

<b>AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT</b>		1. CONTRACT ID CODE	PAGE OF PAGES 1   2	
2. AMENDMENT/MODIFICATION NO. 0015	3. EFFECTIVE DATE See Block 16C	4. REQUISITION/PURCHASE REQ. NO.	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)		CODE
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.	
CODE 129467614			9B. DATED (SEE ITEM 11)	
FACILITY CODE		x	10A. MODIFICATION OF CONTRACT/ORDER NO. DE-EM0003383	
			10B. DATED (SEE ITEM 13) 09/15/2014	
<b>11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS</b>				
<input type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers <input type="checkbox"/> is extended. <input type="checkbox"/> 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				
<b>13. THIS ITEM ONLY APPLIES TO MODIFICATION OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.</b>				
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: FAR 43.103(a) Mutual Agreement of the Parties			
	D. OTHER (Specify type of modification and authority)			
E. IMPORTANT: Contractor <input type="checkbox"/> is not. <input checked="" type="checkbox"/> is required to sign this document and return <u>1</u> 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 The United States Department of Energy, Richland Operations Office (DOE-RL) has a need for a Third Party Administrator (TPA) for the Workers' Compensation Program (WCP) at the Department of Energy Hanford Site, located in Richland Washington. In accordance with mutual agreement of the parties, the purpose of this modification is to revise the following Contract Sections within scope of the Contract: Section F, Section F.3 and Section J Attachment J.4.  The total obligation for this contract remains \$1,609,190.00 which the Contractor exceeds at its own risk. The total amount for the contract remains \$4,345,531.38. 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)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)		
		Marcy J. Aplet-Zelen		
15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA	16C. DATE SIGNED	
_____ (Signature of person authorized to sign)		Signature on File	07/05/2016	
		_____ (Signature of Contracting Officer)		

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The total obligation for this contract remains \$1,609,190.00 which the Contractor exceeds at its own risk. The total amount for the contract remains \$4,345,531.38.

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) Patty Hicks, Manager		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Marcy J. Aplet-Zelen	
15B. CONTRACTOR/OFFEROR Patty Hicks (Signature of person authorized to sign)	15C. DATE SIGNED 7-1-16	16B. UNITED STATES OF AMERICA	16C. DATE SIGNED

**CONTINUATION SHEET**

REFERENCE NO. OF DOCUMENT BEING CONTINUED  
DE-EM0003383/0015

PAGE OF  
2 2

NAME OF OFFEROR OR CONTRACTOR  
PENSER NORTH AMERICA INC

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
	<p>Details of this contract change are included on Page 3 of this modification.</p> <p>All other terms and conditions remain unchanged.</p> <p>LIST OF CHANGES: Reason for Modification : Supplemental Agreement for work within scope</p> <p>Payment: OR for Richland U.S. Department of Energy Oak Ridge Financial Service Center P.O. Box 6017 Oak Ridge TN 37831</p> <p>Period of Performance: 10/01/2014 to 09/30/2016</p>				

**SF30 BLOCK 14 CONTINUATION:**

Modification 015 is a supplemental agreement which revises the following sections of the contract:

1. This modification revises *Section F Deliveries and Performance* by correcting the page numbering.
2. This modification revises *Section F.3 Reporting Requirements* as follows:
  - The content and frequency of the Legal Services report is revised.
    - The content revised to include itemized costs by attorney fees and litigation costs.
    - The frequency changed from bi-annually to quarterly.
3. This modification revises the following sections of *Section J Attachment J.4 Legal Management Plan* as follows:
  - Section *Current Outside Counsel Approved for Retention* is revised.
  - Section *Notification of Outside Counsel Obligations* is removed.
  - Section *Approval of New Outside Counsel and Letter of Engagement* replaces Section *Letter of Engagement*.
  - Section *Litigation Management and Cost Containment* is revised.

All other terms and conditions remain unchanged. End of Modification No. 015

**PART I – THE SCHEDULE**

**SECTION F**

**DELIVERIES AND PERFORMANCE**

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Field Code Changed

**F.1 PERIOD OF PERFORMANCE**

The period of performance (exclusive of the Transition Period, Section H.8) for the work specified in Section C, *Statement of Work*, of this Contract shall commence on October 1, 2014 and continue through September 30, 2019 (if all Options are exercised).

