

**PART I - THE SCHEDULE**

**SECTION H**

**SPECIAL CONTRACT REQUIREMENTS**

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## SECTION H

### SPECIAL CONTRACT REQUIREMENTS

#### H.1 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 months after Contract award, the Contractor shall give a first preference in hiring for vacancies in non-managerial positions under this Contract to qualified employees employed by the Incumbent Contractors (see definition in Clause H.2 below). This hiring preference takes priority over the hiring preference provided in the Section I clause entitled *DEAR 952.226-74 Displaced Employee Hiring Preference*. It does not apply to the Contractor's hiring of management staff (i.e., first line supervisors and above).

#### H.2 PAY AND BENEFITS

- (a) Employees Covered by the Hanford Site Stabilization Agreement (HSSA). For those employees performing work subject to the Davis-Bacon Act, the Contractor shall comply with all requirements of the HSSA for pension and other benefits in the classifications set forth in the HSSA for work performed at the Hanford Site.
- (b) Incumbent Contractors for the purposes of this clause shall mean Hanford Site Prime Contractors and their subcontractors participating in the Hanford Site Pension Plan (HSPP), The Hanford Site Savings Plan, and the Hanford Employee Welfare Trust (HEWT), at the time of Contract award.
- (c) Incumbent Employees for the purposes of this clause employees who are: 1) employed by the Incumbent Contractors at Contract award and subsequently employed by the Contractor or the Contractor's proposed preselected subcontractors under this Contract by the close of Contract Transition, or 2) employed by the Incumbent Contractors at Contract award and subsequent to the close of Contract Transition are employed under this Contract through an involuntary transfer of employment. Involuntary transfer of employment is defined for the purposes of this clause as: 1) employment under this Contract as a result of a DOE directed transfer of function, 2) employment under this Contract as a result of interim recognition of an existing collective bargaining agreement in place at the time of contract award covering incumbent employees, or 3) specific conditions approved in advance on a case-by-case basis by the Contracting Officer. Except for the specific cases described in this section, employees will be considered as non-incumbent employees for the purposes of this clause. Incumbent employees, as defined above, may move from one company to another company within the Contractor Team Arrangement and maintain their incumbency status.
- (d) Employee Pay and Benefits
  - (1) Compensation, Pension, and Benefits. The Contractor shall submit, within 30 days of Contract award, 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 encourage highly skilled, motivated, and experienced workers to accept and retain employment.

- (2) Pay
  - (i) Incumbent employees shall be paid base salary/pay rates that are at least equivalent to the base salary/pay rates being paid to the employees by the incumbent contractors at the time the Contractor offers them employment, if the positions for which they are hired entail duties and responsibilities substantially equivalent to their positions with the Incumbent Contractors.
  - (ii) If the base salary/pay rate that an employee is being paid by an incumbent contractor at the time the Contractor offers the employee employment falls above the new maximum base salary/pay rate for the employee's position, the following shall apply:
    - (A) The employee shall continue to receive the same salary/pay rate that was paid by the incumbent contractor.
    - (B) The employee shall receive no base salary/pay adjustments until such time as the top of the Contractor's pay rate range exceeds the employee's base salary/pay rate.
    - (C) After the top of the Contractor's rate range exceeds the employee's base salary/pay rate, the employee shall be eligible for increases consistent with the Contractor's salary/pay policies.
- (3) Pension and Benefits
  - (i) Pension Benefits for Incumbent Employees
    - (A) The Contractor shall become a sponsor of the HSPP currently sponsored by the Incumbent Contractors.
    - (B) The Contractor shall allow incumbent employees to continue to accrue credit under the HSPP for service under this contract. Incumbent employees shall retain credit for their prior Hanford service without the Contract transition constituting a break in service. The Contractor shall timely supply the HSPP Administrator with the information required by the Administrator necessary to effectively administer the Plan. Contributions to the HSPP as determined by the HSPP Administrator shall be allowable costs under this contract. At Contract completion, the Contractor shall fully fund its withdrawal liability under the HSPP; provided, however, that if this Contract expires or terminates, the Contractor shall continue as a plan sponsor of the HSPP pursuant to paragraph (e) below as directed by DOE.
    - (C) 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 under this contract. The Contractor shall coordinate with the HSPP Administrator and supply the Administrator with all the information necessary to maintain the Federal tax qualification of all Contractor and Hanford Site pension plans.
  - (ii) Non-Pension Benefits for Incumbent Employees

