

SECTION H
SPECIAL CONTRACT REQUIREMENTS

SECTION H
SPECIAL CONTRACT REQUIREMENTS
TABLE OF CONTENTS

Section	Clause	Page
H.1	TECHNICAL DIRECTION	H-1
H.2	MODIFICATION AUTHORITY	H-2
H.3	KEY PERSONNEL	H-2
H.4	SMALL BUSINESS SUBCONTRACTING PLAN	H-2
H.5	REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF THE OFFEROR	H-2
H.6	DISPLACED EMPLOYEE HIRING PREFERENCE -- This section deleted.....	H-2
H.7	IMPLEMENTATION OF SECTION 3161 POLICY ON WORK FORCE RESTRUCTURING AND PREFERENCE IN HIRING -- This section deleted.....	H-2
H.8	LABOR RELATIONS	H-2
H.9	IMPLEMENTATION OF THE HANFORD SITE STABILIZATION AGREEMENT	H-3
H.10	DETERMINATION OF APPROPRIATE LABOR STANDARDS	H-4
H.11	AGE DISCRIMINATION IN EMPLOYMENT	H-5
H.12	OPERATIONS AND ENGINEERING MULTI-EMPLOYER PENSION PLAN.....	H-5
H.13	SELF-PERFORMED WORK	H-5
H.14	PAYMENT BONDS AND PERFORMANCE BONDS	H-5
H.15	GUARANTEE OF PERFORMANCE	H-5
H.16	DOE ACCESS TO CONTRACTOR MANAGEMENT AND CONTRACT DOCUMENTATION.....	H-5
H.17	WASTE TREATMENT AND IMMOBILIZATION PLANT CONCEPTUAL DESIGN AND SUPPORTING INFORMATION	H-6
H.18	RESPONSIBLE CORPORATE OFFICIAL	H-6
H.19	ASSIGNMENT OF SUBCONTRACTS	H-7
H.20	OTHER GOVERNMENT CONTRACTORS	H-7
H.21	ASSIGNMENT.....	H-7
H.22	SUBCONTRACTOR ENVIRONMENT, SAFETY, QUALITY, AND HEALTH REQUIREMENTS.....	H-7
H.23	TRI-PARTY AGREEMENT	H-8
H.24	EMERGENCY CLAUSE.....	H-8
H.25	STOP WORK AND SHUTDOWN AUTHORIZATION	H-9
H.26	ENVIRONMENTAL PERMITS.....	H-11
H.27	CONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATION OR ALLEGED VIOLATIONS, FINES, AND PENALTIES	H-14
H.28	ALLOCATION OF RESPONSIBILITIES FOR CONTRACTOR ENVIRONMENTAL COMPLIANCE ACTIVITIES	H-14
H.29	HAZARDOUS MATERIALS.....	H-14
H.30	PRESERVATION OF ANTIQUITIES AND LAND AREAS	H-15
H.31	INFORMATION	H-15
H.32	COSTS ASSOCIATED WITH WHISTLEBLOWER ACTIONS	H-16
H.33	LITIGATION MANAGEMENT PLAN	H-17
H.34	ALTERNATIVE DISPUTE RESOLUTION	H-17
H.35	LOBBYING RESTRICTION (ENERGY AND WATER DEVELOPMENT APPROPRIATION ACT, 2000).....	H-18
H.36	COOPERATION DURING TRANSITION TO OPERATIONS	H-18
H.37	ADVANCE UNDERSTANDING ON COSTS	H-18
H.38	ADDITIONAL RIGHTS IN INVENTIONS AND TECHNICAL DATA	H-19

H.39	PATENT INDEMNITY – SUBCONTRACTS.....	H-19
H.40	GOVERNMENT-FURNISHED PROPERTY AND GOVERNMENT-FURNISHED EQUIPMENT	H-19
H.41	THIRD PARTIES	H-19
H.42	CONTRACT DUE DATES	H-19
H.43	U.S. DEPARTMENT OF ENERGY MENTOR-PROTÉGÉ PROGRAM.....	H-20
H.44	USE OF THE U.S. DEPARTMENT OF ENERGY SECURITY BADGE AT CONTRACTOR WTP FACILITIES	H-20
H.45	RESERVED (A143).....	H-20
H.46	DOE O 226.1B, <i>IMPLEMENTATION OF DEPARTMENT OF ENERGY OVERSIGHT POLICY</i>	H-20
H.47	PROTECTION OF PERSONALLY IDENTIFIABLE INFORMATION.....	H-20
H.48	DELETED	H-21
H.49	CORPORATE OPERATING EXPERIENCE DOE O 210.2A, DOE CORPORATE OPERATING EXPERIENCE PROGRAM.....	H-21
H.50	OFFICIAL USE ONLY INFORMATION	H-21
H.51	PROPERTY MANAGEMENT SYSTEM	H-21
H.52	REPORT AND APPROVAL REQUIREMENTS FOR CONFERENCE RELATED ACTIVITIES	H-22
H.53	LBL/DFLAW COMPLETION (CLINS 1.0 AND 2.0) (384).....	H-23
H.54	SAFETY CONSCIOUS WORK ENVIRONMENT	H-25

SECTION H

SPECIAL CONTRACT REQUIREMENTS

H.1 TECHNICAL DIRECTION

- (a) Performance of the work under this Contract shall be subject to the technical direction of U.S. Department of Energy (DOE) Contracting Officer's Representative (COR). The term "technical direction" is defined to include, without limitation:
- (1) Provision of written information to the Contractor, which assists in the interpretation of drawings, specifications, or technical portions of the work description.
 - (2) Review and, where required by the Contract, approval of technical reports, drawings, specifications, and technical information to be delivered by the Contractor to the Government under the Contract.
- (b) Technical direction must be within the scope of work stated in this Contract. The COR does not have the authority to, and may not, issue any technical direction which:
- (1) Constitutes an assignment of additional work outside the *Statement of Work*;
 - (2) Constitutes a change as defined in this Contract Section I Clause entitled, "Changes";
 - (3) Changes any of the express terms, conditions, or specifications of this Contract; or
 - (4) Interferes with the Contractor's right to perform the terms and conditions of this Contract.
- (c) All technical direction shall be issued in writing by the COR.
- (d) The Contractor shall proceed promptly with the performance of technical direction duly issued by the COR in the manner prescribed by this clause and within its authority under the provisions of this clause. If, in the opinion of the Contractor, any instruction or direction by the COR falls within one of the categories defined in (b)(1) through (b)(4) above, the Contractor shall not proceed but shall notify the Contracting Officer in writing within ten (10) working days after receipt of any such instruction or direction and shall request the Contracting Officer to modify this Contract accordingly. Upon receiving the notification from the Contractor, the Contracting Officer shall:
- (1) Advise the Contractor in writing within thirty (30) days after receipt of the Contractor's letter that the technical direction is within the scope of the contract effort and does not constitute a change under the Contract Section I Clause.
 - (2) Advise the Contractor in writing within a reasonable time that the Government will issue a written change order.
- (e) A failure of the Contractor and Contracting Officer to agree that the technical direction is within the scope of this Contract, or a failure to agree upon the contract action to be taken with respect thereto shall be subject to the provisions of the Section H Clause entitled, "Alternative Dispute Resolution."

