AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. CONTRACT ID CODE	PAGE OF PAGES
	1 22

2. AMENDMENT/MODIFICATION NO.	3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. *(If applicable)*
127	See Block 16C		

6. ISSUED BY CODE 00601

Richland Operations Office
U.S. Department of Energy
Richland Operations Office
P.O. Box 550, MSIN A7-80
Richland WA 99352

7. ADMINISTERED BY *(If other than Item 6)* CODE 00601

Richland Operations Office
U.S. Department of Energy
Richland Operations Office
P.O. Box 550, MSIN A7-80
Richland WA 99352

8. NAME AND ADDRESS OF CONTRACTOR *(No., street, county, State and ZIP Code)*

MISSION SUPPORT ALLIANCE, LLC
Attn: Mr. J. Frank Armijo
2490 Garlick Boulevard
RICHLAND WA 99354

CODE 800095031 FACILITY CODE

(x) 9A. AMENDMENT OF SOLICITATION NO.

9B. DATED *(SEE ITEM 11)*

x 10A. MODIFICATION OF CONTRACT/ORDER NO. DE-AC06-09RL14728

10B. DATED *(SEE ITEM 13)* 04/28/2009

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended, ☐ is not extended.
Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA *(If required)*
Not Applicable

13. THIS ITEM ONLY APPLIES TO MODIFICATION OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

CHECK ONE	
	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: *(Specify authority)* THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES *(such as changes in paying office, appropriation date, etc.)* SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
X	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: I-103 FAR 52.243-2Changes - Cost Reimbursement (1987) and mutual agreement
	D. OTHER *(Specify type of modification and authority)*

E. IMPORTANT: Contractor ☐ is not, ☒ is required to sign this document and return 1 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION *(Organized by UCF section headings, including solicitation/contract subject matter where feasible.)*

This modification concludes negotiations and definitizes the Material Differences Request for Equitable Adjustment to incorporate the work scope identified during contract transition that was being performed by the predecessor contractor and was not completely identified in the Request for Proposal. The negotiated estimated cost for this Request for Equitable Adjustment is $11,756,269 and the negotiated available fee is $680,247. The total contract price is increased by $12,436,515 for this work scope. The contract value is modified from $3,175,121,876 to $3,187,558,391.

This modification replaces Section B in its entirety. This modification updates Section B, table B.4-1 and Table B.4-2 to include negotiated changes to the contract cost, fee and total contract price is included as Attachment 1.

Continued ...

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER *(Type or print)*	16A. NAME AND TITLE OF CONTRACTING OFFICER *(Type or print)*
BRAD A. EDWARDS DIRECTOR	GIGI H. BRANCH

15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA	16C. DATE SIGNED
Brad A Edwards *(Signature of person authorized to sign)*	6/10/11	Gigi H. Branch *(Signature of Contracting Officer)*	6/10/11

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
	The Statement of Work will be reissued to include the material differences identified in the Material Differences Request for Equitable Adjustment in a subsequent modification. This modification does not add additional obligated funds to the contract as the work is incrementally funded. Accordingly, work under the Contract, such as described herein, must be performed within the amount of funds which have been allotted to the contract in accordance with Clause I.82 FAR 52.232.22 - Limitation of Funds (Apr 1984). By signature on this modification, the Contractor agrees to the following Contractor's Statement of Release: In consideration of this Modification 127 agreed to herein as complete equitable adjustment, the Contractor hereby releases the Government from any and all liability under this contract for further equitable adjustments attributable to such facts or circumstances giving rise to this modification. There are no other changes to the terms and conditions of the contract. FOB: Destination Period of Performance: 04/28/2009 to 04/28/2014				

PART I – THE SCHEDULE

SECTION B

SUPPLIES OR SERVICES AND PRICES/COSTS

TABLE OF CONTENTS

B.1 TYPE OF CONTRACT B-1

B.2 ITEM(S) BEING ACQUIRED B-1

B.3 OBLIGATION AND AVAILABILITY OF FUNDS B-1

B.4 CONTRACT COST AND CONTRACT FEE B-1

B.5 CHANGES TO CONTRACT COST AND CONTRACT FEE B-4

B.6 BASIS FOR TOTAL AVAILABLE FEE B-4

B.7 FEE STRUCTURE B-5

B.8 FEE DETERMINATION AND PAYMENT B-6

B.9 FEE REDUCTIONS B-7

B.10 SMALL BUSINESS SUBCONTRACTING FEE REDUCTION B-8

B.11 ALLOWABILITY OF SUBCONTRACTOR FEE B-9

B.12 DEAR 970.5215-3, CONDITIONAL PAYMENT OF FEE, PROFIT, AND OTHER INCENTIVES – FACILITY MANAGEMENT CONTRACTS (ALTERNATE II) (JAN 2004) [DEVIATION] B-9

B.13 CONDITIONAL PAYMENT OF FEE (CPOF) DOE RICHLAND OPERATIONS OFFICE SITE-SPECIFIC PERFORMANCE CRITERIA/REQUIREMENTS B-17

PART I – THE SCHEDULE

SECTION B

SUPPLIES OR SERVICES AND PRICES/COSTS

B.1 TYPE OF CONTRACT

This is a performance-based Cost-Plus-Award Fee Contract for services to directly support the environmental clean-up mission at the U.S. Department of Energy (DOE) Hanford Site, with a fee structure that provides a strong financial motivation for the Contractor to furnish safe, compliant, cost-effective and energy-efficient services.

