

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. CONTRACT ID CODE

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2. AMENDMENT/MODIFICATION NO. 002		3. EFFECTIVE DATE 12/11/2009		4. REQUISITION/PURCHASE REQ. NO. 10EM000654		5. PROJECT NO. (If applicable)	
6. ISSUED BY Richland Operations Office U.S. Department of Energy Richland Operations Office P.O. Box 550, MSIN A7-80 Richland WA 99352		CODE 00601		7. ADMINISTERED BY (If other than Item 6) Richland Operations Office U.S. Department of Energy Richland Operations Office P.O. Box 550, MSIN A7-80 Richland WA 99352		CODE 00601	
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code) PENSER NORTH AMERICA INC Attn: PHIL VALDENS 700 SLEATER KINNEY RD SE, SUITE B #170 LACEY WA 985138513				(x) 9A. AMENDMENT OF SOLICITATION NO.			
				9B. DATED (SEE ITEM 11)			
				X 10A. MODIFICATION OF CONTRACT/ORDER NO. DE-AC06-09RL15009			
				10B. DATED (SEE ITEM 13) 06/15/2009			
CODE 129467614		FACILITY CODE					

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)

See Schedule

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).
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
X	D. OTHER (Specify type of modification and authority) Contract Clause B.5, Payment of Performance Based Fee, and Requirements in Contract Sections J.4 and J.5

E. IMPORTANT: Contractor is not, is required to sign this document and return _____ 0 _____ copies to the issuing office.

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

Tax ID Number: 91-2180915

DUNS Number: 129467614

Subj to Retent: N

The purpose of this modification is to make the following changes to the contract:

1) Increase the award value of the contract by \$250,000 to account for the \$50,000 annual award fee (\$50K per year times five years) as per contract clause B.5, Payment of Performance Based Fee. This modification does not obligate any additional funding at this time.

2) Adds the approved Legal Management Plan under contract section J.4 and the Continuity of Continued ...

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

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Andrew H. Wirkkala	
15B. CONTRACTOR/OFFEROR (Signature of person authorized to sign)	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA Andrew H. Wirkkala (Signature of Contracting Officer)	16C. DATE SIGNED 12/14/2009

CONTINUATION SHEET

REFERENCE NO. OF DOCUMENT BEING CONTINUED
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NAME OF OFFEROR OR CONTRACTOR
PENSER NORTH AMERICA INC

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
00001	<p>Operations Plan under section J.5. Replacement Section J.4 and J.5 are attached.</p> <p>LIST OF CHANGES: Total Amount for this Modification: \$250,000.00 New Total Amount for this Version: \$3,592,747.38 New Total Amount for this Award: \$3,592,747.38</p> <p>CHANGES FOR LINE ITEM NUMBER: 1 Total Amount changed from \$1,455,410.13 to \$1,555,410.13</p> <p>CHANGES FOR LINE ITEM NUMBER: 2 Total Amount changed from \$598,677.21 to \$648,677.21</p> <p>CHANGES FOR LINE ITEM NUMBER: 3 Total Amount changed from \$628,663.10 to \$678,663.10</p> <p>CHANGES FOR LINE ITEM NUMBER: 4 Total Amount changed from \$659,996.94 to \$709,996.94</p> <p>FOB: Destination Period of Performance: 10/01/2009 to 09/30/2014</p> <p>Change Item 00001 to read as follows (amount shown is the total amount):</p> <p>CONTRACTOR WILL ADMINISTER THE HANFORD WORKERS' COMPENSATION PROGRAM AS THE THIRD PARTY ADMINISTRATOR ON BEHALF OF DOE. Line item value is: \$1,555,410.13 Incrementally Funded Amount: \$537,000.00</p> <p>Accounting Info: 01759-2009-34-421601-25200-1720578-0000000-0421567-0000000-0000000 Fund: 01759 Appr Year: 2009 Allottee: 34 Report Entity: 421601 Object Class: 25200 Program: 1720578 Project: 0000000 WFO: 0421567 Local Use: 0000000 Funded: \$0.00</p> <p>Accounting Info: Fund: 01050 Appr Year: 2009 Allottee: 34 Report Entity: 421601 Object Class: 25100 Program: 3184701 Project: 0000000 WFO: 0000000 Local Use: 0000000 Funded: \$0.00</p> <p>Accounting Info: Continued ...</p>				1,555,410.13