H.2 MODIFICATION AUTHORITY

Notwithstanding any of the other clauses of this Contract, the Contracting Officer shall be the only individual authorized to:

- (a) Accept nonconforming work,
- (b) Waive any requirement of this Contract, or
- (c) Modify any term or condition of this Contract.

H.3 KEY PERSONNEL (291)

A listing of key personnel on this Contract is provided as Section J, Attachment F, "Key Personnel." These key personnel are considered to be essential to the work being performed on this Contract. Prior to adding or deleting positions, changing position titles, diverting any of the employees in these positions to other positions, or substituting any of the employees in specified Key Personnel Positions, 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 prior 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 sixty (60) days. The Key Personnel Positions list may be modified during the course of the Contract to add or delete Key Personnel Positions as appropriate and as approved by the Contracting Officer.

H.4 SMALL BUSINESS SUBCONTRACTING PLAN

The Small Business Subcontracting Plan submitted by the Contractor and approved by the Contracting Officer (via contract award) is incorporated into this Contract as Section J, Attachment D, "Small Business Subcontracting Plan." Any revisions thereto shall be approved by the Contracting Officer and incorporated into this Contract by a separate contract modification. Plans shall provide strong consideration for local and Washington and Oregon state businesses.

H.5 REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF THE OFFEROR

The Representations, Certifications, and Other Statements of the Offeror submitted with the offer for this Contract are, by reference, hereby incorporated in and made a part of this Contract.

H.6 DISPLACED EMPLOYEE HIRING PREFERENCE -- This section deleted.

H.7 IMPLEMENTATION OF SECTION 3161 POLICY ON WORK FORCE RESTRUCTURING AND PREFERENCE IN HIRING -- This section deleted.

H.8 LABOR RELATIONS

- (a) The Contractor, and its major subcontractors, will respect the rights of employees, (1) to organize, form, join, or assist labor organizations; bargain collectively through representatives of the employees own choosing; and engage in other protected concerted activities for the purpose of collective bargaining; or (2) to refrain from such activities.
- (b) To the extent required by law, the Contractor and its major subcontractors shall give notice to any lawfully designated representative of its employees for purposes of collective bargaining and, upon proper request, bargain to good faith impasses or agreement, or otherwise satisfy applicable bargaining obligations.

- (c) 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.

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

The costs associated with grievance processing and settlements, arbitration, and arbitration awards shall be allowable in accordance with the provisions of this Contract Section I Clause entitled, "Insurance – Litigation and Claims."

H.9 IMPLEMENTATION OF THE HANFORD SITE STABILIZATION AGREEMENT

- (a) The Hanford Site Stabilization Agreement (HSSA) for all construction work for DOE at the Hanford Site, which is referenced in this Clause, consists of a Basic Agreement dated September 10, 1984, plus Appendix A, both of which may be periodically amended. The HSSA is hereby incorporated into this Contract by reference.
- (b) Deleted.
- (c) This Section applies to employees performing work, under contracts (or subcontracts thereunder) administered by the DOE, which are subject to the *Davis-Bacon Act*, in the classifications set forth in the Hanford Site Stabilization Agreement (HSSA) for work performed at the Hanford Site.
- (d) Contractors and subcontractors at all tiers who are parties to an agreement(s) for construction work with a local union having jurisdiction over DOE construction work performed at the Hanford Site, or who are parties to a national labor agreement for such construction work, shall become signatory to the Hanford Site Stabilization Agreement (HSSA) and shall abide by all of its articles, including all current appendices thereto. Subcontractors at all tiers who have subcontracts with a signatory contractor or subcontractor shall become signatory to the HSSA and shall abide by all of its articles, including all current appendices thereto.

Contractors and subcontractors at all tiers who are not signatory to the Hanford Site Stabilization Agreement (HSSA) and who are not required under this Section to become signatory to it, 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 Articles of the HSSA:

- (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 & Out, Section 3 only;
 - (7) Article XX, General Working Conditions; and
 - (8) Article XXI, Safety and Health.
- (e) 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 Articles of the amendments to the *Davis-Bacon Act* contained in the Act of July 2, 1964 (Public Law 88-349-78, Statutes 238-239), and the U.S. Department of Labor regulations in implementation thereof (29 *Code of Federal Regulations* [CFR] Parts 1, 3, 5).
- (f) DOE may from time to time provide notice to the Contractor of any changes in wages, fringe benefits, and the parties may modify other employee compensation as the Hanford Site Stabilization Agreement, including all current appendices thereto from time to time. The Contractor shall not be entitled to any change in fee **(155)** due to any change in wages or fringe benefits under the Hanford Site Stabilization Agreement during the term of the Contract.
- (g) The requirements of this Section are in addition to, and shall not relieve the Contractor of any obligation imposed by other sections or subsections of the Contract.
- (h) 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, and to preserve such records for a period of three (3) years thereafter, for all employees performing such work. Such records will contain the name and address of each such employee; the employee's 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 in this Section. 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.
- (i) The Contractor agrees to insert the clauses of this Section in all subcontracts for the performance of work subject to the *Davis-Bacon Act* administered by DOE at the Hanford Site.
- (j) 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.

H.10 DETERMINATION OF APPROPRIATE LABOR STANDARDS

The U.S. Department of Energy (DOE) shall determine the appropriate labor standards in accordance with the *Davis-Bacon Act*, which shall apply to work performed under this Contract. Where requested by DOE, the Contractor shall provide whatever information is relevant to labor standards determinations, in the form and timeframe required by DOE, as may be necessary for

DOE to make such labor standards determinations. The Contractor will then be responsible for ensuring that the appropriate labor standards provisions are included in subcontracts.

H.11 AGE DISCRIMINATION IN EMPLOYMENT

The Contractor shall not discriminate against any employee, applicant for employment, or former employee on the basis of age. The Contractor shall comply with the *Age Discrimination in Employment Act*, with any state or local legislation regarding discrimination based on age, and with all applicable regulations thereunder.

