AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. CONTRACT ID CODE

PAGE OF PAGES: 1 | 2 117 GMP

2. AMENDMENT/MODIFICATION NO.: 0526

3. EFFECTIVE DATE: See Block 16C

4. REQUISITION/PURCHASE REQ. NO.

5. PROJECT NO. (If applicable)

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

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

MISSION SUPPORT ALLIANCE, LLC
Attn: JENNIFER JAHNER
POST OFFICE BOX 650
RICHLAND WA 99352

CODE 010605464 — 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)

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 52.243-2 Alt 1(a)(1), Clause B.8, Clause C.3.8 and by 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 definitizes the MSA Proposal for Fiscal Year 2013 to Fiscal Year 2016 Request for Services as submitted by MSA letter MSA-1600882 dated February 29, 2016. The Request for Service and WFO Table B.4.2-b is updated to reflect supplemental work within the scope of the MSA in accordance with Clause C.3.8 Work for Others (WFO), I.141 DEAR 970.5217-1 Work for Others Program and I.157 DEAR 970.5232-6 Work for Others Funding Authorization. Total contract costs are increased by $1,412,119.00 and available fixed fee is increased by $109,299.00. Total contract value is increased by $1,521,418.00 from $3,626,713,690.33 to $3,628,235,108.33.

This modification revises Table B.4-3, Available Fee Distribution to reflect the final fee determination for Fiscal Year 2015 of $18,776,345 out of the available Fiscal Year 2015 fee

Continued ...

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

15A. NAME AND TITLE OF SIGNER (Type or print): for J. A. Jahner
MARY J. SKELTON, CONTRACT SPECIALIST

16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print): SALLY A. SIERACKI, CONTRACTING OFFICER

15B. CONTRACTOR/OFFEROR: Mary J. Skelton (Signature of person authorized to sign)

15C. DATE SIGNED: 5/2/2016

16B. UNITED STATES OF AMERICA: Sally A. Sieracki (Signature of Contracting Officer)

16C. DATE SIGNED: 4 May 2016

NSN 7540-01-152-8070
Previous edition unusable

STANDARD FORM 30 (REV. 10-83)
Prescribed by GSA
FAR (48 CFR) 53.243

NAME OF OFFEROR OR CONTRACTOR
MISSION SUPPORT ALLIANCE, LLC

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
	of $21,043,816.00. The final fee determination and drawdown instructions were transmitted to Mission Support Alliance, LLC by DOE Letter 16-PRO-0116 dated March 31, 2016. This modification corrects the conformed copy of Section H to reflect Clause H.30 as revised in Modification 501. Attachment 1 - Changes Page (Section B) Attachment 2 - Section B Conformed Attachment 3 - Section H Conformed This modification does not add additional funds to the contract. 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 526 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. Period of Performance: 05/26/2009 to 05/25/2017				

The following revisions are included with this modification:

Table B.4-2.b Request for Service and WFO			
Contract Period	**Elements of Estimated Contract Cost and Contract Fee**		
Year of Contract Performance	**Estimated Contract Cost**	**Estimated Fixed Fee**	**Contract Price**
Base Period			
Fiscal Year 2009	$ -	$ -	$ -
Fiscal Year 2010	$ -	$ -	$ -
Fiscal Year 2011	$ -	$ -	$ -
Fiscal Year 2012	$1,617,108.00	$121,188.00	$1,738,296.00
Fiscal Year 2013	$715,505.00 ~~$0.00~~	$52,308.00 ~~$0.00~~	$767,813.00 ~~$0.00~~
Fiscal Year 2014	$125,368.00 ~~$0.00~~	$11,345.00 ~~$0.00~~	$136,713.00 ~~$0.00~~
Total Base Period	**$2,457,981.00** ~~**$1,617,108.00**~~	**$184,841.00** ~~**$121,188.00**~~	**$2,642,822.00** ~~**$1,738,296.00**~~
Option Period 1			
Fiscal Year 2014	$62,684.00 ~~$0.00~~	$5,673.00 ~~$0.00~~	$68,357.00~~$0.00~~
Fiscal Year 2015	$217,339.00 ~~$0.00~~	$17,695.00 ~~$0.00~~	$235,034.00~~$0.00~~
Fiscal Year 2016	$291,223.00 ~~$0.00~~	$22,278.00 ~~$0.00~~	$313,501.00~~$0.00~~
Fiscal Year 2017	$0.00	$0.00	$0.00
Total Option Period 1	**$571,246.00** ~~**$0.00**~~	**$45,646.00** ~~**$0.00**~~	**$616,892.00** ~~**$0.00**~~
Option Period 2			
Fiscal Year 2017	$0.00	$0.00	$0.00
Fiscal Year 2018	$0.00	$0.00	$0.00
Fiscal Year 2019	$0.00	$0.00	$0.00
Total Option Period 2	**$0.00**	**$0.00**	**$0.00**
Total Option Periods	**$571,246.00** ~~**$0.00**~~	**$45,646.00** ~~**$0.00**~~	**$616,892.00** ~~**$0.00**~~
Total Contract	**$3,029,227.00** ~~**$1,617,108.00**~~	**$230,487.00** ~~**$121,188.00**~~	**$3,259,714.00** ~~**$1,738,296.00**~~

Table B.4-3, Available Award Fee Distribution (excluding Table B.4-2.a and Table B.4-2.b above)					
Contract Period					
	Available Fee as originally Awarded	**Fee associated with contract changes**	**Total Available Fee**	**Available Fee Earned & Paid**	**Fee Forfeited**
Base Period					
Fiscal Year 2009	$1,948,268.00	$16,049.00	$1,964,317.00		
Fiscal Year 2010	$20,261,987.00	$160,038.00	$20,422,025.00	$19,332,431.00	$3,053,911.00
Fiscal Year 2011	$25,327,484.00	$837,282.00	$26,164,766.00	$23,956,349.00	$2,208,417.00
Fiscal Year 2012	$21,275,349.00	($48,431.00)	$21,226,918.00	$19,099,251.00	$2,127,667.00
Fiscal Year 2013	$20,261,987.00	$768,660.00	$21,030,647.00	$19,352,402.00	$1,678,245.00
Fiscal Year 2014	$12,234,861.00	$(104,762.00)	$12,130,099.00	$10,553,429.00	$1,576,670.00
Total Base Period	$101,309,936.00	$1,628,836.00	$102,938,772.00	$92,293,862.00	$10,644,910.00
Option Period(s)					
Option Period 1					
Fiscal Year 2014	$6,701,089.00	$155,301.00	$6,856,390.00	$5,965,197.00	$891,193.00
Fiscal Year 2015	$20,630,771.00	$413,045.00	$21,043,816.00	$18,776,345.00 ~~TBD~~	$2,267,471.00 ~~TBD~~
Fiscal Year 2016	$20,081,355.00	$936,084.00	$21,017,439.00	TBD	TBD
Fiscal Year 2017	TBD	$535,193.00	TBD	TBD	TBD
Total Option Period 1	TBD	$2,039,623.00	TBD	TBD	TBD
Option Period 2					
Fiscal Year 2017	TBD	$236,657.00	TBD	TBD	TBD
Fiscal Year 2018	TBD	$747,937.00	TBD	TBD	TBD
Fiscal Year 2019	TBD	$485,390.00	TBD	TBD	TBD
Total Option Period 2	TBD	$1,469,984.00	TBD	TBD	TBD
Total Option Period(s)	$103,093,690.00	$3,509,607.00	$106,603,297.00	TBD	TBD
Total Base & Option Periods	$204,403,625.00	$5,138,443.00	$209,542,069.00	$117,035,404.00 ~~$98,259,059.00~~	$13,803,574.00 ~~$11,536,103.00~~

* *Fee for August 24, 2009 to September 30, 2009 performance was combined with the FY 2010 Final Fee Determination.*

	Summary Contract Estimated Costs and Fee Table
Total Estimated Direct Funded Contract Cost (a)	$2,515,405,599.03 ~~$2,513,993,480.03~~
Total Estimated OHC UBS Cost (b)	$902,969,307.00
Total Estimated Contract Cost (c) = (a+b)	$3,418,374,906.03 ~~$3,416,962,787.03~~
Total Available Award Fee (d)	$209,542,069.00
Total Fixed Fee (e)	$318,133.30 ~~$208,834.30~~
Total Contract Fee (f) = (d+e)	$209,860,202.30 ~~$209,750,903.30~~
Total Contract Price (g) = (c+f)	$3,628,235,108.33 ~~$3,626,713,690.33~~
Total Estimated OHC UBS Revenue (h)	($902,969,307.00)
Total Direct Funded Contract Price (i) = (g-h)	$2,725,265,801.33 ~~$2,723,744,383.33~~

PART I – THE SCHEDULE

SECTION B

SUPPLIES OR SERVICES AND PRICES/COSTS

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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 - Direct Funding. Pursuant to the Section I Clause entitled, *FAR 52.232-22, Limitation of Funds,* total funds in the amount of $2,011,753,564.09 have been allotted for obligation and are available for payment of services provided from the effective date of this Contract through May 25, 2017.

(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.

(c) Other Hanford Contractors (OHCs) User Based Services (UBS). As discussed in Clause H-44, Hanford site services interface requirements matrix, UBS is received from OHCs for services provided by the Contractor. OHCs provide reimbursement of these services at full cost recovery (exclusive of fee). OHC UBS is not included in the funding amounts specified in (a) above. OHC payment for UBS services shall be recognized by the Contractor as Revenue.

B.4 CONTRACT COST AND CONTRACT FEE

This Section establishes the estimated Total Contract Cost and Contract Fee.

Table B.4-1, Contract Cost and Contract Fee, identifies the *Estimated Direct Funded Contract Cost, Estimated OHC UBS Cost, Available Award Fee, Contract Price, Estimated OHC UBS Revenue,* and *Direct Funded Contract Price*. This table does not reflect costs associated with Portfolio Management Task Orders or Work for Others, as defined in Statement of Work Sections

C.2.5.3 and C.3.8 (respectively), which are reflected in Tables B.4-2.a and B.4-2.b, below.

Definitions for Table B.4-1 are:

(a) *Estimated Direct Funded Contract Cost* is defined as all costs (including Contractor self-purchased UBS costs) initially proposed by the Contractor for base statement of work (excluding costs identified in Tables B.4-2.a and B.4-2.b) and approved contract modifications.

(b) *Estimated OHC UBS Cost* is defined as the cost of UBS services required by the OHCs in accordance with Section J-3 *Hanford Site Services and Interface Requirements Matrix* and performed by the Contractor as specified in B.3(c).

(c) *Available Award Fee* is defined as the maximum amount of award fee that may be earned under the Contract. Total Available Award Fee is applicable to direct funded and OHC UBS work scope as addressed in the Section J Attachment J-4 entitled *Performance Evaluation and Measurement Plan*. Available award fee for each fiscal year is allocated in accordance with B.7 Fee Structure.

(d) *Contract Price* is defined as the sum of *Estimated Direct Funded Contract Cost*, *Estimated OHC UBS Cost*, and *Available Award Fee (allocated each fiscal year)*

(e) *Estimated OHC UBS Revenue* is defined as the estimated funds to be received from OHCs for UBS.

(f) *Direct Funded Contract Price* is defined as the *Contract Price* less the *Estimated OHC UBS Revenue* as specified in B.3(a) Obligation of Funds.

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

Contract Period	**Elements of Estimated Contract Cost and Contract Fee**					
Year of Performance	**Estimated Direct Funded Cost** **(a)**	**Estimated OHC UBS Cost** **(b)**	**Available Award Fee** **(c)**	**Estimated Contract Price** **(d)**	**Estimated OHC UBS Revenue** **(e)**	**Estimated Direct Funded Contract Price** **(f)**
Transition Period*	$6,203,827.00	$0.00	$0.00	$6,203,827.00	$0.00	$6,203,827.00
***Transition Period Costs are included in FY2009 costs**						
Base Period						
Fiscal Year 2009	$28,409,658.00	$5,107,928.00	$1,964,317.00	$35,481,903.00	($5,107,928.00)	$30,373,975.00
Fiscal Year 2010	$296,952,390.00	$134,041,493.00	$20,422,025.00	$451,415,908.00	$(134,041,493.00)	$317,374,415.00
Fiscal Year 2011	$277,738,679.00	$168,232,316.00	$26,164,766.00	$472,135,761.00	$(168,232,316.00)	$303,903,445.00
Fiscal Year 2012	$250,004,284.00	$91,837,218.00	$21,226,918.00	$363,068,420.00	$(91,837,218.00)	$271,231,202.00
Fiscal Year 2013	$316,332,388.00	$80,809,350.00	$21,030,647.00	$418,172,385.00	($80,809,350.00)	$337,363,035.00

Fiscal Year 2014	$168,936,163.00	$46,818,195.00	$12,130,099.00	$227,884,457.00	($46,818,195.00)	$181,066,262.00
Total Base Period	**$1,338,373,562.00**	**$526,846,500.00**	**$102,938,772.00**	**$1,968,158,834.00**	**$(526,846,500.00)**	**$1,441,312,334.00**
Option Period(s)						
Option Period 1						
Fiscal Year 2014	$86,824,257.00	$26,955,930.00	$6,856,390.00	$120,636,577.00	($26,955,930.00)	$93,680,647.00
Fiscal Year 2015	$262,731,245.00	$73,919,996.00	$21,043,816.00	$357,695,057.00	($73,919,996.00)	$283,775,061.00
Fiscal Year 2016	$223,421,805.00	$76,534,857.00	$21,017,439.00	$320,974,101.00	($76,534,857.00)	$244,439,244.00
Fiscal Year 2017	$151,047,500.00	$47,471,133.00	TBD by DOE	$198,518,633.00	($47,471,133.00)	$151,047,500.00
Total Option Period 1	**$724,024,807.00**	**$224,881,916.00**	**TBD by DOE**	**$997,824,368.00**	**($224,881,916.00)**	**$772,942,452.00**
Option Period 2						
Fiscal Year 2017	$71,723,693.00	$27,331,866.00	TBD by DOE	$99,055,559.00	($27,331,866.00)	$71,723,693.00
Fiscal Year 2018	$228,704,448.00	$74,113,929.00	TBD by DOE	$302,818,377.00	($74,113,929.00)	$228,704,448.00
Fiscal Year 2019	$147,589,433.00	$49,795,096.00	TBD by DOE	$197,384,529.00	($49,795,096.00)	$147,589,433.00
Total Option Period 2	**$448,017,574.00**	**$151,240,891.00**	**TBD by DOE**	**$599,258,465.00**	**($151,240,891.00)**	**$448,017,574.00**
Total Option Period(s)	**$1,172,042,381.00**	**$376,122,807.00**	**$106,603,297.00**	**$1,654,768,485.00**	**($376,122,807.00)**	**$1,278,645,678.00**
Total Contract	**$2,510,415,943.00**	**$902,969,307.00**	**$209,542,069.00**	**$3,622,927,319.00**	**$(902,969,307.00)**	**$2,719,958,012.00**

Table B.4-2.a 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 Portfolio Management Task Order (PMTO) is individually priced. The amounts defined in Table B.4-2.a do not invoke the provisions of Clause B.5 for fee adjustments, as fee is determined on each task order.

Definitions for Table B.4-2.a are:

(a) *Estimated PMTO Direct Funded Contract Cost* is defined as sum of the negotiated costs for PMTO work.

(b) *PMTO Fixed Fee* is defined as the sum of the negotiated fixed fee amounts for all PMTO work.

(c) *PMTO Price* is defined as the sum of *Estimated PMTO Direct Funded Contract Cost* and *PMTO Fixed Fee*, as specified in B.3(a) Obligation of Funds.

Table B.4-2.a, Task Order Cost and Contract Fee for Portfolio Management Task Orders (PMTO)			
Contract Period	**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	$ -	$39,763.00
Fiscal Year 2010	$ -	$ -	$ -
Fiscal Year 2011	$375,846.68	$24,911.00	$400,757.68
Fiscal Year 2012	$260,729.31	$933.00	$261,662.31
Fiscal Year 2013	$447,993.05	$2,926.00	$450,919.05
Fiscal Year 2014	$159,524.08	$9,635.90	$169,159.98
Total Base Period	**$1,283,856.12**	**$38,405.90**	**$1,322,262.02**
Option Period 1			
Fiscal Year 2014	$110,041.92	$6,575.40	$116,617.32
Fiscal Year 2015	$451,156.86	$26,794.00	$477,950.86
Fiscal Year 2016	$115,374.13	$15,871.00	$131,245.13
Fiscal Year 2017	$ -	$ -	$ -
Total Option Period 1	**$676,572.91**	**$49,240.40**	**$725,813.31**
Option Period 2			
Fiscal Year 2017	$ -	$ -	$ -
Fiscal Year 2018	$ -	$ -	$ -
Fiscal Year 2019	$ -	$ -	$ -
Total Option Period 2	**$ -**	**$ -**	**$ -**
Total Option Periods	**$676,572.91**	**$49,240.40**	**$725,813.31**
Total Contract	**$1,960,429.03**	**$87,646.30**	**$2,048,075.33**

Table B.4-2.b defines the estimated contract price for work performed under the Statement of Work Section C.3.8 Work for Others (WFO) in accordance with DEAR 970.5217-1 and DEAR 970.5232-6. This table also includes the estimated contract price for additional work within the general scope of the contract ordered by and authorized through a Request for Service (RFS). Each Request for Service order for additional work within the general work scope of the contract is individually priced. The amounts defined in Table B.4-2.b do not invoke the provisions of Clause B.5 for fee adjustments as fee is determined on each RFS or WFO.

Definitions for Table B.4-2.b are:

(a) *Estimated RFS and WFO Direct Funded Contract Cost* is defined as sum of the negotiated costs for RFS and WFO work.

(b) *RFS and WFO Fixed Fee* is defined as the sum of the negotiated fixed fee amounts for all RFS and WFO work.

(c) *RFS and WFO Price* is defined as the sum of *Estimated RFS and WFO Direct Funded Contract Cost* and *RFS and WFO Fixed Fee* as specified in B.3(a) Obligation of Funds.

Table B.4-2.b Request for Service and WFO			
Contract Period	**Elements of Estimated Contract Cost and Contract Fee**		
Year of Contract Performance	**Estimated Contract Cost**	**Estimated Fixed Fee**	**Contract Price**
Base Period			
Fiscal Year 2009	$ -	$ -	$ -
Fiscal Year 2010	$ -	$ -	$ -
Fiscal Year 2011	$ -	$ -	$ -
Fiscal Year 2012	$1,617,108.00	$121,188.00	$1,738,296.00
Fiscal Year 2013	$715,505.00	$52,308.00	$767,813.00
Fiscal Year 2014	$125,368.00	$11,345.00	$136,713.00
Total Base Period	**$2,457,981.00**	**$184,841.00**	**$2,642,822.00**
Option Period 1			
Fiscal Year 2014	$62,684.00	$5,673.00	$68,357.00
Fiscal Year 2015	$217,339.00	$17,695.00	$235,034.00
Fiscal Year 2016	$291,223.00	$22,278.00	$313,501.00
Fiscal Year 2017	$0.00	$0.00	$0.00
Total Option Period 1	**$571,246.00**	**$45,646.00**	**$616,892.00**
Option Period 2			
Fiscal Year 2017	$0.00	$0.00	$0.00
Fiscal Year 2018	$0.00	$0.00	$0.00
Fiscal Year 2019	$0.00	$0.00	$0.00
Total Option Period 2	**$0.00**	**$0.00**	**$0.00**
Total Option Periods	**$571,246.00**	**$45,646.00**	**$616,892.00**
Total Contract	**$3,029,227.00**	**$230,487.00**	**$3,259,714.00**

Table B.4-3 delineates the Total Available Award Fee Distribution as fee allocations, contract definitization, and final fee determinations are made for each fiscal year.

Table B.4-3, Available Award Fee Distribution (excluding Table B.4-2.a and Table B.4-2.b above)					
Contract Period	**Available Fee as originally Awarded**	**Fee associated with contract changes**	**Total Available Fee**	**Available Fee Earned & Paid**	**Fee Forfeited**
Base Period					
Fiscal Year 2009	$1,948,268.00	$16,049.00	$1,964,317.00		
Fiscal Year 2010	$20,261,987.00	$160,038.00	$20,422,025.00	$19,332,431.00	$3,053,911.00
Fiscal Year 2011	$25,327,484.00	$837,282.00	$26,164,766.00	$23,956,349.00	$2,208,417.00
Fiscal Year 2012	$21,275,349.00	($48,431.00)	$21,226,918.00	$19,099,251.00	$2,127,667.00
Fiscal Year 2013	$20,261,987.00	$768,660.00	$21,030,647.00	$19,352,402.00	$1,678,245.00
Fiscal Year 2014	$12,234,861.00	$(104,762.00)	$12,130,099.00	$10,553,429.00	$1,576,670.00
Total Base Period	$101,309,936.00	$1,628,836.00	$102,938,772.00	$92,293,862.00	$10,644,910.00
Option Period(s)					
Option Period 1					
Fiscal Year 2014	$6,701,089.00	$155,301.00	$6,856,390.00	$5,965,197.00	$891,193.00
Fiscal Year 2015	$20,630,771.00	$413,045.00	$21,043,816.00	$18,776,345.00	$2,267,471.00
Fiscal Year 2016	$20,081,355.00	$936,084.00	$21,017,439.00	TBD	TBD
Fiscal Year 2017	TBD	$535,193.00	TBD	TBD	TBD
Total Option Period 1	TBD	$2,039,623.00	TBD	TBD	TBD
Option Period 2					
Fiscal Year 2017	TBD	$236,657.00	TBD	TBD	TBD
Fiscal Year 2018	TBD	$747,937.00	TBD	TBD	TBD
Fiscal Year 2019	TBD	$485,390.00	TBD	TBD	TBD
Total Option Period 2	TBD	$1,469,984.00	TBD	TBD	TBD
Total Option Period(s)	$103,093,690.00	$3,509,607.00	$106,603,297.00	TBD	TBD
Total Base & Option Periods	$204,403,625.00	$5,138,443.00	$209,542,069.00	$117,035,404.00	$13,803,574.00

* *Fee for August 24, 2009 to September 30, 2009 performance was combined with the FY 2010 Final Fee Determination.*

The following Table, *Summary of Contract Estimated Costs and Fee Tables*, summarizes the Contract Cost and Fee from Tables B.4-1, B.4-2.a, and B.4-2.b.

Definitions for descriptions used in the following table are as follows:

Total Estimated Direct Funded Contract Cost is defined as the sum of *Estimated Direct Funded Contract Cost* (B.4-1), *Estimated PMTO Direct Funded Contract Cost* (B-4.2.a), and *Estimated RFS and WFO and Direct Funded Contract Cost* (B-4.2.b).

