event the parties are unable after 30 days to reach such an agreement, either party may request, and the neutral will render, a non-binding advisory opinion. Such opinion shall not be admissible in evidence in any subsequent proceedings.
- (C) If one party to this contract requests the use of the process set forth in paragraphs B(1) and B(2) of this clause and the other party disagrees, the party disagreeing must express its position in writing to the other party. On any such occasion, if the party requesting the above process wishes to file a claim under the “Disputes” clause, it must do so within 30 days of receipt of the written position from the other party.

H.23 Displaced Employee Hiring Preference

- (A) Definition. Eligible employee means a former or current employee of a contractor or subcontractor
- (1) who has been employed at a Department of Energy Defense Nuclear Facility as defined in Section 3163 of the National Defense Authorization Act for FY 1993 (Pub. L. 102-484) and the interim

Planning Guidance for Contractor Work Force Restructuring (DEC 1998) or other applicable Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time (hereinafter "Guidance"), (2) whose employment at such a Defense Nuclear facility has been involuntarily terminated (other than for cause) or who has been notified that they are facing termination, (3) who has also met the job attachment test as set forth in applicable Departmental Guidance, and (4) who is qualified for a particular position with the Contractor or, with retraining, can become qualified within the time and cost limits set forth in the Departmental guidance.

- (B) The Contractor will assess the skills needed for the work to be performed under this contract and will provide to DOE Job Opportunity Bulletin Board System (JOBBS) all information relevant to the qualifications for all of the positions for which the Contractor has vacancies.
- (C) Consistent with the Department of Energy guidance as supplemented by the appropriate site work force restructuring plan, the Contractor agrees it will provide to the extent practicable a preference in hiring to an eligible employee as defined other than for managerial positions (defined as those above the first level of supervision) for work to be performed under this contract.
- (D) To the extent practicable, the Contractor will develop training programs designed to improve the qualifications of employees to fill vacancies with the contractor and will take such training into account in assessing the qualifications of eligible employees.
- (E) The requirements of this clause shall be included in subcontracts at any tier except subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed \$500,000.

H.24 Labor Relations

- (A) The contractor, and its major subcontractors, will respect the rights of employees, (1) to organize, form, join, or assist labor organizations; bargain collectively through representatives of the employees own choosing; and engage in other protected concerted activities for the purpose of collective bargaining, or (2) to refrain from such activities.
- (B) To the extent required by law, the Contractor and its major subcontractors shall give notice to any lawfully designated representative of its employees for purposes of collective bargaining and, upon proper request, bargain to good faith impasse or agreement, or otherwise satisfy applicable bargaining obligations.
- (C) The Contractor shall promptly advise the Contracting Officer of, and provide all appropriate documentation regarding, any labor relations developments at the prime or subcontract level that involve or appear likely to involve:
 - (1) Possible strike situations affecting the facility;
 - (2) Referral to the Energy Labor-Management Relations Panel;
 - (3) The National Labor Relations Board at any level;

(4) Recourse to procedures under the Labor-Management Act of 1947 as amended, or any other Federal or state labor law; and

(5) Any grievance that may reasonably be assumed to be arbitrated under a Collective Bargaining Agreement.

(D) Cost of wages and fringe benefits, to employees represented by collective bargaining units, not in excess of those in appropriate collective bargaining agreements including the Hanford Site Stabilization Agreement, as modified throughout performance of this contract, shall be allowable. The costs associated with grievance processing and settlements, arbitration, and arbitration awards shall be allowable in accordance with the provisions of the Contract Section I Clause entitled, *Insurance - Litigation and Claims*.

H.25 DOE Mentor Protégé Program

The Department of Energy has established a Mentor-Protégé Program to encourage its prime contractors to assist small businesses, firms certified under section 8(a) of the Small Business Act by SBA, other small disadvantaged businesses, women-owned small businesses, Historically Black Colleges and Universities and Minority Institutions, other minority institutions of higher learning and small business concerns owned and controlled by service disabled veterans in enhancing their business abilities. Consistent with the provisions set forth in DEAR 919.70, the Contractor shall Mentor at least one active Protégé company at all times during the performance on this contract. Mentor and Protégé firms will develop and submit “lessons learned” evaluations to DOE at the conclusion of the contract.