CONTINUATION SHEET

REFERENCE NO. OF DOCUMENT BEING CONTINUED
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NAME OF OFFEROR OR CONTRACTOR
PENSER NORTH AMERICA INC

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
	Fund: 01759 Appr Year: 2010 Allottee: 34 Report Entity: 421601 Object Class: 25200 Program: 1720578 Project: 0000000 WFO: 0421567 Local Use: 0000000 Funded: \$0.00 Change Item 00002 to read as follows (amount shown is the total amount):				
00002	CONTRACTOR WILL ADMINISTER THE HANFORD WORKERS' COMPENSATION PROGRAM AS THE THIRD PARTY ADMINISTRATOR ON BEHALF OF DOE. Amount: \$648,677.21 (Option Line Item) Line item value is: \$648,677.21 Change Item 00003 to read as follows (amount shown is the total amount):				648,677.21
00003	CONTRACTOR WILL ADMINISTER THE HANFORD WORKERS' COMPENSATION PROGRAM AS THE THIRD PARTY ADMINISTRATOR ON BEHALF OF DOE. Amount: \$678,663.10 (Option Line Item) Line item value is: \$678,663.10 Change Item 00004 to read as follows (amount shown is the total amount):				678,663.10
00004	CONTRACTOR WILL ADMINISTER THE HANFORD WORKERS' COMPENSATION PROGRAM AS THE THIRD PARTY ADMINISTRATOR ON BEHALF OF DOE. Amount: \$709,996.94 (Option Line Item) Line item value is: \$709,996.94				709,996.94

Attachment J.4

Legal Management Plan

1. **Retention of Counsel:** Contractor has determined that the following legal matters may necessitate handling by retained counsel:
 - a. Any matter appealed to the Board of Industrial Insurance Appeals (BIIA) or any higher level court by the Claimant;
 - b. Any matter which Contractor/DOE determines should be appealed to BIIA or any higher level court;
 - c. Any matter involving complex or novel issues, which may require the expertise of an attorney, even if the matter is still pending before the Department of Labor & Industries (L&I);
 - d. Any matter in which Contractor believes DOE's interests are best served through having legal representation.

2. **Utilization of Outside Counsel:** The following factors are to be considered when determining whether to utilize retained counsel for a particular legal matter:
 - a. The strength of DOE's position and possible negative precedent that may result from failing to retain counsel to pursue the matter;
 - b. The potential ultimate exposure to DOE for payment of benefits;
 - c. Likelihood of prevailing;
 - d. The projected costs for legal services to pursue litigation.

3. **Selection Criteria:** In selecting retained counsel, the following factors have been considered:
 - a. How competitive the attorney's rates and results are, compared to other attorneys in the relevant geographic area who practice before L&I;
 - b. The attorney's reputation for performance and proficiency in handling workers' compensation claims in the State of Washington;
 - c. The extent of the attorney's expertise and years of practice;
 - d. The attorney's familiarity with DOE activities at the Hanford Site, including various issues unique to the operations at Hanford;
 - e. The attorney's geographic location relative to the location of the Hanford Site and the location of the tribunal handling the matter;
 - f. Any potential conflict(s) of interest;
 - g. The attorney's means and rates of compensation.

4. **Current Outside Counsel Approved for Retention:** After taking the above enumerated factors into consideration, Contractor has selected and retained, the following attorneys approved under the prior third party administrator's contract:

Lawrence Mann, Esq.
5800 Meadows Road, Suite 220

Lake Oswego, Oregon 97035

James Gress, Esq.
9020 SW Washington Square Rd
Suite 560
Portland, Oregon 97224

Attached hereto as Exhibit A are the rates that have been negotiated with each attorney for himself and his staff. These rates may not be changed without DOE approval.