(a) *Total Estimated OHC UBS Cost* is defined as *Estimated OHC UBS Cost* (B.4-1).

(b) *Total Estimated Contract Cost* is defined as the sum of *Total Estimated Direct Funded Contract Cost* and *Total Estimated OHC UBS Cost*.

(c) *Total Available Award Fee* is defined as *Available Award Fee* (B-4.1).

(d) *Total Fixed Fee* is defined as the sum of *PMTO Fixed Fee* (B-4.2.a) and *RFS and WFO Fixed Fee* (B-4.2.b).

(e) *Total Contract Fee* is defined as the sum of *Total Available Award Fee* and *Total Fixed Fee*.

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

(g) *Total Estimated OHC UBS Revenue* is defined as *Estimated OHC UBS Revenue* (B.4-1).

(h) *Total Direct Funded Contract Price* is defined as *Total Contract Price* less *Total Estimated OHC UBS Revenue* as specified in B.3(a) Obligation of Funds.

	Summary Contract Estimated Costs and Fee Table
Total Estimated Direct Funded Contract Cost (a)	$2,515,405,599.03
Total Estimated OHC UBS Cost (b)	$902,969,307.00
Total Estimated Contract Cost (c) = (a+b)	$3,418,374,906.03
Total Available Award Fee (d)	$209,542,069.00
Total Fixed Fee (e)	$318,133.30
Total Contract Fee (f) = (d+e)	$209,860,202.30
Total Contract Price (g) = (c+f)	$3,628,235,108.33
Total Estimated OHC UBS Revenue (h)	($902,969,307.00)
Total Direct Funded Contract Price (i) = (g-h)	$2,725,265,801.33

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

funding guidance by fiscal year is within 10% of the amount shown in Table B.4-1.

(2) Pursuant to Section C.3.1.2.3, DOE will provide annual funding guidance to the Contractor. The Contractor shall then develop an Integrated Priority List (IPL) in accordance with the funding guidance. The Contractor shall submit the IPL for DOE approval. Within 60 days of the DOE approval of the IPL, the Contractor shall, unless directed otherwise by the Contracting Officer, submit proposals consistent with the approved IPL work scope, projected Work for Others, and annual forecast of services from Other Hanford Contractors (OHC) to adjust 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*;

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[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 Manual 232.1-2 (Supp Rev 8), *Occurrence Reporting and Processing of Operations Information* requirements; or internal oversight of 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.).

PART I – THE SCHEDULE

SECTION H

SPECIAL CONTRACT REQUIREMENTS

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SECTION H

SPECIAL CONTRACT REQUIREMENTS

H.1 WORKFORCE TRANSITION

(a) Incumbent Employees Hiring Preferences

The Contractor shall use the *Transition Period* to make hiring decisions and to establish the management structures necessary to conduct an employee relations program. In establishing an initial workforce, and through the first six (6) months after Contract award, the Contractor shall give a first preference in hiring for vacancies in non-managerial positions under this Contract to Incumbent Employees (as defined in paragraph (b) of the Section H Clause entitled, *Employee Compensation: Pay and Benefits*) who meet the qualifications for a particular position. This hiring preference takes priority over the hiring preference provided in the Section I Clause entitled, *DEAR 952.226-74, Displaced Employee Hiring Preference*. The hiring preference does not apply to the Contractor's hiring of management staff (i.e., first line supervisors and above).

(b) Employee Pay

The Contractor shall provide equivalent pay to employees receiving a hiring preference as compared to pay provided by the predecessor contractor for substantially equivalent duties and responsibilities for at least the first year of the term of the Contract.

H.2 EMPLOYEE COMPENSATION: PAY AND BENEFITS

(a) Background on Benefit Plans

(1) The Hanford Site Pension Plan (HSPP) is a multi-employer pension plan which includes three (3) separate benefit structures under the Plan: two (2) for bargaining unit employees and one (1) for non-bargaining unit employees (exempt and nonexempt). The HSPP covers eligible employees of certain U.S. Department of Energy (DOE) Hanford prime contractors and subcontractors. The HSPP is managed and administered by committees composed of representatives from each of the sponsoring employers.

(2) The Hanford Site Savings Plans (HSSPs) cover eligible employees of certain DOE Hanford prime contractors and subcontractors. The HSSPs includes three (3) separate plans: two (2) plans for bargaining unit employees and one (1) plan for non-bargaining unit employees (exempt and nonexempt). The HSSPs are managed and administered by committees composed of representatives from each of the sponsoring employers.

(3) The Hanford Employee Welfare Trust (HEWT) is a multiple employer welfare arrangement (MEWA). Health and welfare benefits are administered under the HEWT which contains provisions for a wide range of medical and insurance benefits for eligible Hanford workers of certain DOE Hanford prime contractors and subcontractors and their beneficiaries. The HEWT is managed and administered by the HEWT Committee, which is composed of representatives from each sponsoring employer.

(4) The Contractor is required in paragraph (m) to offer a market-based package of retirement and medical benefits to Non-Incumbent Employees (as defined in paragraph (c)). These benefit plans are referred to herein as "Market-Based Plans."

(5) It is anticipated that Fluor Hanford, Inc. (FHI), under Contract No. DE-AC06-96RL13200, will assume responsibility for sponsorship, management, and administration of certain pension and other benefit plans that currently are maintained by Fluor Fernald, Inc. under Contract No. DE-AC24-01OH20115 (Legacy Plans).

(6) The HSPP, HSSP and HEWT are collectively referred to herein as the “Plans” for purposes of the Section H Clauses entitled, Employee Compensation: Pay and Benefits, Post-Contract Responsibilities for Pension and Other Benefit Plans, and Incumbent Employees, Benefit Plans, and Approval for Subcontractors to participate in the Plans.

(b) Incumbent Employees for the purposes of this Contract

Based on prior employment and the terms of the HSPP, Incumbent Employees are those employees eligible to participate, or to return to and participate, in the HSPP and accrue Benefit Service as defined in the HSPP.

(c) Non-Incumbent Employees

If an employee does not meet the definition of an Incumbent Employee with respect to the HSPP, as described in paragraph (b), the employee will be considered a Non-Incumbent Employee for the purposes of this Contract.

(d) Human Resources Compensation Plan

The Contractor shall submit within 30 days of Transition start date a *Human Resources Compensation Plan* demonstrating how the Contractor will comply with the requirements of this Contract. The *Human Resources Compensation Plan* shall describe the Contractor's policies regarding compensation, pensions and other benefits, and how these policies will support at reasonable cost the effective recruitment and retention of a highly skilled, motivated, and experienced workforce.

(e) Total Compensation System

The Contractor shall develop, implement and maintain formal policies, practices and procedures to be used in the administration of its compensation system consistent with FAR 31.205-6 and DEAR 970.3102-05-6, *Compensation for Personal Services*. DOE-approved standards (e.g., set forth in an advance understanding or appendix), if any, shall be applied to the Total Compensation System. The Contractor's Total Compensation System shall be fully documented, consistently applied, and acceptable to the Contracting Officer. Costs incurred in implementing the Total Compensation System shall be consistent with the Contractor's documented *Human Resources Compensation Plan* as approved by the Contracting Officer.

(f) Reports and Information

The Contractor shall provide the Contracting Officer with the following reports and information with respect to pay and benefits provided under this Contract:

(1) An *Annual Contractor Salary-Wage Increase Expenditure Report* to include, at a minimum, breakouts for merit, promotion, variable pay, special adjustments, and structure movements for each pay structure showing actual against approved amounts.

(2) Within 30 days of Transition start date, a list of the top five (5) most highly compensated executives as defined in FAR 31.205-6(p)(4)(ii) and their total cash compensation at the time of Contract award, and at the time of any subsequent change to their total cash compensation. This should be the same information provided to the System for Award Management (SAM) per FAR 52.204-10.

(3) An *Annual Compensation and Benefits Report* through iBenefits, or its successor system no later than March 1st of each year.

(g) Cash Compensation

(1) The Contractor shall establish pay programs for employees.

(2) The Contractor shall submit the following information to the Contracting Officer for determination of cost allowability for reimbursement for cash compensation under the Contract:

(i) Any proposed major compensation program design changes prior to implementation.

(ii) Variable pay programs/incentives. If not already authorized under an Advance Agreement, a justification shall be provided with proposed costs and impacts to budget, if any.

(iii) In the absence of Departmental policy, as communicated by the Contracting Officer, or other written instruction to the contrary (e.g., Secretarial pay freeze) a Contractor that meets the criteria, as set forth below, is not required to submit a Compensation Increase Plan (CIP) request to the Contracting Officer for an advance determination of cost allowability for a Merit Increase fund or Promotion/Adjustment fund:

a. The Merit Increase fund does not exceed the mean percent increase included in the annual Departmental guidance providing the WorldatWork Salary Budget Survey's salary increase projected for the CIP year. The Promotion/Adjustment fund does not exceed one (1) percent in total.

b. The budget used for both Merit Increase funds and Promotion/Adjustment funds shall be based on the payroll for the end of the previous CIP year.

c. Salary structure adjustments do not exceed the mean WorldatWork structure adjustments projected for the CIP year and communicated through the annual Department CIP guidance.

d. Please note: No later than the first day of the CIP cycle, Contractors must provide notification to the Contracting Officer of planned increases and position to market data by mutually agreed-upon employment categories. No presumption of allowability will exist for employee job classes that exceed market position.

(iv) If a Contractor does not meet the criteria included in (iii) above, a CIP must be submitted to the Contracting Officer for an advance determination of cost allowability. The CIP should include the following components and data:

(1) Comparison of average pay to market average pay.

(2) Information regarding surveys used for comparison.

(3) Aging factors used for escalating survey data and supporting information.

(4) Projection of escalation in the market and supporting information.

(5) Information to support proposed structure adjustments, if any.

(6) Analysis to support special adjustments.

(7) Funding requests for each pay structure to include breakouts of merit, promotions, variable pay, special adjustments, and structure movement. (a) The proposed plan totals shall be expressed as a percentage of the payroll for the end of the previous CIP year. (b) All pay actions granted under the compensation increase plan are fully charged when they occur regardless of time of year in which the action transpires and whether the employee terminates before year end. (c) Specific payroll groups (e.g., exempt, nonexempt) for which CIP amounts are intended shall be defined by mutual agreement between the Contractor and the Contracting Officer. (d) The Contracting Officer may adjust the CIP amount after approval based on major changes in factors that significantly affect the plan amount (for example, in the event of a major reduction in force or significant ramp-up).

(8) A discussion of the impact of budget and business constraints on the CIP amount.

(9) Comparison of pay to relevant factors other than market average pay.

v. After receiving DOE CIP approval or if criteria in (g)(2)(iii) was met, Contractors may make minor shifts of up to 10% of approved CIP funds by employment category (e.g., Scientist/Engineer, Admin, Exempt, Non-Exempt) without obtaining approval.

vi. Individual compensation actions for the top Contractor official (e.g., laboratory director/plant manager or equivalent) and Key Personnel not included in the CIP. For those Key Personnel included in the CIP, DOE will approve salaries upon the initial contract award and when Key Personnel are replaced during the life of the contract. DOE will have access to all individual salary reimbursements. This access is provided for transparency; DOE will not approve individual salary actions (except as previously stated).

(3) The Contracting Officer's approval of individual compensation actions will be required only for the top Contractor official (e.g., laboratory director/plant manager or equivalent) and Key Personnel as stated (g)(2)(vi) above. The base salary reimbursement level for the top Contractor official establishes the maximum allowable base salary reimbursement under the contract. Unusual circumstances may require a deviation for an individual on a case-by-case basis. Any such deviations must be approved by the Contracting Officer.

(4) Subject to the Hanford Site Severance Pay Plans, severance pay is not payable to an employee under this Contract if the employee:

(i) Voluntarily separates, resigns or retires from employment,

(ii) Is offered comparable employment with a successor/replacement Contractor,

(iii) Is offered comparable employment with a parent or affiliated company, or

(iv) Is discharged for cause.

(5) Service Credit for purposes of determining severance pay does not include any period of prior service for which severance pay has been previously paid through a DOE cost reimbursement contract.

(h) Pension and Other Benefit Programs

(1) The Contractor shall become a sponsor of the pension and other benefit plans identified in paragraph (a), and shall be responsible for the management and administration of the Market-Based Plans and Legacy Plans identified in paragraphs (a)(4) and (5).

(2) The Legacy Plans shall be managed and administered separately from the HSPP, HSSP, HEWT, and Market-Based Plans in a manner so as to preserve the Legacy Plans' separate and distinct identities.

(3) Unless otherwise required by applicable law or approved by the Contracting Officer, no implementation of a benefit program and no amendment to any of the plans identified in paragraph (a) or underlying trust documents thereto shall result in allowable costs under this Contract.

(4) No presumption of allowability will exist when the Contractor implements a new benefit plan, or makes changes to existing benefit plans, identified in paragraph (a) above, that increase costs or are contrary to Departmental policy, as communicated by the Contracting Officer, or other written instruction or until the Contracting Officer makes a determination of cost allowability for reimbursement for new or changed benefit plans. Changes shall be in accordance with and pursuant to the terms and conditions of the contract. Advance notification, rather than approval, is required for changes that do not increase costs and are not contrary to Departmental policy, as communicated by the Contracting Officer, or other written instruction.

(5) Cost reimbursement for pension and other benefit plans identified in paragraph (a) sponsored by the Contractor will be based on the Contracting Officer's approval of Contractor actions pursuant to an approved Ben-Val and an Employee Benefits Cost Study as described below.

(6) Unless otherwise stated, or as directed by the Contracting Officer, the Contractor shall submit the studies required in (i) and (ii) below. The studies shall be used by the Contractor in calculating the cost of benefits under existing benefit plans. An Employee Benefits Value (Ben-Val) Study Method using no less than 15 comparator organizations and an Employee Benefits Cost Survey Comparison method shall be used in this evaluation to establish an appropriate comparison

method. In addition, the Contractor shall submit updated studies to the Contracting Officer for approval prior to the adoption of any change to a pension or other benefit plan which increases costs.

(i) Separate Ben-Val studies are required every two years for all plans identified in paragraph (a). A Ben-Val is an actuarial study of the relative value (RV) of the benefits programs offered by the Contractor measured against the RV of benefit programs offered by the Contracting Officer approved comparator companies. To the extent that the value studies do not address post retirement benefits other than pensions, the Contractor shall provide a separate cost and plan design data comparison for the post retirement benefits other than pensions using external benchmarks derived from nationally recognized and Contracting Officer approved survey sources;and

(ii) Separate Employee Benefits Cost Study comparisons are annually required for all plans identified in paragraph (a). An Employee Benefits Cost Study is a study which analyzes the Contractor's employee benefits cost on a per capita per full time equivalent employee basis and as a percent of payroll and compares them with the costs reported by the U.S. Department of Labor's Bureau of Labor Statistics or other Contracting Officer approved, broad based, national survey.

(7) When net benefit value exceeds the comparator group by more than five (5) percent (%), the Contractor shall submit a corrective action plan to the Contracting Officer for approval, unless waived in writing by the Contracting Officer.

(8) When the average total benefit per capita cost or total benefit cost as a percent of payroll exceeds the comparator group by more than 5%, and if required by the Contracting Officer, the Contractor shall submit an analysis of the specific plan costs that are above the per capita cost range or total benefit cost as a percent of payroll and a corrective action plan to achieve conformance with a Contracting Officer directed per capita cost range or total benefit cost as a percent of payroll, unless waived in writing by the Contracting Officer.

(9) Within two (2) years of approval of the Contractor's corrective action plan by the Contracting Officer, the Contractor shall implement corrective action plans to align employee benefit programs with the benefit value and per capita cost range or percent of payroll as approved by the Contracting Officer.

(10) The Contractor may not terminate any benefit plan during the term of the Contract without prior approval of the Contracting Officer in writing.

(11) Cost reimbursement for Post Retirement Benefits (PRBs) is contingent on the specific terms of the plans identified in paragraph (a), as amended. Unless required by Federal or State law, advance funding of PRBs is not allowable.

(12) All costs of administration shall be costs of each plan individually and allocated to participating plan sponsors. Costs of administration shall be directly billed to the plans and not charged by indirect allocation.

(13) The Contractor shall maintain a sufficient number of trained and qualified personnel to perform all of the functions of the plans.

(14) The Contractor shall render all ordinary and normal administrative services and functions which may be reasonably required. The Contractor shall annually provide an itemization of costs incurred for plan administration for each plan to the Contracting Officer within 60 days of the end of each plan year.

(15) The Contractor shall manage Plan assets in a prudent manner. The Contractor shall develop and submit to the Contracting Officer an Investment Policy Statement for each plan that clearly defines investment return objectives and risk tolerances, and shall perform annual pension plan Investment Performance Self-Assessments. The Contractor performance self-assessments shall address investment objectives, development of the plans to achieve investment objectives, execution of the plans, performance monitoring, and appropriate corrective action planning and execution. The Contractor shall provide the Contracting Officer with a copy of each plan's Investment Performance Self-Assessment.

(16) The Contractor shall comply with the Investment Policy Statements developed for the plans. Should the Contractor incur higher costs because the Contractor fails to comply with all or part of the established Investment Policy Statements provided to DOE, the additional costs incurred are unallowable.

(17) Each Contractor sponsoring a defined benefit pension plan and/or postretirement benefit plan will participate in the annual plan management process which includes written responses to a questionnaire regarding plan management, providing forecasted estimates of future reimbursements in connection with the plan(s) and participating in a conference call to discuss the Contractor submission (see (i)(8) below for Pension Management Plan requirements).

(18) Each Contractor will respond to quarterly data calls issued through iBenefits, or its successor system.

(19) Contractors shall submit new benefit plans and changes to plan design or funding methodology with justification to the Contracting Officer for approval, as applicable (see (h)(4) above). The justification must:

i. demonstrate the effect of the plan changes on the contract net benefit value or per capita benefit costs,
ii. provide the dollar estimate of savings or costs, and
iii. provide the basis of determining the estimated savings or cost.

(i) <u>Establishment and Maintenance of Pension Plans for which DOE Reimburses Costs</u>

(1) The Contractor shall comply with the requirements of ERISA if applicable to the pension plan and any other applicable laws.

(2) Employees working for the Contractor shall only accrue credit for service under this Contract after the date of Contract award.

(3) Any pension plan maintained by the Contractor, for which DOE reimburses costs, shall be maintained as a separate pension plan distinct from any other pension plan which provides credit for current service not previously paid through a DOE cost reimbursement contract.

(4) The following reports shall be submitted to DOE as soon as possible after the last day of the plan year by the Contractor responsible for each designated pension plan funded by DOE but no later than the dates specified below:

(i) Actuarial Valuation Reports. The annual actuarial valuation report for each DOE-reimbursed pension plan and when a pension plan is commingled, the Contractor shall submit separate reports for DOE's portion and the plan total by the due date for filing IRS Form 5500.

(ii) Forms 5500. Copies of IRS Forms 5500 with Schedules for each DOE-funded pension plan, no later than that submitted to the IRS.

(iii) Forms 5300. Copies of all forms in the 5300 series submitted to the IRS that document the establishment, amendment, termination, spin-off, or merger of a plan submitted to the IRS.

(5) At least sixty (60) days prior to the adoption of any changes to a pension plan, the Contractor shall submit the information required below, to the Contracting Officer. The Contracting Officer must approve plan changes that increase costs as part of a determination as to whether the costs are deemed allowable pursuant to FAR 31.205-6, as supplemented by DEAR 970.3102-05-6.

(1) For proposed changes to pension plans and pension plan funding, the Contractor shall provide the following to the Contracting Officer:

(A) a copy of the current plan document (as conformed to show all prior plan amendments), with the proposed new amendment indicated in redline/strikeout,
(B) an analysis of the impact of any proposed changes on actuarial accrued liabilities and costs,
(C) except in circumstances where the Contracting Officer indicates that it is unnecessary, a legal explanation of the proposed changes from the counsel used by the plan for purposes of compliance with all legal requirements applicable to private sector defined benefit pension plans,
(D) the Summary Plan Description; and
(E) any such additional information as requested by the Contracting Officer.

(6) The Contractor shall not terminate any pension plan without at least 60 days notice to and the approval of the Contracting Officer prior to the scheduled date

of plan termination.

(7) Each Contractor defined benefit and defined contribution pension plan shall be subjected to a limited-scope audit annually that satisfies the requirements of ERISA section 103, except that every third year the Contractor must conduct a full-scope audit of defined benefit plan(s) satisfying ERISA section 103. Alternatively, the Contractor may conduct a full-scope audit satisfying ERISA section 103 annually. In all cases, the Contractor must submit the audit results to the Contracting Officer. In years in which a limited scope audit is conducted, the Contractor must provide the Contracting Officer with a copy of the qualified trustee or custodian's certification regarding the investment information that provides the basis for the plan sponsor to satisfy reporting requirements under ERISA section 104.

While there is no requirement to submit a full scope audit for defined contribution plans, Contractors are responsible for maintaining adequate controls for ensuring that defined contribution plan assets are correctly recorded and allocated to plan participants.

(8) The Pension Management Plan (PMP) shall include a discussion of the Contractor's plans for

management and administration of all pension plans consistent with the terms of this contract. The PMP shall be submitted in the iBenefits system, or its successor system no later than January 31st of each applicable year. A full description of the necessary reporting will be provided in the annual management plan data request. tWithin sixty (60) days after the date of the submission, appropriate Contractor representatives shall be available to participate in a conference call to discuss the Contractor's PMP submission and any other current plan issues or concerns. The annual revision of the PMP shall include:

(i) The Contractor's best projection of the contributions which it will be legally obligated to make to the pension plan(s), beginning with the required contributions for the coming fiscal year, based on the latest actuarial valuation, and continuing for the following four years. This estimate will be based upon compliance with all applicable legal requirements relating to the determination of contributions and upon the assumptions set out in the plan document(s).

(ii) If the actuarial valuation submitted pursuant to the annual PMP update indicates that the sponsor of the pension plan must impose pension plan benefit restrictions, the Contractor shall provide the following information:

(aa) The type of benefit restriction that will take place,
(bb) The number of Contractor employees that potentially could be impacted and the nature of the restriction (e.g., financial impact) by imposition of the required benefit restriction, and
(cc) The amount of money that would need to be contributed to the pension plan to avoid legally required benefit restrictions.