H.26 Small Business Fee Reduction

The Small Business Subcontracting Plan incorporated into this contract contains percentage goals for awarding of subcontracts to small businesses, small disadvantaged businesses, women-owned businesses, HUBZone businesses, and veteran owned businesses. The Contractor also agrees, as a part of this contract, to have in place, with one or more small businesses, a mentor protégé program. The Contractor’s performance in meeting these goals, and supporting protégé(s) in a mentor protégé agreement(s), will be evaluated at the following milestones:

1. End of Third Year of Contract Performance
2. End of Sixth Year of Contract Performance
3. End of Contract

If, at each one of these milestones, the Contractor has not met any or all of these subcontracting goals for that milestone period, or has failed to support a protégé during that period, the Contracting Officer may reduce the final fee amount by an amount up to \$3 Million for each milestone up to a total reduction of otherwise earned fee for the contract in the amount of \$9 Million. The reduction amount shall be at the unilateral discretion of the Contracting Officer. The dollar amount of each such reduction shall be a permanent reduction in the total fee paid under this contract. For the first two milestone periods, if it has been determined that the Contractor has failed to meet such goals, or have a mentor protégé program, upon establishment of an appropriate fee reduction amount for that period, the ensuing provisional fee payments shall be reduced proportionally during the next milestone period until the full milestone

reduction amount has been achieved. At contract completion, the total amount of fee reduction for failure to meet its subcontracting goals shall be offset by any amount of liquidated damages assessed in accordance with FAR 52.219-16, Liquidated Damages – Subcontracting Plan. Any reduction for failure to meet the Mentor-Protégé program shall be in addition to any liquidated damages under FAR 52.219-16. For the purpose of implementing this clause, the percentage goals initially established in the contractor's Small Business Subcontracting Plan will remain in effect for the duration of the contract period.

H.27 Cost Overruns for Building 324 and 327 D⁴

Any cost to complete over the target cost of \$32,514,000 for RCC20820 and \$1,013,000 for RCC08520 (after being adjusted for escalation) will be deemed unallowable costs and will be subtracted from the contractor's fee, until the combined total of these unallowable costs equals \$5 million, without regard to the contract minimum fee included in section B.7. When the \$5 million amount is reached, any additional costs will again become allowable costs unless excluded elsewhere in the contract. The contractor will account for all costs consistent with government accounting practices.

H.28 Cost Overruns for ISS of 105-H, 105-D, and 105-F Reactors

All costs to complete over the target costs of \$9,332,000 for RCC02430, \$5,614,000 for RCC03300 and \$4,693,000 for RCC01890 (after each is adjusted for escalation) will be deemed unallowable costs and will be subtracted from the subcontractor's fee until the combined total of these unallowable costs equals \$2.5 million, without regard to the contract minimum fee included in section B.7. When the \$2.5 million amount is reached, any additional costs will again become allowable costs unless excluded elsewhere in the Contract. The Contractor will account for all costs consistent with government accounting practices.

H.29 Waste Volume Risk Assumption

Notwithstanding that Clause B.8(B)(3) states that "...for the remediation of waste sites including burial grounds....The contractor may submit for negotiation a request for a change to the target cost if the actual waste volumes are 20% greater than the projected waste volumes as specified in the Richland Environmental Restoration Project Baseline, Multi-Year Work Plan, DOE/RL-96-105 Revision 4, in the aggregate over all the waste sites specified in the SOW," the Contractor will not submit such request for change until the actual waste volumes are 25% greater than the specified volumes.