H.12 OPERATIONS AND ENGINEERING MULTI-EMPLOYER PENSION PLAN

- (a) The Contractor will be a sponsoring employer and ensure participation by its teaming partners, if any, in the existing Hanford Operations and Engineering Pension Plan, a multi-employer pension plan (hereinafter MEPP). The MEPP will cover only those individuals who were employed by the Tank Farm Contractor on the Waste Treatment and Immobilization Plant (WTP) at the time of Contract award and who are existing participants in the plan as of the date of their initial employment on the WTP Project by the Contractor (or its teaming partner(s), if any). Individuals covered by the Hanford Site Stabilization Agreement are not eligible to participate in the MEPP. Employees will earn credit for their service with the Contractor (and any teaming partner) only for services performed by them under this Contract.
- (b) At the request of the Plan Administrator, the Contractor will provide such documents, information, and representations necessary to insure that the Contractor's participation (or that of any teaming partners) in the MEPP has not and will not adversely affect the MEPP's exempt status under the Internal Revenue Code and/or the *Employee Retirement Income Security Act*. The MEPP documents and subsequent amendments are subject to the DOE approval.

H.13 SELF-PERFORMED WORK

The objectives for the amount of self-performed work by the Contractor is 60 percent of the Total Estimated Contract Cost. Self-performed work by the Contractor includes any teaming partner(s) and any parent, wholly-owned subsidiary or affiliated organizations. It is the expectation of DOE that the remainder of the work shall be performed through competitive procurements with an emphasis on fixed price subcontracts.

H.14 PAYMENT BONDS AND PERFORMANCE BONDS

The Contractor will not be required to furnish payment bonds and performance bonds. However, all fixed price subcontractors will be required to submit the necessary payment bonds and performance bonds as required by the *Miller Act*. Specific requirements and penal amounts can be found in *Federal Acquisition Regulation (FAR) 28.102*.

H.15 GUARANTEE OF PERFORMANCE

The Contractor or the Contractor's parent organization(s) has (have) provided a Performance Guarantee Agreement in a manner and form acceptable to the Contracting Officer assuring the performance, duties, and responsibilities of the Contractor, including repayment of unearned provisional fee, will be satisfactorily fulfilled. The Performance Guarantee Agreement dated December 11, 2000, is incorporated herein by reference and made part of this Contract.

H.16 DOE ACCESS TO CONTRACTOR MANAGEMENT AND CONTRACT DOCUMENTATION

- (a) In order to facilitate interactions with the U.S. Department of Energy (DOE), support safe and efficient performance of this Contract and effective contract administration, the Contractor shall locate Contractor offices on the Hanford Site or in the Tri-Cities,

Washington area for, at a minimum, senior level management responsible for the following major project management functions: Project Management; Environment, Safety, Quality and Health (ESQ&H); Project Cost and Schedule Control; Procurement/Contracting; Environmental Compliance; Technology Management; Labor Relations; Human Resources; Engineering; Construction Management; and Design Management for Systems, Facilities, and/or Engineering Disciplines.

- (b) Although not all work is required to be performed in the Tri-Cities area, the Contractor shall use judgment in relocation of project staff to the Tri-Cities to facilitate the objectives of cost efficiency, project integration and meeting DOE's needs for frequent and informative interactions.
- (c) The design process must have the capability for efficient electronic integration. Video teleconferencing shall also be used to facilitate communications with satellite work locations where critical work is to be performed.
- (d) All major design reviews shall be held in the Tri-Cities area unless otherwise approved by the Contracting Officer.

H.17 WASTE TREATMENT AND IMMOBILIZATION PLANT CONCEPTUAL DESIGN AND SUPPORTING INFORMATION

The Waste Treatment and Immobilization Plant (WTP) Conceptual Design and supporting information are provided to the Contractor. Additional information developed for the WTP Conceptual Design will be transitioned from the Tank Farm Contractor to the Contractor subsequent to Contract award. The Contractor is responsible for designing, constructing, and commissioning the WTP in a manner that meets all Contract specifications and requirements, and results in an operating facility that meets or exceeds all functional and performance specifications and requirements. The U.S. Department of Energy (DOE) makes no warranties as to the accuracy, reliability, completeness or usefulness of the WTP Conceptual Design materials. The Contractor shall have no recourse against DOE, or the individuals, or contractors who prepared such information for DOE, for impacts resulting from the Contractor's use or reliance upon WTP Conceptual Design or supporting information. The Contractor shall perform such reviews and evaluations, as it deems necessary for the Contractor to satisfy itself as to the accuracy, reliability, usefulness and completeness of any WTP Conceptual Design or supporting information, which it may utilize in performing this Contract. Any reference to the contractor(s) who prepared the WTP Conceptual Design and supporting information shall not be carried forward by the Contractor in any work products, permits, presentations, or deliverables produced under this Contract except where necessary to comply with applicable laws or comply with proprietary data requirements. A listing of the WTP Conceptual design and supporting information is provided in Section J, Attachment K, "Listing of WTP Conceptual Design and Supporting Information."

H.18 RESPONSIBLE CORPORATE OFFICIAL

The Contractor shall guarantee performance as evidenced by the "Guarantee of Performance Agreement" (Clause H.15). If a separate business entity is established for this Contract, the Contractor's parent company shall guarantee performance as evidenced by the "Guarantee of Performance Agreement (Clause H.15). If the Contractor is a joint venture or other similar entity where more than one company is involved, the parent companies shall assume joint and several liability for the performance of the Contractor. In the event any of the signatories to the "Guarantee of Performance Agreement" enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer. Notwithstanding the provisions of this Clause, the Government may contact, as necessary, the single responsible corporate official identified below, who is at a level above the Project Manager for the Contractor and who is accountable for the performance of the Contractor, regarding Contractor performance issues. Should the responsible corporate official

change during the period of this Contract, the Contractor shall promptly notify the Contracting Officer in writing of the change of the individual to this Contract.

Name: Barbara Rusinko
Position: President
Company/Organization: Bechtel National, Inc.
Address: 12011 Sunset Hills Road, Reston, Virginia 20190-5919
Telephone: 703-429-6300
Facsimile: 703-429-6045
Email: berusink@bechtel.com

H.19 ASSIGNMENT OF SUBCONTRACTS

The Government reserves the right to direct the Contractor to assign to the Government or another Contractor any subcontract awarded under this Contract.

H.20 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 fit 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 the U.S. Department of Energy (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.21 ASSIGNMENT

Neither this Contract nor any interest therein nor claim thereunder shall be assigned or transferred by the Contractor except as expressly authorized in writing by the Contracting Officer.