(iii) A detailed discussion of how the Contractor intends to manage the pension plan(s) to maximize the contribution predictability (i.e. forecasting accuracy) and contain current and future costs, to include rationale for selection of all plan assumptions that determine the required contributions and which impact the level and predictability of required contributions. The Contractor is required to annually establish a long term (e.g. five year) plan that outlines the projected retirement plan costs, and any planned action steps to be taken to better manage predictability. The Contractor must also share the following information with the Department during the meeting:

(aa) Strategy for achieving and maintaining fully-funded status of the plan(s)
(bb) Investment policy statement for the plan, with any recent updates
(cc) Results of recent asset liability studies (required to be performed every 3 years or after a significant event) including rationale for maintaining current asset allocation strategy
(dd) Comparison of budget projections submitted to the Department to actual contributions
(ee) Any recent reports, findings, or recommendations provided by plan's investment consultant.
(ff) Actuarial experience studies to set the plan's actuarial assumptions (required to be performed every 3-5 years)

(iv) An assessment to evaluate the effectiveness of the Contractor's pension plan(s) investment management/results. The assessment shall include at a minimum: a review and analysis of pension plan investment objectives; the strategies employed to achieve those objectives; the methods used to monitor execution of those strategies and the achievement of the investment objectives; and a comparative analysis of the objectives and performance of other comparable pension plans. The Contractor shall also identify its plans, if any, for revising any aspect of its pension plan management based on the results of the review.

(9) <u>Reimbursement of Contractors for Contributions to Defined Benefit Pension Plans</u>

(1) Contractors that sponsor single employer or multiple employer defined benefit pension plans will be reimbursed for the annual required minimum contributions under the Employee Retirement Income Security Act (ERISA), as amended by the Pension Protection Act (PPA) of 2006 and any subsequent amendments. Reimbursement above the annual minimum required contribution will require prior approval of the Contracting Officer. Minimum required contribution amounts will take into consideration all pre-funding balances and funding standard carryover balances. Early in the fiscal year but no later than the end of November,

the Contractor requesting above the minimum may submit/update a business case for funding above the minimum if preliminary approval is needed prior to the Pension Management Plan process. The business case shall include a projection of the annual minimum required contribution and the proposed contribution above the minimum. The submission of the business case will provide the opportunity for the Department to provide preliminary approval, within 30 days after Contractor submission, pending receipt of final estimates, generally after January 1st of the calendar year. Final approval of funding will be communicated by the Contracting Officer when discount rates are finalized and it is known whether there are any budget issues with the proposed contribution amount.

(2) Contractors that sponsor multi-employer DB pension plans will be reimbursed for pension contributions in the amounts necessary to ensure that the plans are funded to meet the annual minimum requirement under ERISA, as amended by the PPA. However, reimbursement for pension contributions above the annual minimum contribution required under ERISA, as amended by the PPA, will require prior approval of the Contracting Officer and will be considered on a case by case basis. Reimbursement amounts will take into consideration all pre-funding balances and funding standard carryover balances. Early in the fiscal year but no later than the end of November, the Contractor requesting above the minimum may submit/update a business case for funding above the minimum if preliminary approval is needed prior to the Pension Management Plan process. The business case shall include a projection of the annual minimum required contribution and the proposed contribution above the minimum. The submission of the business case will provide the opportunity for the Department to provide preliminary approval, within 30 days after Contractor submission, pending receipt of final estimates, generally after January 1st of the calendar year. Final approval of funding will be communicated by the Contracting Officer when discount rates are finalized and it is known whether there are any budget issues with the proposed contribution amount.

(10) <u>Terminating Operations</u>

When operations at a designated DOE facility are terminated and no further work is to occur under the prime contract, the following apply:

(1) No further benefits for service shall accrue.

(2) The Contractor shall provide a determination statement in its settlement proposal, defining and identifying all liabilities and assets attributable to the DOE contract.

(3) The Contractor shall base its pension liabilities attributable to DOE contract work on the market value of annuities or lump sum payments or dispose of such liabilities through a competitive purchase of annuities or lump sum payouts.

(4) Assets shall be determined using the "accrual-basis market value" on the date of termination of operations.

(5) DOE and the Contractor(s) shall establish an effective date for spinoff or plan termination. On the same day as the Contractor notifies the IRS of the spinoff or plan termination, all plan assets assigned to a spun-off or terminating plan shall be placed in a low-risk liability matching portfolio until the successor trustee, or an insurance company, is able to assume stewardship of those assets.

(11) Terminating Plans

(1) DOE Contractors shall not terminate any pension plan (Commingled or site specific) without requesting Departmental approval at least 60 days prior to the scheduled date of plan termination.

(2) To the extent possible, the Contractor shall satisfy plan liabilities to plan participants by the purchase of annuities through competitive bidding on the open annuity market or lump sum payouts. The Contractor shall apply the assumptions and procedures of the Pension Benefit Guaranty Corporation.

(3) Funds to be paid or transferred to any party as a result of settlements relating to pension plan termination or reassignment shall accrue interest from the effective date of termination or reassignment until the date of payment or transfer.

(4) If ERISA or IRC rules prevent a full transfer of excess DOE reimbursed assets from the terminated plan, the Contractor shall pay any deficiency directly to DOE according to a schedule of payments to be negotiated by the parties.

(5) On or before the same day as the Contractor notifies the IRS of the spinoff or plan termination, all plan assets assigned to a spun-off or terminating plan shall be placed in a low-risk liability matching portfolio until the successor trustee, or an insurance company, is able to assume stewardship of those assets.

(6) DOE liability to a Commingled pension plan shall not exceed that portion which corresponds to DOE contract service. The DOE shall have no other liability to the plan, to the plan sponsor, or to the plan participants.

(7) After all liabilities of the plan are satisfied, the Contractor shall return to DOE an amount equaling the asset reversion from the plan termination and any earnings which accrue on that amount because of a delay in the payment to DOE. Such amount and such earnings shall be subject to DOE audit. To effect the purposes of this paragraph, DOE and the Contractor may stipulate to a schedule of payments.

(j) Benefits for Incumbent Employees under the HSPP and HSSP

(1) HSPP

(i) The Contractor shall allow individuals who are Incumbent Employees to accrue credit under the HSPP for service under this Contract. The Contractor shall timely supply the Plan Administrator(s) with the information required by the Administrator(s) necessary to effectively administer the Plan(s). Contributions to the HSPP as determined by the Plan Administrator shall be allowable costs under this Contract, subject to compliance with other provisions of this Contract and terms of the Plans, as amended. At Contract completion, the Contractor shall fully fund its withdrawal liability under the HSPP; provided, however, that when or if this Contract expires or terminates, the Contractor shall continue as a plan sponsor of the HSPP pursuant to the Section H Clause entitled, *Post-Contract Responsibilities for Pension and Other Benefit Plans*.

(ii) The Contractor shall coordinate with the HSPP Administrator to ensure DOE receives an annual reporting and accounting of the Contractor's pension obligations, pursuant to Financial Accounting Standard (FAS) 87, for those employees participating in the HSPP and supply the Administrator with all the information necessary to maintain the Federal tax qualifications of all Contractor and Hanford Site pension plans.

(2) HSSP

Contributions to the HSSP shall be allowable costs under this Contract, subject to compliance with other provisions of this Contract and terms of the Plans, as amended.

(k) Benefits for Incumbent Employees under the HEWT

(1) The Contractor shall be a sponsor of the HEWT. Individuals who are Incumbent Employees for purposes of the HEWT shall be eligible to participate (in the HEWT and receive medical and other benefits under the HEWT consistent with the terms of that HEWT, as amended. The Contractor shall recognize service credited under the HEWT toward the service period required for benefits relating to vacation, sick leave, health insurance, severance, layoff, recall, and other benefits.

(2) The Contractor shall, in a timely manner, supply the HEWT Administrator with the information required by the Administrator necessary to effectively administer the HEWT. The Contractor shall coordinate with the HEWT Administrator to ensure that DOE receives copies of all annual reports, actuarial reports, and submissions of FAS 106 data, and other reports as required by the Contracting Officer, of the Contractor's benefit obligations for those employees participating in the HEWT under this Contract. Contributions to the HEWT as determined by the HEWT Administrator shall be allowable costs under this Contract, subject to compliance with other provisions of this Contract.

(l) Pension and Other Benefits for Non-Incumbent Employees

(1) The Contractor shall offer a market-based package of retirement and medical benefits competitive for the industry to individuals who are not Incumbent Employees. If the Contractor meets all applicable legal and tax requirements, the Contractor may establish a separate line of business pursuant to Internal Revenue Code (IRC) 410 and 414 for the purpose of maintaining the Federal tax qualification of pension covering the Contractor's employees.

(2) The Contractor shall ensure that DOE receives copies of all annual reports, actuarial reports, applicable FAS data, and other reports as required by the Contracting Officer for eligible employees with respect to this Contract.

(3) Any benefit programs established and/or maintained by the Contractor, for which DOE reimburses costs, shall meet the tests of allowability and reasonableness established by FAR 31.205-6 and DEAR 970.3102-05-6.

(m) Reporting for Legacy Plans

The Contractor shall ensure that DOE receives copies of all annual reports, actuarial reports, submissions of FAS 87 and 106 data, as applicable, and other reports, as required by the Contracting Officer.

H.3 POST-CONTRACT RESPONSIBILITIES FOR PENSION AND OTHER BENEFIT PLANS

(a) If this Contract expires or terminates and the U.S. Department of Energy (DOE) has awarded a contract under which the new contractor becomes a sponsor of the Hanford Site Pension Plan (HSPP), Hanford Site Savings Plan (HSSP), Hanford Employee Welfare Trust (HEWT), Market-Based Plans and Legacy Plans as defined in paragraph (a) of the Section H Clause entitled, *Employee Compensation: Pay and Benefits*, of this Contract, and becomes responsible for management, and administration of the Market-Based Plans and Legacy Plans, the Contractor shall cooperate and transfer to the new contractor its responsibility for sponsorship, management and administration of the plans as appropriate and consistent with direction from the Contracting Officer.

(b) If this Contract expires or terminates without a contract with a new contractor under which the new contractor becomes a sponsor of the HSPP, HSSP, HEWT, Market-Based Plans and Legacy Plans as defined in paragraph (a) of the Section H Clause entitled, *Employee Compensation: Pay and Benefits*, of this Contract, and becomes responsible for management and administration of the Market-Based Plans and Legacy Plans, or if the Contracting Officer determines that the scope of work under the Contract has been completed (any one such event may be deemed by the Contracting Officer to be "Contract Completion" for purposes of this clause), whichever is earlier, and notwithstanding any other obligations and requirements concerning expiration or termination under any other clause of this Contract, the following actions shall occur regarding the Contractor's obligations regarding all of the plans as defined in paragraph (a) of the Section H Clause entitled, *Employee Compensation: Pay and Benefits*, of this Contract at the time of Contract Completion:

(1) Subject to subparagraph (2) below, and notwithstanding any legal obligations independent of the Contract the Contractor may have regarding responsibilities for sponsorship, management, and administration of the plans as defined in paragraph (a) of the Section H Clause entitled, *Employee Compensation: Pay and Benefits*, of this Contract, the Contractor shall remain the sponsor of the plans as defined in paragraph (a) of the Section H Clause entitled, *Employee Compensation: Pay and Benefits*, of this Contract, in accordance with applicable legal requirements.

(2) The parties shall exercise their best efforts to reach agreement on the Contractor's responsibilities for sponsorship, management and administration of the plans as defined in paragraph (a) of the Section H Clause entitled, *Employee Compensation: Pay and Benefits*, of this Contract prior to or at the time of Contract Completion. However, if the parties have not reached agreement on the Contractor's responsibilities for sponsorship, management and administration of the plans as defined in paragraph (a) of the Section H Clause entitled, *Employee Compensation: Pay and Benefits*, of this Contract prior to or at the time of Contract Completion, unless and until such agreement is reached, the Contractor shall comply with written direction from the Contracting Officer regarding the Contractor's responsibilities for continued provision of pension and other benefits under the plans as defined in paragraph (a) of the Section H Clause entitled, *Employee Compensation: Pay and Benefits*, of this Contract, including but not limited to continued sponsorship of the plans as defined in paragraph (a) of the Section H Clause entitled, *Employee Compensation: Pay and Benefits*, of this Contract, in accordance with applicable legal requirements. To the extent that the Contractor incurs costs in implementing direction from the Contracting Officer, the Contractor’s costs will be reimbursed pursuant to applicable Contract provisions.

H.4 NO THIRD PARTY BENEFICIARIES

This Contract is for the exclusive benefit and convenience of the parties hereto. Nothing contained herein shall be construed as granting, vesting, creating or conferring any right of action or any other right or benefit upon past, present or future employees of the Contractor, or upon any other third party. This provision is not intended to limit or impair the rights which any person may have under applicable Federal statutes.

H.5 OVERTIME CONTROL PLAN

Notwithstanding any other provision in this Contract, if the aggregate overtime premium pay as a percent (%) of base salary exceeds 2 % for non-represented employees or 10% for represented employees, the Contractor shall submit to the Contracting Officer separate annual *Overtime Control Plans* in accordance with the Section I Clause entitled, *FAR 52.222-2, Payment for Overtime Premiums*.

H.6 LABOR RELATIONS

(a) The Contractor shall respect the right of employees to organize and to form, join, or assist labor organizations, to bargain collectively through their chosen labor representatives, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of these activities.

(b) The Contractor shall meet with the Contracting Officer or designee(s) for the purpose of reviewing the Contractor's bargaining objectives prior to negotiations of any collective bargaining agreement or revision there to and shall consult with and obtain the approval of the Contracting Officer regarding appropriate economic bargaining parameters, including those for pension and medical benefit costs, prior to the Contractor entering into the collective bargaining process. During the collective bargaining process, the Contractor shall notify the Contracting Officer before submitting or agreeing to any collective bargaining proposal which can be calculated to affect allowable costs under this Contract or which could involve other items of special interest to the Government. During the collective bargaining process, the Contractor shall obtain the approval of the Contracting Officer before proposing or agreeing to changes in any pension or other benefit plans.

(c) The Contractor will seek to maintain harmonious bargaining relationships that reflect a judicious expenditure of public funds, equitable resolution of disputes and effective and efficient bargaining relationships consistent with the requirements of FAR Subpart 22.1 and DEAR Subpart 970.2201 and all applicable Federal and state labor relations laws.

(d) The Contractor will notify the Contracting Officer or designee in a timely fashion of all labor relations issues and matters of local interest including organizing initiatives, unfair labor practice, work stoppages, picketing, labor arbitrations, and settlement agreements and will furnish such additional information as may be required by the Contracting Officer.

H.7 COLLECTIVE BARGAINING AGREEMENTS

The Contractor shall use its best efforts to ensure that collective bargaining agreements negotiated under this Contract contain provisions designed to assure continuity of services. All such agreements entered into during the Contract period of performance should provide that grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout, or other interruption of normal operations. For this purpose, each collective bargaining agreement should provide an effective grievance procedure with arbitration as its final step, unless the parties mutually agree upon some other method of assuring continuity of operations. As part of such agreements, management and labor should agree to cooperate fully with the Federal Mediation and Conciliation Service. The Contractor shall include the substance of this Clause in any subcontracts for protective services or other services performed on the U.S. Department of Energy (DOE)-owned site which will affect the continuity of operation of the facility.

H.8 INCUMBENT EMPLOYEES, BENEFIT PLANS, AND APPROVAL FOR SUBCONTRACTORS TO PARTICIPATE IN THE PLANS

(a) DOE and the Contractor shall agree to those subcontractors that will be subject to the requirements to provide pension and other benefits for Incumbent Employees as defined in paragraph (b) of the Section H Clause entitled, *Employee Compensation: Pay and Benefits*. The Contractor shall submit its proposed agreement to DOE no later than thirty days prior to the close of the Transition Period, as defined in the Section F Clause entitled, *Period of Performance*.

After the parties have reached agreement, as set forth above, upon those subcontractors subject to paragraph (b) of the Section H Clause entitled *Employee Compensation: Pay and Benefits*, the Contractor may propose changes to the agreement. Prior to initiating any subcontracting action (e.g., issuing a solicitation) that may require a subcontractor to offer benefits to Incumbent Employees, the Contractor shall provide the Contracting Officer with rationale to support the benefits of its proposed change. Proposed changes shall not be effective or implemented without prior written approval by the Contracting Officer. Approval of the proposed change is at the unilateral discretion of the Contracting Officer.

(b) The Contractor shall flow down to all subcontractors that are subject to the agreement in paragraph (a) of this Clause the requirements of paragraphs (g)(3) and (4), (i), (j), (k), and (l) of the Section H Clause entitled, *Employee Compensation: Pay and Benefits*, and paragraphs (a) and (b) of the Section H clause entitled, *Post-Contract Responsibilities for Pension and Other Benefit Plans*.

(c) For the purpose of determining allowability of costs, the Contractor shall not take any action that would result in the change of status of an Incumbent Employee with respect to Plans identified in paragraphs (a) and (b) of the Section H Clause entitled, *Employee Compensation: Pay and Benefits*, without the prior written approval of the Contracting Officer.

Subject to other subcontract review and approval requirements in this Contract, this Clause does not limit the Contractor's ability to utilize subcontractors as necessary to perform Contract requirements.

H.9 DETERMINATION OF APPROPRIATE LABOR STANDARDS

(a) The U.S. Department of Energy (DOE) will determine the appropriate labor standards that apply to work activities in accordance with the *Davis-Bacon Act* or other applicable labor law. When requested by DOE, the Contractor shall provide the Contracting Officer the information in the form and timeframe required by DOE, as may be necessary for DOE to render a determination on Contracts in excess of $2,000 for construction, alteration, or repair, including painting and decorating, of public buildings and public works that involve the employment of laborers and mechanics.

(b) Once a determination is made, the Contractor is responsible for compliance with the determination and incorporation of applicable labor standard requirements into subcontracts.

H.10 IMPLEMENTATION OF THE HANFORD SITE STABILIZATION AGREEMENT

(a) The Hanford Site Stabilization Agreement (HSSA) for all construction work for the U. S. Department of Energy (DOE) at the Hanford Site, which is referenced in this Clause, consists of a Basic Agreement dated September 10, 1984, plus Appendix A, both of which may be periodically amended. The HSSA is hereby incorporated into this Contract by reference. The Contractor is responsible for obtaining the most current text from DOE.

(b) This Clause applies to employees performing work under Contracts (or subcontracts) administered by DOE which are subject to the *Davis-Bacon Act*, in the classifications set forth in the HSSA 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 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 HSSA 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 HSSA 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 HSSA and who are not required under paragraph (c) above to become signatory to the HSSA, 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 (Section 2 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 (Sections 1 and 2 only);
(6)	Article XVII	Payment of Wages-Checking In and Out (Section 3 only);
(7)	Article XX	General Working Conditions; and
(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 Statutes 238-239), and U.S. Department of Labor regulations in implementation thereof (Code of Federal Regulations Title 29 Parts 1 and 5).

(g) The Contracting Officer may direct the Contractor to pay amounts for wages, fringe benefits, and other employee compensation if the HSSA, including its Appendix A, is modified by the involved parties.

(h) In the event of failure to comply with paragraphs (c) (d) (e) (f) and (g), 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.

(i) The rights and remedies of the Government provided in this Clause shall not be exclusive and are in addition to any other rights and remedies of the Government provided by law or under this Contract.

(j) The requirements of this Clause are in addition to, and shall not relieve the Contractor of, any obligation imposed by other Clauses of this Contract, including Section I Clauses entitled, *FAR 52.222-4, Contract Work Hours and Safety Standards Act—Overtime Compensation, FAR 52.222-6, Davis-Bacon Act, FAR 52.222-7, Withholding of Funds, FAR 52.222-8, Payrolls and Basic Records, FAR 52.222-10, Compliance with Copeland Act Requirements,* and *FAR 52.222-12, Contract Termination – Debarment.*

(k) 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, and to preserve such records for a period of three (3) years thereafter, for all employees performing such work. Such records will contain the name and address of each such employee, his/her 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.

(l) The Contractor agrees to insert the provisions of this Clause including this paragraph (k) in all subcontracts for the performance of work subject to the *Davis-Bacon Act*.

A copy of the *Hanford Site Stabilization Agreement* is located at:

http://www.hanford.gov

The U.S. Department of Labor wage determinations for the *Davis-Bacon Act* and *Service Contract Act* are located at:

http://www.wdol.gov

H.11 WORKFORCE RESTRUCTURING

(a) Notwithstanding any other provision in this Contract, when the Contractor determines that a reduction of force is necessary, the Contractor shall notify the Contracting Officer in writing and seek U.S. Department of Energy (DOE) approval. The Contractor shall take no further action until receiving approval and direction by the Contracting Officer. The Contractor shall provide information as directed by the Contracting Officer related to workforce restructuring activities and to enable compliance with Section 3161 of the *National Defense Authorization Act for Fiscal Year 1993* and any other DOE guidance pertaining to employees who may be eligible for provisions of the Act. The Contractor shall comply with the *Hanford Site Workforce Restructuring Plan*, as amended, and shall supply workforce restructuring related information and reports as

needed by DOE. The Contractor shall extend displaced employee hiring preference in accordance with the Section I Clause entitled, *DEAR 952.226-74, Displaced Employee Hiring Preference*.

(b) The requirements of H.11(a) apply to the following MSA pre-selected subcontractors: Dade Moeller & Associates Hanford; HPM Corporation-MSA; RJ Lee Group Inc-MSA; PSI-Hanford, Inc; Westech International MSA LLC; Akima Hanford Services LLC; Abadan Hanford LLC; Vivid Learning Systems, Inc; Innovations Group, Inc; Test America Laboratories, Inc; Longnecker & Associates; and CSC Hanford LLC. The following pre-selected subcontractor: Lockheed Martin Services, Inc (or its successors) is excepted from the requirements of H.11(a) but is subject to the following: 1) The Contractor will provide DOE with a ten-working day advance notification for all future restructuring actions prior to announcement and/or implementation; and 2) Any costs incurred in anticipation of, or the defense of, claims associated with subcontractor layoffs including the costs of litigation, settlements, and adverse judgments, are unallowable. Notwithstanding the foregoing, severance is allowable for eligible employees in accordance with the *Hanford Site Severance Pay Plan.*

Contractors must provide actual and projected workforce reductions on an annual basis no later than March 15th of each year. The collection of Contractor workforce reduction data will be administered through the iBenefits system (https://ibenefits.energy.gov) for the collection of the following:

- Actual number of voluntary/involuntary separations for the prior Fiscal Year (FY); and
- Actual and projected number of voluntary/involuntary separations for the current FY. Please include any actual separations that have already occurred in the current fiscal year.

H.12 WORKERS' COMPENSATION

The Hanford Workers' Compensation Program is an administrative function that provides for the support of the Hanford Site Workers' Compensation Program under U.S. Department of Energy (DOE) State of Washington Self-Insurance. Pursuant to State of Washington Revised Code (RCW) Title 51, DOE is a group self-insurer for purposes of workers' compensation coverage. Notwithstanding any other provision in this Contract, 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:

(a) Under the terms of a Memorandum of Understanding with the Washington State Department of Labor and Industries (L&I), DOE has agreed to perform all functions required by self-insurers in the State of Washington.