- (A) The Contractor shall become a sponsor of the Hanford Employee Welfare Trust (HEWT) Plan. Incumbent employees shall be eligible to continue participation in the HEWT Plan and receive medical and other benefits under the HEWT Plan consistent with the terms of that Plan as amended from time to time. The Contractor shall credit the length of service credited by the incumbent contractor of incumbent employees toward the service period required for benefits relating to vacation, sick leave, health insurance, severance, layoff, recall, and other benefits.
  - (B) The Contractor shall timely supply the HEWT Administrator with the information required by the Administrator necessary to effectively administer the Plan. Contributions into the HEWT Plan as determined by the Administrator will qualify as allowable costs under this Contract.
  - (C) The Contractor shall coordinate with the HEWT Plan administrator or to ensure DOE receives an annual reporting and accounting of the Contractor's benefit obligations for those employees participating in the HEWT Plan under this Contract.
- (4) Pension and Benefits for Non-Incumbent Employees
- (i) The Contractor shall offer a market-based retirement and medical benefit package competitive for the industry for non-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 plans covering the Contractor's employees.
  - (ii) The Contractor shall develop and implement welfare benefit programs that meet the tests of allowability and reasonableness established by Federal Acquisition Regulation 31.205-6.
- (a) Post-Contract Responsibilities for Pension and Benefit Plans
- If this Contract expires or terminates without a follow-on contract, notwithstanding any other obligations and requirements concerning expiration or termination under any other clause of this Contract, including but not limited to the Section I clause entitled FAR 52.249-6 Termination (Cost Reimbursement), the following actions shall occur:
- (1) The Contractor shall continue as a plan sponsor of the existing pension plan and any welfare benefit plans covering those vested employees (identified during the transition period).
  - (2) (Reserved)
  - (3) DOE and the Contractor shall meet to determine the ultimate disposition of all pension, post-retirement welfare, and post-employment plans.
  - (4) During the final 18 months of this Contract, the Contracting Officer shall provide written direction to the Contractor regarding all post-contract pension and welfare benefit plans.

- (5) Pension plan contributions, plan asset management costs, and plan administration costs will continue to be allowable and fully reimbursed under this Contract, on a funding basis acceptable to DOE, unless other arrangements have been approved by the Contracting Officer.

### H.3 LABOR RELATIONS

- (a) The Contractor shall respect the right of employees to self-organization 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, or to refrain from any or all of these activities. The Contractor shall develop and implement labor relations policies that will promote orderly collective bargaining relationships, equitable resolution of disputes, efficiency and economy in operations, and the judicious expenditure of public funds.
- (b) Consistent with applicable labor laws and regulations, the Contractor shall recognize and bargain in good faith with the collective bargaining representative of employees performing work that has historically and traditionally been performed by Hanford Atomic Metal Trades Council (HAMTC) members. The Contractor shall provide the Contracting Officer with a copy of the collective bargaining agreement within 30 to 60 days after formal ratification.
- (c) The Contractor shall consult with the Contracting Officer prior to and during the course of negotiations with labor unions, and during the term of resultant contracts, on economic issues and other matters that have a potentially significant impact on work rules, make-or-buy decisions, or other matters that may cause a significant deviation from past customs or practices.
- (d) The Contractor shall promptly advise the Contracting Officer of, and provide all appropriate documentation regarding any labor relations developments at the prime or subcontract level that involve or appear likely to involve:
  - (1) Possible strike situations affecting the facility;
  - (2) Referral to the Energy Labor-Management Relations Panel;
  - (3) The National Labor Relations Board at any level;
  - (4) Recourse to procedures under the Labor-Management Act of 1947 as amended, or any other Federal or state labor law; and
  - (5) Any grievance that may reasonably be assumed to be arbitrated under a Collective Bargaining Agreement.
- (e) "Labor organization," as used in this clause, shall have the same meaning it has in 42 U.S.C. 2000e(d).

### H.4 WORKFORCE RESTRUCTURING

When the Contractor determines that a reduction of force is necessary, the Contractor shall notify the Contracting Officer and seek approval, if required under applicable DOE guidance. The Contractor shall provide such information as directed by the Contracting Officer 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 from time to time 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* of this contract.

#### **H.5 DETERMINATION OF APPROPRIATE LABOR STANDARDS**

- (a) DOE shall determine the appropriate labor standards that apply to work activities in accordance with the Davis-Bacon Act or other applicable labor law. When requested, the Contractor shall provide the Contracting Officer the information necessary for DOE to render a determination on contracts in excess of \$2,000 for construction, alternation, 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.6 WORKERS' COMPENSATION**

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

- (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. The Contractor is not required to pay for Workers' Compensation coverage or benefits except as otherwise provided below or as directed by the Contracting Officer.
- (b) The Contractor shall submit to DOE (or other party as designated by DOE), for transmittal to the L&I, such payroll records as are required by Workers' Compensation laws of the State of Washington.
- (c) The Contractor shall submit to DOE (or other party as designated by DOE), for transmittal to DOE, the accident reports provided for by RCW Title 51, Section 51.28.010, or any other documentation requested by DOE or the L&I pursuant to the Workers' Compensation laws of the State of Washington.
- (d) The Contractor shall take such action, and only such action, as DOE requests in connection with any accident reports, including assistance in the investigation and disposition of any claim thereunder and, subject to the direction and control of DOE, the conduct of litigation in the Contractor's own name in connection therewith.
- (e) 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 is responsible for withholding appropriate employee contributions and forwarding on a timely basis these contributions plus the employer-matching amount to DOE.
- (f) 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 that provides workers' compensation benefit coverage to Contractor employees under this Contract.

