

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT		1. CONTRACT ID CODE	PAGE OF PAGES 1 4	
2. AMENDMENT/MODIFICATION NO. 043	3. EFFECTIVE DATE See Block 16C	4. REQUISITION/PURCHASE REQ. NO. 11EM003625	5. PROJECT NO. (If applicable)	
6. ISSUED BY Office of River Protection U.S. Department of Energy Office of River Protection P.O. Box 450 Richland WA 99352	CODE 00603	7. ADMINISTERED BY (If other than Item 6) Office of River Protection U.S. Department of Energy Office of River Protection P.O. Box 450 Richland WA 99352	CODE 00603	
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code) ADVANCED TECHNOLOGIES AND LABORATORIES (ATL) Attn: JOU HWANG 20010 CENTURY BLVD., SUITE 500 GERMANTOWN MD 208741119		(x)	9A. AMENDMENT OF SOLICITATION NO.	
CODE 827013467			9B. DATED (SEE ITEM 11)	
FACILITY CODE		x	10A. MODIFICATION OF CONTRACT/ORDER NO. DE-AC27-10RV15051	
			10B. DATED (SEE ITEM 13) 11/20/2009	

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

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

12. ACCOUNTING AND APPROPRIATION DATA (If required) Net Increase: \$11,000.00

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

CHECK ONE	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
X	D. OTHER (Specify type of modification and authority) FAR 52.232-22 Limitation of Funds (APR 1984)

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

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

Please reference continuation page(s)
FOB: Destination
Period of Performance: 01/03/2010 to 01/03/2015

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

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Susan C. Johnson	
15B. CONTRACTOR/OFFEROR (Signature of person authorized to sign)	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA  (Signature of Contracting Officer)	16C. DATE SIGNED 09/14/2011

Purpose of Modification:

The purpose of this modification is to update Section B, *Supplies or Services and Prices/Costs*, and add incremental funding to CLIN 2, *Analytical Services & Testing*, in the amount of \$11,000.00. This funding is provided in support for RL-0012. As a result of this of this action, the total funds obligated to CLIN 2 will increase from \$20,576,131.74 to \$20,587,131.74. The total funds obligated to the contract is increased from \$26,161,489.92 to \$26,172,489.92.

Description of Modification:

1. Under the authority of Contract Clause I.59, *Limitation of Funds (Apr 1984)*, the total amount of funds obligated to CLIN 2, *Analytical Services & Testing*, is increased by \$11,000.00, from \$20,576,131.74 to \$20,587,131.74. The total funds obligated to the contract is increased from \$26,161,489.92 to \$26,172,489.92.
2. The table in Contract Clause B.1, *Type of Contract – Items Being Acquired*, is deleted in its entirety and replaced with the following table, which reflects the changes described herein.

TOTAL ESTIMATED CONTRACT COST			
CLIN Number	Description	Estimated Cost	Estimated Fee
1	Contract Transition	\$99,214.53	N/A
2	Analytical Services & Testing	\$23,862,646.20	\$1,730,762.28
3	Analytical Services & Testing	\$12,846,805.51	\$929,161.06
4	Analytical Services & Testing	\$13,324,325.55	\$961,635.30
5	Analytical Services & Testing	\$12,351,009.12	\$895,449.78
6	PRC ARRA Analytical Services & Testing	\$5,151,769.65	\$334,374.00
TOTAL		\$67,635,770.56	\$4,851,382.42
TECC (ESTIMATED COST & ESTIMATED FEE)		\$72,487,152.98	

TOTAL FUNDS OBLIGATED			
CLIN Number	Description	Estimated Cost	Funds Obligated
1	Contract Transition	\$99,214.53	\$99,214.53
2	Analytical Services & Testing	\$23,862,646.20	\$20,587,131.74
3	Analytical Services & Testing	\$12,846,805.51	\$0.00
4	Analytical Services & Testing	\$13,324,325.55	\$0.00
5	Analytical Services & Testing	\$12,351,009.12	\$0.00
6	PRC ARRA Analytical Services & Testing	\$5,151,769.65	\$5,486,143.65
TOTAL		\$67,635,770.56	\$26,172,489.92

3. The table in Contract Clause B.1, *Type of Contract – Items Being Acquired*, paragraph (b) is deleted in its entirety and replaced with the following table, which reflects the changes described herein.