(b) 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 claims thereunder and, subject to the direction and control of DOE, the conduct of litigation in the Contractor's own name in connection therewith.

(c) Under RCW Title 51.32.073, DOE is the self-insurer and is responsible for making quarterly payments to the L&I. In support of this arrangement, the Contractor shall be responsible for withholding appropriate employee contributions and forwarding these contributions on a timely basis, plus the employer-matching amount to DOE.

(d) The workers' compensation program shall operate in partnership with Contractor employee benefits, risk management, and environmental, safety, and health management programs. The Contractor shall cooperate with DOE for the management and administration of the DOE-RL self-insurance program.

(e) The Contractor shall be responsible for all predecessor Contractor claims that fall under DOE's self-insurance. The Contractor shall maintain and retain all claim data for information and reporting needs.

(f) The Contractor shall certify as to the accuracy of the payroll record used by DOE in establishing the self-insurance claims reserves and cooperate with any state audit.

(g) The Contractor shall provide statutory workers' compensation coverage for staff members performing work under this Contract outside of the State of Washington and not otherwise covered by the State of Washington workers' compensation laws.

(h) Time-loss compensation shall be paid to injured workers in accordance with the RCW § 51.08.178 and other applicable requirements. Compensation paid to workers in excess of the amounts required by statute are unallowable costs under this contract.

(i) Workers compensation loss income benefit payments, when supplemented by other programs (such as salary continuation) are to be administered so that total benefit payments from all sources shall not exceed 100 percent of the employee's net pay.

(j) Upon request, the Contractor shall submit to DOE, or other party as designated by DOE, payroll records as required by Washington State Workers' Compensation laws.

(k) Upon request, the Contractor shall submit to DOE, or other party as designated by DOE, the accident reports required by RCW Title 51, Section 51.28.010, or any other documentation requested by DOE pursuant to the Washington State Workers' Compensation laws.

(l) Upon request, the Contractor shall submit to the Contracting Officer an evaluation and analysis of workers' compensation cost as a percent of payroll compared with the percentage of payroll cost reported by a nationally recognized Cost of Risk Survey that has been pre-approved by DOE.

(m) The Contractor shall ensure all employees receive training and have a clear understanding of the workers' compensation process.

(n) The Contractor shall develop and maintain a web site with Workers Compensation information and ensure that the web site is made available to employees within 45 days of the close of Transition.

(o) The Contractor shall provide additional training to claimants on the workers' compensation process when a claim is filed. This training shall include but is not limited to information regarding company contacts, approvals needed for appointments, time off, documentation requirements, etc.

(p) The Contractor shall submit ad hoc reports and other information as required by DOE.

(q) The Contractor shall provide briefings to DOE as requested.

(r) For purposes of workers' compensation, all entities included in the Contractor team arrangement, as defined below, shall be covered by DOE's self-insurance certification under Washington State Department of Labor and Industries for workers' compensation:

(1) Contractor team arrangement means an arrangement in which –

(i) Two or more companies form a partnership or joint venture to act as a potential prime Contractor; or

(ii) A potential prime Contractor agrees with one or more other companies to have them act as its subcontractors under a specified Government contract or acquisition program.

(2) Any changes to the Contractor team arrangement for purposes of workers' compensation coverage shall be subject to the prior approval of the Contracting Officer.

(s) Subcontractors not meeting the Contractor teaming arrangement definition performing work under this Contract on behalf of the Contractor are not covered by the provision of the Memorandum of Understanding referenced above.

(t) The Contractor shall flow-down to its subcontractors the requirements to provide statutory workers compensation coverage for the subcontractors' employees. The Contractor shall have no responsibility for subcontractor workers' compensation when it includes this requirement in the sub-contract(s).

H.13 ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM ACT (EEOICPA)

The Contractor shall provide support of the EEOICPA established under Title XXXVI of the *National Defense Authorization Act of 2001* (Public Law 106-398). The Contractor shall provide records in accordance with the Section I Clause entitled, *DEAR 970.5204-3, Access to and Ownership of Records* in support of EEOICPA claims and the claim process under the EEOICPA.

The Contractor shall:

(a) Verify employment and provide other records which contain pertinent information for compensation under the EEOICPA. The Contractor shall provide this support for itself and any named subcontractors' employees.

(b) Provide reports as directed by the U.S. Department of Energy (DOE), such as costs associated with EEOICPA.

(c) Provide an EEOICPA point-of-contact; this employee shall attend meetings, as requested by the U.S. Department of Energy Richland Operations Office (DOE-RL).

(d) Locate, retrieve and provide a copy of any personnel and other program records as requested.

(e) Perform records research needed to complete the Department of Labor (DOL) claims or to locate records needed to complete the claims or other related EEOICPA requests.

(f) Ensure cost information is submitted to the DOE RL EEOICPA POC by the 10th of each month.

(g) Ensure all EEOICPA claims received are completed and returned to DOE-RL within 45 calendar days of the date entered in the Federal Compensation Program Act (FCPA) electronic reporting system.

H.14 ADVANCE UNDERSTANDING ON COSTS

The U.S. Department of Energy (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, and employee compensation and benefits. 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 FAR Subpart 31.2, *Contracts with Commercial Organizations,* as supplemented by DEAR 931.2, *Contracts with Commercial Organizations*. Advance understandings will be appended to the Contract in the Section J Attachment entitled, *Advance Understanding of Costs.*

H.15 KEY PERSONNEL

(a) <u>Introduction</u>

Key Personnel are considered essential to the success of all work being performed under this Contract. This Clause provides specific requirements for the Key Personnel Team, requirements for changes to Key Personnel, reductions in Contract fee for changes to Key Personnel, and identification of all Key Personnel for this Contract.

(b) <u>Key Personnel Team Requirements</u>

All Key Persons under this Contract are collectively referred to as the Key Personnel Team. The Offeror's Key Personnel Team shall consist of, at a minimum, the position of Project Manager, the position(s) associated with management of the five functional areas (Safety, Security, and Environment; Site Infrastructure and Utilities; Site Business Management; Information Resources and Content Management; and Portfolio Management) contained in Section C, *Statement of Work* and any other persons included in paragraph (f) below. The Key Person associated with the five functional areas shall be in a direct-reporting relationship with the Project Manager. The Contracting Officer and designated Contracting Officer Representative(s) shall have direct access to the Key Personnel. In addition to the definition contained in the Section I Clause entitled, *DEAR 952.231-71, Insurance—Litigation and Claims*, Key Persons are considered managerial personnel.

(c) Definitions

(1) For the purposes of this Clause, *Changes to Key Personnel* is defined as: (i) any change to the position assignment of a current Key Person under the Contract, except for a person who acts for short periods of time, in the place of a Key Person during his or her absence, the total time of which shall not exceed 30 working days during any given year; (ii) utilizing the services of a new substitute Key Person for assignment to the Contract; or (iii) assigning a current Key Person for work outside the Contract.

(2) For the purposes of this Clause, *Beyond the Contractor's Control* is defined as an event for which the Contractor lacked legal authority or ability to prevent *Changes to Key Personnel*.

(d) Requirements for Changes to Key Personnel

(1) The Contractor shall notify the Contracting Officer and request approval in writing at least 60 days in advance of any changes to Key Personnel.

(2) The Contractor shall not make a change in Key Personnel without prior written approval of the Contracting Officer.

(3) No Key Person position shall remain vacant for a period more than 30 days following Contracting Officer approval of a change in Key Personnel.

(4) Approval of changes to Key Personnel is at the unilateral discretion of the Contracting Officer.

(e) Contract Fee Reductions for Changes to Key Personnel

(1) Notwithstanding approval by the Contracting Officer, any time the Project Manager (the initial Project Manager or any substitution approved by the Contracting Officer) is changed for any reason within two (2) years of being placed in the position, *Available Fee* described in Section B, *Supplies or Services and Prices/Costs*, will be permanently reduced by $500,000 for each and every occurrence of a change to the Project Manager. A change to the Project Manager beyond the Contractor's control shall not result in a permanent reduction of fee under this paragraph.

(2) Notwithstanding approval by the Contracting Officer, any time a Key Person other than the Project Manager (any initial Key Person or any substitution approved by the Contracting Officer) is changed for any reason within two (2) years of being placed in the position, *Available Fee* described in Section B, *Supplies or Services and Prices/Costs*, will be permanently reduced by $100,000 for each and every occurrence of a change to the Key Person. A change to a Key Person other than the Project Manager beyond the Contractor's control shall not result in a permanent reduction of fee under this subsection.

(3) The Contractor may request in writing that the Contracting Officer consider waiving all or part of a reduction in Contract fee. Such written request shall include the factual basis for the request. The Contracting Officer shall have unilateral discretion to make the determination to waive or not waive all or part of a reduction in Contract fee.

(f) Key Personnel for this Contract

The list of Key Personnel for this Contract will be amended during the course of the Contract to add or delete Key Personnel as approved by the Contracting Officer. The following is the current list of Key Personnel for this Contract:

Name	Position
Mr. Bill Johnson	MSA President/General Manager
Mr. Robert Wilkinson	Chief Operations Officer
Mr. P. K. Brockman	Vice President of Site Services & Interface Management
Mr. Craig W. Walton	Vice President of Emergency Services
Mr. Michael Wilson	Vice President of Environmental, Safety, Health, and Training
Ms. Lori Fritz	Vice President of Public Works
Mr. Todd Eckman	Vice President of Information Management
Mr. Steve Young	Vice President of Portfolio Management

H.16 SAFETY AND SECURITY KEY PERSONNEL

(a) Introduction.

Safety and Security Key Personnel are considered integral to the success of all work being performed under this Contract. This Clause provides specific requirements for the

Safety and Security Key Personnel, requirements for changes to Safety and Security Key Personnel, reduction in Contract fee for changes to Safety and Security Key Personnel, and identification of all Safety and Security Key Personnel for this Contract.

(b) Safety and Security Key Personnel Requirements.

As part of Transition, the Contractor shall provide a *Transition Plan* that includes the resumes for proposed persons to fill the positions of the Director of Safeguards and Security, Chief of Hanford Patrol, Chief of Hanford Fire, and Fire Marshal. DOE will review the proposed persons in the *Transition Plan*, and upon DOE approval of the *Transition Plan*, the proposed persons will be designated as Safety and Security Key Personnel. In addition to the definition contained in the Section I Clause entitled, *DEAR 952.231-71, Insurance—Litigation and Claims*, Safety and Security Key Personnel are considered managerial personnel. The Contracting Officer and designated Contracting Officer Representative(s) shall have direct access to the Key Personnel.

(c) Definitions

(1) For the purposes of this Clause, *Changes to Safety and Security Key Personnel* is defined as:

(i) Any change to the position assignment of a current Safety and Security Key Person under the Contract, except for a person who acts for short periods of time, in the place of a Safety and Security Key Person during his or her absence, the total time of which shall not exceed 30 working days during any given year;

(ii) Utilizing the services of a new substitute Safety and Security Key Person for assignment to the Contract; or

(iii) Assigning a current Safety and Security Key Person for work outside the Contract.

(2) For the purposes of this Clause, *Beyond the Contractor's Control* is defined as an event for which the Contractor lacked legal authority or ability to prevent *Changes to Safety and Security Key Personnel*.

(d) Requirements for Contractor Changes to Safety and Security Key Personnel

(1) The Contractor shall notify the Contracting Officer and request approval in writing at least 60 days in advance of any changes to Safety and Security Key Personnel.

(2) The Contractor shall not make a change in Safety and Security Key Personnel without prior written approval of the Contracting Officer.

(3) No Safety and Security Key Person position shall remain vacant for a period more than 30 days following Contracting Officer approval of a change in Safety and Security Key Personnel.

(4) Approval of changes to Safety and Security Key Personnel is at the unilateral discretion of the Contracting Officer.

(5) The requirements of this paragraph (d) do not apply to the event described in paragraph (f).

(e) Contract Fee Reductions for Changes to Safety and Security Key Personnel

(1) Notwithstanding approval by the Contracting Officer, any time a Safety and Security Key Person (any initial Safety and Security Key Person or any substitution approved by the Contracting Officer) are changed for any reason within two (2) years of being placed in the position, *Available Fee* described in Section B, *Supplies or Services and Prices/Costs*, will be permanently reduced by $100,000 for each and every occurrence of a change to the Safety and Security Key Person. A change to a Safety and Security Key Person beyond the Contractor's control shall not result in a permanent reduction of fee under this subsection.

(2) The Contractor may request in writing that the Contracting Officer consider waiving all or part of a reduction in Contract fee. Such written request shall include the factual basis for the request. The Contracting Officer shall have unilateral discretion to make the determination to waive or not waive all or part of a reduction in Contract fee.

(f) Removal of Safety and Security Key Personnel

At the unilateral discretion of the U.S. Department of Energy (DOE), the Contracting Officer may direct immediate removal of any or all Safety and Security Key Personnel from their respective position(s). In event of removal, the Contractor shall immediately appoint an interim person and obtain concurrent approval by the Contracting Officer. Within six (6) months of the removal, the Contractor shall propose a new person and request written approval from the Contracting Officer.

(g) Safety and Security Key Personnel for this Contract

The list of Safety and Security Key Personnel for this Contract will be amended during the course of the Contract to add or delete Safety and Security Key Personnel as approved by the Contracting Officer. The following is the current list of Safety and Security Key Personnel for this Contract:

Name	Position
Craig W. Walton	Vice President of Emergency Services & Director of Safeguards and Security
Monty Giulio	Chief of Hanford Patrol
Norbert Kuhman	Chief of Hanford Fire
Richard J. Kobelski	Fire Marshal

H.17 RADIOLOGICAL SITE SERVICES AND RECORDS, AND OCCUPATIONAL MEDICINE SERVICES AND RECORDS

(a) The Contractor shall obtain Radiological Site Services (RSS) and occupational medicine services for all Contractor and subcontractor employees performing hazardous work that may expose workers to chemical, physical (including radiological), biological, and/or similar hazards. The Contractor shall identify required RSS and occupational medicine services as required by Section C, *Statement of Work, Government-Furnished Services and Information (GFS/I)*.

(b) RSS are obtained as specified in Contract Section J Attachment entitled, *Hanford Site Services and Interface Requirements Matrix*. RSS includes external dosimetry, internal dosimetry services, radiological instrumentation program, and radiological records services. The Section I Clauses entitled, *DEAR 952.223-75, Preservation of Individual Occupational Radiation Exposure Records* and *DEAR 970.5204-3, Access to and Ownership of Records* are implemented as follows with respect to radiological records: All radiological exposure records generated during the performance of Hanford-related activities will be maintained by the designated provider of this service listed in the Section J Attachment entitled, *Hanford Site Services and Interface Requirements Matrix* and are the property of the U.S. Department of Energy (DOE).

(c) Occupational medicine services are provided under this Contract by the Hanford Site occupational medicine services contractor as specified in Contract Section J Attachment entitled, *Hanford Site Services and Interface Requirements Matrix*. The Section I Clause entitled, *DEAR 970.5204-3, Access to and Ownership of Records* is implemented as follows with respect to occupational medicine records: All occupational medicine records generated during the performance of Hanford-related activities will be maintained by the Hanford Site occupational medicine services provider and are the property of DOE.

H.18 STOP-WORK AND SHUTDOWN AUTHORIZATION

(a) Definitions:

Imminent Danger: Any condition or practice such that a hazard exists that could reasonably be expected to cause death, serious physical harm, or other serious hazard

to employees, unless immediate actions are taken to mitigate the effects of the hazard and/or remove employees from the hazard.

Adversely Affects Safe Operation of Facility or Serious Facility Damage: A condition, situation, or activity that if not terminated or mitigated could reasonably be expected to result in: nuclear criticality; facility fire/explosion; major facility or equipment damage or loss; or, a facility evacuation response.

Stop Work Criteria:

1. Conditions exist that pose an imminent danger to the health and safety of workers or the public; or

2. Conditions exist, that if allowed to continue, could adversely affect the safe operation of, or could cause serious damage to, the facility; or

3. Conditions exist, that if allowed to continue, could result in the release from the facility to the environment of radiological or chemical effluents that exceed applicable regulatory requirements or approvals.

(b) <u>DOE Stop Work Order.</u>

In accordance with Section I, *Contract Clause*, I.143, DEAR 970.5223-1 *Integration of Environment, Safety, and Health into Work Planning and Execution* the DOE Contracting Officer has the ability to issue a DOE Stop Work Order stopping work in whole or in part if:

1. the contractor fails to provide resolution of any noncompliance with applicable requirements and Safety Management System or if,

2. at any time the contractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public.

In addition, a DOE Stop Work Order can be initiated if the Stop Work Criteria as defined in Section H.17 (a) is met dependent on the severity and extent of the condition.

The DOE Stop Work Order shall be executed in accordance with Section F, *Deliverables or Performance*, F.3 FAR 52.242-15, STOP-WORK ORDER

(c) <u>DOE Stop Work Action.</u>

DOE personnel provide safety oversight of contractor operations and have the authority to initiate a DOE Stop Work Action if the Stop Work Criteria as defined in Section H.17 (a) is met. DOE personnel have the authority to shutdown an entire facility, activity, or job. Following a DOE Stop Work Action the contractor shall:

1. immediately stop the identified activity or activities (up to and including entire plant shutdown);

2. place the area, activity, facility, etc. into a safe condition;

3. determine actions necessary to address the unsafe condition;

4. provide proposed corrective actions to the DOE initiator of the DOE Stop Work Action;

5. prior to restarting work, inform the DOE initiator that the corrective actions allowing for restart have been completed;

6. restart work only after the unsafe condition is mitigated and the DOE has given verbal direction to allow restart; and

7. if requested, provide DOE a Corrective Action Plan subsequent to the resumption of work in accordance with contractual requirements.

(d) Contractor Stop Work Action

1. The contractor shall establish a stop work process/procedure that:

    a. meets the requirement of 10 CFR 851.20, *Management responsibilities and worker rights and responsibilities*

    b. at a minimum uses the Stop Work Criteria defined in Section H.17 (a) for when a Contractor Stop Work Action is required; and

    c. meets the tenets of the "Stop Work Policy."

2. Upon initiating a Contractor Stop Work Action the contractor shall:

    a. immediately stop the identified activity or activities (up to and including entire plant shutdown);

    b. place the area, activity, facility, etc. into a safe condition;

    c. notify the DOE Facility Representative if the Contractor's Stop Work Action meets the Stop Work Criteria defined in Section H.17 (a), or notification of facility management is required for the issue;

    d. determine actions necessary to address the unsafe condition;

    e. restart work only after the unsafe condition is mitigated.

(e) Stop Work Policy.

The following represent the site's Stop Work Policy:

Stop Work Responsibility: Every Hanford site employee, regardless of employer, has the responsibility and authority to stop work IMMEDIATELY, without fear of reprisal, when the employee is convinced:

1. Conditions exist that pose a danger to the health and safety of workers or the public; or

2. Conditions exist, that if allowed to continue, could adversely affect the safe operation of, or could cause serious damage to, a facility; or
3. Conditions exist, that if allowed to continue, could result in the release from the facility to the environment of radiological or chemical effluents that exceed applicable regulatory requirements or approvals.

Reporting Unsafe Conditions: Employees are expected to report any activity or condition which he/she believes is unsafe. Notification should be made to the affected worker(s) and then to the supervisor or designee at the location where the activity or condition exists. Following notification, resolution of the issue resides with the responsible supervisor.

Right to a Safe Workplace: Any employee who reasonably believes that an activity or condition is unsafe is expected to stop or refuse work without fear of reprisal by management or coworkers and is entitled to have the safety concern addressed prior to participating in the work.

Stop Work Resolution: If you have a "stop work" issue that has not been resolved through established channels, immediately contact your employer's Safety Representative or your Union Safety Representative. Alternatively, you may contact the employer's Employee Concerns Program or the DOE Employee Concerns Program.

H.19 ALLOCATION OF RESPONSIBILITY AND LIABILITY FOR CONTRACTOR AND U.S. DEPARTMENT OF ENERGY (DOE) ENVIRONMENTAL COMPLIANCE ACTIVITIES

(a) In this Clause:

(1) "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; and

(2) "Party" means either the Contractor or DOE.

(b) Responsibility and liability for fines or penalties arising from or related to violations of environmental requirements shall be borne by the party causing the violation regardless of which party:

(1) The cognizant regulatory authority fines or penalizes;

(2) Signs permit applications (including situations where DOE signs defective or non-conforming permit applications or other environmental submittals prepared by or under the direction of the Contractor), manifests, reports, or other required documents;

(3) Is a permittee; or

(4) Is the named subject of an enforcement action or assessment of a fine or penalty.

(c) Consequently, if the Contractor causes a violation:

(1) All fines and penalties arising from or related to violations of environmental requirements are unallowable costs. If DOE pays a fine or penalty for a violation that the Contractor caused, the amount of the fine or penalty shall be due from the Contractor, and DOE may immediately offset that amount against payments to which the Contractor is otherwise entitled for allowable costs and fee, or any other funds otherwise owed by the Government to the Contractor; and

(2) In accordance with subsection (e) of the Section I Clause entitled, *DEAR 952.231-71, Insurance-Litigation and Claims*, costs of challenging or defending actions brought against the Contractor for violations of environmental requirements are specifically disallowed. However, if the Contracting Officer provides prior written authorization to challenge or defend against the action, the Contractor shall proceed in accordance with *DEAR 952.231-71, Insurance-Litigation and Claims*. If the Contractor proceeds with the action without the prior written authorization of the Contracting Officer, the costs of the challenge or defense may be allowable if there is no settlement, conviction, or finding of liability.

H.20 ENVIRONMENTAL RESPONSIBILITY

(a) General. The Contractor is required to comply with all environmental laws, regulations, and procedures applicable to the work being performed under this Contract. This includes, but is not limited to, compliance with applicable Federal, State and local laws and regulations, interagency agreements such as the *Hanford Federal Facility Agreement and Consent Decree* [also known as the Tri-Party Agreement (TPA)], consent orders, consent decrees, and settlement agreements between the U. S. Department of Energy (DOE) and Federal and state regulatory agencies. For the purposes of this Contract, the TPA constitutes a requirement pursuant to which the Contractor agrees to plan and perform the Contract work.

(b) Environmental Permits. This Clause addresses three permit scenarios, where the Contractor is the sole permittee; where the Contractor and DOE are joint permittees; and where multiple Contractors are permittees.