H.22 SUBCONTRACTOR ENVIRONMENT, SAFETY, QUALITY, AND HEALTH REQUIREMENTS

The U.S. Department of Energy (DOE) and the Contractor are committed to zero accidents on the WTP. To that end, unless expressly approved by the Contracting Officer, the Contractor is required to subcontract only with subcontractors that have an acceptable Environmental, Safety, Quality, and Health (ESQ&H) program and that satisfy the following minimum requirements:

- (a) An ESQ&H program that is compliant with applicable local, State, Federal and DOE regulatory requirements.
- (b) Employees are properly trained and equipped to perform their assigned work. The subcontractor has established an orientation program for new hires, which includes ESQ&H.
- (c) Policies and procedures are in place to eliminate accidents, injuries/illnesses, and damage to property and equipment.
- (d) ESQ&H records are adequately and properly maintained.
- (e) Accidents/Incidents are investigated promptly and required reports are generated. If the investigation discovers inadequacies in either the work process or the policies and procedures, the appropriate processes are put in place to avert the accident/incident in the future and personnel are provided proper training.
- (f) Hazards are identified and appropriate measures are taken to ensure that personnel and equipment are adequately protected as a result of identified hazards.

- (g) Employees have the right to report unsafe conditions and to interrupt or stop work without fear of reprisal.
- (h) The frequency of ESQ&H meetings with employees to discuss the work to be performed and the hazards associated with the work is based on the scope of work and commensurate with the work hazards.
- (i) ESQ&H inspections/audits are conducted to evaluate effectiveness of the program.
- (j) ESQ&H reviews subcontractor supplied information. Such as:
 - (1) The subcontractor has provided its Experience Modification Rate (EMR), for the previous three (3) years, and Occupational Safety and Health Administration (OSHA) Total Recordable and Lost Workday case rates for the previous three (3) years.
 - (2) The subcontractor has an Experience Modification Rate of 1.0 or better and an average not greater than the most currently published rates by the Bureau of Labor and Statistics for the Construction Industry for OSHA Total Recordable and Lost Workday case rates for the previous three (3) years.
 - (3) The subcontractor has provided an explanation for the increase should the subcontractor's rates exceed the above stated rates and a documented mitigation plan. All mitigation plans shall be submitted to the BNI Safety Assurance Manager or designee for review and concurrence. **(204)**
- (k) The subcontractor has an established written Hazard Communication Program and a system within the program to maintain Material Safety Data Sheets (MSDS).
- (l) The subcontractor has had no significant willful citations from OSHA or other regulatory organizations during the previous three (3) years.
- (m) The subcontractor has received no citations, other than those determined to be minor violations, or fines for *Price-Anderson Amendments Act* noncompliances during the previous three (3) years.
- (n) The subcontractor has received no fines for Nuclear Regulatory Commission noncompliances during the previous three (3) years.

The Contractor shall flow down all applicable ESQ&H program criteria to the lowest tier subcontractor performing construction, equipment fabrication, or commissioning.

H.23 TRI-PARTY AGREEMENT

The U.S. Department of Energy (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 (RCRA)* and the *Comprehensive Environmental Response, Compensation, and Liability Act*, as amended (CERCLA). 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 DOE direction concerning implementation of the TPA and achievement of current and future milestones in the TPA.

H.24 EMERGENCY CLAUSE

- (a) The DOE Office of River Protection (ORP) Manager, or designee shall have sole discretion to determine when an emergency situation exists as a result of facility

operations within the physical boundaries defined by this Contract affecting personnel, public health, safety, the environment, or security. The DOE Richland Operations Office (RL) Manager, or designee has the discretion to determine when an emergency condition exists elsewhere on the Hanford Site that may affect ORP employees. In the event that either the ORP or RL Manager or designee, determines that an emergency exists, the ORP 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 ORP 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.
- (c) Deleted. **(256)**

H.25 STOP WORK AND SHUTDOWN AUTHORIZATION (162)

- (a) Definitions:

Imminent Danger: Any condition or practice such that a hazard exists that could reasonably be expected to cause death, serious physical harm, or other serious hazard to employees, unless immediate actions are taken to mitigate the effects of the hazard and/or remove employees from the hazard.

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

Stop Work Criteria:

1. Conditions exist that pose an imminent danger to the health and safety of workers or the public; or
2. Conditions exist, that if allowed to continue, could adversely affect the safe operation of, or could cause serious damage to, the facility; or
3. Conditions exist, that if allowed to continue, could result in the release from the facility to the environment of radiological or chemical effluents that exceed applicable regulatory requirements or approvals.

- (b) DOE Stop Work Order:

In accordance with Section I, *Contract Clauses*, I.105, DEAR 952.223-71, "Integration of Environment, Safety, and Health into Work Planning and Execution," the DOE Contracting Officer has the ability to issue a DOE Stop Work Order in whole or in part if:

1. The Contractor fails to provide resolution of any noncompliance with applicable requirements and Safety Management System or if,
2. At any time the Contractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public.

In addition, a DOE Stop Work Order can be initiated if the Stop Work Criteria as defined in Section H.25 (a) is met dependent on the severity and extent of the condition.

(c) DOE Stop Work Action:

DOE personnel provide safety oversight of contractor operations and have the authority to initiate a DOE Stop Work Action if the Stop Work Criteria as defined in Section H.25 (a) is met. DOE personnel have the authority to shut down an entire facility, activity, or job. Following a DOE Stop Work Action the contractor shall:

1. Immediately stop the identified activity or activities (up to and including entire plant shutdown);
2. Place the area, activity, facility, etc. into a safe condition;
3. Determine actions necessary to address the unsafe condition;
4. Provide proposed corrective actions to the DOE initiator of the DOE Stop Work Action;
5. Prior to restarting work, inform the DOE initiator that the corrective actions allowing for restart have been completed;
6. Restart work only after the unsafe condition is mitigated and the DOE has given verbal direction to allow restart; and
7. If requested, provide DOE a corrective action plan subsequent to the resumption of work in accordance with contractual requirements.

(d) Contractor Stop Work Action:

1. The contractor shall establish a stop work process/procedure that:
 - a. Meets the requirement of 10 CFR 851.20, "Management responsibilities and worker rights and responsibilities";
 - b. At a minimum uses the Stop Work Criteria defined in Section H.25 (a) for when a Contractor Stop Work Action is required; and
 - c. Meets the tenets of the "Stop Work Policy."
2. Upon initiating a Contractor Stop Work Action the contractor shall:
 - a. Immediately stop the identified activity or activities (up to and including entire plant shutdown);
 - b. Place the area, activity, facility, etc. into a safe condition;
 - c. Notify the DOE Facility Representative if the Contractor's Stop Work Action meets the Stop Work Criteria defined in Section H.25 (a), or notification of facility management is required for the issue;
 - d. Determine actions necessary to address the unsafe condition; and
 - e. Restart work only after the unsafe condition is mitigated.

(e) Stop Work Policy:

The following represents the site's Stop Work Policy:

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

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

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

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

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

H.26 ENVIRONMENTAL PERMITS

The Contractor is required to comply with all environmental laws, regulations, and procedures applicable to the work being performed under this Contract. This includes, but is not limited to, compliance with applicable Federal, state, and local laws and regulations, interagency agreements such as the *Hanford Federal Facility Agreement and Consent Order*, consent orders, consent decrees, and settlement agreements between DOE and Federal and state regulatory agencies.