B.2 ITEM(S) BEING ACQUIRED

The Contractor shall, in accordance with the terms of this Contract, provide the personnel, equipment, materials, supplies, and services and do all things necessary for, or incident to, providing its best efforts to manage, operate, and deliver mission support services.

B.3 OBLIGATION AND AVAILABILITY OF FUNDS

(a) Obligation of Funds. Pursuant to the Section I Clause entitled, *FAR 52.232-22, Limitation of Funds,* total funds in the amount of $636,076,391.31 have been allotted for obligation and are available for payment of services provided from the effective date of this Contract through September 30, 2011.

(b) Availability of Funds. Except as may be specifically provided in the Section I Clause entitled, *DEAR 952.250-70, Nuclear Hazards Indemnity Agreement*, the duties and obligations of DOE hereunder calling for the expenditure of appropriated funds shall be subject to the availability of funds appropriated by the U.S. Congress that DOE may legally spend for such purposes.

B.4 CONTRACT COST AND CONTRACT FEE

This Section establishes the estimated Total Contract Cost and Contract Fee. Within Table B.4-1:

(a) *Contract Period* is defined as the *Transition Period, Base Period,* and *Option Period(s)* (if exercised) described in the Section F Clause entitled, *Period of Performance.*

(b) *Estimated Contract Cost* (Column (a)) is defined as all costs initially proposed by the Contractor for base statement of work.

(c) *Available Fee (Column* (b)) is defined as the maximum amount of fee that may be earned under the Contract by Contract period. *Contract Price* (Column (c)) is the sum of columns (a) and (b), in each year of Contract performance.

(d) *Total Contract Cost* is *defined as the* cumulative *Estimated Contract Cost* for all Contract periods.

(e) *Total Available Fee* is defined as the cumulative *Available Fee* for all Contract periods.

(f) *Total Contract Price* is defined as the sum of *Total Contract Cost* and *Total Available Fee.*

(g) *Estimated Contract Cost, Contract Price, and Available Fee* by Fiscal Year will be adjusted annually by the Contracting Officer upon approval of the *Performance Measurement Baseline* and whenever changes affecting the table are made under the Section I Clause entitled, *Changes – Cost Reimbursement.*.

Table B.4-1, Contract Cost and Contract Fee

Contract Period *Year of Contract Performance*	**Elements of Estimated Contract Cost and Contract Fee**		
	Estimated Contract Cost (a)	**Available Fee** (b)	**Contract Price** (c)
Transition Period*	$6,203,827	-0-	$6,203,827
***Transition Period Costs are included in FY2009 costs**			
Base Period			
Fiscal Year 2009	$34,394,723	$1,964,317	$36,359,040
Fiscal Year 2010	$315,386,158	$20,422,025	$335,808,183
Fiscal Year 2011	$302,194,031	$26,135,112	$328,329,143
Fiscal Year 2012	$282,923,928	TBD BY DOE[1]	TOTAL
Fiscal Year 2013	$352,422,992	TBD BY DOE	TOTAL
Fiscal Year 2014	$201,277,922	TBD BY DOE	TOTAL
Total Base Period	$1,488,599,754	$103,820,183	$1,592,419,937
Option Period(s)			
Option Period 1			
Fiscal Year 2014	$99,944,496	TBD BY DOE	TOTAL
Fiscal Year 2015	$309,260,738	TBD BY DOE	TOTAL
Fiscal Year 2016	$293,565,489	TBD BY DOE	TOTAL
Fiscal Year 2017	$195,264,853	TBD BY DOE	TOTAL
Total Option Period 1	$898,035,576	TBD BY DOE	TOTAL
Option Period 2			
Fiscal Year 2017	$97,326,819	TBD BY DOE	TOTAL
Fiscal Year 2018	$298,557,139	TBD BY DOE	TOTAL
Fiscal Year 2019	$195,243,463	TBD BY DOE	TOTAL
Total Option Period 2	$591,127,421	TBD BY DOE	TOTAL
Total Option Period(s)	$1,489,162,997	$105,595,909	$1,594,858,906

Transition, Base & Option Periods	**Contract Cost**	$2,977,762,7512
	Available Fee	$209,516,092
	Contract Price	$3,187,278,843

[1] *TBD by DOE* within the cells of Table B.4-1 is the amount of *Available Fee* DOE allocates from the proposed available fee in accordance with the Section B Clause entitled, *Fee Structure*.

Table B.4-2 defines the estimated contract price for work performed as part of Section C.2.5.3 Portfolio Management that is ordered by task order. Each task order is individually priced. The amounts defined in Table B.4-2 do not invoke the provisions of Clause B-5 for fee adjustments as fee is determined on each task order.