**F.2 PRINCIPAL PLACE OF PERFORMANCE**

The principal place of performance of this contract shall be at the Contractor's discretion, provided the location is within the United States. A supervisory level staff person shall be located in the Tri-Cities area at least five consecutive days per month to attend meetings with DOE and Hanford Site Contractors, meet with claimants on concerns, and provide additional customer service activities.

**F.3 REPORTING REQUIREMENTS**

Reporting Requirements			
Title	Content	Frequency	Recipient
a. The following reports are required to be submitted electronically in accordance with Sections G.5.			
b. The Contractor shall provide the monthly, quarterly, bi-annual and annual reports within five (5) business days following the end of the reporting period:			
Funds Request	Request for funds in accordance with H.11, Claim Administration Payments. The request shall be provided using an Excel spreadsheet (format will be provided by the government).	Daily	COR and RL Finance Division.
Status Report of Individual Claims by Contractor/Subcontractor	Report by Hanford Site Contractor/Subcontractor or of all open claims. The reports shall include: claimants name, file number, facility, date of injury, type of injury, date received by Contractor, body part, reserves, payments to date, status, adjusters name.	Monthly	COR and Current covered Site Contractor(s) receive a report of their claims only.

New Claims/Claims Closure Report by Contractor/ Subcontractor	List of all claims opened and/or closed during the previous month	Monthly	COR and Current covered Site Contractor(s) receive a report of their claims only.
Open Case Liability Estimate Report by Contractor/ Subcontractor	List of claims by contractor with reserves; amounts of such reserves; and any changes from the previous month.	Monthly	COR
Claims Assignment	Total number of open claims assigned per adjuster.	Monthly	COR
Check Register	Report of payments made during the month. Such reports shall include the check number, payee, type of payment, amount, check date, file number, claimant name, and date of service. Beginning and ending balance of the account	Monthly	COR
Penalties	Penalties paid indicating the reason for the penalty, whether it is valid and/or in dispute, and the party responsible for the penalty.	Quarterly	COR
Reserves by Contractor/ Subcontractor	All open claims for which a reserve has been established and exceeds \$25,000.	Quarterly	COR
<u>Legal Services</u>	<u>Claims with outside counsel, current status, assigned counsel, and projected results and cost of services. Costs</u>	<u>Quarterly</u>	<u>COR</u>

	<u>will be itemized by attorney fees and litigation costs.</u>		
Report by Contractor/ Subcontractor	Numbers and costs of injuries by injury types/nature, etc; average length of claims, claims costs by received year and claims cost by nature of injury.	Bi-annually	COR
Claims Status	Total number of claims files; opened, reopened, closed or denied, closed statistics, expense statistics by appropriate code, etc.	Bi-annually	COR
Rehabilitation	Claims assigned to Vocational Services, current status, and projected results and cost of services.	Bi-annually	COR
<del>Legal Services</del>	<del>Claims with outside counsel, current status, assigned counsel, and projected results and cost of services</del>	<del>Bi-annually</del> <u>Quarterly</u>	<del>COR</del>
Claims Open Status	List of medical/indemnity claims that remained open past 180 days.	Bi-annually	COR
Records Inventory and Disposal Schedules	Identifies active records and approved schedule for disposition of records	Review Annually	COR and RL Records Manager
Legal Management Plan (clause H.10)	See Section J.4	Due 60 Days After Contract Award	CO
Continuity of Operations Plan (COOP) (applicable to CRD 150.1)	See Section J.5	Due 60 Days After Contract Award	CO

**F.4 FAR 52.242-15 STOP-WORK ORDER (AUG 1989)**

- (a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either -
- (1) Cancel the stop-work order; or
  - (2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.
- (b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if -
- (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
  - (2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.
- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(End of clause)

#### **F.5 FAR 52.242-17 GOVERNMENT DELAY OF WORK (APR 1984)**

- (a) If the performance of all or any part of the work of this contract is delayed or interrupted (1) by an act of the Contracting Officer in the administration of this contract that is not expressly or impliedly authorized by this contract, or (2) by a

failure of the Contracting Officer to act within the time specified in this contract, or within a reasonable time if not specified, an adjustment (excluding profit) shall be made for any increase in the cost of performance of this contract caused by the delay or interruption and the contract shall be modified in writing accordingly. Adjustment shall also be made in the delivery or performance dates and any other contractual term or condition affected by the delay or interruption. However, no adjustment shall be made under this clause for any delay or interruption to the extent that performance would have been delayed or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an adjustment is provided or excluded under any other term or condition of this contract.