- (a) Environmental Permits: The Contractor shall accept as co-operator assignment or transfer of permits currently held by the DOE and its existing contractor for the Waste Treatment and Immobilization Plant (WTP). The Contractor is responsible to DOE for operation of the treatment, storage, and/or disposal unit known as the WTP in compliance with the laws, regulations, etc., as stated in the paragraph above and in accordance with the terms of the environmental permits.
- (b) Contractor and DOE as Joint Permittees: Where appropriate, required by law, or required by applicable regulatory agencies, DOE shall sign permits as owner or co-operator with the Contractor as the operator or co-operator. DOE will co-sign Hazardous Waste and State Dangerous Waste Permit Applications as owner/co-operator where required by applicable law. In this scenario, the Contractor must coordinate its actions with DOE. The Contractor shall accept assignment as co-operator of the State Dangerous Waste Permit Application, which has been submitted to the Washington State

Department of Ecology for the WTP. 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.

- (c) Multiple Contractors as Permittees: Where appropriate, in situations where multiple contractors are operators or co-operators of operations requiring environmental permits, DOE shall 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.
- (d) Permit Applications: The Contractor shall provide to DOE for review and comment in draft form any permit applications and other regulatory materials and permits necessary to be submitted to regulatory agencies for the purposes of obtaining a permit for construction or operation of the WTP. In the event the permit application is required to be co-signed, submitted by DOE, or is related to a permit in which DOE is a permittee, the Contractor shall provide the application for review and comment. Whenever reasonably possible, all such materials shall be provided to DOE initially not later than 150-days prior to the date they are to be submitted to the regulatory agency. The Contractor shall normally provide final regulatory documents to DOE at least 30-days prior to the date of submittal to the regulatory agencies for DOE's final review and signature or concurrence that shall be performed by DOE in a prompt manner. Special circumstances may require permits to be submitted in a shorter time frame. The Contractor may submit for DOE's consideration, requests for alternate review, comment, or signature schedules for environmental permit applications or other regulatory materials covered by this Clause. Any such requests shall be submitted 180-days prior to the date the materials are to be submitted to the regulatory agencies. Any such schedule revision shall be effective only upon approval from the Contracting Officer (Table C.5-1.1, Deliverable H.1). **(152)**

In case of permit applications that are co-signed by DOE with the Contractor, DOE may sign the application through either the Manager of the Richland Operations Office or the Manager of the Office of River Protection, or the Manager's authorized designees, as determined by DOE in its sole discretion.

- (e) Financial Responsibility: DOE agrees that if bonds, insurance, or administrative fees are required as a condition for permits obtained by the Contractor under this Contract, such costs shall be allowable. In the event such costs are determined by DOE to be excessive or unreasonable, DOE 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.
- (f) Copies of Technical Information: The Contractor shall provide DOE with copies of environmental permits, authorizations, and regulatory approvals issued to the Contractor by regulatory agencies. DOE shall provide the Contractor access to copies of environmental permits, authorizations, and approvals issued by the regulatory agencies to DOE that the Contractor may need to comply with applicable law.

The Contractor and DOE shall provide to the each other, copies of documentation, such as letters, reports, or other such materials transmitted either to or from regulatory agencies relating to the Contract work.

The Contractor and DOE shall maintain all necessary technical information required to support applications for revision of DOE or other Hanford Site Contractor environmental permits when such applications or revisions are related to the Contractor's operations.

- (g) Certifications: The Contractor shall provide a written certification statement attesting that information DOE is requested to sign was prepared in accordance with applicable requirements. If required by law, regulation, or DOE order, the Contractor shall include the following or similar certification statement in the submittal of such materials to DOE:

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

The certification statement shall be signed by the individual who is authorized, in writing, by the Contractor to sign such certification statements submitted to Federal or State regulatory agencies under the applicable regulatory program.

- (h) Negotiations: DOE may elect to be in charge of, and direct, all negotiations with regulatory agencies regarding permits, fines, penalties, and any other proposed notice, notice, administrative order, and similar type of notice. As directed or required by DOE, the Contractor shall participate in negotiations with regulatory agencies; however, the Contractor shall not make any commitments or offers to regulators purporting to bind or binding the Government in any form or fashion, including monetary obligations, without receiving written authorization or concurrence from the Contracting Officer or his/her authorized representative prior to making such offers/commitments. Failure to obtain such advance written approval may result in otherwise allowable costs being declared unallowable and/or the Contractor being liable for any excess costs to the Government associated with or resulting from such offers/commitments. In the event DOE elects to allow the Contractor to conduct such negotiations without direct DOE participation, the Contractor shall keep DOE fully advised as to the progress of such negotiations.
- (i) Permit Transfer Upon Contract Termination or Expiration: In the event of expiration or termination of this Contract, DOE may require the Contractor on an allowable cost basis to take all necessary steps to transfer to DOE some or all environmental permits held by the Contractor. DOE will assume responsibility for such permits, with the approval of the regulating agency, and the Contractor shall be relieved of all liability and responsibility to the extent that such liability and responsibility results from the acts or omissions of a successor contractor, DOE, or their agents, representatives, or assigns. The Contractor shall remain liable for all unresolved costs, claims, demands, fines, and penalties, including reasonable legal costs arising prior to the date such permits are transferred to another party in accordance with other provisions of the Contract. The Contractor shall not be liable for any such claims occurring after formal transfer of this Contract unless said claims result from Contractor's action or inaction.

H.27 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 or alleged violations (NOVs/NOAVs) 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 the U.S. Department of Energy (DOE) promptly when it receives service from the regulators of notices of violation or alleged violations and fines and penalties.

H.28 ALLOCATION OF RESPONSIBILITIES FOR CONTRACTOR ENVIRONMENTAL COMPLIANCE ACTIVITIES

- (a) This Clause allocates the responsibilities of the U.S. Department of Energy (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 that caused 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 the DOE (if DOE pays the fine or penalty).

H.29 HAZARDOUS MATERIALS

In implementation of the Section I Clause entitled, *Hazardous Material Identification and Material Safety Data*, the Contractor shall obtain, review, and maintain a Material Safety Data Sheet (MSDS) in a readily accessible manner for each hazardous material (or mixture containing a hazardous material) ordered, delivered, stored, or used; and maintain an accurate inventory and history of use of hazardous materials at each use and storage location. After Contract award the Offeror shall submit the information required by paragraph (b) of the Section I Clause referenced above. The MSDS shall conform to the requirements of 29 Code of Federal Regulations (CFR 1910.1200 (g), "Hazard Communication." MSDS shall be readily accessible during each work shift to employees when they are in their work areas.