Table B.4-2, Task Order Cost and Contract Fee for Portfolio Management Task Orders			
Contract Period *Year of Contract Performance*	**Elements of Estimated Contract Cost and Contract Fee**		
	Estimated Contract Cost (a)	**Estimated Fixed Fee (b)**	**Contract Price (c)**
Base Period			
Fiscal Year 2009	$39,763.00	$0.00	$39,763.00
Fiscal Year 2010	0	0	0
Fiscal Year 2011	225,006	14,779	239,785
Fiscal Year 2012	TBD	TBD	TBD
Fiscal Year 2013	TBD	TBD	TBD
Fiscal Year 2014	TBD	TBD	TBD
Total Base Period	264,769	14,779	279,548
Option Period(s)			
Option Period 1			
Fiscal Year 2014	TBD	TBD	TBD
Fiscal Year 2015	TBD	TBD	TBD
Fiscal Year 2016	TBD	TBD	TBD
Total Option Period 1	TBD	TBD	TBD
Option Period 2			
Fiscal Year 2017	TBD	TBD	TBD
Fiscal Year 2018	TBD	TBD	TBD
Fiscal Year 2019	TBD	TBD	TBD
Total Option Period 2	TBD	TBD	TBD
Total Option Period(s)	TBD	TBD	TBD
Total Contract Cost (Table B-4.1 & B-4.2)	$2,978,027,520		
Total Available Fee (Table B-4.1)	$209,516,092		
Total Available Fixed Fee (Table B-4.2)	14,779		
Total Contract Price	$3,187,558,391		

B.5 CHANGES TO CONTRACT COST AND CONTRACT FEE

(a) Funding.

(1) DOE intends to obligate funding to the Contract in accordance with the *Contract Price* shown by fiscal year in Table B.4-1, *Contract Cost and Contract Fee*. The Contractor shall not be entitled to an equitable adjustment to *Available Fee* if the obligated funding by fiscal year is within 10% of the amount shown in Table B.4-1.

(2) If DOE does not obligate funding within the parameters detailed in paragraph (a)(1) above, the Contracting Officer may initiate a change or consider a request for an equitable adjustment to the *Contract Price* and/or Schedule in accordance with the Section I Clause entitled, *FAR 52.243-2, Changes – Cost Reimbursement, Alternates II, III, and IV.*

(b) Performance Risk.

(1) Changes to *Total Available Fee* will accurately reflect the corresponding changes to the Contract with respect to performance risk as determined by DEAR 915.404-4-70, *DOE structured profit and fee system* and implemented by the profit-analysis factors defined in FAR 15.404-4, *Profit*. Accordingly, changes to the Contract resulting in an increase or decrease to the Contractor's performance risk as defined in FAR 15.404-4(d)(1), shall cause a proportionate increase or decrease to the *Total Available Fee*.

(2) If performance risk changes, the Contracting Officer may initiate a change or consider a request for equitable adjustment to the *Contract Price* and/or Schedule in accordance with the Section I Clause entitled, *FAR 52.243-2, Changes – Cost Reimbursement, Alternates II, III, and IV.*

B.6 BASIS FOR TOTAL AVAILABLE FEE

The cost basis for *Total Available Fee* shall be the *Total Contract Cost*, excluding:

(a) Pass-through funding provided to other contractors for Hanford Site services identified in the Section J Attachment entitled, *Hanford Site Services and Interface Requirements Matrix;*

(b) Costs associated with Work-for-Others performed under the Section I Clause entitled, *DEAR 970.5217-1, Work-for-Others Program*;

(c) Costs associated with sponsorship, management, administration and/or contributions for Legacy Plans (set forth in the Section H Clause entitled, Employee Compensation: Pay and Benefits) administered under this Contract; and

(d) Costs associated with sponsorship, management, administration and/or contributions for any defined benefit pension plan.

B.7 FEE STRUCTURE

(a) The Contracting Officer reserves the unilateral discretion to allocate between 15 percent (%) and 25% of the *Available Fee* for the *Base Period* and *Option Period(s)* (if exercised), to each fiscal year as described in this Clause; and as adjusted in the Section B Clause entitled, *Changes to Contract Cost and Contract Fee*. The Contractor will have the opportunity to earn 100% of the *Available Fee,* as adjusted, within a Contract period.

(b) The *Available Fee* shown in Table B.4-1, Contract Cost and Contract Fee, can be earned through objective fee components and/or subjective fee components. The performance measures for these components and the *Available Fee* for the period allocated to the fiscal year are provided in the Section J Attachment entitled, *Performance Evaluation and Measurement Plan* (PEMP). The PEMP may contain annual and multi-year performance measures.

(1) *Available Fee* for the period allocated to annual performance measures may only be earned in that fiscal year. Allocated *Available Fee* for the fiscal year not earned in the fiscal year for an annual performance measure is unavailable and not payable to the Contractor. The Contractor forfeits any rights to unearned fee. The Contracting Officer reserves the unilateral discretion to determine how any unearned fee will be utilized.

(2) *Available Fee* for the period allocated to fiscal years for multi-year performance measures may be earned incrementally or upon final fee determination. Allocated *Available Fee* not earned for a multi-year performance measure is unavailable and not payable to the Contractor. The Contractor forfeits any rights to unearned fee. The Contracting Officer reserves the unilateral discretion to determine how any unearned fee will be utilized.

(3) *Provisional Fee* is defined as *Available Fee* that is paid contingently during an annual performance period. *Provisional Fee* may become earned fee upon the final fee determination.