- (g) The Contractor will assume responsibility for predecessor contractor self-insurance workers' compensation claims. The Contractor shall maintain and retain a claim file for information and reporting needs.
- (h) The Contractor must certify to the accuracy of the payroll record used by DOE in establishing the self-insurance claims reserves, and cooperate with any state audit.
- (i) The Contractor shall submit to the Contracting Officer, a yearly 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 (once DOE has provided the Contractor with the necessary data to perform the analysis required in this paragraph).
- (j) 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.
- (k) Subcontractors performing work under this Contract on behalf of the Contractor are not covered by the provision of the Agreement referenced in (a)(1) of this clause. The Contractor shall flow-down to its subcontractors the requirement to provide statutory workers' compensation coverage for the subcontractor's employees. The Contractor shall have no responsibility for subcontractor workers' compensation when it includes this requirement in the subcontract.
- (l) The term Contractor is defined as a Contractor Team Arrangement, consisting of the companies WCH proposed in response to the River Corridor Closure solicitation including ESHI and ILSI subcontractors. All companies included in the contractor team arrangement proposed will be covered by DOE's self-insurance certification under Washington State Department of Labor and Industries for worker's compensation.

#### **H.7 IMPLEMENTATION OF THE HANFORD SITE STABILIZATION AGREEMENT**

- (a) The Site Stabilization Agreement for all construction work for DOE at the Hanford Site (hereinafter referred to as "Site Stabilization Agreement"), which is referenced in this clause, consists of a Basic Agreement dated September 10, 1984, plus an appendix, both of which may be periodically amended. The Site Stabilization Agreement is hereby incorporated into this Contract by reference. The Contractor is responsible for obtaining the most current text from DOE.
- (b) This clause applies to employees performing work, under contracts (or subcontracts thereunder) administered by DOE-RL which are subject to the Davis-Bacon Act, in the classifications set forth in the Site Stabilization Agreement for work performed at the Hanford Site.
- (c) Contractors and subcontractors at all tiers who are parties to an agreement(s) for construction work with a Local Union having jurisdiction over DOE-RL construction work performed at the Hanford Site, or who are parties to a national labor agreement for such construction work, shall become signatory to the Site Stabilization Agreement and shall abide by all of its provisions, including its Appendix A. Subcontractors at all tiers who have subcontracts with a signatory Contractor or subcontractor shall become signatory to the Site Stabilization Agreement and shall abide by all of its provisions, including its Appendix A.
- (d) Contractors and subcontractors at all tiers who are not signatory to the Site Stabilization Agreement and who are not required under Paragraph C above to become signatory to

the Agreement, shall pay not less and no more than the wages, fringe benefits, and other employee compensation set forth in Appendix A thereto and shall adhere, except as otherwise directed by the Contracting Officer, to the following provisions of the Agreement:

- (1) Article VII Employment, 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 Stat. 238-239), and the Department of Labor regulations in implementation thereof (29 CFR, Parts 1, 5).
- (g) The Contracting Officer may, from time to time, direct the Contractor to pay amounts for wages, fringe benefits, and other employee compensation if the Site Stabilization Agreement, including its Appendix A, may be modified by the involved parties.
- (h)
- (1) In the event of failure to comply with Paragraphs (c) (d) (e) (f) and (g) above, or failure to perform any of the obligations imposed upon the Contractor and its subcontractors hereunder, the Contracting Officer may withhold any payments due to the Contractor and may terminate the Contract for default.
  - (2) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies of the Government provided by law or under this Contract.
- (i) The requirements of this clause are in addition to, and shall not relieve the Contractor of, any obligation imposed by other clauses of this Contract, including those entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act - Overtime Compensation," "Payrolls and Basic Records," "Compliance with Copeland Act Requirements," "Withholding of Funds," and "Contract Termination - Debarment."
- (j) The Contractor agrees to maintain its bid or proposal records showing rates and amounts used for computing wages and other compensation, and its payroll and personnel records during the course of work subject to this clause, and to preserve such records for a period of three years thereafter, for all employees performing such work. Such records will contain the name and address of each such employee, his correct classification, rate

of pay, daily and weekly number of hours worked, and dates and hours of the day within which work was performed, deductions made, and amounts for wages and other compensation covered by Paragraphs (c) (d) (e) (f) and (g) hereof. The Contractor agrees to make these records available for inspection by the Contracting Officer and will permit him/her to interview employees during working hours on the job.

- (k) The Contractor agrees to insert the provisions of this clause 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 Department of Labor wage determinations for the Davis-Bacon Act and Service Contract Act are located at:

<http://www.wdol.gov>

#### **H.8 RADIOLOGICAL DOSIMETRY SERVICES AND RECORDS, AND OCCUPATIONAL MEDICAL SERVICES AND RECORDS**

- (a) The Contractor shall obtain radiological dosimetry services and occupational medical services as a mandatory Hanford Site Service 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 radiological dosimetry and occupational medical services as required by Section C.4, *Government-Furnished Services and Information (GFS/I)*.
- (b) Radiological dosimetry services are a mandatory Hanford Site Service under this Contract and are provided by the Pacific Northwest National Laboratory (PNNL). Radiological dosimetry services include: external dosimetry; in vivo measurement services; in vitro measurement services; and radiological records services. The Section I clause entitled *Access to and Ownership of Records* is implemented as follows with respect to radiological records: All radiological exposure records generated during the performance of Hanford-related activities will be maintained by PNNL and are the property of DOE.
- (c) Occupational medical services are a mandatory Hanford Site Service under this Contract and are provided by the Hanford Site Occupational Medical Contractor (HSOMC). The Section I clause entitled *Access to and Ownership of Records* is implemented as follows with respect to occupational medical records: All occupational medical records generated during the performance of Hanford-related activities will be maintained by the Hanford Site occupational medical services provider and are the property of DOE.