H.30 ERDF Performance Warranty

If the Contractor disposes of waste at ERDF that does not meet ERDF waste acceptance criteria, the Contractor will take whatever corrective action is necessary per the permit. The costs for any such corrective action shall be unallowable and will be subtracted from the contractor's fee until the combined total of those unallowable costs equals \$2 million, without regard to the contract minimum fee included in Clause B.7. When the \$2 million amount is reached, any additional costs will again become allowable

costs unless excluded elsewhere in the contract. The contractor will account for all costs consistent with government accounting practices.

H.31 Penalty for Failing to Meet Tri-Party Agreement Milestones

The Contractor will be assessed a \$100,000 fee reduction for each of the 23 Phase I Tri-Party Agreement milestones listed in Table C.5 of the Statement of Work that the Contractor misses, without regard to the contract minimum fee included in Clause B.7. This fee penalty is independent of, and may be in addition to, any penalty assigned to the Contractor under Clause H.15.

H.32 Penalty for Removal of Essential Personnel

The Contractor shall provide a list of the 40 essential personnel. The essential personnel list shall be amended during the course of the contract to add or delete essential personnel as appropriate and as approved by the Contracting Officer.

Any time an essential person is replaced or removed for any reason under the Contractor's control within two (2) years of being placed in the position or before the planned end of the position, whichever is less, fee will be reduced by \$100,000 for each removed or replaced individual.

The Contractor may request, in writing, that the Contracting Officer waive all or part of a reduction, if special circumstances exist. The Contracting Officer shall have sole unilateral discretion to waive or not waive all or part of a reduction.

In addition, the Contractor will pay a \$100,000 penalty for each named essential person who does not report to work on his/her first day of scheduled work on this contract for any reason under the control of the Contractor. This penalty will be subtracted from the Contractor's fee. Any such essential personnel fee penalty shall be deducted without regard to the contract minimum fee included in Clause B.7.

H.33 Employee Incentive and Retention Programs

The Contractor will create an employee performance incentive and retention program pool for all contract employees. Upon contract award, the Contractor will prepare a detailed plan defining and establishing specific award and payment criteria; DOE will be provided the opportunity to approve this plan. This program will be administered by the Contractor for employee incentives and retention.

Under this performance incentive and retention program, the Contractor shall contribute into this program's incentive pool 10% of its fee earnings for cost performance under the contract target cost. In addition, DOE has the option to "contribute" 10% of its cost savings for cost performance under the contract target cost. The DOE contribution shall be achieved by accepting as an allowable cost under the contract payment by the Contractor into the incentive program pool of an amount equal to 10% of the cost savings achieved against the target cost. This cost savings payment amount shall not count against the actual target cost established pursuant to Section B of this contract.

The Contractor will annually establish the incentive distribution plan and shall make annual payments into the incentive program pool, as appropriate, based on earned value performance against the target cost. The incentive program plan will have provisions for incremental incentive contribution forfeiture for performance that compromises safety or compliance, consistent with the severity of the fee deduction imposed on the Contractor by DOE.

Inclusion of this clause into this contract creates no rights in any third parties. Additionally, this clause may not be used to claim any right to disbursement of any amount. Based on contract performance, it is possible that no disbursement will be made.

H.34 Technical Assistance

The Contractor will provide DOE with a list of 30 technical experts that the Contractor will make available upon request at no cost to provide support to WCC for the RCC Project. Such corporate support will be for special technical expertise not generally available on the contract, or support that is needed on an immediate or emergency basis.

H.35 Parent Company G&A Cost Unallowability

Except for the G&A expense allocations for any employees of the Contractor's parent(s) or affiliated companies under a subcontract to the Contractor, no parent company G&A expense (home office expense) is allowable under this contract per FAR 31.201-6.

H.36 Development of Labor Resources

The Contractor will invest in a program to develop craft labor in disciplines that are anticipated to be needed or have limited availability. Annually, the Contractor will contribute from fee to the program. The Contractor must contribute \$1 million over the life of the contract. The program may address recruiting, training, retention or any other area designed to make skilled resources available to the site. The program will be designed in cooperation with local unions and will be reviewed by DOE. Inclusion of this clause creates no rights in any third parties or any relators under the False Claims Act. Benefit flows exclusively to the Government.