(4) *Incremental Fee* is defined as *Available Fee* that the Contractor may earn by achieving a specific, fee-bearing, performance measure event.

(5) Individual performance measures may require the Contractor to exceed approved baseline performance to earn 100% of the fee allocated to that performance measure.

(c) The Contracting Officer will prepare and issue performance measures prior to the start of each fiscal year. The Contracting Officer may provide draft performance measures for Contractor review and input; however, the Contracting Officer reserves the unilateral discretion to issue the performance measures without Contractor review.

B.8 FEE DETERMINATION AND PAYMENT

(a) Fee earned under this Contract will be paid in accordance with the specific criteria defined in the PEMP and the Clauses in Section B. Monthly provisional payments of fee may be authorized by the Contracting Officer and will be made in accordance with paragraph (b) of this Clause.

(b) For annual performance measures that do not have specific, incremental, fee-bearing performance measure events, the Contractor may request Contracting Officer approval to execute a monthly draw of *Provisional Fee* payments from the Special Financial Institution Account. The Contractor may request a monthly *Provisional Fee* payment of up to 7.5% of fee allocated to such performance measures, subject to a maximum payment of 80% of fee allocated to such performance measures, and also subject to withholding by DOE as described in paragraphs (e) and (f) of this Clause.

(c) The Contractor shall request Contracting Officer acceptance of a specific, incremental, fee-bearing performance measure event. Following Contracting Officer acceptance of a specific, incremental, fee-bearing performance measure event, the Contractor may request Contracting Officer approval to execute a draw of *Incremental Fee* from the Special Financial Institution Account, subject to withholding by the Contracting Officer as described in paragraphs (e) and (f) of this Clause and the Section B Clause entitled, *Fee Reductions*.

(d) At the end of each year of Contract performance, the Fee Determining Official will make a final *Fee Determination* using the PEMP described in the Section B Clause entitled, *Fee Structure*. In the event that fee overpayment results from the *Provisional Fee* payments provided for in this Clause, the Contractor shall reimburse the unearned fee overpayment within 30 days of notification, to the Contracting Officer payable with interest in accordance with the Section I Clause entitled, *FAR 52.232-17, Interest.*

(e) Withholding of *Incremental* and *Provisional Fee* Payments for adverse Contract Performance.

(1) Withholding of *Incremental* and *Provisional Fee* Payments. If the Contractor demonstrates adverse performance, the Contracting Officer reserves the unilateral discretion to withhold *Incremental* and *Provisional Fee* Payments. Withheld Fee Payments are not subject to interest for the amount(s) of the withheld fee payment(s) under 5 CFR 1315, *Prompt Payment.*

(2) Release of Withheld *Incremental* and *Provisional Fee* Payments. The Contracting Officer may release withheld *Incremental* and *Provisional Fee* Payments and resume making *Incremental* and *Provisional Fee* Payments when the Contractor demonstrates sustained recovery in performance.

(f) Withholding of *Incremental* and *Provisional Fee* Payments for bankruptcy or other issues with guarantor company(ies).[4]

(1) Withholding of *Incremental* and *Provisional Fee*. In order to assure the Contractor's ability to repay any *Incremental* and *Provisional Fee* Payments that are determined to be in excess of the total fee earned, the Contracting Officer reserves the unilateral discretion to discontinue *Incremental* and *Provisional Fee* payments, in the event that a guarantor company files bankruptcy, is acquired by other owners, or impacted by other events that arise with the Contractor's guarantor company(ies) that can jeopardize DOE's ability to recover excess *Incremental Payment* and *Provisional Fee* Payments. Withheld Fee Payments are not subject to interest for the amount(s) of the withheld fee payment(s) under 5 CFR 1315, *Prompt Payment.*

(2) Release of Withheld *Incremental* and *Provisional Fee* Payments. Following receipt of evidence that bankruptcy or other issues do not affect the ability of the Contractor to continue to perform the obligations under the Contract, the Contracting Officer may release all *Incremental* and *Provisional Fee* Payments and resume making *Incremental* and *Provisional Fee* Payments.

B.9 FEE REDUCTIONS

(a) All earned fee in each year of Contract performance is subject to reductions imposed by the terms and conditions of this Contract, including, but not limited to:

(1) Section B Clause entitled, *Fee Determination and Payment;*

(2) Section B Clause entitled, *Small Business Subcontracting Fee Reduction;*

(3) Section B Clause entitled, *DEAR 970.5215-3, Conditional Payment of Fee, Profit, and Other Incentives – Facility Management Contracts (Alternate II) [DEVIATION]*;

(4) Section B Clause entitled, *Conditional Payment of Fee (CPOF) DOE Richland Operations Office Site-Specific Performance Criteria/Requirements*;

(5) Section E Clause entitled, *FAR 52.246-3, Inspection of Supplies – Cost Reimbursement*;

(6) Section E Clause entitled, *FAR 52.246-5, Inspection of Services – Cost Reimbursement*;

(7) Section H Clause entitled, *Key Personnel*;

(8) Section H Clause entitled, *Safety and Security Key Personnel*;

---

[4] Guarantor Company(ies) is defined as the company(ies) executing the performance guarantee (s) in Section H Clause entitled, *Performance Guarantee Agreement.*

(9) Section I Clause entitled, FAR 52.203-10, Price or Fee Adjustment for Illegal or Improper Activity;

(10) Section I Clause entitled, *FAR 52.215-11, Price Reduction for Defective Cost or Pricing Data – Modifications;*

(11) Section I Clause entitled, *FAR 52.215-13, Subcontractor Cost or Pricing Data – Modifications;*

(12) Section I Clause entitled, *FAR 52.243-2, Changes – Cost Reimbursement.*

(b) The maximum fee reduction in any one (1) year of Contract performance is the allocated *Available Fee*, as defined in the Section J Attachment entitled, *Performance Evaluation and Measurement Plan*, that can be earned in the year the event occurred.