#### **H.9 STOP-WORK AND SHUTDOWN AUTHORIZATION**

- (a) "Imminent Health and Safety Hazard" is a given condition or situation which, if not immediately corrected, could result in a serious injury or death, including exposure to radiation and toxic/hazardous chemicals. "Imminent Danger" in relation to the Facility Safety Envelope is a condition, situation, or proposed activity which, if not terminated, could cause, prevent mitigation of, or seriously increase the risk of (1) Nuclear Criticality, (2) Radiation Exposure, (3) Fire/Explosion, and/or (4) Toxic Hazardous Chemical Exposure.

- (b) **Stop-Work:** In the event of an imminent health and safety hazard, identified by facility line management or operators or facility health and safety personnel overseeing facility operations, or other individuals, the individual or group identifying the imminent hazard situation shall immediately take actions to eliminate or mitigate the hazard (i.e., by directing the operator/implementer of the activity or process causing the imminent hazard to stop work, or by initiating emergency response actions or other actions) to protect the health and safety of the workers and the public and to protect DOE facilities and the environment. In the event an imminent health and safety hazard is identified, the individual or group identifying the hazard should coordinate with an appropriate Contractor official, who will direct the shutdown or other actions, as required. Such mitigating action should subsequently be coordinated with the DOE and Contractor management. The suspension or stop-work order should be promptly confirmed in writing from the Contracting Officer.
- (c) **Shutdown:** In the event of an imminent danger in relation to the Facility Safety Envelope or a non-imminent health and safety hazard identified by facility line managers, facility operators, health and safety personnel overseeing facility operations, or by independent oversight organizations, the individual or group identifying the potential health and safety hazard may recommend facility shutdown in addition to any immediate actions needed to mitigate the situation. However, the recommendation must be coordinated with Contractor management, and the DOE-RL Manager. Any written direction to suspend operations shall be issued by the Contracting Officer, pursuant to the Section F clause entitled *FAR 52.242-15 Stop Work Order*.
- (d) **Facility Representatives:** DOE personnel designated as Facility Representatives (FR) provide the technical oversight of operations. The FR has the authority to "stop work," which applies to the shutdown of an entire plant, activity, or job. This stop-work authority will be used for an operation of a facility which is performing work the FR believes:
  - (1) Poses an imminent danger to health and safety of workers or the public if allowed to continue;
  - (2) Could adversely affect the safe operation of, or could cause serious damage to the facility if allowed to continue; or
  - (3) Could result in the release of radiological or chemical hazards to the environment in excess of regulatory limits.

#### **H.10 CONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATION OR ALLEGED VIOLATIONS, FINES, AND PENALTIES**

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

#### **H.11 ALLOCATION OF RESPONSIBILITIES FOR CONTRACTOR ENVIRONMENTAL COMPLIANCE ACTIVITIES**

- (a) This clause allocates the responsibilities of DOE and the Contractor, referred to collectively as the "parties," for implementing the environmental requirements at facilities within the scope of the Contract. In this clause, the term "environmental requirements"

means requirements imposed by applicable Federal, State, and local environmental laws and regulations, including, without limitation, statutes, ordinances, regulations, court orders, consent decrees, administrative orders, or compliance agreements including the *Hanford Federal Facility Agreement and Consent Order*, consent orders, permits, and licenses.

- (b) Liability and responsibility for civil fines or penalties arising from or related to violations of environmental requirements shall be borne by the party causing the violation irrespective of the fact that the cognizant regulatory authority may assess any such fine or penalty upon either party or both parties without regard to the allocation of responsibility or liability under this Contract. This contractual allocation of liability for any such fine or penalty is effective regardless of which party signs permit applications, manifests, reports, or other required documents, is a permittee, or is the named subject of an enforcement action or assessment of a fine or penalty.
- (c) Regardless of which party to this Contract is named subject of an enforcement action for noncompliance with environmental requirements by the cognizant regulatory authority, provisions of this Contract related to allowable costs will govern liability for payment of any fine or penalty. If the named subject of an enforcement action or assessment of a fine or penalty is DOE and the fine or penalty would not otherwise be reimbursable under the allowable cost provisions of this Contract if the Contractor was the named subject of the enforcement action, the Contractor will either pay the fine or penalty or reimburse DOE (if DOE pays the fine or penalty).

#### H.12 ENVIRONMENTAL RESPONSIBILITY

- (a) Tri-Party Agreement.

The DOE, the U.S. Environmental Protection Agency Region 10 (EPA), and the Washington State Department of Ecology (Ecology) have entered into the Hanford Federal Facility Agreement and Consent Order (referred to as the Tri-Party Agreement [TPA]) to ensure compliance with the Resource Conservation and Recovery Act and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended. The TPA sets forth certain requirements and milestones for cleanup activities at the Hanford Site. The Contractor agrees to plan and perform the work under this Contract in accordance with the TPA and achievement of current and future milestones in the TPA.

- (b) Environmental Permits.

This clause addresses the following permit scenarios where: the Contractor is the sole permittee; the Contractor and DOE are joint permittees; and 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) Contractor and DOE as Joint Permittees. Where determined appropriate by DOE, required by law, or required by applicable regulatory agencies, DOE shall sign permits 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 must 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 is 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 determined appropriate by DOE, in situations where multiple Contractors are operators or co-operators of operations requiring environmental permits, DOE may sign such permits as owner or co-operator and affected Contractors shall sign as operators, or co-operators. In this scenario, the Contractor must coordinate as appropriate with DOE and other Contractors affected by the permit.
- (c) Financial Responsibility.