(1) Contractor as Sole Permittee. To the extent permitted by law and subject to other applicable provisions of the Contract that impose responsibilities on DOE, and provisions of law that impose responsibilities on DOE or third parties, the Contractor shall be responsible for obtaining in its own name, shall sign, and shall be solely responsible for compliance with all permits, authorizations and approvals from Federal, State, and local regulatory agencies which are necessary for the performance of the work required of the Contractor under this Contract. Under this permit scenario, that Contractor shall make no commitments or set precedents that are detrimental to DOE or other contractors. The Contractor shall coordinate its permitting activities with DOE, and with other Hanford Site contractors which may be affected by the permit or precedent established therein, prior to taking the permit action.

(2) DOE as Permitee, or Contractor and DOE as Joint Permittees. Where appropriate, required by law, or required by applicable regulatory agencies, DOE will sign permits as permittee, or as owner or as owner/operator with the Contractor as operator or co-operator, respectively. DOE will co-sign hazardous waste permit applications as owner/operator where required by applicable law. In this scenario, the Contractor shall coordinate its actions with DOE. DOE is responsible for timely notification to the Contractor of any issues or changes in the regulatory environment that impact or may impact Contractor implementation of any permit requirement. The Contractor shall be responsible for timely notification to DOE of any issues or changes in the regulatory environment that impact or may impact Contractor implementation of any permit requirement. Notification need not be in writing.

(3) Multiple Contractors as Permittees. Where appropriate, in situations where multiple contractors are operators or co-operators of operations requiring environmental permits, DOE will sign such permits as owner or co-operator and affected contractors shall sign as operators, or co-operators. In this scenario, the Contractor shall coordinate as appropriate with DOE and other contractors affected by the permit.

(c) Permit Applications. The Contractor shall provide to DOE for review and comment in draft form any permit applications and other regulatory materials necessary to be submitted to regulatory agencies for the purposes of obtaining a permit. In the event that the permit application is required to be co-signed, submitted by DOE, or is related to a permit in which DOE is a permittee, the Contractor shall provide the application for review and comment. Whenever reasonably possible all such materials shall be provided to DOE initially not later than 90 days prior to the date they are to be submitted to the regulatory agency. The Contractor shall normally provide final regulatory documents to DOE at least 30 days prior to the date of submittal to the regulatory agencies for DOE's final review and signature or concurrence which shall be performed by DOE in a prompt manner. Special circumstances may require permits to be submitted in a shorter time frame. The Contractor may submit for DOE's consideration, requests for alternate review, comment, or signature, schedules for environmental permit applications or other regulatory materials covered by this Clause. Any such requests shall be submitted 30 days before such material would ordinarily be required to be provided to DOE. Any such schedule revision shall be effective only upon approval from the Contracting Officer.

(d) Financial Responsibility. DOE agrees that if bonds, insurance, or administrative fees are required as a condition for permits obtained by the Contractor under this Contract, such costs shall be allowable. In the event such costs are determined by DOE to be excessive or unreasonable, DOE will provide the regulatory agency with an acceptable form of financial responsibility. Under no circumstances shall the Contractor or its parent be required to provide any corporate resources or corporate guarantees to satisfy such regulatory requirements.

(e) Copies, Technical Information. The Contractor shall provide DOE copies of all environmental permits, authorizations, and regulatory approvals issued to the Contractor by the regulatory agencies. DOE will, upon request, make available to the Contractor access to copies of all environmental permits, authorizations, and approvals issued by the regulatory agencies to DOE that the Contractor may need to comply with applicable law. The Contractor and DOE will provide to each other copies of all documentation, such as, letters, reports, or other such materials transmitted either to or from regulatory agencies relating to the Contract work. The Contractor and DOE shall maintain all necessary technical information required to support applications for revision of DOE or other Hanford Site Contractor environmental permits when such applications or revisions are related to the Contractor's operations. Upon request, the Contractor or DOE shall provide to the other access to all necessary and available technical information required to support applications for or revisions to permits or permit applications. The Contractor shall provide to DOE a certification statement relating to such technical information in the form required by the following paragraph.

(f) Certifications. The Contractor shall provide a written certification statement attesting that information DOE is requested to sign was prepared in accordance with applicable requirements. The Contractor shall include the following certification statement in the submittal of such materials to DOE:

> *I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

The certification statement shall be signed by the individual authorized to sign such certification statements submitted to Federal or state regulatory agencies under the applicable regulatory program.

(g) Fines, Penalties, Allowable Costs. The Contractor shall accept, in its own name, service of proposed notices, or notices of, correction, penalty, fine, violation, administrative orders, citation, or notice of alleged violations, (e.g., Notice of Correction [NOC], Notice of Penalty [NOP], Notice of Fine [NOF], Preliminary Notice of Violation [PNOV], Notice of Violation [NOV], and Notice of Alleged Violation [NOAV]) and any similar type notices issued by Federal or State regulators to the Contractor resulting from or relating to Contractor's performance of work under this Contract, without regard to liability. The Contractor shall immediately notify DOE of such receipt and shall provide copies or originals of such documents as soon as possible thereafter.

(h) Negotiations. DOE may in its discretion choose to be in charge of, and direct, all negotiations with regulatory agencies regarding permits, fines, penalties, and any other proposed notice, notice, administrative order, and any similar type of notice as described in paragraph (g) above. As directed or required by DOE, the Contractor shall participate in negotiations with regulatory agencies; however, the Contractor shall not make any commitments or offers to regulators purporting to bind or binding the Government in any form or fashion, including monetary obligations, without receiving written authorization or concurrence from the Contracting Officer or his/her authorized representative prior to making such offers/commitments. Failure to obtain such advance written approval may result in otherwise allowable costs being declared unallowable and/or the Contractor being liable for any excess costs to the Government associated with or resulting from such offers/commitments.

(i) Termination, Expiration, Permit Transfer. In the event of expiration or termination of this Contract, DOE may require the Contractor to take all necessary steps to transfer on an allowable cost basis some or all environmental permits held by the Contractor. DOE will assume responsibility for such permits, with the approval of the regulating agency, and the Contractor shall be relieved of all liability and responsibility to the extent that such liability and responsibility results from the acts or omissions of a successor Contractor, DOE, or their agents, representatives, or assigns. The Contractor shall remain liable for all unresolved costs, claims, demands, fines and penalties, including reasonable legal costs, arising prior to the date such permits are transferred to another party. The Contractor shall not be liable for any such claims occurring after formal transfer unless said claims result from the Contractor's action or inaction that occurred prior to transfer.

(j) Miscellaneous. The Contractor shall accept assignment or transfer of permits pertaining to matters under this Contract currently held by DOE and its existing Contractor. The Contractor may submit for DOE's consideration, requests for alternate review, comment, or signature schedules for environmental permit applications or other regulatory materials covered by this Clause. Any such schedule revision shall be effective only upon written approval from the Contracting Officer.

H.21 SELF-PERFORMED WORK

(a) Unless otherwise approved in advance by the Contracting Officer, the percentage of work which may be self-performed by the large business(es) of the Contractor team arrangement (as described in *FAR 9.6, Contracting Team Arrangements*), shall be limited collectively to not more than 60 percent (%) of the *Total Contract Price*. This limitation does not apply to any small business member of the Contractor team

arrangement. Unless otherwise approved in advance by the Contracting Officer, work to subcontractors outside of the Contractor team arrangement shall be performed through competitive procurements with an emphasis on fixed-price subcontracts.

(b) At least 25% of the *Total Contract Price* shall be performed by small business. Small business members of the Contractor team arrangement, and subcontractors selected after Contract award, count toward fulfillment of this requirement and other small business goals in this Contract.

(c) Reporting requirements to confirm compliance with these thresholds and limitations are described in Section C, *Statement of Work*.

H.22 EMERGENCY CLAUSE

(a) The U.S. Department of Energy (DOE) Richland Operations Office (DOE-RL) Manager and/or the DOE Office of River Protection (DOE-ORP) Manager or designee shall have sole discretion to determine when an emergency situation exists at the Hanford Site. In the event that either the DOE-RL or DOE-ORP Manager or designee determines such an emergency exists, the applicable DOE Manager or designee will have the authority to direct any and all activities of the Contractor and subcontractors necessary to resolve the emergency situation. The applicable DOE Manager or designee may direct the activities of the Contractor and subcontractors throughout the duration of the emergency.

(b) During declared security events, DOE-RL may assume direct command and control of the Hanford Patrol. The Chief of the Hanford Patrol shall report directly to the DOE-RL Director of Security and Emergency Services (SES) once DOE-RL has assumed command.

(c) The Contractor shall include this Clause in all subcontracts at any tier for work performed at the Hanford Site.

H.23 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, Cost Accounting Standards, and U.S. Department of Energy (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 budget and reporting classification (BRC) numbers, program task numbers, and local projects/tasks;

(5) Restricts the movement of funds between project baseline summaries (PBSs) consistent with Congressional appropriation language;

(6) Notifies DOE as soon as possible when potential reprogramming actions are required (e.g., movement of funds between PBSs);

(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 files data supporting payments cleared, financing arrangement draw downs, and cost accrual and accrual reversal records to the Contracting Officer. Within the electronic submission, the Contractor shall provide data elements required to:

(1) Determine that all costs drawn down 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, and adders.

(2) Properly record all Contract costs and property in the DOE accounting system (Standard Accounting and Reporting System [STARS]). 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, 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/her designee.

(c) 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.

(d) The Contractor shall provide reports at DOE direction. Some example or such reports are:

(1) Annual Estimated Property Valuation Report;
(2) Monthly Contract Funds Status Report;
(3) Monthly Depreciation Changes;
(4) Quarterly Erroneous Payment Report;
(5) Monthly Standard Accounting and Reporting System;
(6) Year-End Requirements and FY20XX Planning Requirements;
(7) Semi-Annual Travel Target Report; or
(8) Quarterly International Transactions Report.

H.24 PAYMENTS AND ADVANCES

(a) Payment of *Provisional* and *Incremental Fee*. *Provisional* and *Incremental Fee* are payable following the Government's determination of *Available Fee* in accordance with the Section B Clause entitled, *Fee Structure*. *Provisional Fee* and earned *Incremental Fee* shall be made by direct payment or withdrawn from funds advanced or available under this Contract, as determined by the Contracting Officer, in accordance with the Section B Clause entitled, *Fee Determination and Payment*. 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 *Provisional* or *Incremental Fee* may be withdrawn against the payments cleared financing arrangement without the 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 therefore shall be excluded from costs for payment purposes until such costs are paid. If pension contributions are paid on a quarterly or more frequent basis, accrual therefore 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. 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 that 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 patent clearance requirements, and

(2) The furnishing by the Contractor of:

(i) 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;

(ii) A closing financial statement;

(iii) The accounting for Government-owned property required by the Section I Clause entitled, *FAR 52.245-5, Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts);* and

(iv) 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:

(A) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible to exact statement by the Contractor;

(B) 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 Section I Clause entitled, *DEAR 952.231-71, Insurance – Litigation and Claims*);

(C) 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

(D) Claims recognizable under the Section I Clause entitled, *DEAR 952.250-70, Nuclear Hazards Indemnity Agreement.*

(3) In arriving at the amount due the Contractor under this Clause, there shall be deducted,

(i) Any claim which the Government may have against the Contractor in connection with this Contract, and

(ii) 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 Section I Clause entitled, *DEAR 970.5204-2, Laws, Regulations, and DOE Directives* 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 (10) days of 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.

(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 Part 931, *Contract Cost Principles and Procedures* in effect on the date of this Contract and other provisions of this Contract.

(k) Certification and Penalties. The Contractor shall prepare and submit a "Final Indirect Rate Proposal" in accordance with Section I Clause entitled, *FAR 52.216-7, Allowable*

Cost and Payment/DEAR 952.216-7, Allowable Cost and Payment; Alternate II, for the total of net expenditures incurred for the period covered by the Cost Statement. It is anticipated that this will be an annual submission unless otherwise agreed to by the Contracting Officer. The Contractor shall certify the Cost Statement subject to the penalty provisions for unallowable costs as stated in sections 306(b) and (i) of the *Federal Property and Administrative Services Act of 1949 (41 U.S.C. 256),* as amended.

H.25 ALTERNATIVE DISPUTE RESOLUTION (ADR)

(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 jointly select a "standing neutral." 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. Specific joint ADR processes shall be developed.

(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 jointly-developed ADR procedures.

(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 standing neutral will render, a non-binding advisory opinion. Such opinion shall not be admissible in evidence in any subsequent proceedings.

(3) 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 Section I Clause entitled, *FAR 52.233-1, Disputes*, it must do so within 30 days of receipt of the written position from the other party.

H.26 LITIGATION SUPPORT

As required by the Contracting Officer, the Contractor shall provide support to the Government on regulatory matters, third-party claims, and threatened or actual litigation. Support includes, but is not necessarily limited to: case preparation, document retrieval, review and reproduction, witness preparation, expert witness testimony, and assistance with discovery or other information requests responsive to any legal proceeding.

H.27 ASSIGNMENT AND ADMINISTRATION OF SUBCONTRACTS

(a) Assignment of Subcontracts. The Government reserves the right to direct the Contractor to assign to the Government or another Contractor any subcontract awarded under this Contract, including lower-tier subcontracts. This Clause is required as a flow-down Clause in all subcontracts.

(b) Assignment of DOE Prime Contracts. During the period of performance of this Contract it may become necessary for the U.S. Department of Energy (DOE) to transfer and assign (and Contractor agrees to accept) existing or future DOE prime contracts supporting site work to this Contract. The transfer of these prime contracts will be for administration purposes and in effect the transferred contracts will become subcontracts to this Contract. Any recommendations and/or suggestions on individual transfers shall be submitted in writing to the Contracting Officer prior to the transfer or assignment.

(c) Administration of Subcontracts. 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 the DOE.

(d) Transfer of Subcontracts. 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.28 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, the U.S. Department of Energy (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 Section I Clause entitled *DEAR 970.5227-1 Rights in Data-Facilities*.

The Contractor shall ensure that its subcontractors and licensors make similar rights available to DOE and its contractors.

(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.29 PRIVACY ACT SYSTEMS OF RECORDS

(a) The Contractor shall design, develop, or adopt the following systems of records on individuals to accomplish an agency function pursuant to the Section I Clause entitled, *FAR 52.224-2, Privacy Act*.

System No.	Title
DOE-5	Personnel Records of Former Contractor Employees
DOE-11	Emergency Locator Records
DOE-13	Payroll & Locator Records
DOE-14	Report of Compensation
DOE-15	Payroll & Pay-Related Data for Employees of Terminated Contractors
DOE-23	Richland Property System
DOE-28	General Training Records
DOE-31	Firearms Qualifications Requirements
DOE-32	Government Motor Vehicle Operator Records
DOE-33	Personnel Medical Records
DOE-35	Personnel Radiation Exposure Records
DOE-40	Contractor Employees Insurance Claims
DOE-43	Personnel Security File
DOE-47	Security Investigations
DOE-51	Employee and Visitor Access Control Records
DOE-53	Access Authorization for ADP Equipment
DOE-58	General Correspondence Files

(b) The above list shall be revised by mutual agreement between the Contractor and the Contracting Officer as necessary to keep it current. A formal modification to the Contract is not required to incorporate these revisions; but the revisions become effective upon mutual agreement of the parties. The mutually agreed upon revisions shall have the same effect as if actually listed above for the purpose of satisfying the listing requirement contained in paragraph (a)(1) of the Section I Clause entitled, *FAR 52.224-2, Privacy Act*. The revisions will be formally incorporated per the next annual Contract update modification, unless added sooner by the Contracting Officer.

H.30 RESPONSIBLE CORPORATE OFFICIAL

The Contractor has provided a Guarantee of performance from its parent company in the form set forth in Section J Attachment entitled, *Performance Guarantee Agreement*. If the Contractor is a joint venture, newly-formed Limited Liability Company (LLC), 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. DOE may contact, as necessary, the single responsible corporate official identified below, who is at an organizational level above the Contractor and who is accountable for the performance of the Contractor.

Name: Mr. Martin Stanislav

Position: Finance and Business Ops, Vice President

Company/Organization: Lockheed Martin IS&GS - Civil

Address: 9231 Corporate Boulevard, Rockville, MD 20850

Phone: 301-240-7520-

Email: martin.t.stanislav@lmco.com

The Contractor shall notify the Contracting Officer in writing within 30 days of any change to the Responsible Corporate Official.

H.31 MENTOR-PROTÉGÉ PROGRAM

(a) Both the U.S. Department of Energy (DOE) and the Small Business Administration (SBA) have established Mentor Protégé Programs to encourage Federal prime Contractors to assist small businesses, firms certified under Section 8(a) of the *Small Business Act* by the 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 its business abilities. Within 90 days of Transition start and continuing throughout the Contract period of performance, the Contractor shall mentor at least one active Protégé company through the DOE and/or SBA Mentor-Protégé Programs. Mentor and Protégé firms will develop and submit "lessons learned" evaluations to DOE at the conclusion of the Contract.

(b) DOE Mentor-Protégé Agreements shall be in accordance with DEAR Subpart 919.70, *The Department of Energy Mentor-Protégé Program.*

(c) SBA Mentor-Protégé Agreements shall be in accordance with applicable SBA regulations.

H.32 LOBBYING RESTRICTION (ENERGY AND WATER ACT 2006)

The Contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence Congressional action on any legislation or appropriation matters pending before Congress, other than communication to Members of Congress as described in United States Code Title 18 Part 1913, *Lobbying with Appropriated Moneys*. This restriction is in addition to those prescribed elsewhere in statute and regulation.

H.33 COUNTERINTELLIGENCE (CI) SITE SPECIFIC REQUIREMENTS

Pursuant to Executive Order 12333, *United States Intelligence Activities* and DOE procedures for intelligence activities, it is DOE policy to protect programs, resources, facilities, and personnel from intelligence collection by or on behalf of international terrorists, foreign powers, or entities and related threats through implementation of an effective, efficient Counterintelligence (CI) Program. DOE Order 475.1, *Counterintelligence Program*, reflects the current CI Program scope and requirements. These requirements are set forth locally in the Site CI Support Plan (SCSP). The local CI Program is managed and administered by the DOE Office of Intelligence and Counterintelligence, Directorate of Counterintelligence, Richland Regional Office (RLR-OCI) with the assistance of DOE organizations and contractors as identified in the SCSP. The Contractor agrees to fulfill the requirements of the SCSP.

H.34 SEPARATE CORPORATE ENTITY

The prime contractor under this Contract shall be a separate corporate entity established solely to perform Contract activities. The separate corporate entity may be a partnership or joint venture as described in FAR Subpart 9.601(1), *Contractor Team Arrangements, Definition*. Requirements for access to Key Personnel under this separate corporate entity are described in the Section H Clauses entitled, *Key Personnel* and *Safety and Security Key Personnel.*

H.35 PERFORMANCE GUARANTEE AGREEMENT

The Contractor or the Contractor's parent organization(s) has (have) provided a Performance *Guarantee Agreement* in a manner and form acceptable to the Contracting Officer assuring the performance, duties, and responsibilities of the Contractor, including repayment of unearned provisional fee, will be satisfactorily fulfilled. The *Performance Guarantee Agreement dated May 9, 2008,* is incorporated herein by reference and included as Contract Section J Attachment, entitled, *Performance Guarantee Agreement*.

H.36 WITHDRAWAL OF WORK

(a) The Government may, at its option and during the performance of this Contract unilaterally have any of the work contemplated by Section C, *Statement of Work*, of this Contract performed by either another Contractor or to have the work performed by Government employees.

(b) Work may be withdrawn:

(1) In order for the Government to conduct pilot programs;

(2) If the Contractor's estimated cost of the work is considered unreasonable;

(3) For less than satisfactory performance by the Contractor; or

(4) For any other reason deemed by the Contracting Officer to be in the best interests of the Government.

(c) If the withdrawn work has been authorized under the Performance Measurement Baseline for the current year, the work shall be terminated in accordance with the procedures in the Section I Clause entitled, *FAR 52.249-6, Termination (Cost-Reimbursement)*.

(d) If any work is withdrawn by the Contracting Officer, the Contractor agrees to fully cooperate with the new performing entity and to provide whatever support is required.

H.37 USE OF DOE FACILITIES

The Contractor may conduct programs of local community assistance to mitigate adverse impacts of closure or reconfiguration of U.S. Department of Energy (DOE) facilities. Such programs may provide for the lease or transfer of DOE property at less than fair market value in accordance with the *Hall Amendment* (Public Law 103-160, Sections 3154 and 3155). The Contracting Officer must approve, in writing, prior to any lease or transfer of DOE property under this program. Any lease or transfer of property under this program must also be approved and executed (issued) by the DOE Realty or Personal Property Officer, as appropriate.

H.38 INFORMATION

(a) Management of Information Resources. The Contractor shall design and implement Information Resources Management (IRM) capabilities for the Hanford Site systems identified in the Section C, *Statement of Work* in accordance with the Office of Management and Budget (OMB) Circular A-130, *Management of Federal Information Resources*.

(b) Release of Information. The Contractor shall provide timely, accurate, and complete responses to information requested by DOE to comply with *Freedom of Information Act* and *Privacy Act* requirements.

(c) Unclassified, Controlled, Nuclear Information (UCNI). Documents originated by the Contractor or furnished by the Government to the Contractor, in connection with this Contract, may contain Unclassified, Controlled, Nuclear Information as determined pursuant to Section 148 of the *Atomic Energy Act of 1954*, as amended. The Contractor shall be responsible for protecting such information from unauthorized dissemination in accordance with DOE regulations and directives and Section I Clauses entitled, *DEAR 952.204-2, Security Requirements* and *DEAR 952.204-70, Classification/Declassification.*

(d) Confidentiality of Information. To the extent that the work under this Contract requires that the Contractor be given access to confidential or proprietary business, technical, or financial information belonging to the Government or other companies, the Contractor shall, after receipt thereof, treat such information as confidential and agrees not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by the Contracting Officer in writing. The foregoing obligations, however, shall not apply to:

(1) Information which, at the time of receipt by the Contractor, is in the public domain;

(2) Information which is published after receipt thereof by the Contractor or otherwise becomes part of the public domain through no fault of the Contractor;

(3) Information which the Contractor can demonstrate was in its possession at the time of receipt thereof and was not acquired directly or indirectly from the Government or other companies;

(4) Information which the Contractor can demonstrate was received by it from a third party that did not require the Contractor to hold it in confidence.

The Contractor shall obtain the written agreement, in a form satisfactory to the Contracting Officer, of each employee permitted access to such information, whereby the employee agrees that he/she will not discuss, divulge or disclose any such information or data to any person or entity except those persons within the Contractor's organization directly concerned with the performance of the Contract.

The Contractor agrees, if requested by the Government, to sign an agreement identical, in all material respects, to the provisions of this subparagraph (d), with each company supplying information to the Contractor under this Contract, and to supply a copy of such agreement to the Contracting Officer. Upon request from the Contracting Officer, the Contractor shall supply the Government with reports itemizing information received as confidential or proprietary and setting forth the company or companies from which the Contractor received such information.