B.10 SMALL BUSINESS SUBCONTRACTING FEE REDUCTION

(a) For the purpose of implementing this Clause, the percentage goals established in the Section J Attachment entitled, *Small Business Subcontracting Plan*, will remain in effect for the duration of the Contract, except as modified in accordance with the Section B Clause entitled, *Changes to Contract Cost and Contract Fee*. The Contractor shall submit annual updates to the narrative elements of the *Small Business Subcontracting Plan* by December 31 of each year.

(b) The Contractor's performance in meeting small business performance percentage goals in accordance with the Section H Clause entitled, *Self-Performed Work*, providing meaningful involvement for small businesses, and entering into the required Mentor-Protégé Agreement(s) will be evaluated after the:

(1) Three year period concluding at the end of the 3rd year of Contract performance;

(2) Two year period concluding at the end of the 5th year of Contract performance; and, if the *Option Period(s)* is exercised;

(3) If *Option Period* 1 is exercised -- -two year period concluding at the end of the 7th year of Contract performance; and

(4) At the end of the Contract period of performance.

(c) The Contracting Officer will consider the Contractor's performance in meeting small business percentage goals and entering into the required Mentor-Protégé Agreement(s) when making a decision on the *Option Period(s)* authorization.

(d) If the Contractor has not met any or all of the subcontracting goals, has failed to provide meaningful involvement for small business, and/or has failed to enter into the required Mentor-Protégé Agreement(s) during the above specified periods, the Contracting Officer may reduce the earned fee by an amount up to 10% of total earned fee in each period of the four (4) multi-year periods described above.

(e) 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 the Section I Clause entitled, *FAR 52.219-16, Liquidated Damages – Subcontracting Plan.* The fee reduction amount will be a unilateral determination by the Contracting Officer and a permanent reduction in the earned fee under this Contract.

(f) Any reduction for failure to meet the requirements of the Section H Clause entitled, *Mentor-Protégé Program* shall be in addition to any liquidated damages assessed in accordance with the Section I Clause entitled, *FAR 52.219-16, Liquidated Damages – Subcontracting Plan.* The fee reduction amount will be a unilateral determination by the Contracting Officer and a permanent reduction in the earned fee under this Contract.

B.11 ALLOWABILITY OF SUBCONTRACTOR FEE

(a) If the Contractor is part of a teaming arrangement as described in FAR Subpart 9.6, *Contractor Team Arrangements,* the team shall share in the *Total Available Fee* as shown in Table B.4-1. Separate additional subcontractor fee is not an allowable cost under this Contract for individual team members, or for a subcontractor, supplier, or lower-tier subcontractor that is a wholly-owned, majority-owned, or affiliate of any team member.

(b) The subcontractor fee restriction in paragraph (a) does not apply to members of the Contractor's team that are: (1) small business(es); (2) Protégé firms as part of an approved Mentor-Protégé relationship under the Section H Clause entitled, *Mentor-Protégé Program*; (3) subcontractors under a competitively awarded firm-fixed price or firm-fixed unit price subcontract; or (4) commercial items as defined in FAR Subpart 2.1, *Definitions of Words and Terms.*

B.12 DEAR 970.5215-3, CONDITIONAL PAYMENT OF FEE, PROFIT, AND OTHER INCENTIVES – FACILITY MANAGEMENT CONTRACTS (ALTERNATE II) (JAN 2004) [DEVIATION]

(a) General.

(1) The payment of earned fee, fixed fee, profit, or share of cost savings under this Contract is dependent upon:

(i) The Contractor's or Contractor employees' compliance with the terms and conditions of this Contract relating to environment, safety, health and quality (ESH&Q), which includes worker safety and health, including performance under an approved Integrated Safety Management System (ISMS); and

(ii) The Contractor's or contractor employees' compliance with the terms and conditions of this Contract relating to the safeguarding of Restricted Data and other classified information.

(2) The ESH&Q performance requirements of this Contract are set forth in its ESH&Q terms and conditions, including the DOE-approved Contractor ISMS or similar document. Financial incentives for timely mission accomplishment or cost effectiveness shall never compromise or impede full and effective implementation of the ISMS and full ESH&Q compliance.

(3) The performance requirements of this Contract relating to the safeguarding of Restricted Data and other classified information are set forth in the Section I Clause entitled, *FAR 52.239-1, Privacy or Security Safeguards (AUG 1996)*, and *DEAR 970.5204-2, Laws, Regulations, and DOE Directives*, as well as in other terms and conditions.