DOE agrees that if bonds, insurance, or administrative fees are required as a condition for permits obtained by Contractor under this Contract, such costs shall be allowable. In the event such costs are determined by DOE to be excessive or unreasonable, DOE shall 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.

### H.13 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 9.601), shall be limited collectively to not more than 40% of the contract value (defined as the sum of Target Cost plus Target Fee). This limitation does not apply to any small business member of the Contractor team arrangement. Unless otherwise approved in advance by the Contracting Officer, the remainder of the 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 30% of the total contract value shall be performed by small business. Small business members of the Contractor team arrangement, as well as subcontractors selected after Contract award, count toward fulfillment of this requirement and other small business goals in this Contract.
- (c) The Contractor shall manage the team arrangement and the performance of work under this Contract to eliminate wherever possible, and mitigate where necessary, any potential conflicts of interest between the self-performed work by the Contractor team arrangement and the subcontracted work outside the Contractor team arrangement.
- (d) Reporting requirements to confirm compliance with these thresholds and limitations are described in Contract Section C.5.4 *Project Performance Information and Measurement*, Deliverable C.5.4.2 *Monthly Performance Report*.

#### H.14 EMERGENCY CLAUSE

- (a) The RL Manager or designee shall have sole discretion to determine when an emergency situation exists at the Hanford Site, except for River Protection Project facilities, affecting site personnel, the public health, safety, the environment, or security. The Manager, Office of River Protection (ORP), or designee has the discretion to determine whether an emergency situation exists under the Waste Treatment and Immobilization Plant contract and other ORP contract areas of work that might affect RL workers. In the event that either the RL or ORP Manager or designee determines such an emergency exists, the RL 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 RL Manager or designee may direct the activities of the Contractor and subcontractors throughout the duration of the emergency.
- (b) The Contractor shall include this clause in all subcontracts at any tier for work performed at the Hanford Site.

#### H.15 ADVANCE UNDERSTANDING ON COSTS

The DOE and the Contractor will, within 60 days after Contract award, reach advance understandings regarding certain costs under this Contract. Such advance understandings enable both DOE and the Contractor to determine the allocability, allowability, and reasonableness of such costs prior to their incurrence, thereby avoiding subsequent disallowances and disputes, and facilitating prudent expenditure of public funds. It is expected that costs covered by such advance understandings will include employee travel and relocation, corporate home office, employee compensation and benefits, and facilities capital costs of money. Generally, DOE expects the incurrence of costs to be consistent with the Contractor's corporate-wide policies consistently and uniformly applied throughout its domestic operations subject to the specific limitations, conditions, and exclusions of subpart 31.2 of FAR as supplemented by Department of Energy Acquisition Regulation (DEAR) 931.2. Advance understandings will be appended to the Contract in Section J, Attachment J-6, *Advance Agreements, Personnel, and Related Costs*.

#### H.16 PAYMENTS AND ADVANCES

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

favor of the financial institution or, at the option of the Government, shall be made by direct payment or other payment mechanism to the Contractor, and shall be deposited only in the special financial institution account referred to in the Special Financial Institution Account Agreement, which is incorporated into this Contract in Section J, Attachment J-7. No part of the funds in the special financial institution account shall be commingled with any funds of the Contractor or used for a purpose other than that of making payments for costs allowable and, if applicable, fees earned under this Contract, negotiated fixed amounts, or payments for other items specifically approved in writing by the Contracting Officer. If the Contracting Officer determines the balance of such special financial institution account exceeds the Contractor's current needs, the Contractor shall promptly make such disposition of the excess as the Contracting Officer may direct.

- (d) Title to Funds Advanced. Title to the unexpended balance of any funds advanced and of any special financial institution account established pursuant to this clause shall remain in the Government and be superior to any claim or lien of the financial institution of deposit or others. It is understood that an advance to the Contractor hereunder is not a loan to the Contractor, and will not require the payment of interest by the Contractor, and that the Contractor acquires no right, title or interest in or to such advance other than the right to make expenditures therefrom, as provided in this clause.
- (e) Financial Settlement. The Government will promptly pay to the Contractor the unpaid balance of allowable costs (or other items specifically approved in writing by the Contracting Officer) and fee upon termination of the work, expiration of the term of the Contract, or completion of the work and its acceptance by the Government after:
  - (1) Compliance by the Contractor with DOE's patent clearance requirements, and
  - (2) The furnishing by the Contractor of:
    - (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 *Property*, 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 clause entitled, *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;
  - (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;
  - (iii) Claims. Claims for credit against funds advanced for payment shall be accompanied by such supporting documents and justification as the Contracting Officer shall prescribe;
  - (iv) 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;
  - (v) Collections. All collections accruing to the Contractor in connection with the work under this Contract, except for the Contractor's fee and royalties or other income accruing to the Contractor from technology transfer activities in accordance with this Contract, shall be Government property and shall be processed and accounted for in accordance with applicable requirements imposed by the Contracting Officer pursuant to the laws, regulations, and DOE directives clause of this Contract and, to the extent consistent with those requirements, shall be deposited in the special financial institution account or otherwise made available for payment of allowable costs under this Contract, unless otherwise directed by the Contracting Officer;
  - (vi) Direct Payment of Charges. The Government reserves the right, upon ten days written notice from the Contracting Officer to the Contractor, to pay directly to the persons concerned, all amounts due which otherwise would be allowable under this Contract. Any payment so made shall discharge the Government of all liability to the Contractor therefore; and
  - (vii) Determining Allowable Costs. The Contracting Officer shall determine allowable costs in accordance with the Federal Acquisition Regulation Subpart 31.2 and the Department of Energy Acquisition Regulation Subpart 931.2 in effect on the date of this Contract and other provisions of this Contract.