Should Contractor decide to utilize the services of an attorney not listed above, Contractor will do so only after careful consideration of the factors set forth herein. Furthermore, Contractor will secure DOE approval of such retained counsel, and will obtain counsel's agreement to abide by all requirements imposed by DOE and Contractor. In determining which attorney will be assigned a particular matter, Contractor will primarily consider the geographical location of the attorney and the nature of the legal issues to be addressed.

5. **Notification of Outside Counsel Obligations:** The retained attorneys were previously apprised of their obligations under the prior third party administrator's contract with regard to legal referrals, billing, reporting, and fees as set forth in Section J.4 of the prior contract with DOE. The attorneys were provided with a reminder of these policies from the previous contractor's manager on May 17, 2006. Contractor will re-address all of these service instructions with the approved attorneys within the first month of the Contract. (by 11/1/09)
6. **Letter of Engagement:** Whenever a matter is assigned to retained counsel, they will receive an engagement letter from Contractor, requesting his/her services on a particular matter. The letter will be from the adjuster handling that matter, and it will set forth a brief factual summary. It will also request the attorney's assessment of the case and the attorney's recommendations, as well as an anticipated budget for handling the matter. The engagement letter will specify that the adjuster must be contacted prior to the attorney taking any action on the matter, that the attorney must copy all pleadings and correspondence to Contractor's Branch Manager and that retained counsel's costs may not exceed \$25,000.00 without prior written approval from Contractor.

If retained counsel anticipates exceeding \$25,000.00 in costs, she/he will be required to submit a letter outlining a history of the matter, identifying the current stage of litigation, analyzing the potential outcome(s) should the matter proceed forward, summarizing their recommendations for further action, and providing a detailed estimate of the costs which may be incurred if the matter proceeds forward. This letter will be sent to Contractor's Branch Manager, who will review and then forward to Contracting Officer's Representative (COR) for review and approvals. If approval is granted by DOE, then Contractor's Richland Branch Manager will notify retained counsel accordingly.

In addition, the engagement letter will include the following: A statement that provision of records to the Government is not intended to constitute a waiver of any applicable legal privilege, protection, or immunity with respect to disclosure of such records to third parties; notification that the Contractor, DOE, and the Government Accountability Office have the right to inspect, copy, and audit all records documenting billable fees and costs; and, a statement that all records must be retained for a period of three (3) years after the final payment.

Contractor will secure agreements from retained counsel to follow appropriate billing format as set forth in Attachment to Appendix to 10 CFR 719, and to submit invoices on a monthly basis. The engagement letter will not address "significant matters" as defined in 10 CFR 719 because it is highly unlikely that any one case will result in legal fees in excess of \$100,000.00. Contractor and DOE recognize that there is a mediation proceeding once the matter is referred to the BIIA, but that Alternative Dispute Resolution (ADR) is not a part of this process of adjudication. Accordingly, there are no provisions in this Legal Management Plan for ADR.

7. Litigation Management and Cost Containment:

- a. To ensure effective litigation management and cost containment, Contractor's Branch Manager will be copied on any and all correspondence to and from retained counsel, as well as all pleadings and other correspondence submitted by retained counsel in any particular matter.
- b. All retained counsel will be required to timely submit invoices for their services in accordance with DOE and Contractor requirements. Each invoice will be reviewed by the adjuster handling the particular file. If the adjuster has any questions, those may be addressed with retained counsel and/or the adjuster's supervisor or manager. Once Contractor is satisfied that the invoice is acceptable, the adjuster will approve same and forward to DOE for review and approval. A cover sheet requesting approval and indicating if the invoice cost are related to a Superior Court claim.
- c. Contractor will engage in frequent interaction with and provide continuous oversight of retained counsel, to include the following:
 - (1) All correspondence and pleadings will be copied to Contractor's Branch Manager;
 - (2) All correspondence and pleadings will be copied to the adjuster;
 - (3) All correspondence and pleadings will be reviewed by adjuster and supervisor and Branch Manager;
 - (4) Retained counsel will provide a status report every 60 days on all open files;
 - (5) Periodic communication via telephone and/or e-mail will take place as needed between retained counsel and Contractor; and
 - (6) Retained counsel will be responsive to any inquiries from Contractor and/or DOE.
- d. Contractor will attempt to ensure appropriate interaction between retained counsel and DOE's Contracting Officer (CO) and DOE/RL Counsel through the following:
 - (1) Periodic meetings with on-site DOE contractors and DOE's Contracting Officer's Representative (COR);
 - (2) Contractor will act as liaison between retained counsel and DOE's CO and DOE/RL Counsel, and will ensure open and effective communication; and
 - (3) Contractor notification to DOE/RL Counsel and/or DOE CO and/or COR regarding any litigation issues which may be particularly sensitive or potentially problematical.