<u>Modification No.</u>	<u>Accounting and Appropriation Data</u>	<u>Obligation Amount*</u>
A000	01250 2010 34 421301 25200 1110909 0001481 0000000 0000000 0000000	\$999,990.44
A002	01250 2010 34 421601 25200 1110849 0001525 0421398	\$24,000.00
A003	1250 2010 34 421601 25200 1110849 0001525 041398	\$76,000.00
A003	890251 2010 34 421301 61000000 25200 1110909 0001481	\$4,000,000.00
A003	01250 2034 421601 25200 1110849 0001525 041398	\$100,000.00
A004	01250 2010 34 422100 61000000 25200 1110843 0001524	\$309,604.00
A005	01250 2010 34 421301 25200 1110909 0001481 0000000 0000000 0000000	\$1,000,000.00
A006	01250 2010 34 421301 25200 1110909 0001481 0000000 0000000 0000000	\$960,000.00
A010	01250 2010 34 421301 61000000 25200 1111412 0004263	\$243,558.69
A011	01250 2010 34 421301 61000000 25200 1110909 0001481	\$1,125,886.00
A016	01250 2010 34 421301 25200 1110909 0001481 0000000 0000000 0000000	\$370,523.83
A016	01250 2010 34 421301 25200 1110676 0004022 0000000 0000000 0000000	\$3,155.93
A017	01250 2010 34 421301 25200 1110909 0001481 0000000 0000000 0000000	\$850,000.00
A019	01250 2011 34 421301 25200 1110909 0001481 0000000 0000000 0000000	\$500,000.00
A019	01250 2010 34 421301 25200 1110909 0001481 0000000 0000000 0000000	\$9.56
A021	01250 2011 34 421301 25200 1110909 0001481 0000000 0000000 0000000	\$866,000.00
022	01250 2011 34 421601 25200 1110849 0001525	\$65,985.00
022	01250 2011 34 421601 25200 1110842 0001522	\$132,488.00
022	01250 2011 34 421601 25200 1110820 0001520	\$3,810.00
023	01250 2011 34 421301 25200 1110909 0001481 0000000 0000000 0000000	\$500,000.00

024	01250 2011 34 421301 25200 1110909 0001481 0000000 0000000 0000000	\$1,500,000.00
029	01250 2009 34 421301 25200 1110676 0004022 0000000 0000000	\$130,000.00
029	01250 2010 34 421301 25200 1111412 0004263 0000000 0000000	\$181,120.29
029	01250 2011 34 421301 25200 1110909 0001481 0000000 0000000	\$400,000.00
030	01250 2011 34 421301 25200 1110909 0001481 0000000 0000000	\$500,000.00
031	01250 2011 034 421301 25200 1110909 0001481 0000000 0000000	\$400,000.00
34	01250 2011 034 421301 25200 1110909 0001481 0000000 0000000	\$900,000.00
036	01250 2011 34 421301 25200 1110909 0001481 0000000 0000000	\$500,000.00
038	01250 2011 34 421301 25200 1110909 0001481 0000000 0000000	\$850,000.00
040	01250 2011 34 421301 25200 1110909 0001481 0000000 0000000	\$1,000,000.00
042	01250 2011 34 421301 25200 1110909 0001481 0000000 0000000	\$2,084,000.00
043	01250 2011 34 421601 25200 1110826 0001521 0000000 0000000	\$11,000.00
TOTAL		\$20,587,131.74

4. All other terms and conditions remain unchanged.

Attachments

1. **Section B, *Supplies or Services and Prices/Costs*, conformed through Contract Modification No. 043.**

(End of Modification)

222-S LAS&T

Contract No. DE-AC27-10RV15051
Contract Modification 043

ATTACHMENT 1:

Section B, *Supplies or Services and Prices/Costs*, conformed through Contract Modification No. 043.