## H.17 FINANCIAL MANAGEMENT SYSTEM REQUIREMENTS

- (a) The Contractor shall operate and maintain a financial management system that:
- (1) Conforms with Generally Accepted Accounting Principles, Federal Financial Accounting Standards, and Cost Accounting Standards, except as modified by DOE requirements;
  - (2) Provides accurate, reliable, and auditable financial and statistical data on a timely basis;
  - (3) Ensures accountability for all assets;
  - (4) Supports financial planning and budget formulation, validation, execution, and the recasting or changing of DOE funding or task codes such as Budget and Reporting Classification (BRC) Numbers, Program Task Numbers, and local projects/tasks;
  - (5) Maintains proper funding authorization;
  - (6) Provides sufficient management controls per the Section I clause entitled *DEAR 970.5203-1 Management Controls*, and internal controls;
  - (7) Integrates and reports the financial information for subcontractors; and
  - (8) Provides all other necessary financial reports, which shall include accumulating and reporting indirect and support costs by function. The Contractor may be requested, periodically, to provide detail cost element information at the institutional level using standard definitions and applications.
- (b) The Contractor shall provide monthly electronic invoices (or data supporting payments cleared financing arrangement drawdowns), and cost accrual and accrual reversal records to the Contracting Officer. Within the electronic invoice submission, the Contractor shall provide all invoice data elements required to:
- (1) Determine that all costs invoiced by the Contractor were necessary and reasonable per the terms and conditions of the Contract. This includes, but is not limited to: invoice number, billing period, Work Breakdown Structure number, purchase order number and line item, quantity/hours, description of goods or services provided, cost type, cost categories, unit price, amount, and adders.
  - (2) Properly record all Contract costs and payments in the DOE accounting system. This includes, but is not limited to: Reporting Entity, Financial Plan, Local Organization, Fund-Code, Control Program Number (i.e., Budget and Reporting Numbers), Program Task Number, Project Baseline Summaries (PBS) numbers, the fiscal year the funds were provided, the project/task number, Object Class, sub-object classes, Other Party Identifiers, and Budget Reference Numbers for plant and equipment line item number (if applicable).
- Upon request, the Contractor shall also provide written documentation to support the electronic invoices to the Contracting Officer or his designate.
- (c) Centralized Business Management System (BMS) services are available from the assigned provider on a cost reimbursable basis. If a determination is made that said services will not be used, the Contracting Officer shall be notified within 60 days after

Contract award. DOE reserves the right to direct utilization of Central BMS services at any time.

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

#### **H.18 INVOICED AMOUNTS**

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

#### **H.19 ALTERNATIVE DISPUTE RESOLUTION (ADR)**

- (a) The 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.
- (c) If one party to this Contract requests the use of the process set forth in Paragraphs b(1) and b(2) of this clause and the other party disagrees, the party disagreeing must express its position in writing to the other party. On any such occasion, if the party requesting the above process wishes to file a claim under the Section I clause entitled *Disputes*, it must do so within 30 days of receipt of the written position from the other party.

#### **H.20 LITIGATION MANAGEMENT PLAN**

- (a) The Contractor shall maintain a legal function to support litigation, arbitration, environmental issues, procurement, employment, labor, and the Price-Anderson

Amendments Act. The Contractor shall provide sound litigation management practices. Within 60 days of contract award, the contractor shall provide a Litigation Management Plan (Deliverable H.20 as shown in Section C Statement of Work) compliant with 10 CFR § 719.

- (b) 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.21 ADMINISTRATION OF SUBCONTRACTS**

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

#### **H.22 DISPOSITION OF INTELLECTUAL PROPERTY – FAILURE TO COMPLETE CONTRACT PERFORMANCE**

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

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

- (d) remediation and closure of the facilities to DOE or such other third party as DOE may designate.

### H.23 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 contract clause entitled "Privacy Act."

<u>System No.</u>	<u>Title</u>
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	Gov't 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 from time to time 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 contract clause entitled "Privacy Act." The revisions will be formally incorporated per the next annual contract update modification, unless added sooner by the Contracting Officer.

### H.24 OTHER GOVERNMENT CONTRACTORS

The Government may undertake or award other contracts for additional work or services. The Contractor agrees to fully cooperate with such other Contractors and Government employees and carefully integrate its own work to such other work as may be directed by the Contracting Officer. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other Contractor or by Government employees. If DOE determines that the Contractor's activities may interfere with another DOE Contractor, the Contracting Officer shall so notify the Contractor and the Contractor shall comply with any instructions the Contracting Officer may provide.