The Contractor agrees that upon request by DOE, it will execute a DOE-approved agreement with any party whose facilities or proprietary data it is given access to or is furnished, restricting use and disclosure of the data or the information obtained from the facilities. Upon request by DOE, such an agreement shall also be signed by Contractor personnel.

(e) The Government reserves the right to require the Contractor to include this Clause or a modified version of this Clause in any subcontract as directed in writing by the Contracting Officer.

H.39 PARENT ORGANIZATION SUPPORT

(a) For on-site work, U.S. Department of Energy (DOE) fee generally provides adequate compensation for parent organization expenses incurred in the general management of this Contract. The general construct of this Contract results in minimal parent organization investment (in terms of its own resources, such as labor, material, overhead, etc.) in the Contract work. The Contract is largely financed by DOE advance payments, and DOE provides government-owned facilities, property, and other needed resources.

Accordingly, allocations of parent organization expenses are unallowable for the prime contractor, major subcontractors, and/or teaming partners, unless authorized by the Contracting Officer in accordance with this Clause.

(b) The Contractor may propose, or DOE may require, parent organization support to:

(1) Monitor safety and performance in the execution of Contract requirements;

(2) Ensure achievement of Contract environmental clean-up and closure commitments;

(3) Sustain excellence of Contract Key Personnel;

(4) Ensure effective internal processes and controls for disciplined Contract execution;

(5) Assess Contract performance and apply parent organization problem-solving resources on problem areas; and

(6) Provide other parent organization capabilities to facilitate Contract performance.

(c) The Contracting Officer may, at its unilateral discretion, authorize parent organization support, and the corresponding indirect or direct costs, if a direct-benefiting relationship to DOE is demonstrated. All parent organization support shall be authorized in advance by the Contracting Officer.

(d) If parent organization support is proposed by the Contractor or required by DOE, the Contractor shall submit for DOE review and approval, an annual *Parent Organization Support Plan* (POSP). The Contractor shall submit its initial POSP 60 days prior to: (1) the end of the Contract *Transition Period*; or (2) the commencement date of parent organization support proposed by the Contractor or required by the Government. Any subsequent POSP shall be submitted 90 days prior to the start of each year of Contract performance.

H.40 RESERVED

H.41 ELECTRONIC SUBCONTRACTING REPORTING SYSTEM (eSRS)

The requirement for the submittal of paper versions of the Standard Form (SF) 294, *Subcontracting Reports for Individual Contracts*, and SF 295, *Summary Subcontract Reports*, as provided in Section I Clause entitled, FAR 52.219-9, *Small Business Subcontracting Plan - - Alternate II* is hereby deleted and is replaced with the electronic submittal of data under the Electronic Subcontract Reporting System (eSRS).

The Offeror's *Subcontracting Plan* shall include assurances that the Offeror will:

(a) Submit the Individual Subcontracting Reports and Summary Subcontracting Reports under the eSRS, and

(b) Ensure that its subcontractors agree to submit Individual Subcontracting Reports and Summary Subcontracting Reports at all tiers, in eSRS.

The Contractor or subcontractor shall provide such information that will allow applicable lower tier subcontractors to fully comply with the statutory requirements of FAR 19.702, *The Small Business Subcontracting Program, Statutory Requirements*.

H.42 HANFORD SITE RECREATION POLICY

The Contractor shall comply with the Hanford Site Recreation Policy. The Contractor shall flow-down applicable requirements of this Clause to any subcontractors.

H.43 ORGANIZATIONAL CONFLICT OF INTEREST BETWEEN HANFORD SITE CONTRACTS

Performance of the Mission Support Contract (MSC) will be limited throughout the Contract period of performance to a Contractor that is not concurrently performing the River Corridor Closure Contract (RCCC), Waste Treatment and Immobilization Plant (WTP) contract, Plateau Remediation Contract (PRC), and Tank Operations Contract (TOC).

This Contract limitation applies to any teaming member(s) as described in FAR Subpart 9.6, *Contractor Team Arrangements* pre-selected subcontractor(s), parent companies or affiliates of the teaming member(s), or pre-selected contractor(s), concurrently performing the RCCC, WTP contract, PRC, or TOC.

This Contract requirement may be waived at the unilateral discretion of an individual with delegated authority, but at no lower level than the Head of Contracting Activity, as described in FAR Subpart 9.5, *Organizational and Consultant Conflicts of Interest.*

Upon submission of a conflict of interest mitigation plan to the Contracting Officer, the Contracting Officer shall consider the extent to which the conflict has been sufficiently mitigated and issue appropriate direction.

H.44 HANFORD SITE SERVICES AND INTERFACE REQUIREMENTS MATRIX

(a) Definition

The Contractor may provide services to or receive services from other Hanford Site U.S. Department of Energy (DOE) prime contractors in performance of the scope of this Contract. The purpose of the Section J Attachment entitled, *Hanford Site Services and Interface Requirements* Matrix (Matrix) is to identify the service provider and the associated, general interface obligations. The Matrix is not an all-inclusive listing of services that may be required or provided, however all services provided to another contractor shall fall within the scope of the provider's contract.

(b) Categories of Services

Services are identified in each Contract (see Section J Attachment entitled, *Hanford Site Services and Interface Requirements Matrix*) as either "Mandatory," or "Optional" for use by Hanford Site customers, including DOE and/or Site contractors and their subcontractors.

(1) "Mandatory" services are provided by the identified service provider to all users at the start of contract performance. If, for any reason, a service provider of a mandatory service cannot provide the required service to meet the requesting contractors' needs, the requesting contractor must obtain Contracting Officer approval, prior to obtaining the services from any other source.

(2) "Optional" services are services that have been historically discretionary and are considered non-compulsory at the time of Contract award.

(c) Interfaces

All "Information" interfaces (see Section J Attachment entitled, *Hanford Site Services and Interface Requirements Matrix*) are Mandatory.

(d) Requirement to Establish Controls

As set forth in the Section C, *Statement of Work* section entitled, *Interface Management*, the Mission Support Contractor (MSC) shall develop, in conjunction with the Tank Operations Contractor (TOC) and Plateau Remediation Contractor (PRC), the *Hanford Site Interface Management Plan*. As part of this Plan, the Contractors shall include controlling agreements (e.g., Memoranda of Agreement) establishing effective control of interfaces and terms for the provision of services. At a minimum, controlling agreements shall define:

(1) The interface and/or the services work request elements, and service levels (quantity and delivery rates);

(2) If applicable, the method and timing for charging costs associated with the service and the payment methods; and target performance measures for meeting required service levels;

(3) Decision process and a rigorous dispute resolution process; and

(4) Clear delineation of roles, responsibilities, accountabilities, and authorities.

(e) Controls

When services between prime contractors are offered and accepted, DOE does not expect the requesting prime contractor to review or otherwise validate top-level cross-cutting quality control, health, safety and/or environmental protection requirements mandated by the performing contractor's contract. The requesting prime contractor may assume that such contract requirements, e.g., Integrated Safety Management System, Quality Program/Plan are acceptable to DOE. The performing contractor shall be expected by DOE and the requesting Contractor to provide products or services in a manner that is consistent with the requirements of the performing prime contractor's contract, including quality assurance, health and safety and environmental compliance requirements, and the task instructions provided by the requesting contractor.

(f) Right of Access

Hanford Site Contractors shall, with coordination and adequate preparation, allow service-providing Contractors access to facilities to perform the service.

(g) Nuclear Safety

The Contractor shall establish a protocol with each Hanford Site contractor identified in the Section J Attachment entitled, *Hanford Site Service and Interface Requirements Matrix*; this protocol shall establish the basis to perform MSC work scope within a nuclear facility, or perform work scope that affects the safety basis of a nuclear facility, that is operated by the Hanford Site contractor with responsibility for the nuclear facility. The protocol shall describe the general scope of work to be performed, flow down of nuclear safety requirements, and implementing processes/procedures for DOE approval prior to transition. The protocol shall be signed by the MSC and concurred in by the other affected contractor. Any new or future protocols or updates will be submitted to and approved by DOE. The protocol will be recognized as part of the ISMS Description. The Contractor shall comply with all facility safety authorization basis and nuclear safety requirements that are established by the Hanford Site contractor responsible for the nuclear facility. The Contractor shall flow down to each subcontractor (in accordance with the Section I Clause entitled, DEAR 970.5223-1, *Integration of Environment, Safety and Health Into Work Planning and Execution*), the protocol to comply with all facility safety authorization basis and nuclear safety requirements that are established by the contractor responsible for the nuclear facility.

(h) Updates to the Matrix

In cooperation with PRC and TOC, the MSC shall annually update the Matrix and provide it to DOE through the annual *Infrastructure and Services Alignment Plan* (ISAP) revision and Matrix update process. MSC shall solicit input from Hanford Site contractors/users for the ISAP, including projection of need for services and proposed performance metrics/controlling agreements for the service provider. Other Hanford Site contractors/users are included to inform MSC/PRC/TOC of their complete obligation. The Matrix updates shall be signed, showing concurrence, by MSC, PRC, and TOC.

If any Hanford Site contractor believes it is in DOE's best interest to change a "Mandatory" service to "Optional" so that it may be self-performed by the requestor or procured from a different source, the Contractor shall propose this change through the annual ISAP revision and Matrix update process. A written justification shall be provided showing how the change is in the best interest of the Government and include the impacts to users and the provider. If, at the unilateral discretion of the Contracting Officer, the decision is made to implement the proposed change, the change will not take affect until the Contractor receives Contracting Officer direction to implement the change. Contracting Officer rejection or delay of a proposed change shall not be the basis for a Request for Equitable Adjustment (REA) or subject to the Section I Clause entitled, *FAR 52.233-1, Disputes*.

(i) Payment of Services

Fee-for-Service providers shall provide to DOE and make available to the user an adequate basis for liquidation of the charge for usage-based, "Mandatory" services. Service rates will be developed based upon customer-projected usage.

(j) Responsibility for Delivery of Service

Contractors retain the responsibility to reach agreement on interfaces and for the appropriate delivery of services. The Government makes no guarantees or warranties regarding the delivery of services, and services between contractors shall not constitute government-furnished services or government-furnished information. The Government shall not be held responsible for the delivery or non-delivery of services between Hanford Site contractors. Contractors shall attempt to resolve any disputes regarding service interfaces and the provision of services among themselves. If contractors are unable to achieve a timely resolution of issues between themselves regarding interfaces or the appropriate delivery of services, contractors may seek direction from the Contracting Officer. To the extent contractors attempt to litigate disputes between themselves regarding interfaces or the appropriate delivery of services, all costs associated with such litigation shall be unallowable under this Contract.

H.45 RESERVED

H.46 CONTRACTOR INVESTMENT COMMITMENTS

The contractor agrees to invest $11,000,000 over the pre-award phase and ten-year contract period of performance in the projects identified in the table (Figure 1-1) in this clause at no cost to DOE-RL. The time phasing of the investments is subject to the requirements of each project, and the cost shall be incurred as required to complete each project. DOE-RL recognizes that changes may occur during the course of the contract that may require the reallocation of funding among individual projects, but the Contractor shall incur the cost for these projects. The Contractor shall provide annual reports of activities and actual costs incurred against the planned expenditure for each project to the Contracting Officer.
Figure 1-1, which is incorporated into this contract, is the list of investment projects identified by the Contractor in its proposal dated July 16, 2007, and which have not been identified elsewhere in this contract as a contractual requirement. The Contractor is committed to meet the stated objectives as part of contract compliance, subject to the $11M investment ceiling. The extent to which the Contractor is able to achieve success in the execution and completion of the investment projects shall be considered by DOE in any determination to exercise the Options provided for in Section B of this contract. DOE is authorized to off-set the value of any incomplete investment projects for which the Contractor does not spend its obligated amount from otherwise payable cost and fee in the event of non-delivery. If funds remain available during the term of the contract, the Contractor may identify and recommend additional investment projects. Selection of investment projects will be based on the potential benefits to the Hanford mission and priorities, and in consultation with DOE.

MSA Investment Commitments	Benefit	Estimated Timeframe	Estimated Value
PRE-AWARD, JUMP START			
We conduct pre-award ***Jump Start*** activities to plan and develop key enablers and tools, finalize the Transition Plan, and prepare early draft plan deliverables.	Accelerated, seamless Transition and Contract Start at minimal-risk.	***Pre-Award***	***$1.0M***
MSC PROJECT LIFE CYLE INVESTMENTS			

MSA Investment Commitments	Benefit	Estimated Timeframe	Estimated Value
PRE-AWARD, JUMP START			
We implement ***Voice Over Internet Protocol (VoIP)*** combining telephone and network systems providing cost savings through the life of the contract.	DOE saves $35 million dollars over the life of the contract, avoids capital costs, with improved performance and efficiency.	**Base Period**	**$2.0M**
We deploy the ***Mission Support Integration Center (MSIC)***, a modern, fully digital, decision support center for MSC planning, scheduling, and monitoring as well as support for quick reaction Portfolio Management activities where a separate facility is required.	Central ***Integration Point*** for DOE, MSC, and Site customers/stakeholders to facilitate planning and control of project activities and resolve issues real time. Provides modern systems and tools to optimize problem setup and DOE decision making.	**Base Period**	**$1.0M**
We invest in ***college internships***, ***scholarships,*** and building local ***science and technology educational programs*** with local K-12 and colleges.	Investment in the future workforce and economic diversification of the economy while providing valuable experience in related fields.	**Base Period** **1st Option Period** **2nd Option Period**	**$1.0M**
We fund ***HAMMER business development*** resources to attract additional customer contracts to the facility	Reduces dependency on EM funding – HAMMER becomes self-sustaining.	**Base Period** **1st Option Period** **2nd Option Period**	**$0.6M**
We implement and deploy a ***Mission Optimization Center*** during Transition.	Proving ground for re-engineering business processes, evaluating innovative ideas, building and pilot testing proof-of-concepts, and supporting training activities.	**Base Period**	**$0.5M**
We offer ***jobs for qualified displaced workers*** with our parent companies.	Provides soft landing for displaced workers and promotes goodwill in the local communities.	**Base Period**	**$0.5M**
We provide access to ***parent company training programs*** such as LM21 Operating Excellence and conduct Kaizen/Six Sigma (continuous improvement) events and training for Site contractors and DOE.	Staff Development provides additional opportunities for MSC operational efficiencies and offers MSA Best Practices for Site contractors and DOE; tangible benefits to the Site in productivity, cost savings, or cost avoidance.	**Base Period** **1st Option Period** **2nd Option Period**	**$0.5M**
We deploy a single integrated state-of-the-art ***Mission Service Desk*** for centralized 24x7x365 support to Site contractors and DOE for customer calls and electronic requests.	Provides a single support desk for MSC services to improve response times, measure time to resolution, and track all services at a lower cost of operations.	**Base Period**	**$0.4M**
We install ***portable HAMMER classrooms*** to support Site-wide ***Mobile Training Teams*** that provide training resources at Site contractor locations.	Extends HAMMER resources into the Site meeting training needs where and when required, lowers training costs, and promotes worker safety.	**Base Period**	**$0.2M**
We ***modernize Emergency Operations Center technology.***	Improve the technology of the EOC without capital or operating expenses to DOE.	**Base Period**	**$0.2M**
We make ***WSI's Senior Fire Chief*** available to work on ***safety planning for SNM transport.***	Subject Matter Expert available for 18 months to assist in reducing risk during SNM transport.	**Base Period**	**$0.1M**
DISCRETIONARY RESERVE – to be defined by MSA and approved by LLC Members Committee over the life of the contract.	Allocated in collaboration between DOE and MSA to address new initiatives/technologies that improve efficiency/performance, and/or reduce cost.	**Base Period** **1st Option Period** **2nd Option Period**	**$3.0M**
		TOTAL MSA INVESTMENT	**$11.0M**

H.47 SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (Feb 2009)

Preamble:

The ARRA terms and conditions in this contract will apply only to work performed with ARRA funds received from other site prime contractors through service agreements. All reporting requirements identified shall be reported through prime contractors, and not directly to DOE-RL.

Work performed under this contract will be funded, in whole or in part, with funds appropriated by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (Recovery Act or Act). The Recovery Act's purposes are to stimulate the economy and to create and retain jobs. The Act gives preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds made available by it for activities that can be initiated not later than June 17, 2009.

Contractors should begin planning activities for their first tier subcontractors, including obtaining a DUNS number (or updating the existing DUNS record), and registering with the Central Contractor Registration (CCR).

Be advised that Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and related Guidance. For projects funded by sources other than the Recovery Act, Contractors should plan to keep separate records for Recovery Act funds and to ensure those records comply with the requirements of the Act.

The Government has not fully developed the implementing instructions of the Recovery Act, particularly concerning the how and where for the new reporting requirements. The Contractor will be provided these details as they become available. The Contractor must comply with all requirements of the Act. If the contractor believes there is any inconsistency between Recovery Act requirements and current contract requirements, the issues will be referred to the Contracting Officer for reconciliation.

Be advised that special provisions may apply to projects funded by the Act relating to:

- Reporting, tracking and segregation of incurred costs;
- Reporting on job creation and preservation;
- Publication of information on the Internet;
- Protecting whistleblowers; and
- Requiring prompt referral of evidence of a false claim to the Inspector General.

Definitions:

For purposes of this clause, "Covered Funds" means funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5. Covered Funds will have special accounting codes and will be identified as Recovery Act funds in the contract and/or modification using Recovery Act funds. Covered Funds must be reimbursed by September 30, 2015.

Non-Federal employer means any employer with respect to Covered Funds – the contractor or

subcontractor, as the case may be, if the contractor or subcontractor is an employer; and any professional membership organization, certification of other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving Covered Funds; or with respect to Covered Funds received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor receiving the funds and any contractor or subcontractor of the State or local government; and does not mean any department, agency, or other entity of the federal government.

(a) Flow Down Provision

This clause must be included in every first-tier subcontract. The contractor shall also flow down requirements to any site service provider required to provide services to support Recovery Act work through appropriate controlling agreements, as described in clause H.44, *Hanford Site Services and Interface Requirements Matrix*.

(b) Segregation and Payment of Costs

Contractor must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from the Recovery Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects. Where Recovery Act funds are authorized to be used in conjunction with other funding to complete projects, tracking and reporting must be separate from the original funding source to meet the reporting requirements of the Recovery Act and OMB Guidance.

(c) Prohibition on Use of Funds

None of the funds provided under this agreement derived from the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

(d) Wage Rates

All laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan numbered 14 of 1950 (64 Stat. 1267, 5 U.S.C. App.) and section 3145 of title 40 United States Code. See http://www.dol.gov/esa/whd/contracts/dbra.htm.

(e) Publication

Information about this agreement will be published on the Internet and linked to the website www.recovery.gov , maintained by the Accountability and Transparency Board (the Board). The Board may exclude posting contractual or other information on the

website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

(f) Registration requirements

Contractor shall ensure that all first-tier subcontractors, as required in accordance with the Section I clause entitled FAR 52.204-11, American Recovery and Reinvestment Act – Reporting Requirements (MAR 2009), have a DUNS number and are registered in the Central Contractor Registration (CCR) no later than the date the first report is due under the clause.

(g) Utilization of Small Business

Contractor shall to the maximum extent practicable give a preference to small business in the award of subcontracts for projects funded by Recovery Act dollars.

H.48 RESERVED

H.49 EMERGENCY PROCEDURES

This Clause supplements the "DOE-RL Emergency Plan Implementing Procedure", DOE-0223, by clarifying the process for implementation of proposed changes listed in Section 3.20, Subsection 5.0 of this document. DOE-0223 is managed by the RL Security and Emergency Services organization. When updates to the Procedure need to be made, the Emergency Preparedness points of contact from each represented company are provided drafts for review and are required to consult with the appropriate contractor staff in their respective organization to determine impacts to contractual requirements (e.g., work scope, cost, schedule). If there are impacts, the contractor will immediately contact the RL contracting officer for direction."

H.50 TRANSFORMATIONAL ENERGY ACTION MANAGEMENT (TEAM) INITIATIVE

In support of the goals of the Department of Energy's Transformational Energy Action Management (TEAM) initiative, and the goals and objectives contained in Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management, the Contractor shall provide full and open access to the maximum extent practicable to DOE contracted Energy Service Companies (ESCOs) under Energy Savings Performance Contracts (ESPCs), facilitate on-site assessments of opportunities to improve the Site's energy efficiency, water reduction and renewable energy improvements, and shall provide assistance in reviewing ESCO recommendations. The Contractor shall define requirements necessary to be placed in ESPCs and participate in the creation of ESPCs. The Contractor shall ensure ESCO personnel are granted access pursuant to contractual requirements; monitor ESCO activities to ensure that site safety and security requirements are adhered to; promptly provide information requested by ESCO personnel to assist them in developing viable recommendations; and, assist in the monitoring and execution of ESPC projects. When an ESCO is working in facilities under the control of the contractor, the ESCO shall work under the facility contractor's work control and safety program.

H.51 SHIPMENT NOTIFICATION

(a) The Contractor and /or Subcontractors shall notify Energy Northwest seven (7) days in advance (1) of any movement of "common" explosives over 1,800 pounds excluding small arms ammunitions or classified shipments within five (5) miles of Energy Northwest and/or, (2) of any railroad shipment from/to Hanford north of the rail spur to the Fast Flux Test Facility.

(b) For EM radioactive material/waste shipments by motor carrier and/or rail, the additional security measures described below shall be implemented. Documentation that the security measures were performed shall be maintained with the shipping papers.

(1) Additional Security Measures to be Implemented for Motor Carriers transporting Radioactive Material/Waste Shipments:

(i) Verify and document that site security plans require drivers entering the faculty for loading/unloading of shipments to sign in at the security gate and be escorted to the loading/unloading location unless a security badge has been issued.
(ii) Verify and document the name of the drivers, who will be entering DOE facilities to pick up shipments to be used for commercial shipments, are on the list provided by the motor carrier.
(iii) Verify and document the motor carriers to be used have provided documentation that all drivers meet the personal security requirements addressed in the U.S. Department of Transportation's (DOT) Security Sensitive Visits.
(iv) Obtain copies of documentation from the carriers that all drivers are citizens of the United State
(v) Verify the drivers have a Commercial Driver's License, with proper hazardous materials endorsements, and attach a copy to the shipment documentation to be kept on file for each shipment.
(vi) Verify and document the carriers utilize satellite tracking and/or maintains cellular telephone contact with the driver, including the requirement that the driver must contact carrier dispatch at regular intervals.
(vii) Require security staff to perform and document per-loading equipment inspections to avoid explosive and other devices as detailed in Measure 18 of CRD Notice 473.9 (Supplemented Rev. 0), *Security Conditions*.