8. **Approach to Legal Decision Making:** Contractor's approach to legal decision making is to at all times proceed in a manner that protects the interests of DOE, and to do so in a fair and lawful manner, in accordance with the applicable statutes, rules, and regulations promulgated by the State of Washington. Implementation of this approach will be accomplished as follows:

When an adjuster, supervisor, identifies a situation which may require legal analysis or which is indicative of the need for legal representation, Contractor's Branch Manager will be provided a memorandum which outlines the potential legal issues. Contractor's Branch Manager will then review the matter and determine whether it needs to be forwarded for review by DOE. If so, the manager will advise the COR of the situation and provide recommendations and/or request guidance if needed. In certain circumstances, Contractor's Branch Manager will contact the COR regarding the matter. Contractor will then take whatever action is authorized or directed by DOE.

There are some limited circumstances in which it would be in the best interest of the parties to settle a matter rather than proceed with litigation. In those instances, retained counsel will prepare a settlement summary which sets forth the chronology of events, the terms of the proposed settlement agreement, the amount and basis for the proposed settlement agreement, and a detailed analysis explaining why the settlement agreement is recommended. This summary will be forwarded to Contractor's manager, with a signature page for the CO to grant authorization for a settlement amount, should s/he choose to do so. If Contractor's manager is in agreement with the settlement summary, s/he will forward the summary to the COR for review. If the COR agrees with the recommendation, s/he will forward to CO and DOE/RL Counsel for review and approval. Contractor will then take whatever action is authorized or directed by DOE.

9. **Revisions:** This Legal Management Plan will be updated or modified on an as-needed basis.

Attachment J.5

Continuity of Operations Plan

Penser North America Inc. employs a multi-faceted plan to protect our data base and to ensure continuity of our operations. We take many different precautions and do everything we can upfront to avoid disasters and mitigate potential downtime. Here are some of the key components and precautions we take to protect our data base:

1. Our data base and server is hosted out of Seattle's premiere hosting location, the Fisher Plaza Internap Data Center (http://fisherplaza.com/tech_data_center.html?38415096). This facility has redundant commercial power feeds, redundant network feeds, and a redundant cooling infrastructure.
2. Our physical server has redundant power supplies, redundant network cards and is protected by a next business day guarantee from Dell to have any hardware malfunction addressed.
3. We do a nightly back up and the tape is held off site.
4. The data is stored on a Storage Area Network (SAN) and can suffer the catastrophic loss of a hard drive without causing data loss.
5. The server is continuously monitored and failure of key metrics will alert staff so that they can immediately begin responding proactively in the event of an alert.

With regard to a potential disaster or an issue that renders our Richland physical office temporarily unable to operate, we have DOE "team members" working out of our Lacey, corporate office. These "team members" will be involved in the oversight of the DOE account and be familiar with the DOE service instruction from the program inception. This "team" is comprised of certified, experienced personnel and will be able to step in and service the DOE claims in an emergent situation until our Richland operations are restored.

If, for whatever reason, we lose one of our certified adjusters in our Richland office (and we do not yet have more than two certified) , we will transplant one of Lacey office staff to fill this requirement until a local certified adjuster can be put in place.

By having both our data and personnel housed out of more than one location, Penser will be able to mitigate any potential downtime in the event of a disaster, or staffing change.