(4) If the Contractor does not meet the performance requirements of this Contract relating to ESH&Q or to the safeguarding of Restricted Data and other classified information during any performance evaluation period established under the Contract, otherwise earned fee, fixed fee, profit or share of cost savings may be unilaterally reduced by DOE.

(b) Reduction Amount.

(1) The amount of earned fee, fixed fee, profit, or share of cost savings that may be unilaterally reduced will be determined by the severity of the performance failure pursuant to the degrees specified in paragraphs (c) and (d) of this Clause.

(2) If a reduction of earned fee, fixed fee, profit, or share of cost savings is warranted, unless mitigating factors apply, such reduction shall not be less than 26% nor greater than 100% of the amount of earned fee, fixed fee, profit, or the Contractor's share of cost savings for a first degree performance failure, not less than 11% nor greater than 25% for a second degree performance failure, and up to 10% for a third degree performance failure.

(3) In determining the amount of the reduction and the applicability of mitigating factors, DOE will consider the Contractor's overall performance in meeting the ESH&Q or security requirements of the Contract. Such consideration will include performance against any site specific performance criteria/requirements that provide additional definition, guidance for the amount of reduction, or guidance for the applicability of mitigating factors. In all cases, DOE will consider mitigating factors that may warrant a reduction below the applicable range (see *48 CFR 970.1504-1-2*). The mitigating factors include, but are not limited to, the following ((v), (vi), (vii) and (viii) apply to ESH&Q only).

(i) Degree of control the Contractor had over the event or incident.

(ii) Efforts the Contractor had made to anticipate and mitigate the possibility of the event in advance.

(iii) Contractor self-identification and response to the event to mitigate impacts and recurrence.

(iv) General status (trend and absolute performance) of: ESH&Q and compliance in related areas; or of safeguarding Restricted Data and other classified information and compliance in related areas.

(v) Contractor demonstration to the Contracting Officer's satisfaction that the principles of industrial ESH&Q standards are routinely practiced (e.g., Voluntary Protection Program, ISO [International Organization for Standardization] 14000, *Environmental Management System Standards*).

(vi) Event caused by "Good Samaritan" act by the Contractor (e.g., off-site emergency response).

(vii) Contractor demonstration that a performance measurement system is routinely used to improve and maintain ESH&Q performance (including effective resource allocation) and to support DOE corporate decision-making (e.g., policy, ESH&Q programs).

(viii) Contractor demonstration that an Operating Experience and Feedback Program is functioning that demonstrably affects continuous improvement in ESH&Q by use of lessons-learned and best practices inter- and intra-DOE sites.

(4) (i) The amount of fee, fixed fee, profit, or share of cost savings that is otherwise earned by a Contractor during an evaluation period may be reduced in accordance with this Clause if it is determined that a performance failure warranting a reduction under this Clause occurs within the evaluation period.

(ii) The amount of reduction under this Clause, in combination with any reduction made under any other clause in the Contract, shall not exceed

the amount of fee, fixed fee, profit, or the Contractor's share of cost savings that is otherwise earned during the evaluation period.

(iii) For the purposes of this clause, earned fee, fixed fee, profit, or share of cost savings for the evaluation period shall mean the amount determined by DOE or fee determination official as otherwise payable based on the Contractor's performance during the evaluation period. Where the Contract provides for financial incentives that extend beyond a single evaluation period, this amount shall also include: any provisional amounts determined otherwise payable in the evaluation period; and, if provisional payments are not provided for, the allocable amount of any incentive determined otherwise payable at the conclusion of a subsequent evaluation period. The allocable amount shall be the total amount of the earned incentive divided by the number of evaluation periods over which it was earned.

(iv) The Government will effect the reduction as soon as practicable after the end of the evaluation period in which the performance failure occurs. If the Government is not aware of the failure, it will effect the reduction as soon as practical after becoming aware. For any portion of the reduction requiring an allocation the Government will effect the reduction at the end of the evaluation period in which it determines the total amount earned under the incentive. If at any time a reduction causes the sum of the payments the Contractor has received for fee, fixed fee, profit, or share of cost savings to exceed the sum of fee, fixed fee, profit, or share of cost savings the Contractor has earned (provisionally or otherwise), the Contractor shall immediately return the excess to the Government. (What the Contractor "has earned" reflects any reduction made under this or any other Clause of the Contract.)

(v) At the end of the Contract:

(A) The Government will pay the Contractor the amount by which the sum of fee, fixed fee, profit, or share of cost savings the Contractor has earned exceeds the sum of the payments the Contractor has received; or

(B) The Contractor shall return to the Government the amount by which the sum of the payments the Contractor has received exceeds the sum of fee, fixed fee, profit, or share of cost savings the Contractor has earned. (What the Contractor "has earned" reflects any reduction made under this or any other Clause of the Contract.)

(c) Environment, Safety, Health and Quality (ESH&Q). Performance failures occur if the Contractor does not comply with the Contract ESH&Q terms and conditions, including the DOE-approved Contractor ISMS. The degrees of performance failure under which reductions of earned or fixed fee, profit, or share of cost savings will be determined are:

(1) First Degree: Performance failures that are most adverse to ESH&Q. Failure to develop and obtain required DOE approval of an ISMS is considered first degree. The Government will perform necessary review of the ISMS in a timely manner and will not unreasonably withhold approval of the Contractor's ISMS. The following performance failures or performance failures of similar import will be considered first degree.