(b) A claim under this clause shall not be allowed -

- (1) For any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved; and
- (2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the delay or interruption, but not later than the day of final payment under the contract.

(End of clause)

## 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; and
  - 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;
  - 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; and
  - 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:

Wallace, Klor, Mann P.C.  
5800 Meadows Road, Suite 220  
Lake Oswego, Oregon 97035

Mark Dynan, Esq.  
2102 N Pearl Suite D400  
Tacoma, WA 98406

The rates that have been negotiated with each firm for the attorneys and staff which are authorize to perform services on behalf of the Contractor and DOE shall be listed in the Engagement Letter. These rates may not be changed without DOE approval.

5. **Approval of New Outside Counsel and Letter of Engagement:** 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 above. 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 an Engagement Letter. 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.

Whenever new counsel is retained, they will receive an Engagement Letter from Contractor, requesting his/her services on a particular matter. The Engagement Letter will be from the adjuster handling that matter, and it will include the names and negotiated rates for each attorney and staff person that will be authorized to perform services on Contractor/DOE's behalf. Any increase in rates must be approved by DOE. Contractor will address all service instructions in this LMP with the approved attorney(s) through the Letter of Engagement, which will direct that the Contractor/DOE expect that every member of the firm who is authorized to perform services will read and acquire an understanding of the Engagement Letter. A copy of the executed Engagement Letter must be submitted to the COR within a reasonable time following execution, but not later than fourteen (14) days.

The engagement letter will specify that the attorney must copy all pleadings and correspondence to Contractor's Program Manager and that costs for legal

services on any particular matter may not exceed \$25,000.00 without prior written approval from Contractor.

If retained counsel anticipates exceeding \$25,000.00 in costs for legal services on a particular matter, he/she 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 Program Manager, who will review and then forward to Contracting Officer's Representative (COR) for review and approval. If approval is granted by DOE, then Contractor's Richland Program 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 six (6) years and three (3) months after the final payment or after final case disposition, whichever is later.

Contractor will secure agreements from retained counsel to follow appropriate billing format as set forth in "Attachment – Contractor Litigation and Legal Costs, Model Bill Format" of Appendix A to 10 CFR Part 719, and to submit invoices on a monthly basis. The engagement letter will not address "significant matters" as defined in 10 CFR Part 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 and that Alternative Dispute Resolution (ADR) is not a part of this process of adjudication.

6. **Litigation Management and Cost Containment:**

- a. To ensure effective litigation management and cost containment, Contractor's Program 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 or by

the adjuster's manager to determine if the invoice meets the requirements of the Engagement Letter Any questions may be addressed with retained counsel. Once Contractor is satisfied that the invoice is acceptable, Contractor will approve same and forward to DOE for review and approval. Each invoice will be accompanied by a cover sheet requesting approval and indicating if the invoice costs are related to a Superior Court claim.

- c. Contractor will provide a year-end report on legal costs within 30 days of the end of each fiscal year.
- d. 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 Program Manager;
  - (2) All correspondence and pleadings will be copied to the adjuster;
  - (3) All correspondence and pleadings will be reviewed by adjuster and Program Manager;
  - (4) Retained counsel will provide a quarterly status report 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.
- e. Contractor will attempt to ensure appropriate interaction between retained counsel and DOE's Contracting Officer Representative (COR), Contracting Officer (CO) and DOE/RL Counsel through the following:
  - (1) Periodic meetings with on-site DOE contractors and DOE's 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.

7. **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 by the State of Washington. Implementation of this approach will be accomplished as follows:

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

- b. Prior to participating in settlement discussions or alternative dispute resolution regarding any workers' compensation litigation arising under this Contract, the Contractor shall seek written approval by the Contracting Officer. The Contractor's retained counsel shall provide justification for any proposed settlement or alternative dispute resolution via the Contractor to the Department of Energy Richland Operations Chief Counsel. Contractor shall provide the justification in sufficient time prior to the proposed settlement discussions or alternative dispute resolution to allow for Contracting Officer review and approval.
8. **Revisions:** This Legal Management Plan will be updated or modified on an as-needed basis.