### H.25 KEY PERSONNEL

- (a) Key Personnel are considered to be essential to the work being performed on this Contract. Prior to diverting to other positions or substituting any of the specified Key individuals, or proposing them as a Key Person under another Contract, the Contractor shall notify the Contracting Officer in writing at least thirty (30) days in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the work being performed under this Contract. No diversion

or substitution shall be made by the Contractor without the written consent of the Contracting Officer, provided that the Contracting Officer may ratify in writing such diversion or substitution and such ratification shall constitute the consent of the Contracting Officer required by this clause. Unless approved in writing by the Contracting Officer, no Key Personnel position will remain unfilled by a permanent replacement for more than 60 days. The Key Personnel list shall be amended during the course of the Contract to add or delete Key Personnel as appropriate and approved by the Contracting Officer.

- (a) Anytime the overall RCC Project Manager is replaced or removed for any reason under the Contractor's control within two (2) years of being placed in the position, Earned and Interim Fee will be reduced by \$1,000,000. In addition, each time any of the other Key Personnel proposed (except the Transition Manager) are replaced or removed for any reason under the Contractor's control within two (2) years of being placed in the position, Earned and Interim Fee will be reduced by \$500,000 for each removed or replaced individual.
- (b) The Contractor may request, in writing, that the Contracting Officer waive all or part of a reduction, if special circumstances exist. The Contracting Officer shall have sole unilateral discretion to waive or not waive all or part of a reduction.

The following is a list of Key Personnel for this Contract:

<b>Name</b>	<b>Position</b>
Charles Spencer	Project Manager
Raymond Skwarek	SQH Manager
Kurt Kehler	D4 Closure/Reactor ISS Closure Manager
Rick Donahoe	Field Remediation Closure Manager
Bruce Covert	Waste Operations Manager
Mike Fox	Project Integration Manager
Bill Shingler	Project Services Manager
Wayne Johnson	Environmental Protection Manager

Position: Senior Vice President, Closure Sites  
Company/Organization: Washington Closure Hanford, LLC  
Address: 2620 Fermi, Richland WA 99354  
Phone: 509-372-9951  
Facsimile: 509-372-9654  
Email: plpettiette@wch-rcc.com

Should the responsible corporate official change during the period of the Contract, the Contractor shall promptly notify the Contracting Officer in writing of the change in the individual to contact.

#### **H.27 MENTOR-PROTÉGÉ PROGRAM**

- (a) Both the 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 their business abilities. Within 90 days of contract award 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 Department of Energy Regulation (DEAR) 919.70.
- (c) SBA Mentor-Protégé Agreements shall be in accordance with applicable SBA regulations.

#### **H.28 SMALL BUSINESS SUBCONTRACTING FEE REDUCTION**

The Small Business Subcontracting Plan, incorporated into this Contract as Section J, Attachment J-4, contains percentage goals for awarding of subcontracts to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns. The Contractor also agrees, as a part of this Contract, to have in place, with one or more small businesses, a Mentor-Protégé program. The Contractor's performance in meeting these goals, and supporting protégé(s) in a Mentor-Protégé agreement(s), will be evaluated at the following milestones:

- End of Third Year of Contract Performance;
- End of Sixth Year of Contract Performance; and
- End of Contract.

If, at each one of these milestones, the Contractor has not met any or all of these subcontracting goals for that milestone period, or has failed to support a protégé during that period, the Contracting Officer may reduce the final fee amount by an amount up to \$3 Million for each

concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns. The Contractor also agrees, as a part of this Contract, to have in place, with one or more small businesses, a Mentor-Protégé program. The Contractor's performance in meeting these goals, and supporting protégé(s) in a Mentor-Protégé agreement(s), will be evaluated at the following milestones:

- End of Third Year of Contract Performance;
- End of Sixth Year of Contract Performance; and
- End of Contract.

If, at each one of these milestones, the Contractor has not met any or all of these subcontracting goals for that milestone period, or has failed to support a protégé during that period, the Contracting Officer may reduce the final fee amount by an amount up to \$3 Million for each milestone up to a total reduction of otherwise earned fee for the contract in the amount of \$9 Million. The reduction amount shall be at the unilateral discretion of the Contracting Officer. The dollar amount of each such reduction shall be a permanent reduction in the total fee paid under this contract. For the first two milestone periods, if it has been determined that the Contractor has failed to meet such goals, or failed to have a Mentor-Protégé Program, upon establishment of an appropriate fee reduction amount for that period, the ensuing provisional fee payments shall be reduced proportionally during the next milestone period until the full milestone reduction amount has been achieved. At contract completion, the total amount of fee reduction for failure to meet its subcontracting goals shall be offset by any amount of liquidated damages assessed in accordance with FAR 52.219-16, Liquidated Damages – Subcontracting Plan. Any reduction for failure to meet the Mentor-Protégé Program shall be in addition to any liquidated damages under FAR 52.219-16. For the purpose of implementing this clause, the percentage goals initially established in the Contractor's Small Business Subcontracting Plan will remain in effect for the duration of the contract period.