NOTE: DOE Notice, Measure 18. Implement screening procedures for other deliveries at designated inspection points to identify explosives and incendiary devices. Use K-9 teams for inspections, when available. Instruct site personnel to report suspicious packages to Security and refrain from handling them until cleared by appropriate authority.

(iv) Provide the drivers a briefing and a copy of written instructions regarding en route shipment security measures to be taken. Ensure the drivers can read and understand the instructions provided and have the driver sign a copy of the instructions. Attach signed and dated copy of the instructions to the shipment documentation to be kept on file.
(v) Request consignee notification of receipt of shipments.

(2) Additional Security Measures to be Implemented for Rail Carriers transporting Radioactive Material/Waste Shipments

(i) Obtain a copy of the rail carrier's security plan. Ensure the plan identifies communications links, frequency of communication, and points of contact information for security-related emergencies.
(ii) Implement a mechanism to be notified by the carrier should cars/train encounter any unexpected occurrences en route. Ensure the rail carrier has access to the information.
(iii) Require security staff to perform and document pre-loading equipment inspections to avoid explosive and other as detailed in Measure 18 of CRD Notice 473.9 (Supplemented Rev. 0), *Security Conditions*.

NOTE: DOE Notice, Measure 18. Implement screening procedures for other deliveries at designated inspection points to identify explosives and incendiary devices. Use K-9 teams for inspections, when available. Instruct site personnel to report suspicious packages to Security and refrain from handling them until cleared by appropriate authority.

(iv) Verify and document the rail carrier has a communication system (through central dispatch consignee notification of arrival cars/trains.
(v) Request consignee notification of arrival of cars/trains.

H.52 EM-SPECIFIC SUSTAINABILITY INTERIM CLAUSE TO IMPLEMENT EISA 2007 AND EXECUTIVE ORDER 13514

Contractor is responsible for the management and operation of the Department of Energy's facilities, fleets and conduct of mission operations at the Hanford Site. In accordance with the Energy Independence and Security Act of 2007 (EISA 2001) and Executive Order 13514 Federal leadership in Environmental, Energy, and Economic Performance (10/5/2009) the contractor shall:

(a) Assist the Department through direct participation and other support in achieving the Department's scope 1, 2, and 3 greenhouse gas emission reduction goals and other goals and objectives contained in Executive Order 13514.
(b) Report annually a comprehensive inventory of absolute greenhouse gas emissions, including specified scope 3 emissions, as directed by the Contracting Officer. Develop and implement internal policies to calculate and track greenhouse gas emissions following federal guidelines.
(c) Implement the *Technical Guidance on Implementing the Stormwater Runoff Requirements for Federal Projects under Section 438 of the Energy Independence and Security Act* issued by the Environmental Protection Agency.
(d) Use low-GHG-emitting vehicles, optimize number of vehicles in fleet and follow DOE fleet guidance as provided by the Contracting Officer.
(e) Assist the Department in meeting the pollution prevention and waste diversion goals of E.O. 13514 through source reduction and, as supported by cost-benefit analysis,

diverting from disposal non-hazardous solid wastes and construction and demolition materials and debris.

(f) Assist the department in meeting its high performance sustainable building design, construction, operation and management, maintenance, and deconstruction goals as provided in E.O. 13514.
   1) Pursue cost-effective, innovative strategies, such as highly reflective and vegetated roofs, to minimize consumption of energy, water, and materials and to contribute to the efforts to bring facilities into compliance with the federal guiding principles for high performance buildings;
   2) Manage existing building systems to reduce the consumption of energy, water, and materials, and identify alternatives to renovation that reduce existing assets' deferred maintenance costs;
   3) Identify opportunities to consolidate and dispose of existing assets, optimize the performance of the Department's real-property portfolio, and reduce associated environmental impacts.

(g) Assist the Department in ensuring that new federal buildings and federal buildings undergoing major renovations reduce their fossil fuel-generated energy consumption (baseline 2003) by 55% (2010), 65% (2015), 80% (2020, 90% (2025), and 100% (2030).

(h) Ensure major replacements of installed equipment, renovation, or expansion of existing space employ the most energy efficient designs, systems, equipment, and controls that are life-cycle cost effective. And ensure such activities contribute to compliance with federal guiding principles for high performance buildings.

(i) As directed by the contracting officer, designate a facility energy manager and complete energy and water evaluations every 4 years for each facility. Ensure that facility energy managers commission equipment and establish O&M plans for measuring, verifying, and reporting energy and water savings.

(j) Assist the department in advancing sustainable acquisition for products and services as outlined in E.O. 13514.
   1) Promote electronics stewardship.
   2) Establish and implement policies to enable power management, duplex printing, and other energy-efficient or environmentally preferable features on all eligible agency electronic products;
   3) Employ environmentally sounds practices with respect to the agency's disposition of all agency excess or surplus electronic products;
   4) Implement best management practices for energy-efficient management of servers and federal data centers;

(k) Assist the Department to sustain environmental management by:
   1) Continuing implementation of formal environmental management systems at all appropriate organizational levels; and
   2) Ensuring these formal systems are appropriately implemented and maintained to achieve the performance necessary to meet the goals of E.O. 13514.

H.53 NNSA/EM STRATEGIC SOURCING PARTNERSHIP

The contractor shall participate in the National Nuclear Security Administration (NNSA)/Environmental Management (EM) Strategic Sourcing Partnership. Under this

partnership, EM contractors shall work with the NNSA/EM Supply Chain Management Center (SCMC) to yield an enterprise-wide, synergistic strategic sourcing solution that leverages NNSA and EM purchasing power to gain pricing, processing, and reporting efficiencies to reduce costs overall for the Government.

H.54 CONFERENCE RELATED ACTIVITIES AND SPENDING

The Contractor agrees that:

a) The contractor shall ensure that contractor-sponsored conferences reflect the DOE/NNSA's commitment to fiscal responsibility, appropriate stewardship of taxpayer funds and support the mission of DOE/NNSA as well as other sponsors of work. In addition, the contractor will ensure conferences do not include any activities that create the appearance of taxpayer funds being used in a questionable manner.
b) For the purposes of this clause, "conference" is defined in Attachment 2 to the Deputy Secretary's memorandum of August 17, 2015 entitled "Updated Guidance on Conference-Related Activities and Spending."
c) Contractor-sponsored conferences include those events that meet the conference definition and either or both of the following:
   1) The contractor provides funding to plan, promote, or implement an event, except in instances where a contractor:
      i) covers participation costs in a conference for specified individuals (e.g. students, retirees, speakers, etc.) in a total amount not to exceed $10,000 (by individual contractor for a specific conference) or
      ii) purchases goods or services from the conference planners (e.g., attendee registration fees, renting booth space).
   2) The contractor authorizes use of its official seal, or other seals/logos/ trademarks to promote a conference. Exceptions include non-M&O contractors who use their seal to promote a conference that is unrelated to their DOE contract(s) (e.g., if a DOE IT contractor were to host a general conference on cyber security).
d) Attending a conference, giving a speech or serving as an honorary chairperson does not connote sponsorship.
e) The contactor will provide information on conferences they plan to sponsor with expected costs exceeding $100,000 to DOE-RL for input in the Department's Conference Management Tool, including:
   1) Conference title, description, and date
   2) Location and venue
   3) Description of any unusual expenses (e.g., promotional items)
   4) Description of contracting procedures used (e.g., competition for space/support)
   5) Costs for space, food/beverages, audio visual, travel/per diem, registration costs, recovered costs (e.g., through exhibit fees)
   6) Number of attendees
f) The contractor will not expend funds on the proposed contractor-sponsored conferences with expenditures estimated to exceed $100,000 until notified of approval by the contracting officer.

g) For DOE-sponsored conferences, the contractor will not expend funds on the proposed conference until notified by the contracting officer.
   1) DOE-sponsored conferences include events that meet the definition of a conference and where the Department provides funding to plan, promote, or implement the conference and/or authorizes use of the official DOE seal, or other seals/logos/ trademarks to promote a conference. Exceptions include instances where DOE:
      i) covers participation costs in a conference for specified individuals (e.g. students, retirees, speakers, etc.) in a total amount not to exceed $10,000 (by individual contractor for a specific conference) or
      ii) purchases goods or services from the conference planners (e.g., attendee registration fees; renting booth space); or provide funding to the conference planners through Federal grants.
   2) Attending a conference, giving a speech, or serving as an honorary chairperson does not connote sponsorship.
   3) The contractor will provide cost and attendance information on their participation in all DOE-sponsored conferences to DOE-RL for input in the DOE Conference Management Tool.

h) For *non-contractor sponsored conferences*, the contractor shall develop and implement a process to ensure costs related to conferences are allowable, allocable, reasonable, and further the mission of DOE/NNSA. This process must at a minimum:
   1) Track all conference expenses.
   2) Require the Laboratory Director (or equivalent) or Chief Operating Officer approve a single conference with net costs to the contractor of $100,000 or greater.

i) Contractors are not required to enter information on non-sponsored conferences in DOE'S Conference Management Tool.

j) Once funds have been expended on a non-sponsored conference, contractors may not authorize the use of their trademarks/logos for the conference, provide the conference planners with more than $10,000 for specified individuals to participate in the conference, or provide any other sponsorship funding for the conference. If a contractor does so, its expenditures for the conference may be deemed unallowable.

H.55 COST ESTIMATING SYSTEM REQUIREMENTS

(a) *Definitions.*

Acceptable estimating system means an estimating system that complies with the system criteria in paragraph (d) of this clause, and provides for a system that—

(1) Is maintained, reliable, and consistently applied;

(2) Produces verifiable, supportable, documented, and timely cost estimates that are an acceptable basis for negotiation of fair and reasonable prices;

(3) Is consistent with and integrated with the Contractor's related management systems; and

(4) Is subject to applicable financial control systems.

Estimating system means the Contractor's policies, procedures, and practices for budgeting and planning controls, and generating estimates of costs and other data included in proposals submitted to customers in the expectation of receiving contract awards or contract modifications. Estimating system includes the Contractor's—

(1) Organizational structure;

(2) Established lines of authority, duties, and responsibilities;

(3) Internal controls and managerial reviews;

(4) Flow of work, coordination, and communication; and

(5) Budgeting, planning, estimating methods, techniques, accumulation of historical costs, and other analyses used to generate cost estimates.

Significant deficiency means a shortcoming in the system that materially affects the ability of officials of the Department of Energy to rely upon information produced by the system that is needed for management purposes.

(b) *General.* The Contractor shall establish, maintain, and comply with an acceptable estimating system.

(c) *Applicability.* Paragraphs (d) and (e) of this clause apply if the Contractor is a large business to include a contractor teaming arrangement, as defined at 48 CFR 9.601(1), performing a contract in support of a Capital Asset Project (other than a management and operating contract as described at 917.6), as prescribed in DOE Order (DOE O) 413.3B, or current version; or a non-capital asset project and either—

(1) The total prime contract value exceeds $50 million, including options; or

(2) The Contractor was notified, in writing, by the Contracting Officer that paragraphs (d) and (e) of this clause apply.

(d) *System requirements.*

(1) The Contractor shall disclose its estimating system to the Contracting Officer, in writing. If the Contractor wishes the Government to protect the information as privileged or confidential, the Contractor must mark the documents with the appropriate legends before submission. If the Contractor plans to adopt the existing system from the previous Contractor, the Contractor is responsible for the system and shall comply with the system requirements required in this clause.

(2) An estimating system disclosure is acceptable when the Contractor has provided the Contracting Officer with documentation no later than 60 days after contract award that—

(i) Accurately describes those policies, procedures, and practices that the Contractor currently uses in preparing cost proposals; and

(ii) Provides sufficient detail for the Government to reasonably make an informed judgment regarding the acceptability of the Contractor's estimating practices.

(3) The Contractor shall—

(i) Comply with its disclosed estimating system; and

(ii) Disclose significant changes to the cost estimating system to the Contracting Officer on a timely basis.

(4) The Contractor's estimating system shall provide for the use of appropriate source data, utilize sound estimating techniques and good judgment, maintain a consistent approach, and adhere to established policies and procedures. An acceptable estimating system shall accomplish the following functions:

(i) Establish clear responsibility for preparation, review, and approval of cost estimates and budgets.

(ii) Provide a written description of the organization and duties of the personnel responsible for preparing, reviewing, and approving cost estimates and budgets.

(iii) Ensure that relevant personnel have sufficient training, experience, and guidance to perform estimating and budgeting tasks in accordance with the Contractor's established procedures.

(iv) Identify and document the sources of data and the estimating methods and rationale used in developing cost estimates and budgets.

(v) Provide for adequate supervision throughout the estimating and budgeting process.

(vi) Provide for consistent application of estimating and budgeting techniques.

(vii) Provide for detection and timely correction of errors.

(viii) Protect against cost duplication and omissions.

(ix) for the use of historical experience, including historical vendor pricing information, where appropriate.

(x) Require use of appropriate analytical methods.

(xi) Integrate information available from other management systems.

(xii) Require management review, including verification of compliance with the company's estimating and budgeting policies, procedures, and practices.

(xiii) Provide for internal review of, and accountability for, the acceptability of the estimating system, including the budgetary data supporting indirect cost estimates and comparisons of projected results to actual results, and an analysis of any differences.

(xiv) Provide procedures to update cost estimates and notify the Contracting Officer in a timely manner.

(xv) Provide procedures that ensure subcontract prices are reasonable based on a documented review and analysis provided with the prime proposal, when practicable.

(xvi)) Provide estimating and budgeting practices that consistently generate sound proposals that are compliant with the provisions of the solicitation and are adequate to serve as a basis to reach a fair and reasonable price.

(xvii) Have an adequate system description, including policies, procedures, and estimating and budgeting practices, that comply with the Federal Acquisition Regulation (48 CFR chapter 1) and Department of Energy Acquisition Regulation (48 CFR chapter 9).

(e) *Significant deficiencies.*

(1) The Contracting Officer will provide an initial determination to the Contractor, in writing, of any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's estimating system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing. In the event the Contractor did not respond in writing to the initial determination within the response time, this lack of response shall indicate that the Contractor agrees with the initial determination.

(3) The Contracting Officer will evaluate the Contractor's response or the Contractor’s lack of response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—

(i) Remaining significant deficiencies;

(ii) The adequacy of any proposed or completed corrective action; and

(iii) System disapproval, if the Contracting Officer determines that one or more significant deficiencies remain.

(f) If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the significant deficiencies.

(g) *Withholding payments.* If the Contracting Officer makes a final determination to disapprove the Contractor's estimating system, and the contract includes the Section H clause Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

H.56 EARNED VALUE MANAGEMENT SYSTEM

(a) *Definitions.* As used in this clause—

Acceptable earned value management system means an earned value management system that generally complies with system criteria in paragraph (b) of this clause.

Earned value management system means an earned value management system that complies with the earned value management system guidelines in the ANSI/EIA-748.

Over Target Baseline means an overrun to the Contract Budget Base (CBB) which is formally incorporated into the Performance Measurement Baseline (PMB) for management purposes.

Over Target Schedule means the term used to describe a condition where a baseline schedule is time-phased beyond the contract completion date.

Significant deficiency means a shortcoming in the system that materially affects the ability of officials of the Department of Energy to rely upon information produced by the system that is needed for management purposes.

(b) *System criteria.* In the performance of this contract, the Contractor shall use—

(1) An Earned Value Management System (EVMS) that complies with the EVMS guidelines in the American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems (ANSI/EIA-748, current version at time of award); and

(2) *Management procedures.*

(i) Management procedures provide for generation of timely, reliable, and verifiable information for DOE Integrated Program Management Report (IPMR) data item of this contract.

(ii) The Contractor shall use Department of Defense's Data Item Description (DID) Integrated Program Management Report (IPMR), DI-MGMT-81861, (current version at time of award) which contains data for measuring cost and schedule performance for this DOE contract. The report's structure has seven formats

that contain the content and relationships required for electronic submissions. DOE does not use section 2.8 Applicability of DI-MGMT-81861 for electronic data submissions, in lieu of this section, the Contractor shall use Project Assessment and Reporting System (PARS II). Data shall be submitted by the Contractor electronically by uploading the data into the PARS II in accordance with the —Contractor Project Performance Upload Requirements‖ document maintained by the DOE Office of Acquisition and Project Management (OAPM). All requested data shall be submitted timely and accurately, and shall be current as of the close of the previous month's accounting period.

(c) If the Contractor has one or more DOE contracts valued at $20,000,000 or greater per contract for a total contract value of $50,000,000 or more which support DOE Capital Asset Projects, the Contractor shall use an EVMS that has been determined to be acceptable by DOE. If, at the time of award, the Contractor's EVMS has not been determined by DOE to be in compliance with the EVMS guidelines as stated in paragraph (b)(1) of this clause, the Contractor shall apply its current system to the contract and shall take necessary actions to meet the milestones n the Contractor's EVMS plan.

(d) If this contract has a total value of less than $50,000,000 and does not meet the condition described at (c) above, the Government will not make a formal determination that the Contractor's EVMS complies with the EVMS guidelines in ANSI/EIA-748 with respect to the contract. The use of the Contractor's EVMS for this contract does not imply a Government determination of the Contractor's compliance with the EVMS guidelines in ANSI/EIA-748 for application to future contracts.

(e) The Contractor shall submit notification of all proposed changes to the EVMS procedures and the impact of those changes to DOE. If this contractor has one or more contracts in support of DOE Capital Asset Projects and the total contract values are $20,000,000 or greater per contract for total contract values of $50,000,000 or more, unless a waiver is granted by DOE, any EVMS changes proposed by the Contractor require approval of DOE prior to implementation. DOE will advise the Contractor of the acceptability of such changes as soon as practicable (generally within 30 calendar days) after receipt of the Contractor's notice of proposed changes. If DOE waives the advance approval requirements, the Contractor shall disclose EVMS changes to DOE at least 14 calendar days prior to the effective date of implementation.

(f) *Integrated baseline reviews.*

(1) The purpose of the integrated baseline reviews (IBR) is to verify the technical content and the realism of the related performance budgets, resources, and schedules. It should provide a mutual understanding of the inherent risks in the offerors'/contractors' performance plans and the underlying management control systems, and it should formulate a plan to handle these risks. DOE and the Contractor will use the IBR process described in the National Defense Industrial Association Program Management Systems Committee Integrated Baseline Review (NDIA PMSC IBR) Guide (current version at time of award).

(2) The Government will schedule IBRs as early as practicable, and the review process will be conducted not later than 180 calendar days after—

(i) Contract award;

(ii) The exercise of significant contract options; and

(iii) The incorporation of major modifications.

During such reviews, the Government and the Contractor will jointly assess the Contractor's baseline to be used for performance measurement to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.

(g) The Contractor shall provide access to all pertinent records and data requested by the Contracting Officer or duly authorized representative as necessary to permit Government surveillance to ensure that the EVMS complies, and continues to comply, with the performance criteria referenced in paragraph (b) of this clause.

(h) When indicated by contract performance, the Contractor shall submit a request for approval to initiate an over-target baseline or over-target schedule to the Contracting Officer. The request shall include a top-level projection of cost and/or schedule growth, a determination of whether or not performance variances will be retained, and a schedule of implementation for the rebaselining. The Government will acknowledge receipt of the request in a timely manner (generally within 30 calendar days).

(i) *Significant deficiencies.*

(1) The Contracting Officer will provide an initial determination to the Contractor, in writing, on any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's EVMS. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing. In the event the Contractor did not respond in writing to the initial determination within the response time, this lack of response shall indicate that the Contractor agrees with the initial determination.

(3) The Contracting Officer will evaluate the Contractor's response or the Contractor’s lack of response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—

(i) Remaining significant deficiencies;

(ii) The adequacy of any proposed or completed corrective action;

(iii) System noncompliance, when the Contractor's existing EVMS fails to comply

with the earned value management system guidelines in the ANSI/EIA-748; and

(iv) System disapproval, if initial EVMS validation is not successfully completed within the timeframe approved by the Contracting Officer, or if the Contracting Officer determines that the Contractor's earned value management system contains one or more significant deficiencies in high-risk guidelines in ANSI/EIA-748 standards (guidelines 1, 3, 6, 7, 8, 9, 10, 12, 16, 21, 23, 26, 27, 28, 30, or 32). When the Contracting Officer determines that the existing earned value management system contains one or more significant deficiencies in one or more of the remaining 16 guidelines in ANSI/EIA-748 standards, the contracting officer will use discretion to disapprove the system based on input received from the DOE Office of Acquisition and Project Management or the DOE Program Office, herein referred to as the functional specialists.

(4) If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the significant deficiencies.

(j) *Withholding payments.* If the Contracting Officer makes a final determination to disapprove the Contractor's EVMS, and the contract includes the Section H clause Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

(k) With the exception of paragraphs (i) and (j) of this clause, for contracts valued at $20 million or more requiring EVMS, the contractor shall flow down appropriate EVMS requirements to its subcontractors in order for the contractor to meet all requirements of this clause.

Lockheed Martin Integrated Technology, LLC;
Jacobs Engineering Group, LLC;
Wackenhut Services, Inc;
Computer Sciences Corporation;
and future subcontractors that meet the definition of teaming subcontractors as defined by FAR 9.6.

(l) *Adopting previous Contractor's previously certified earned value management (EVM) process.* If the Contractor plans to adopt the existing system from the previous Contractor or DOE-site, the Contractor is responsible for the system and shall comply with the system requirements required in this clause. The existing system shall utilize the same DOE approved EVM Process Description and the same EVM training as the previous system. The Contractor shall –

(1) Identify the corporate entity which owns the certified EVM process and provide the certification documentation;

(2) Obtain DOE prior approval or Advanced Agreement including DOE approval of process changes and joint surveillance;

(3) Be responsible for compliance with the system criteria required in paragraph (b) of this clause; and

(4) Be responsible for correcting any significant deficiencies previously identified to the previous Contractor by the Contracting Officer in accordance with paragraph (i) of this clause. Within 45 days after receiving a copy of the previous contractor's final determination, the Contractor shall follow paragraph (i)(4) and either correct any significant deficiencies or submit an acceptable corrective action plan. The Contracting Officer or designee, will provide a copy of the previous contractor's final determination.

H.57 CONTRACTOR BUSINESS SYSTEMS

(a) This clause only applies to fixed-price contract awarded to a large business on the basis of adequate price competition with or without submission of cost or pricing data; or covered contract that is subject to the Cost Accounting Standards under 41 U.S.C. chapter 15, as implemented in regulations found at 48 CFR 9903.201-1(a) and is not exempted at 9903.201-1(b)(1) through (14) (see the 48 CFR Appendix).