(i) Type A accident (defined in DOE Order 225.1A, *Accident Investigations*); and

(ii) Two (2) Second Degree performance failures during an evaluation period.

(2) Second Degree: Performance failures that are significantly adverse to ESH&Q. They include failures to comply with an approved ISMS that result in an actual injury, exposure, or exceedence that occurred or nearly occurred but had minor practical long-term health consequences. They also include breakdowns of the Safety Management System. The following performance failures or performance failures of similar import will be considered second degree:

(i) Type B accident (defined in DOE Order 225.1A).

(ii) Non-compliance with an approved ISMS that results in a near miss of a Type A or B accident. A near miss is a situation in which an inappropriate action occurs, or a necessary action is omitted, but does not result in an adverse effect.

(iii) Failure to mitigate or notify DOE of an imminent danger situation after discovery, where such notification is a requirement of the Contract.

(3) Third Degree: Performance failures that reflect a lack of focus on improving ESH&Q. They include failures to comply with an approved ISMS that result in potential breakdown of the System. The following performance failures or performance failures of similar import will be considered third degree:

(i) Failure to implement effective corrective actions to address deficiencies/non-compliances documented through: external (e.g., Federal) oversight and/or reported per ~~DOE Order 232.1A, *Environment, Safety and Health Reporting*~~ [DOE Manual 232.1A, *Occurrence Reporting and Processing of Operations Information*] requirements; or internal oversight ~~of DOE Order 440.1A, *Worker Protection Management for DOE Federal and Contractor Employees*~~ [10 CFR 830, 10 CFR 835, 10 CFR 850, and 10 CFR 851] requirements.

(ii) Multiple similar non-compliances identified by external (e.g., Federal) oversight that in aggregate indicate a significant programmatic breakdown.

(iii) Non-compliances that either have, or may have, significant negative impacts to the worker, the public, or the environment or that indicate a significant programmatic breakdown.

(iv) Failure to notify DOE upon discovery of events or conditions where notification is required by the terms and conditions of the Contract.

(d) Safeguarding Restricted Data and Other Classified Information. Performance failures occur if the Contractor does not comply with the terms and conditions of this Contract relating to the safeguarding of Restricted Data and other classified information. The degrees of performance failure under which reductions of fee, profit, or share of cost savings will be determined are as follows:

(1) First Degree: Performance failures that have been determined, in accordance with applicable law, DOE regulation, or directive, to have resulted in, or that can reasonably be expected to result in, exceptionally grave damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered first degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating a risk of, loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, or any classification level of information in a Special Access Program (SAP), information identified as sensitive compartmented information (SCI), or high risk nuclear weapons-related data.

(ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(2) Second Degree: Performance failures that have been determined, in accordance with applicable law, DOE regulation, or directive, to have actually resulted in, or that can reasonably be expected to result in, serious damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered second degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.

(ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Secret Restricted Data, or other information classified as Secret.

(iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Restricted Data or other classified information regardless of classification (except for information covered by paragraph (d)(1)(iii) of this Clause).

(iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Secret Restricted Data or other classified information classified as Secret.

(3) Third Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, undue risk to the common defense and security. In addition, this category includes performance failures that result from a lack of Contractor management and/or employee attention to the proper safeguarding of Restricted Data and other classified information. These performance failures may be indicators of future, more severe performance failures and/or conditions, and if identified and corrected early would prevent serious incidents. The following are examples of performance failures or performance failures of similar import that will be considered third degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Restricted Data or other information classified as Confidential.

(ii) Failure to promptly report alleged or suspected violations of laws, regulations, or directives pertaining to the safeguarding of Restricted Data or other classified information.

(iv) Failure to identify or timely execute corrective actions to mitigate or eliminate identified vulnerabilities and reduce residual risk relating to the protection of Restricted Data or other classified information in accordance with the Contractor's Safeguards and Security Plan or other security plan, as applicable.

(iv) Contractor actions that result in performance failures which unto themselves pose minor risk, but when viewed in the aggregate indicate degradation in the integrity of the Contractor's safeguards and security management system relating to the protection of Restricted Data and other classified information.

(e) Minimum requirements for specified level of performance.

(1) At a minimum the Contractor must perform the following:

(i) The requirements with specific incentives which do not require the achievement of cost efficiencies in order to be performed at the level of performance set forth in Section C, *Statement of Work*, work authorization directive(s), or similar document unless an otherwise minimum level of performance has been established in the specific incentive;

(ii) All of the performance requirements directly related to requirements specifically incentivized which do not require the achievement of cost efficiencies in order to be performed at a level of performance such that the overall performance of these related requirements is at an acceptable level; and

(iii) All other requirements at a level of performance such that the total performance of the Contract is not jeopardized.

(2) The evaluation of the Contractor's achievement of the level of performance shall be unilaterally determined by the Government. To the extent that the Contractor fails to achieve the minimum performance levels specified in Section C, *Statement of Work*, work authorization directive(s), or similar document, during the performance evaluation period, the DOE Operations/Field Office Manager, or designee, may reduce any otherwise earned fee, fixed fee, profit, or shared net savings for the performance evaluation period. Such reduction shall not result in the total of earned fee, fixed fee, profit, or shared net savings being less than 25% of the total available fee amount. Such 25% shall include base fee, if any.