H.30 PRESERVATION OF ANTIQUITIES AND LAND AREAS

Federal law provides for the protection of antiquities located on land owned or controlled by the U.S. Department of Energy (DOE). Antiquities include Indian graves or campsites, relics, and artifacts. The Contractor shall control the movements of its personnel and its subcontractors' personnel at the job site and provide appropriate training to ensure that any existing antiquities discovered thereon will not be disturbed or destroyed by such personnel. It shall be the duty of the Contractor to report to the Contracting Officer the existence of any antiquities so discovered. The Contractor shall also preserve all vegetation except where such vegetation must be removed for survey or construction purposes. Any removal of vegetation shall be in accordance with the terms of applicable habitat mitigation plans and permits.

H.31 INFORMATION

- (a) Release of Information
 - (1) The Contractor shall be responsible for developing, planning, and coordinating timely dissemination of information regarding performance of work under this Contract.
 - (2) The Contractor shall be responsible for following the U.S. Department of Energy (DOE) guidelines and/or procedures for all oral, written and audio/visual information material prepared for public use, including technical information.
- (b) Unclassified Controlled Nuclear Information (UCNI): Documents originated by the Contractor or furnished by the Government to the Contractor, in connection with this Contract, may contain unclassified controlled nuclear information as determined pursuant to Section 148 of the *Atomic Energy Act of 1954*, as amended. The Contractor shall be responsible for protecting such information from unauthorized dissemination in accordance with applicable DOE regulations, directives, and orders.
- (c) Confidentiality of Information: To the extent that the work under this Contract requires that the Contractor be given access to confidential or proprietary business, technical, or financial information belonging to the Government or other companies, the Contractor shall, after receipt thereof, treat such information as confidential and agrees not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by the Contracting Officer in writing. The foregoing obligations, however, shall not apply to:
 - (1) Information, which, at the time of receipt by the Contractor, is in the public domain.
 - (2) Information that is published after receipt thereof by the Contractor or otherwise becomes part of the public domain through no fault of the Contractor.
 - (3) Information that the Contractor can demonstrate was in its possession at the time of receipt thereof and was not acquired directly or indirectly from the Government or other companies.
 - (4) Information that the Contractor can demonstrate was received by it from a third party that did not require the Contractor to hold it in confidence.

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

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

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

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

H.32 COSTS ASSOCIATED WITH WHISTLEBLOWER ACTIONS

- (a) Definitions:

Covered Contractors and subcontractors for the purposes of this Section means those contractors and subcontractors with contracts for an excess of \$500,000.

Employee whistleblower action encompasses any action filed by an employee in Federal and State court for redress of a retaliatory act by a contractor and any administrative procedure brought by an employee under 29 Code of Federal Regulations (CFR) Part 24, "Procedures for the Handling of Retaliation Complaints under the Employee Protection Provisions of Six Environmental Statutes and Section 211 of the Energy Reorganization Act of 1974"; 48 CFR subpart 3.9, "Whistleblower Protections for Contractor Employees"; 10 CFR Part 708, "DOE Contractor Employee Protection Program"; or 42 United States Code (USC) 7239, "Whistleblower protection program."

Retaliatory acts means discharge, demotion, reduction in pay, coercion, restraint, threat, intimidation, or other similar negative action taken against an employee by a contractor as a result of an employee's activity protected as a whistleblower activity by a Federal or state statute or regulation.

Settlement and award costs means defense costs and costs arising from judicial orders, negotiated agreements, arbitration, or an order from a Federal agency or board and includes compensatory damages, underpayment for work performed, and reimbursement for a complainant employee's legal counsel.

- (b) For costs associated with employee whistleblower actions where a retaliatory act is alleged against a covered contractor or subcontractor, the Contracting Officer:
 - (1) May authorize reimbursement of costs on a provisional basis, in appropriate cases;

- (2) Must consult with the DOE Office of General Counsel whistleblower cost point of contact before making a final allowability determination; and
 - (3) Must determine allowability of defense, settlement, and award costs on a case-by-case basis after considering the terms of the contract, relevant cost regulations, and the relevant facts and circumstances, including Federal law and policy prohibiting reprisal against whistleblowers, available at the conclusion of the employee whistleblower action.
- (c) Covered contractors and subcontractors must segregate legal costs including costs of in-house counsel, incurred in the defense of an employee whistleblower action so that the costs are separately identifiable.
- (d) If a Contracting Officer provisionally disallows costs associated with an employee whistleblower action for a covered contractor or subcontractor, funds advanced by the U.S. Department of Energy (DOE) may not be used to finance costs connected with the defense, settlement, and award of an employee whistleblower action.
- (e) Contractor defense, settlement, and award costs incurred in connection with the defense of suits brought by employees under Section 2 of the *Major Fraud Act of 1988* are excluded from coverage of this Section.

H.33 LITIGATION MANAGEMENT PLAN

The Contractor shall prepare a Litigation Management Plan that shall be submitted to the Contracting Officer for approval within ninety (90) days following Contract award. The purpose of the Plan will be to control the cost of litigation and implement the DOE policy favoring the use of Alternative Dispute Resolution (ADR) techniques where appropriate and beneficial to the Government. The Litigation Management Plan should, at a minimum, follow the procedures and cost guidelines in the policy statement published in the Federal Register on April 3, 1996 (61 FR 147.63). The Plan should also cover legal costs not connected with litigation. The Plan will be revised from time to time to conform to litigation management and ADR policies established by DOE (Table C.5-1.1, Deliverable H.2). **(152)**

H.34 ALTERNATIVE DISPUTE RESOLUTION

The U.S. Department of Energy (DOE) and the Contractor both recognize that methods for fair and efficient dispute resolution are essential to the successful and timely achievement of critical milestones and completion of all Contract requirements. To facilitate the prevention and early resolution of disputes, the parties agree to the following Alternative Dispute Resolution (ADR) provisions:

- (a) Dispute Avoidance:
- (1) DOE and the Contractor agree to participate in a partnering workshop to be conducted by an experienced professional jointly agreed upon by the parties, within 60 days after Contract award.
 - (2) The parties agree to jointly select a "standing neutral" within 30 days of completion of the partnering workshop. The "standing neutral" will be available to help resolve disputes, as they arise. This 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. The specific ADR processes and procedures, as well as the process for selecting the "standing neutral" will be determined at the partnering workshop.

(b) Early Resolution of Disputes:

- (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 an agreement cannot be reached through informal negotiations after 30 days, then such agreement shall be referred to the "standing neutral," pursuant to the procedures jointly developed in the partnering workshop.
- (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 thirty (30) days to reach such an agreement either party may request, and the neutral will render a nonbinding advisory opinion. Such opinion shall not be admissible in evidence in any subsequent proceeding. All costs incurred by the Contractor in connection with this mediation procedure, shall if reasonable, be an allowable cost under this Contract. Section J, Attachment N, "Alternative Dispute Resolution" provides mutual agreement for Standing Neutral procedures. **(147)**

(c) Formal Complaint:

If the dispute is not resolved through the "standing neutral" process, no later than thirty (30) days after the completion of said process either party may proceed under the Section I Clause, "Disputes."