**H.29 LOBBYING RESTRICTION (ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 2003)**

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 18 USC 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

**H.30 NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS – SENSE OF CONGRESS**

It is the sense of Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

**H.31 RESERVED**

**H.32 SPECIAL VOLUNTARY RETIREMENT PROGRAM (SVRP) PAYMENT AUTHORIZATION**

The Contractor, Washington Closure Hanford, LLC (WCH), is authorized to reimburse, as an allowable cost, monthly payments associated with the 1996 Special Voluntary Retirement Program (SVRP) for Mr. Theodore A. Curran and Mr. Kenneth R. Porter. The monthly payments will be equal to the enhancement portion of the SVRP. As of February 1, 1997, these amounts are \$523.66 for Mr. Curran and \$752.98 for Mr. Porter. The exact amounts are to be determined

by the Plan Administrator based on the actual retirement date and the joint and survivor annuity option as selected by the individuals. Each monthly payment will continue until: (1) the month immediately preceding the month each individual receives his first payment of an enhanced benefit from the Hanford Pension Plan; or (2) the month of his death or his spouse's death, whichever is later. The Contractor shall make such payments, as allowable costs, for the terms of the contract only. Any costs related to these payments, such as administration, employer taxes, etc., are also considered allowable. The Department of Energy (DOE) will incorporate provisions in successor contracts for continuation of said payments as allowable costs. In the event there is no successor contractor, DOE will make such payments directly to the above individuals based on the conditions herein.

Payment of the above amounts may be found to be included as part of the Hanford Pension Plan, should the Internal Revenue Service (IRS) rule that such payments are qualified under the Hanford Pension Plan. A ruling by the IRS qualifying such payment under the Hanford Pension Plan will negate the monthly payments by WCH, successor contractors or the DOE.

SVRP Payments are excluded from both the target cost and target fee amounts and will be reimbursed on a cost, no fee basis. In addition, such costs will be excluded from all Cost Performance Incentive Fee payments and calculations under Section B and elsewhere in this contract. The contractor understands, however, that the pension cost for SVRP Payments will not be separately funded and is included in the funding amounts shown in the Funding Profile, Section J, Attachment J-11, entitled *RCC Funding Profile*.

### H.33 OTHER CONTRACTORS

The Contractor may, from time to time, provide products and/or services to and receive products and/or services from other Hanford Prime Contractors by Memoranda of Agreement (MOA). An MOA is used to establish a solid framework for providing work between Prime Contractors, to clarify the responsibilities and processes, and to create consistency among the Parties. The MOA will include standard definitions, work request elements, generalized decision analysis, and a rigorous dispute resolution process. The use of an MOA, and/or the use of any term contained within, does not create a subcontractor or supplier relationship.

Products and/or services provided to other Prime Contractors shall have no impact on contractual target cost or fee and shall not relieve the Contractor of any performance requirement of this contract.

Those products and/or services that the Prime Contractor chooses to use or those DOE directs the Prime Contractor to use for performance of this Contract, shall be costed and reimbursed under the terms of this Contract in accordance with Attachment J-13, Hanford Site Services.

When products and/or services between Prime Contractors are offered and accepted, DOE does not expect the requesting Prime Contractor to review or otherwise validate top-level crosscutting quality control, health, safety and/or environmental protection requirements mandated by the performing Contractor's prime 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 Prime Contractor requesting products and/or services, however, is responsible for oversight of requirements related to the specific work task(s) to ensure that the performing Prime Contractor delivers a product or service that will meet the requirements of the requesting Prime Contractor. When ordering products and/or services from a Prime Contractor source, the requesting Prime Contractor can use and rely on existing information from DOE or the performing Prime Contractor to develop and implement oversight protocols, using a graded approach, that are appropriate to the relevant task. The performing Prime Contractor will be expected by DOE and the requesting Prime Contractor to provide products and/or services in a manner that is

consistent with the requirements of the performing Prime Contractor's prime contract, including quality assurance, health and safety and environmental compliance requirements, and the task instructions provided by the requesting Prime Contractor. Potential conflicts, questions, and/or issues that may be unclear or otherwise confusing should be discussed and resolved by both parties in advance.

The requesting Prime Contractor is obligated to provide sufficient specifications, requirements, hazard information and unique quality, technical, safety and environmental requirements for the work to be performed. The performing Prime Contractor is expected to seek clarification of requirements that conflict with, or are greater than, its own baseline requirements.

The requesting Prime Contractor will notify the performing Prime Contractor of issues regarding the products and/or services provided by the performing Prime Contractor, including issues relative to delivery of specific products and/or services or the quality of the specific products and/or services provided. The Prime Contractors should work together to resolve these issues promptly. DOE should be promptly notified if the issue remains unresolved. For outstanding issue resolution, DOE senior management should involve the contractor principals, or designees, to quickly provide resolution.

The performing Prime Contractor should operate in accordance with the requirements of its prime contract, including but not limited to, requirements associated with environmental compliance, safety, health, and quality, in executing the specific activities identified by the requesting Prime Contractor as well as meeting any specific requirements identified and required by the requesting Prime Contractor. If meeting the requested requirements would be inconsistent with the performing Prime Contractor's prime contract with DOE, then the conflict should be brought to the attention of DOE and resolution developed prior to performance of the work.

#### **H.34 EXCLUSIVE BENEFIT OF CONTRACTING PARTIES**

This Contract and each and every term of this Contract is intended for the exclusive benefit of the Parties, and not for the benefit of any third party. Nothing contained in this Contract shall be construed to grant, vest, or create any right of action in any party not a party to this contract.