(f) Minimum requirements for cost performance.

(1) Requirements incentivized by other than cost incentives must be performed within their specified cost constraint and must not adversely impact the costs of performing unrelated activities.

(2) The performance of requirements with a specific cost incentive must not adversely impact the costs of performing unrelated requirements.

(3) The Contractor's performance within the stipulated cost performance levels for the performance evaluation period shall be determined by the Government. To the extent the Contractor fails to achieve the stipulated cost performance levels, the DOE Operations/Field Office Manager, or designee, may reduce in whole or in part any otherwise earned fee, fixed fee, profit, or shared net savings for the performance evaluation period. Such reduction shall not result in the total of earned fee, fixed fee, profit or shared net savings being less than 25% of the total available fee amount. Such 25% shall include base fee, if any.

B.13 CONDITIONAL PAYMENT OF FEE (CPOF) DOE RICHLAND OPERATIONS OFFICE SITE-SPECIFIC PERFORMANCE CRITERIA/REQUIREMENTS

This Clause supplements Section B Clause entitled, *DEAR 970.5215-3, Conditional Payment of Fee, Profit, and Other Incentives – Facility Management Contracts (Alternate II) [Deviation]* by establishing Site-specific Environment, Safety, Health, and Quality (ESH&Q), and security performance criteria/requirements. Performance failures relating to the performance criteria set forth in this Clause will be processed in accordance with DEAR 970.5215-3. Site-specific performance criteria/requirements for ESH&Q, and Safeguards and Security are as follows:

(a) Environment, Safety, Health, and Quality

(1) First Degree: Performance failures relating to the criteria set forth in this Clause will be processed in accordance with DEAR 970.5215-3, Alternate II [Deviation].

(2) Second Degree: Performance failures relating to the criteria set forth in this Clause will be processed in accordance with DEAR 970.5215-3, Alternate II [Deviation].

(3) Third Degree: Performance failures that reflect a lack of focus on ESH&Q or failures to comply with an approved ISMS that may result in a negative impact to the public, worker or environment. The following performance failures, or events of similar import, are examples of performance failures that are considered third degree:

(i) Multiple similar non-compliances identified by external oversight (e.g., Federal) that in the aggregate indicate a significant programmatic breakdown.

(ii) Non-compliances or adverse performance trends that either have or may have negative impact to the public, worker, or environment or that indicate a programmatic breakdown.

(iii) Failure to notify the Contracting Officer upon discovery of events or conditions where notification is required by the terms and conditions of the Contract.

(iv) Failure to report required data accurately and in a timely manner.

(v) Failure to implement continuous improvement in ESH&Q performance through effective utilization of ISMS processes, including timely submittal of meaningful performance objectives, measurements and commitments.

(b) Safeguards and Security

(1) First Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have resulted in, or that can reasonably be expected to result in, exceptionally grave damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered first degree:

(i) Theft, loss or diversion of category I or II special nuclear material (SNM); adversarial attacks or acts of sabotage that result in significant consequences the safety or security of personnel, facilities, or the public due to a failure or inadequacy of performance by the Contractor.

(ii) Receipt of an overall rating of Unsatisfactory on any DOE Safeguards and Security survey, audit, and/or inspection.

(iii) Failure to implement corrective action(s) in response to any first degree performance failure.

(2) Second Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, serious damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered second degree:

(i) Theft, loss or diversion of Category III SNM that is due to a failure or inadequacy of performance by the Contractor.

(ii) Inventory differences of Category I/II/III SNM beyond alarm limits where there is no evidence that the difference is created by loss, theft, or diversion.

(iii) Any amount of SNM found in a dangerous/hazardous or unapproved storage environment, or unapproved mode of transportation/transfer.

(iv) Failure to implement corrective action(s) in response occurrence of any second degree performance failure.

(3) Third Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, undue risk to the common defense and security, and/or jeopardizes protection of the facility or Site security interests. The following are examples of performance failures or performance failures of similar import that will be considered third degree:

(i) Loss, theft, diversion, or unauthorized disclosure of information classified as Confidential.

(ii) Negligent weapons and firearms-related incidents involving protective force operations/personnel (e.g., unauthorized weapons discharge, personal wounding).

(iii) Evidence that SNM data has been manipulated or falsified.

(iv) Inventory differences of Category IV SNM beyond alarm limits where there is no evidence that the difference is created by loss, theft, or diversion.

(v) Loss, theft, or diversion of Category IV quantities of SNM that is due to a failure or inadequacy of performance by the contractor.

(vi) Five (5) or more incidents that involve a potential compromise of classified information and/or unsecured classified repository, in any three (3) month period, of any type.

(vii) Receipt of any topical area rating of Unsatisfactory on any DOE Safeguards and Security survey, audit, and/or inspection.

(viii) Failure to implement corrective action(s) in response to any third degree performance failure.

(ix) Non-compliant or adverse cyber security performance that indicates serious cyber security program degradation (e.g., negative mission impacts or compromise of sensitive information [Sensitive Unclassified Information, Personally Identifiable Information, Unclassified Controlled Nuclear Information], etc.).