H.35 LOBBYING RESTRICTION (ENERGY AND WATER DEVELOPMENT APPROPRIATION ACT, 2000)

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 to communicate to Members of Congress as described in the *Anti-Lobbying Act* (18 United States Code (USC 1913)). This restriction is in addition to those prescribed elsewhere in statute and regulation.

H.36 COOPERATION DURING TRANSITION TO OPERATIONS

The Contractor shall cooperate with U.S. Department of Energy (DOE) and other contractor(s) as the Contracting Officer directs in planning for and carrying out the transition from the Waste Treatment and Immobilization Plant (WTP) to a future operations contractor. The Contractor shall take all necessary steps to effectuate a smooth transition of responsibility for operation of the WTP to such entity(s) and to transfer to such entity all permits, WTP operating documentation, other technical data, and government furnished property and equipment in the possession of the Contractor in accordance with direction of the Contracting Officer. The Contractor shall prepare, as directed by the Contracting Officer, a plan for smooth transition of property, documentation, and WTP personnel necessary for operation of the WTP to such contractor as the Contracting Officer directs. The transition will occur upon completion of commissioning activities as approved by the Contracting Officer.

H.37 ADVANCE UNDERSTANDING ON COSTS

The U.S. Department of Energy (DOE) and the Contractor will, within 60 days after Contract award, reach advance understandings regarding certain costs under this Contract. Such advance understandings enable both DOE and the Contractor to determine the allocability, allowability, and reasonableness of such costs prior to their incurrence, thereby avoiding subsequent disallowances and disputes, and facilitating prudent expenditure of public funds. It is expected that costs covered by such advance understandings will include employee travel and relocation, 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 FAR subpart 31.2 of FAR, "Contracts with Commercial Organizations," as supplemented by *Department of Energy Acquisition Regulation (DEAR) 931.2*, "Contract with Commercial Organizations," and such understanding shall be consistent with DOE Order 350.1, *Contractor Human Resource Management*. Such policies will be summarized and submitted to DOE for approval. Advance understandings will be appended to this Contract in Section J, Attachment J, "Advance Understanding on Costs."

H.38 ADDITIONAL RIGHTS IN INVENTIONS AND TECHNICAL DATA

In addition to rights specified elsewhere, the Contractor agrees that it will, upon request by the Government, grant to the Government, and others acting on behalf of the Government, an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the Contractor and any other intellectual property, including technical data, which are owned or controlled by the Contractor, at any time through the completion of this Contract. The right of the Government shall apply to inventions, discoveries, and intellectual property, including technical data that are incorporated or embodied in the construction or design of the Waste Treatment and Immobilization Plant (WTP) or which are utilized in the operation of the WTP or which cover articles, materials, or products manufactured at the WTP. The acceptance or exercise by the Government of the aforesaid rights and license shall not prevent the Government at any time from contesting the enforceability, validity, or scope of, or title to, any rights or patents or other intellectual property herein licensed.

The Contractor shall take all necessary steps to assign permits, authorizations, leases, and any licenses in any third party intellectual property for design, construction, operation, and closure of the WTP to U.S. Department of Energy (DOE) or such other third party as DOE may designate.

H.39 PATENT INDEMNITY – SUBCONTRACTS

Except as otherwise authorized by the Contracting Officer, the Contractor must obtain indemnification of the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a secrecy order by the Government) from the Contractor's subcontractors for any contract work subcontract in accordance with Federal Acquisition Regulation (FAR) 52.227-3, "Patent Indemnity."

H.40 GOVERNMENT-FURNISHED PROPERTY AND GOVERNMENT-FURNISHED EQUIPMENT

A list of government-furnished property and government-furnished-equipment is provided in Section J, Attachment C, "Government-Furnished Property and Government-Furnished Equipment."

H.41 THIRD PARTIES

Nothing contained in this Contract or its amendments shall be construed to grant, vest, or create any rights in any person not a party to this Contract. This provision is not intended to limit or impair the rights, which any person may have under applicable Federal Statutes.

H.42 CONTRACT DUE DATES

All due dates for deliverables, submittals, or any other requirement in this Contract that fall on a non-Federal workday and/or a Hanford Site closure day shall be deemed to be due on the next Federal/Hanford workday.

H.43 U.S. DEPARTMENT OF ENERGY MENTOR-PROTÉGÉ PROGRAM

The Contractor may participate in the Department of Energy Mentor-Protégé Program to encourage it to assist firms certified under Section 8(a) of the *Small Business Act* by U.S. Small Business Administration, 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. The applicable regulations governing the Contractor's participation in this Program are provided at 48 CFR 919.70, "The Department of Energy Mentor-Protégé Program."

H.44 USE OF THE U.S. DEPARTMENT OF ENERGY SECURITY BADGE AT CONTRACTOR WTP FACILITIES

DOE security badges are required to be conspicuously worn above the waist by all personnel accessing the Contractor WTP Facilities located in the Tri-Cities, Washington area.

H.45 RESERVED (143)

H.46 DOE O 226.1B, IMPLEMENTATION OF DEPARTMENT OF ENERGY OVERSIGHT POLICY (069) (108) (128) (310) (352)

The Contractor shall comply with the Contractor Requirements Document of DOE O 226.1B, and provide timely notification to the DOE Contracting Officer regarding significant assurance system changes prior to the changes being made. DOE O 226.1B will be implemented within the limitations of DOE-approved assumptions and direction for prior revisions (referenced in the following: CCN: 137766, "Contract No. DE-AC27-01RV14136 – Implementation of U.S. Department of DOE O 226.1, 'Implementation of Department of Energy Oversight Policy', Bechtel National, Inc. Plan and Schedule," dated April 14, 2006; CCN: 141622, "Contract No. DE-AC27-01RV14136 – Approval of Bechtel National, Inc. (BNI) Plan and Schedule for Implementation of U.S. Department Energy (DOE) O 226.1, 'Implementation of Department of Energy Oversight Policy.'" dated June 26, 2006; CCN: 143142, "Contract No. DE-AC27-01RV14136 – Response to Comments on Hanford Tank Waste Treatment and Immobilization Plant Assurance Program Description," dated August 9, 2006; and CCN: 144316, "Contract No. DE-AC27-01RV14136 – Approval of Bechtel National, Inc. (BNI) Assurance System Description," dated August 18, 2006).