(13 pages including cover page)

PART I – THE SCHEDULE

SECTION B – SUPPLIES OR SERVICES AND PRICES/COSTS

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SECTION B

SUPPLIES OR SERVICES AND PRICES/COSTS

B.1 TYPE OF CONTRACT – ITEMS BEING ACQUIRED

This is a cost-plus-award-fee type contract for analytical services and testing at the 222-S Laboratory on the Hanford Site. The contractor shall furnish all personnel, facilities, equipment, material, supplies, and services (except as may be expressly set forth in this contract as furnished by the government) and otherwise do all things necessary for, or incident to, the performance of work as described in Section C, Performance Work Statement. The total performance period includes a ninety (90) day transition period, two-year base period, and three (3) 1-year option periods as shown below in the following individual Contract Line Items (CLINs):

TOTAL ESTIMATED CONTRACT COST			
CLIN Number	Description	Estimated Cost	Estimated Fee
1	Contract Transition	\$99,214.53	N/A
2	Analytical Services & Testing	\$23,862,646.20	\$1,730,762.28
3	Analytical Services & Testing	\$12,846,805.51	\$929,161.06
4	Analytical Services & Testing	\$13,324,325.55	\$961,635.30
5	Analytical Services & Testing	\$12,351,009.12	\$895,449.78
6	PRC ARRA Analytical Services & Testing	\$5,151,769.65	\$334,374.00
TOTAL		\$67,635,770.56	\$4,851,382.42
TECC (ESTIMATED COST & ESTIMATED FEE)		\$72,487,152.98	

TOTAL FUNDS OBLIGATED			
CLIN Number	Description	Estimated Cost	Funds Obligated
1	Contract Transition	\$99,214.53	\$99,214.53
2	Analytical Services & Testing	\$23,862,646.20	\$20,587,131.74
3	Analytical Services & Testing	\$12,846,805.51	\$0.00
4	Analytical Services & Testing	\$13,324,325.55	\$0.00
5	Analytical Services & Testing	\$12,351,009.12	\$0.00
6	PRC ARRA Analytical Services & Testing	\$5,151,769.65	\$5,486,143.65
TOTAL		\$67,635,770.56	\$26,172,489.92

CONTRACT TRANSITION:

CLIN Number	Description	Estimated Cost
1	Contract Transition	\$99,214.53

CLIN 01 Description:

The performance of CLIN 01 includes the total estimated costs for the contract transition period stated in Section F.1. There is no base or award fee available for this CLIN.

Funds Obligated to CLIN 01:

Modification No	Accounting and Appropriation Data	Obligated Amount*
N/A	01250 2010 34 421301 25200 1110909 0001481 0000000 0000000 000000	\$99,214.53

* Subject to Section I Clause FAR 52.232-22 entitled, *Limitation of Funds (APR 1984)*, the CLIN 01 value is estimated to be no more than \$99,214.53. The cumulative amount identified in this column is the total amount presently available for payment under this CLIN.

(b) **BASE PERIOD:**

CLIN Number	Description	Estimated Cost
2	Analytical Services & Testing	\$23,862,646.20

CLIN 02 Description:

The performance of CLIN 02 includes the total estimated costs for the performance period stated in Section F.1 and the total award fee that can be earned (less any adjustment made in accordance with Section B Clause *DEAR 952.223-77 Conditional Payment of Fee* and Section H Clause *Key Personnel*).

The total available award fee for this CLIN is \$1,730,762.28. There is no base fee for this CLIN. The award fee for this CLIN shall be awarded upon the unilateral determination of DOE's fee determination official (FDO) that an award fee has been earned. The unilateral decision is made solely at the discretion of the government. This determination shall be based upon the FDO's evaluation of the Contractor's performance, as measured against the evaluation criteria set forth in the award fee plan. Provisional payment of a proportional monthly amount equivalent of an amount up to 50% of the available award fee for this CLIN may be permitted.

Immediately upon the FDO's final determination of the award fee for the evaluation period, the Contractor may invoice any fee amount not previously paid or must repay

any excess amount paid. Any unearned award fee from this CLIN shall not be eligible to be earned in any other CLINs.