(b) *Definitions.* As used in this clause—

Acceptable contractor business systems means contractor business systems that comply with the terms and conditions of the applicable business system clauses listed in the definition of contractor business systemsll in this clause.

Contractor business systems means—

(1) Accounting system, if this contract includes the Section H clause Accounting System Administration;

(2) Earned value management system, if this contract includes the Section H clause Earned Value Management System;

(3) Estimating system, if this contract includes the Section H clause Cost Estimating System Requirements;

(4) Property management system, if this contract includes the Section H clause Contractor Property Management System Administration; and

(5) Purchasing system, if this contract includes the Section H clause Contractor Purchasing System Administration.

Significant deficiency, in the case of a contractor business system, means a shortcoming in the system that materially affects the ability of officials of the Department of Energy to rely upon information produced by the system that is needed for management purposes.

(c) *General.* The Contractor shall establish and maintain acceptable business systems in accordance with the terms and conditions of this contract. If the Contractor plans to adopt any existing business system from the previous Contractor, the Contractor is responsible for the system and shall comply with the system requirements and criteria required in that specific business system clause.

(d) *Significant deficiencies.*

(1) The Contractor shall respond, in writing, within 30 days to an initial determination that there are one or more significant deficiencies in one or more of the Contractor's business systems.

(2) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the final determination as to whether the Contractor's business system contains significant deficiencies. If the Contracting Officer determines that the Contractor's business system contains significant deficiencies, the final determination will include a notice to withhold payments.

(e) Withholding payments.

(1) If the Contracting Officer issues the final determination with a notice to withhold payments for significant deficiencies in a contractor business system required under this contract, the Contracting Officer will direct the Contractor, in writing, to withhold five percent from its invoices until the Contracting Officer has determined that the Contractor has corrected all significant deficiencies as directed by the Contracting Officer's final determination. The Contractor shall, within 45 days of receipt of the notice, either –

(i) Correct the deficiencies; or

(ii) Submit an acceptable corrective action plan showing milestones and actions to eliminate the deficiencies. The plan shall contain—

(A) Root cause(s) identification of the problem(s);

(B) The proposed corrective action(s) to address the root cause(s);

(C) A schedule for implementation; and

(D) The name of the person responsible for the implementation.

(2) If the Contractor submits an acceptable corrective action plan within 45 days of receipt of a notice of the Contracting Officer's intent to withhold payments, and the Contracting Officer, in consultation with the auditor or functional specialist, determines that the Contractor is effectively implementing such plan, the Contracting Officer will direct the Contractor, in writing, to reduce the percentage withheld on invoices to two percent until the Contracting Officer determines the Contractor has corrected all significant deficiencies as directed by the Contracting Officer's final determination. However, if at any time, the Contracting Officer determines that the Contractor has failed to follow the accepted corrective action plan, the Contracting Officer will increase withholding and direct the Contractor, in writing, to increase the percentage withheld on invoices to the

percentage initially withheld, until the Contracting Officer determines that the Contractor has corrected all significant deficiencies as directed by the Contracting Officer's final determination.

(3) Payment withhold percentage limits.

(i) The total percentage of payments withheld on amounts due on this contract shall not exceed—

(A) Five percent for one or more significant deficiencies in any single contractor business system; and

(B) Ten percent for significant deficiencies in multiple contractor business systems.

(ii) If this contract contains pre-existing withholds, and the application of any subsequent payment withholds will cause withholding under this clause to exceed the payment withhold percentage limits in paragraph (e)(3)(i) of this clause, the Contracting Officer will reduce the payment withhold percentage in the final determination to an amount that will not exceed the payment withhold percentage limits.

(4) For the purpose of this clause, payment means invoicing for any of the following payments authorized under this contract:

(i) Interim payments under—

(A) Cost-reimbursement contracts;

(B) Incentive type contracts;

(C) Time-and-materials contracts; or

(D) Labor-hour contracts.

(ii) Progress payments to include fixed-price contracts.

(iii) Performance-based payments to include fixed-price contracts.

(5) Payment withholding shall not apply to payments on fixed-price line items where performance is complete and the items were accepted by the Government.

(6) The withholding of any amount or subsequent payment to the Contractor shall not be construed as a waiver of any rights or remedies the Government has under this contract.

(7) Notwithstanding the provisions of any clause in this contract providing for interim, partial, or other payment withholding on any basis, the Contracting Officer may withhold payment in accordance with the provisions of this clause.

(8) The payment withholding authorized in this clause is not subject to the interest- penalty provisions of the Prompt Payment Act.

(f) *Correction of deficiencies.*

(1) The Contractor shall notify the Contracting Officer, in writing, when the Contractor has corrected the business system's deficiencies.

(2) Once the Contractor has notified the Contracting Officer that all deficiencies have been corrected, the Contracting Officer will take one of the following actions:

(i) If the Contracting Officer determines that the Contractor has corrected all significant deficiencies as directed by the Contracting Officer's final determination, the Contracting Officer will direct the Contractor, in writing, to discontinue the payment withholding from invoices under this contract associated with the Contracting Officer's final determination, and authorize the Contractor to bill for any monies previously withheld that are not also being withheld due to other significant deficiencies. Any payment withholding under this contract due to other significant deficiencies, will remain in effect until the Contracting Officer determines that those significant deficiencies are corrected.

(ii) If the Contracting Officer determines that the Contractor still has significant deficiencies, the Contractor shall continue withholding amounts from its invoices in accordance with paragraph (e) of this clause, and not invoice for any monies previously withheld.

(iii) If the Contracting Officer determines, based on the evidence submitted by the Contractor, that there is a reasonable expectation that the corrective actions have been implemented and are expected to correct the significant deficiencies, the Contracting Officer will discontinue withholding payments, and release any payments previously withheld directly related to the significant deficiencies identified in the Contractor notification, and direct the Contractor, in writing, to discontinue the payment withholding from invoices associated with the Contracting Officer's final determination, and authorize the Contractor to bill for any monies previously withheld.

(iv) If, within 90 days of receipt of the Contractor notification that the Contractor has corrected the significant deficiencies, the Contracting Officer has not made a determination in accordance with paragraphs (f)(2)(i), (ii), or (iii) of this clause, the Contracting Officer will direct the Contractor, in writing, to reduce the payment withholding from invoices directly related to the significant deficiencies identified in the Contractor notification by a specified percentage that is at least 50 percent, but not authorize the Contractor to bill for any monies previously withheld until the Contracting Officer makes a determination in accordance with paragraphs (f)(2)(i), (ii), or (iii) of this clause.

(v) At any time after the Contracting Officer directs the Contractor to reduce or discontinue the payment withholding from invoices under this contract, if the Contracting Officer determines that the Contractor has failed to correct the significant deficiencies identified in the Contractor's notification, the Contracting Officer will reinstate or increase withholding and direct the Contractor, in writing, to reinstate or increase the percentage withheld on invoices to the percentage initially withheld, until the Contracting Officer determines that the Contractor has corrected all significant deficiencies as directed by the Contracting Officer's final determination.

H.58 ACCOUNTING SYSTEM ADMINISTRATION

(a) *Definitions.* As used in this clause—

(1) *Acceptable accounting system* means a system that complies with the system criteria in paragraph (c) of this clause to provide reasonable assurance that—

(i) Applicable laws and regulations are complied with;

(ii) The accounting system and cost data are reliable;

(iii) Risk of misallocations and mischarges are minimized; and

(iv) Contract allocations and charges are consistent with billing procedures.

(2) *Accounting system* means the Contractor's system or systems for accounting methods, procedures, and controls established to gather, record, classify, analyze, summarize, interpret, and present accurate and timely financial data for reporting in compliance with applicable laws, regulations, and management decisions, and may include subsystems for specific areas such as indirect and other direct costs, compensation, billing, labor, and general information technology.

(3) *Significant deficiency* means a shortcoming in the system that materially affects the ability of officials of the Department of Energy to rely upon information produced by the system that is needed for management purposes.

(b) *General.* The Contractor shall establish and maintain an acceptable accounting system. If the Contractor plans to adopt the existing system from the previous Contractor, the Contractor is responsible for the system and shall comply with the system criteria required in this clause. The Contractor shall provide in writing to the Contracting Officer documentation that its accounting system meets the system criteria in paragraph (c) of this clause no later than 60 days after contract award. Failure to maintain an acceptable accounting system, as defined in this clause, shall result in the withholding of payments if the contract includes the Section H clause Contractor Business Systems, and also may result in disapproval of the system.

(c) *System criteria.* The Contractor's accounting system shall provide for—

(1) A sound internal control environment, accounting framework, and organizational structure;

(2) Proper segregation of direct costs from indirect costs;

(3) Identification and accumulation of direct costs by contract;

(4) A logical and consistent method for the accumulation and allocation of indirect costs to intermediate and final cost objectives;

(5) Accumulation of costs under general ledger control;

(6) Reconciliation of subsidiary cost ledgers and cost objectives to general ledger;

(7) Approval and documentation of adjusting entries;

(8) Management reviews or internal audits of the system to ensure compliance with the Contractor's established policies, procedures, and accounting practices;

(9) A timekeeping system that identifies employees' labor by intermediate or final cost objectives;

(10) A labor distribution system that charges direct and indirect labor to the appropriate cost objectives;

(11) Interim (at least monthly) determination of costs charged to a contract through routine posting of books of account;

(12) Exclusion from costs charged to Government contracts of amounts which are not allowable in terms of 48 CFR part 31, Contract Cost Principles and Procedures, and other contract provisions;

(13) Identification of costs by contract line item and by units (as if each unit or line item were a separate contract), if required by the contract;

(14) Segregation of preproduction costs from production costs, as applicable;

(15) Cost accounting information, as required—

(i) By contract clauses concerning limitation of cost (48 CFR 52.232-20), limitation of funds (48 CFR 52.232-22), or allowable cost and payment (48 CFR 52.216-7); and

(ii) To readily calculate indirect cost rates from the books of accounts;

(16) Billings that can be reconciled to the cost accounts for both current and cumulative amounts claimed and comply with contract terms;

(17) Adequate, reliable data for use in pricing follow-on acquisitions; and

(18) Accounting practices in accordance with standards promulgated by the Cost Accounting Standards Board, if applicable, otherwise, Generally Accepted Accounting Principles.

(d) *Significant deficiencies.*

(1) The Contracting Officer will provide an initial determination to the Contractor, in writing, on any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's accounting system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing. In the event the Contractor did not respond in writing to the initial determination within the response time, this lack of response shall indicate that the Contractor agrees with the initial determination.

(3) The Contracting Officer will evaluate the Contractor's response or the Contractor's lack of response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—

(i) Remaining significant deficiencies;

(ii) The adequacy of any proposed or completed corrective action; and

(iii) System disapproval, if the Contracting Officer determines that one or more significant deficiencies remain.

(e) If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the significant deficiencies.

(f) *Withholding payments.* If the Contracting Officer makes a final determination to disapprove the Contractor's accounting system, and the contract includes the Section H clause Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

H.59 CONTRACTOR PURCHASING SYSTEM ADMINISTRATION

(a) *Definitions.* As used in this clause—

Acceptable purchasing system means a purchasing system that complies with the system criteria in paragraph (c) of this clause.

Purchasing system means the Contractor's system or systems for purchasing and subcontracting, including make-or-buy decisions, the selection of vendors, analysis of quoted prices, negotiation of prices with vendors, placing and administering of orders, and expediting delivery of materials.

Significant deficiency means a shortcoming in the system that materially affects the ability of officials of the Department of Energy to rely upon information produced by the system that is needed for management purposes.

(b) *General.* The Contractor shall establish and maintain an acceptable purchasing system. If the Contractor plans to adopt the existing system from the previous Contractor, the Contractor is responsible for the system and shall comply with the system criteria required in this clause. The Contractor shall provide in writing to the Contracting Officer documentation that its purchasing system meets the system criteria in paragraph (c) of this clause no later than 60 days after contract award. Failure to maintain an acceptable purchasing system, as defined in this clause, may result in disapproval of the system by the Contracting Officer and/or withholding of payments.

(c) *System criteria.* The Contractor's purchasing system shall—

(1) Have an adequate system description including policies, procedures, and purchasing practices that comply with the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) and the Department of Energy Acquisition Regulation (48 CFR Chapter 9);

(2) Ensure that all applicable purchase orders and subcontracts contain all flowdown clauses, including terms and conditions and any other clauses needed to carry out the requirements of the prime contract;

(3) Maintain an organization plan that establishes clear lines of authority and responsibility;

(4) Ensure all purchase orders are based on authorized requisitions and include a complete and accurate history of purchase transactions to support vendor selected, price paid, and document the subcontract/purchase order files which are subject to Government review;

(5) Establish and maintain adequate documentation to provide a complete and accurate history of purchase transactions to support vendors selected and prices paid;

(6) Apply a consistent make-or-buy policy that is in the best interest of the Government;

(7) Use competitive sourcing to the maximum extent practicable, and ensure debarred or suspended contractors are properly excluded from contract award;

(8) Evaluate price, quality, delivery, technical capabilities, and financial capabilities of competing vendors to ensure fair and reasonable prices;

(9) Require management level justification and adequate cost or price analysis, as applicable, for any sole or single source award;

(10) perform timely and adequate cost or price analysis and technical evaluation for each subcontractor and supplier proposal or quote to ensure fair and reasonable subcontract prices;

(11) Document negotiations in accordance with 48 CFR 15.406-3;

(12) Seek, take, and document economically feasible purchase discounts, including cash discounts, trade discounts, quantity discounts, rebates, freight allowances, and company- wide volume discounts;

(13) Ensure proper type of contract selection and prohibit issuance of cost-plus-a- percentage-of-cost subcontracts;

(14) Maintain subcontract surveillance to ensure timely delivery of an acceptable product and procedures to notify the Government of potential subcontract problems that may impact delivery, quantity, or price;

(15) Document and justify reasons for subcontract changes that affect cost or price;

(16) Notify the Government of the award of all subcontracts that contain the 48 CFR Chapter 1 and 48 CFR Chapter 9 flowdown clauses that allow for Government audit of those subcontracts, and ensure the performance of audits of those subcontracts;

(17) Enforce adequate policies on conflict of interest, gifts, and gratuities, including the requirements of the 41 U.S.C. chapter 87, Kickbacks;

(18) Perform internal audits or management reviews, training, and maintain policies and procedures for the purchasing department to ensure the integrity of the purchasing system;

(19) Establish and maintain policies and procedures to ensure purchase orders and subcontracts contain mandatory and applicable flowdown clauses, as required by the 48 CFR chapter 1, including terms and conditions required by the prime contract and any clauses required to carry out the requirements of the prime contract;

(20) Provide for an organizational and administrative structure that ensures

effective and efficient procurement of required quality materials and parts at the best value from responsible and reliable sources;

(21) Establish and maintain selection processes to ensure the most responsive and responsible sources for furnishing required quality parts and materials and to promote competitive sourcing among dependable suppliers so that purchases are reasonably priced and from sources that meet contractor quality requirements;

(22) Establish and maintain procedures to ensure performance of adequate price or cost analysis on purchasing actions;

(23) Establish and maintain procedures to ensure that proper types of subcontracts are selected, and that there are controls over subcontracting, including oversight and surveillance of subcontracted effort; and

(24) Establish and maintain procedures to timely notify the Contracting Officer, in writing, if—

(i) The Contractor changes the amount of subcontract effort after award such that it exceeds 70 percent of the total cost of the work to be performed under the contract, task order, or delivery order. The notification shall identify the revised cost of the subcontract effort and shall include verification that the Contractor will provide added value; or

(ii) Any subcontractor changes the amount of lower-tier subcontractor effort after award such that it exceeds 70 percent of the total cost of the work to be performed under its subcontract. The notification shall identify the revised cost of the subcontract effort and shall include verification that the subcontractor will provide added value as related to the work to be performed by the lower-tier subcontractor(s).

(d) *Significant deficiencies.*

(1) The Contracting Officer will provide notification of initial determination to the Contractor, in writing, of any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's purchasing system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing. In the event the Contractor did not respond in writing to the initial determination within the response time, this lack of response shall indicate that the Contractor agrees with the initial determination.

(3) The Contracting Officer will evaluate the Contractor's response or the Contractor’s lack of response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—

(i) Remaining significant deficiencies;

(ii) The adequacy of any proposed or completed corrective action; and

(iii) System disapproval, if the Contracting Officer determines that one or more significant deficiencies remain.

(e) If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the deficiencies.

(f) *Withholding payments.* If the Contracting Officer makes a final determination to disapprove the Contractor's purchasing system, and the contract includes the Section H clause Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

H.60 CONTRACTOR PROPERTY MANAGEMENT SYSTEM ADMINISTRATION

(a) *Definitions.* As used in this clause—

Acceptable property management system means a property system that complies with the system criteria in paragraph (c) of this clause.

Property management system means the Contractor's system or systems for managing and controlling Government property.

Significant deficiency means a shortcoming in the system that materially affects the ability of officials of the Department of Energy to rely upon information produced by the

system that is needed for management purposes.

(b) *General.* The Contractor shall establish and maintain an acceptable property management system. If the Contractor plans to adopt the existing system from the previous Contractor, the Contractor is responsible for the system and shall comply with the system criteria required in this clause. The Contractor shall provide in writing to the Contracting Officer documentation that its property management system meets the system criteria in paragraph (c) of this clause no later than 60 days after contract award. Failure to maintain an acceptable property management system, as defined in this clause, may result in disapproval of the system by the Contracting Officer and/or withholding of payments.

(c) *System criteria.* The Contractor's property management system shall be in accordance with paragraph (f) of the contract clause at 48 CFR 52.245-1.

(d) *Significant deficiencies.*

(1) The Contracting Officer will provide an initial determination to the Contractor, in

writing, of any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's property management system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing. In the event the Contractor did not respond in writing to the initial determination within the response time, this lack of response shall indicate that the Contractor agrees with the initial determination.

(3) The Contracting Officer will evaluate the Contractor's response or the Contractor's lack of response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—

(i) Remaining significant deficiencies;

(ii) The adequacy of any proposed or completed corrective action; and

(iii) System disapproval, if the Contracting Officer determines that one or more significant deficiencies remain.

(e) If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the significant deficiencies.

(f) *Withholding payments.* If the Contracting Officer makes a final determination to disapprove the Contractor's property management system, and the contract includes the Section H clause Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

H.61 MANAGEMENT AND INSURANCE PROGRAMS

1. BASIC REQUIREMENTS

a. Maintain commercial insurance or a self-insured program, (i.e., any insurance policy or coverage that protects the contractor from the risk of legal liability for adverse actions associated with its operation, including malpractice, injury, or negligence) as required by the terms of the contract. Types of insurance include automobile, general liability, and other third party liability insurance. Other forms of coverage must be justified as necessary in the operation of the Department facility and/or the performance of the contract, and approved by the DOE.

b. Contractors shall not purchase insurance to cover public liability for nuclear incidents without DOE authorization (See DEAR 950.5070, Indemnification and DEAR 950.70, Nuclear Indemnification of DOE Contractors).

c. Demonstrate that insurance programs and costs comply with the cost limitations and exclusions at FAR 28.307, Insurance Under Cost Reimbursement Contracts; and FAR 31.205-19, DEAR 931.205-19, and DEAR 970.3102-05-19, Insurance and Indemnification.

d. Demonstrate that the insurance program is being conducted in the government's best interest and at reasonable cost.

e. The contractor shall submit copies of all insurance policies or insurance arrangements to the contracting officer no later than 30 days after the purchase date.

f. When purchasing commercial insurance, the contractor shall use a competitive process to ensure costs are reasonable.

g. Ensure self-insurance programs include the following elements:

(1) Compliance with criteria set forth in FAR 28.308, Self-Insurance. Approval of self-insurance is predicated upon submission of verifiable proof that the self-insurance charge does not exceed the cost of purchased insurance. This includes hybrid plans (i.e., commercially purchased insurance with self-insured retention (SIR) such as large deductible, matching deductible, retrospective rating cash flow plans, and other plans where insurance reserves are under the control of the insured). The SIR components of such plans are self-insurance and are subject to the approval and submission requirements of FAR 28.308, as applicable.

(2) Demonstration of full compliance with applicable state and federal regulations and related professional administration necessary for participation in alternative insurance programs.

(3) Safeguards to ensure third party claims and claims settlements are processed in accordance with approved procedures.

(4) Accounting of self-insurance charges.

(5) Accrual of self-insurance reserve. The Contracting Officer's approval is required and predicated upon the following:

(a) The claims reserve shall be held in a special fund or interest bearing account.

(b) Submission of a formal written statement to the Contracting Officer stating that use of the reserve is exclusively for the payment of insurance claims and losses, and that DOE shall receive its equitable share of any excess funds or reserve.

(c) Annual accounting and justification as to the reasonableness of the claims reserve submitted for Contracting Officer's review.

(d) Claim reserves, not payable within the year the loss occurred, are discounted to present value based on the prevailing Treasury rate.

h. Separately identify and account for interest cost on a Letter of Credit used to guarantee self-insured retention, as an unallowable cost and omitted from charges to the DOE contract.

i. Comply with the Contracting Officer's written direction for ensuring the continuation of insurance coverage and settlement of incurred and/or open claims and payments of premiums owed or owing to the insurer for prior DOE contractors.

2. PLAN EXPERIENCE REPORTING.

(a) The Contractor shall provide the Contracting Officer with annual experience reports for each type of insurance (e.g., automobile and general liability), listing the following for each category:

(1) The amount paid for each claim.

(2) The amount reserved for each claim.

(3) The direct expenses related to each claim.

(4) A summary for the year showing total number of claims.

(5) A total amount for claims paid.

(6) A total amount reserved for claims.

(7) The total amount of direct expenses.

b. Provide the Contracting Officer with an annual report of insurance costs and/or self-insurance charges. When applicable, separately identify total policy expenses (e.g., commissions, premiums, and costs for claims servicing) and major claims during the year, including those expected to become major claims (e.g., those claims valued at $100,000 or greater)

c. Provide additional claim financial experience data as may be requested on a case-by-case basis.

3. TERMINATING OPERATIONS.

The Contractor shall:

a. Ensure protection of the government's interest through proper recording of cancellation credits due to policy terminations and/or experience rating.

b. Identify and provide continuing insurance policy administration and management requirements to a successor, other DOE contractor, or as specified by the Contracting Officer.

c. Reach agreement with DOE on the handling and settlement of self insurance claims incurred but not reported at the time of contract termination; otherwise, the contractor shall retain this liability.

4. SUCCESSOR CONTRACTOR OR INSURANCE POLICY CANCELLATION.

The Contractor shall:

a. Obtain the written approval of the Contracting Officer for any change in program direction; and

b. Ensure insurance coverage replacement is maintained as required and/or approved by the Contracting Officer.