Funds Obligated to CLIN 02:

Modification No.	Accounting and Appropriation Data	Obligation Amount*
A000	01250 2010 34 421301 25200 1110909 0001481 0000000 0000000 0000000	\$999,990.44
A002	01250 2010 34 421601 25200 1110849 0001525 0421398	\$24,000.00
A003	1250 2010 34 421601 25200 1110849 0001525 041398	\$76,000.00
A003	890251 2010 34 421301 61000000 25200 1110909 0001481	\$4,000,000.00
A003	01250 2034 421601 25200 1110849 0001525 041398	\$100,000.00
A004	01250 2010 34 422100 61000000 25200 1110843 0001524	\$309,604.00
A005	01250 2010 34 421301 25200 1110909 0001481 0000000 0000000 0000000	\$1,000,000.00
A006	01250 2010 34 421301 25200 1110909 0001481 0000000 0000000 0000000	\$960,000.00
A010	01250 2010 34 421301 61000000 25200 1111412 0004263	\$243,558.69
A011	01250 2010 34 421301 61000000 25200 1110909 0001481	\$1,125,886.00
A016	01250 2010 34 421301 25200 1110909 0001481 0000000 0000000 0000000	\$370,523.83
A016	01250 2010 34 421301 25200 1110676 0004022 0000000 0000000 0000000	\$3,155.93
A017	01250 2010 34 421301 25200 1110909 0001481 0000000 0000000 0000000	\$850,000.00
A019	01250 2011 34 421301 25200 1110909 0001481 0000000 0000000 0000000	\$500,000.00
A019	01250 2010 34 421301 25200 1110909 0001481 0000000 0000000 0000000	\$9.56
A021	01250 2011 34 421301 25200 1110909 0001481 0000000 0000000 0000000	\$866,000.00
022	01250 2011 34 421601 25200 1110849 0001525	\$65,985.00
022	01250 2011 34 421601 25200 1110842 0001522	\$132,488.00
022	01250 2011 34 421601 25200 1110820 0001520	\$3,810.00
023	01250 2011 34 421301 25200 1110909 0001481 0000000 0000000 0000000	\$500,000.00
024	01250 2011 34 421301 25200 1110909 0001481 0000000 0000000 0000000	\$1,500,000.00
029	01250 2009 34 421301 25200 1110676 0004022 0000000 0000000	\$130,000.00
029	01250 2010 34 421301 25200 1111412 0004263 0000000 0000000	\$181,120.29
029	01250 2011 34 421301 25200 1110909 0001481 0000000 0000000	\$400,000.00
030	01250 2011 34 421301 25200 1110909 0001481 0000000 0000000	\$500,000.00
031	01250 2011 034 421301 25200 1110909 0001481 0000000 0000000	\$400,000.00
34	01250 2011 034 421301 25200 1110909 0001481 0000000 0000000	\$900,000.00
036	01250 2011 34 421301 25200 1110909 0001481 0000000 0000000	\$500,000.00
038	01250 2011 34 421301 25200 1110909 0001481 0000000 0000000	\$850,000.00

040	01250 2011 34 421301 25200 1110909 0001481 0000000 0000000	\$1,000,000.00
042	01250 2011 34 421301 25200 1110909 0001481 0000000 0000000	\$2,084,000.00
043	01250 2011 34 421601 25200 1110826 0001521 0000000 0000000	\$11,000.00
TOTAL		\$20,587,131.74

* Subject to Section I Clause FAR 52.232-22 entitled, *Limitation of Funds (APR 1984)*, the CLIN 02 value is estimated to be no more than \$25,593,408.48 (including Award Fee). The cumulative amount identified in this column is the total amount presently available for payment under this CLIN.

(c) **OPTION PERIOD I:**

CLIN Number	Description	Estimated Cost
3	Analytical Services & Testing	\$12,846,805.51

CLIN 03 Description:

The performance of CLIN 03 includes the total estimated costs for the performance period stated in Section F.1 and the total award fee that can be earned (less any adjustment made in accordance with Section B Clause *DEAR 952.223-77 Conditional Payment of Fee* and Section H Clause *Key Personnel*).

The total available award fee for this CLIN is \$929,161.06. There is no base fee for this CLIN. The award fee for this CLIN shall be awarded upon the unilateral determination of DOE's fee determination official (FDO) that an award fee has been earned. The unilateral decision is made solely at the discretion of the government. This determination shall be based upon the FDO's evaluation of the Contractor's performance, as measured against the evaluation criteria set forth in the award fee plan. Provisional payment of a proportional monthly amount equivalent of an amount up to 50% of the available award fee for this CLIN may be permitted.

Immediately upon the FDO's final determination of the award fee for the evaluation period, the Contractor may invoice any fee amount not previously paid or must repay any excess amount paid. Any unearned award fee from this CLIN shall not be eligible to be earned in any other CLINs.

Funds Obligated to CLIN 03:

Modification No.	Accounting and Appropriation Data	Obligation Amount*
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* Subject to Section I Clause FAR 52.232-22 entitled, *Limitation of Funds (APR 1984)*, the CLIN 03 value is estimated to be no more than \$ 13,775,966.57 (including Award Fee). The cumulative amount identified in this column is the total amount presently

available for payment under this CLIN. It is estimated this amount will cover performance through January 2, 2013 as stated in Section F.1.

(d) **OPTION PERIOD II:**

CLIN Number	Description	Estimated Cost
4	Analytical Services & Testing	\$13,324,325.55

CLIN 04 Description:

The performance of CLIN 04 includes the total estimated costs for the performance period stated in Section F.1 and the total award fee that can be earned (less any adjustment made in accordance with Section B Clause *DEAR 952.223-77 Conditional Payment of Fee* and Section H Clause *Key Personnel*).

The total available award fee for this CLIN is \$961,635.30. There is no base fee for this CLIN. The award fee for this CLIN shall be awarded upon the unilateral determination of DOE's fee determination official (FDO) that an award fee has been earned. The unilateral decision is made solely at the discretion of the government. This determination shall be based upon the FDO's evaluation of the Contractor's performance, as measured against the evaluation criteria set forth in the award fee plan. Provisional payment of a proportional monthly amount equivalent of an amount up to 50% of the available award fee for this CLIN may be permitted.

Immediately upon the FDO's final determination of the award fee for the evaluation period, the Contractor may invoice any fee amount not previously paid or must repay any excess amount paid. Any unearned award fee from this CLIN shall not be eligible to be earned in any other CLINs.

Funds Obligated to CLIN 04:

<u>Modification No.</u>	<u>Accounting and Appropriation Data</u>	<u>Obligation Amount*</u>
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To be inserted at the time of option exercise

* Subject to Section I Clause FAR 52.232-22 entitled, *Limitation of Funds (APR 1984)*, the CLIN 04 value is estimated to be no more than \$ To be inserted at the time of option exercise (including Award Fee). The cumulative amount identified in this column is the total amount presently available for payment under this CLIN. It is estimated this amount will cover performance through To be inserted at the time of option exercise.

(e) **OPTION PERIOD III:**

CLIN Number	Description	Estimated Cost
5	Analytical Services & Testing	\$12,351,009.12

CLIN 05 Description:

The performance of CLIN 05 includes the total estimated costs for the performance period stated in Section F.1 and the total award fee that can be earned (less any adjustment made in accordance with Section B Clause *DEAR 952.223-77 Conditional Payment of Fee* and Section H Clause *Key Personnel*).

The total available award fee for this CLIN is \$895,449.78. There is no base fee for this CLIN. The award fee for this CLIN shall be awarded upon the unilateral determination of DOE's fee determination official (FDO) that an award fee has been earned. The unilateral decision is made solely at the discretion of the government. This determination shall be based upon the FDO's evaluation of the Contractor's performance, as measured against the evaluation criteria set forth in the award fee plan. Provisional payment of a proportional monthly amount equivalent of an amount up to 50% of the available award fee for this CLIN may be permitted.

Immediately upon the FDO's final determination of the award fee for the evaluation period, the Contractor may invoice any fee amount not previously paid or must repay any excess amount paid. Any unearned award fee from this CLIN shall not be eligible to be earned in any other CLINs.

Funds Obligated to CLIN 05:

<u>Modification No.</u>	<u>Accounting and Appropriation Data</u>	<u>Obligation Amount*</u>
<i>To be inserted at the time of option exercise</i>		

* Subject to Section I Clause FAR 52.232-22 entitled, *Limitation of Funds (APR 1984)*, the CLIN 05 value is estimated to be no more than \$ To be inserted at the time of option exercise (including Award Fee). The cumulative amount identified in this column is the total amount presently available for payment under this CLIN. It is estimated this amount will cover performance through To be inserted at the time of option exercise.

(f) ARRA ANALYTICAL SERVICES AND TESTING

CLIN Number	Description	Estimated Cost
6	PRC ARRA Analytical Services & Testing	\$5,151,769.65

CLIN 06 Description:

The performance of CLIN 06 includes the total estimated costs for the performance period from January 3, 2010 through December 30, 2011. The total fee that can be earned (less any adjustment made in accordance with Section B Clause *DEAR 952.223-77 Conditional Payment of Fee* and Section H Clause *Key Personnel*), for this CLIN, is \$334,374.00.

ARRA Project	Cost	Fee	Total
K East Reactor (1111330)	\$173,047.90	\$10,031.22	\$183,079.12
Balance of Site (1111329)	1,846,132.55	120,374.64	1,966,507.19
PFP Demo (1111328)	3,132,589.20	203,968.14	3,336,557.34
Total	\$5,151,769.65	\$334,374.00	\$5,486,143.65

Funds Obligated to CLIN 06:

\$5,486,143.65 is obligated to CLIN 06 as follows:

Type of Funding	Line of Accounting	Obligated Amount
ARRA PRC RL-11	06049 2009 34 421601 25200 1111328 2002140 0000000 0000000 0000000	\$2,901,000.00
ARRA PRC RL-11	06049 2009 34 421601 25200 1111328 2002140 0000000 0000000 0000000	\$435,557.34
ARRA PRC RL-40	06049 2009 34 421601 25200 1111329 2002140 0000000 0000000 0000000	\$996,000.00
ARRA PRC RL-40	06049 2009 34 421601 25200 1111329 2002140 0000000 0000000 0000000	\$970,507.19
ARRA PRC RL-41	06049 2009 34 421601 25200 1111330 2002140 0000000 0000000 0000000	\$183,079.12
	TOTAL	\$5,486,143.65

The contractor shall not incur any costs in excess of this amount.

**B.2 DEAR 952.223-77 - CONDITIONAL PAYMENT OF FEE, PROFIT, OR INCENTIVE
(JAN 2004)**

(a) General.

(1) The payment of fee or profit (i.e., award fee, fixed fee, and incentive fee or profit) under this contract is dependent upon the contractor's compliance with the terms and conditions of this contract relating to the protection of worker safety and health (WS&H), including compliance with applicable law, regulation, and DOE directives. The term "contractor" as used in this clause to address failure to comply shall mean "contractor or contractor employee."

(2) In addition to other remedies available to the Federal Government, if the contractor fails to comply with the terms and conditions of this contract relating to the protection of worker safety and health, the contracting officer may unilaterally reduce the amount of fee or profit that is otherwise payable to the contractor in accordance with the terms and conditions of this clause.

(3) Any reduction in the amount of fee or profit earned by the contractor will be determined by the severity of the contractor's failure to comply with contract terms and conditions relating to worker safety and health pursuant to the degrees specified in paragraph (c) of this clause.

(b) Reduction Amount.

(1) If in any period (see 48 CFR 952.223-77)(b)(2)) it is found that the contractor has failed to comply with contract terms and conditions relating to the protection of worker safety and health, the contractor's fee or profit of the period may be reduced. Such reduction shall not be less than 26% nor greater than 100% of the total fee or profit earned for a first degree performance failure, not less than 11% nor greater than 25% for a second degree performance failure, and up to 10% for a third degree performance failure. The contracting officer must consider mitigating factors that may warrant a reduction below the specified range (see 48 CFR 923.7001(b)). The mitigating factors include, but are not limited to, the following:

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

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

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

(iv) General status (trend and absolute performance) of protecting WS&H and compliance in related areas.

(v) Contractor demonstration to the Contracting Officer's satisfaction that the principles of industrial WS&H standards are routinely practiced (e.g., Voluntary Protection Program Star Status).

(vi) Event caused by "Good Samaritan" act by the contractor (e.g., offsite emergency response).

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

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

(2)(i) Except in the case of performance based firm-fixed-price contracts (see paragraph (b)(3) below), the contracting officer, for purposes of this clause, will at the time of contract award, or as soon as practicable thereafter, allocate the total amount of fee or profit that is available under this contract to equal periods of [insert 6 or 12] months to run sequentially for the entire term of the contract (i.e., from the effective date of the contract to the expiration date of the contract, including all options). The amount of fee or profit to be allocated to each period shall be equal to the average monthly fee or profit that is available or otherwise payable during the entire term of the contract, multiplied by the number of months established above for each period.

(ii) Under this clause, the total amount of fee or profit that is subject to reduction in a period in which a performance failure occurs, in combination with any reduction made under any other clause in the contract that provides for a reduction to the fee or profit, shall not exceed the amount of fee or profit that is earned by the contractor in the period established pursuant to paragraph (b)(2)(i) of this clause.

(3) For performance-based firm-fixed-price contracts, the contracting officer will at the time of contract award include negative monetary incentives in the contract for contractor violations relating to the protection of worker safety and health.

(c) Protection of Worker Safety and Health. Performance failures occur if the contractor does not comply with the contract's WS&H terms and conditions, which may be included in the DOE approved contractor Integrated Safety Management System (ISMS). The degrees of performance failure under which reductions of fee or profit will be determined are:

(1) First Degree: Performance failures that are most adverse to WS&H or could threaten the successful completion of a program or project. For contracts including ISMS requirements, failure to develop and obtain required DOE approval of WS&H aspects of an ISMS is considered first degree. The Government will perform necessary review of the ISMS in a timely manner and will not unreasonably withhold approval of the WS&H aspects of the contractor's ISMS. The following performance failures or performance failures of similar import will be deemed first degree:

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

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

(2) Second Degree: Performance failures that are significantly adverse to WS&H. They include failures to comply with approved WS&H aspects of an ISMS that result in an actual injury, exposure, or exceedence that occurred or nearly occurred but had minor

practical long-term health consequences. The following performance failures or performance failures of similar import will be considered second degree:

- (i) Type B accident (defined in DOE Order 225.1A).
- (ii) Non-compliance with approved WS&H aspects of an ISMS that results in a near miss of a Type A or B accident. A near miss is a situation in which an inappropriate action occurs, or a necessary action is omitted, but does not result in an adverse effect.
- (iii) Failure to mitigate or notify DOE of an imminent danger situation after discovery, where such notification is a requirement of the contract.

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

- (i) Failure to implement effective corrective actions to address deficiencies/non-compliance documented through external (e.g., Federal) oversight and/or reported per DOE Order 232.1A requirements, or internal oversight of DOE O 440.1A requirements.
- (ii) Multiple similar non-compliances identified by external (e.g., Federal) oversight that in aggregate indicate a significant WS&H system breakdown.
- (iii) Non-compliances that either have, or may have, significant negative impacts to workers that indicate a significant WS&H system breakdown.
- (iv) Failure to notify DOE upon discovery of events or conditions where notification is required by the terms and conditions of the contract.

B.3 AWARD FEE ADJUSTMENTS

Should the anticipated scope per fiscal year increase or decrease the estimated cost by an estimated 10% or greater from the scope as priced in the contract for that year, the Contractor and Government will enter into good faith negotiations to revise the award fee pool for that period (and subsequent years as may be appropriate) accordingly.

B.4 FINAL FEE DETERMINATION

(a) Upon successful completion of work as specified in Section C, the Contracting Officer shall determine the total fee earned by the Contractor consistent with the award fee plan, and any reductions made under any other clause of the contract. If the amount of the total fee earned is less than the total amount of all fee payments previously made to the Contractor, the Contractor shall reimburse DOE the difference. The difference is subject to FAR Clause 52.232-17, Interest (JUN 1996). If the amount of total fee earned is more than the total amount of all prior fee payments previously made to the Contractor, DOE shall pay the Contractor the difference.

(b) Termination. If this contract is terminated in its entirety, fee shall be payable to the Contractor consistent with paragraph (a) above. Nothing in this paragraph shall limit or restrict the application of FAR Clause 52.249-6, Termination (Cost-Reimbursement).

B.5 OPTIONS

- (a) The Government may unilaterally exercise the Option Periods in accordance with FAR 52.217-9. The Government reserves the unilateral right to extend the period of performance through the exercise of Option Periods I, II and III.
- (b) The Contracting Officer will provide written preliminary notice in accordance with the clause entitled 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000).