H.47 PROTECTION OF PERSONALLY IDENTIFIABLE INFORMATION (073)

(a) Definitions:

- (1) *Personally Identifiable Information (PII)*: Any information about an individual maintained by DOE or its contractors, (e.g., medical, education, financial, criminal or other employment history and information, etc.), which can be used to distinguish or trace an individual's identity, (e.g., name, social security numbers, date and place of birth, mother's maiden name, biometric records, etc.), and any other personal information which is linked or linkable to an individual.
- (2) *PII Incident*: Any suspected or confirmed cyber security or physical security incident involving PII.

(b) Requirements:

- (1) All suspected or confirmed cyber security and physical security incidents involving PII are to be reported to the DOE Joint Cybersecurity Coordination Center – Cyber Incident Response Capability (JC3-CIRC) within 45 minutes of discovering the incident. Reports to the JC3-CIRC may be sent via email to

circ@jc3.doe.gov or by phone to 1-866-941-2472. The JC3-CIRC website is <http://energy.gov/cio/services/incident-management>.

- (2) All JC3-CIRC Incident Reports must be immediately provided to the DOE Richland Operations Office Safeguards and Emergency Services Division and DOE Office of River Protection Manager or designee.
- (3) All suspected or confirmed cyber security and physical security incidents involving PII shall be reported telephonically within 45 minutes of discovering the incident to (i) the EM-3 Chief Operating Officer; and (ii) the ORP Manager, ORP Deputy Manager, or off-hours duty officer.
- (4) While an informal, telephonic notice may occur, all notices must be in writing and signed by a senior Contractor official. Notices must at a minimum contain factual information describing both the circumstances surrounding the loss and the information that was compromised. All notifications shall include the name and telephone number of a contact person.
- (5) Appropriate steps shall be taken to minimize identity theft risks to the affected individuals.
- (6) The Contractor shall notify all employees and others affected by the PII loss unless after consultation with law enforcement officials, the Assistant Secretary for Environmental Management determines that notification will significantly compromise the investigation.

H.48 DELETED (175)

H.49 CORPORATE OPERATING EXPERIENCE PROGRAM, DOE O 210.2A, CONTRACTOR REQUIREMENTS DOCUMENT (077) (128) (310)

The Contractor is responsible for complying with the Contractor Requirements Document of DOE O 210.2A, *DOE Corporate Operating Experience Program*.

H.50 OFFICIAL USE ONLY INFORMATION (087) (091)

- (a) Official Use Only information is certain unclassified information that may be exempt from public release under the *Freedom of Information Act* and has the potential to damage governmental, commercial, or private interests if disseminated to persons who do not need to know the information to perform their jobs or other DOE authorized activities.
- (b) The Contractor shall comply with the Contractor Requirements Documents of DOE O 471.3, *Identifying and Protecting Official Use Only Information*, and DOE M 471.3-1, *Manual for Identifying and Protecting Official Use Only Information*, to determine whether unclassified documents created and/or handled in the performance of this Contract are Official Use Only information, and ensure that documents determined to contain Official Use Only information are marked appropriately.

H.51 PROPERTY MANAGEMENT SYSTEM (120)

The Contractor shall provide major changes/revisions to the approved Property Management System to the Office of River Protection (ORP) for review prior to implementation. In addition, a copy of the Property Management System shall be provided to ORP annually (Table C.5-1.1, Deliverable H.4). **(152)**

H.52 REPORT AND APPROVAL REQUIREMENTS FOR CONFERENCE RELATED ACTIVITIES

The Contractor agrees that:

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

- (g) For DOE-sponsored conferences, the Contractor will not expend funds on the proposed conference until notified by the Contracting Officer.
 - (1) DOE-sponsored conferences include events that meet the definition of a conference and where the Department provides funding to plan, promote, or implement the conference and/or authorizes use of the official DOE seal or other seals/logos/trademarks to promote a conference. Exceptions include instances where DOE:
 - (i) Covers participation costs in a conference for specified individuals (e.g., students, retirees, speakers, etc.) in a total amount not to exceed \$10,000 (by individual contractor for a specific conference); or
 - (ii) Purchases goods or services from the conference planners (e.g., attendee registration fees; renting booth space); or provide funding to the conference planners through Federal grants.
 - (2) Attending a conference, giving a speech, or serving as an honorary chairperson does not connote sponsorship.
 - (3) The Contractor will provide cost and attendance information on their participation in all DOE-sponsored conferences in the DOE Conference Management Tool.
- (h) For non-contractor sponsored conferences, the Contractor shall develop and implement a process to ensure costs related to conferences are allowable, allocable, reasonable, and further the mission of DOE/National Nuclear Security Administration. This process must at a minimum:
 - (1) Track all conference expenses.
 - (2) Require the Laboratory Director (or equivalent) or Chief Operating Officer approve a single conference with net costs to the contractor of \$100,000 or greater.
- (i) Contractors are not required to enter information on nonsponsored conferences in DOE'S Conference Management Tool.
- (j) Once funds have been expended on a nonsponsored conference, contractors may not authorize the use of their trademarks/logos for the conference, provide the conference planners with more than \$10,000 for specified individuals to participate in the conference, or provide any other sponsorship funding for the conference. If a contractor does so, its expenditures for the conference may be deemed unallowable.
(356)

H.53 LOW-ACTIVITY WASTE FACILITY, BALANCE OF FACILITIES, AND ANALYTICAL LABORATORY/DIRECT-FEED LOW-ACTIVITY WASTE COMPLETION (CLINS 1.0 AND 2.0)
(436)

- (a) The following provisions pertain to Contract Line Item Number (CLIN) 1.0, Low-Activity Waste Facility, Balance of Facilities, and Analytical Laboratory completion and CLIN 2.0, direct-feed low-activity waste (DFLAW), only. Nothing included below shall be construed in such a manner as to modify or supersede any term and/or condition of this Contract, which remain in full force and effect. Any inconsistency between provisions in Deliverable H.53 and any other term or condition of this Contract shall be resolved pursuant to Contract Clause I.12, FAR 52.215-8, "Order of Precedence—Uniform Contract Format" (October 1997).

- (b) **Government Furnished Services and Information.** The parties acknowledge that provision of these services and information is essential to the Contractor's ability to perform CLINs 1.0 and 2.0 and recognize that either party's failure to comply may constitute as basis for equitable relief pursuant to the "Changes" clause of this Contract.
- (1) All Contractor requested approvals and/or requests for information will be provided and/or replied to by DOE within 30 calendar days, except as otherwise stated in this Contract.
 - (2) DOE will prioritize CLIN 1.0 and 2.0 regulatory reviews for permits, Temporary Authorization (TA) requests, clarifications, and regulatory approvals in support of the baseline schedule. The baseline project schedule shall reflect typical DOE time allotments for these items. DOE will assert its best efforts to support a total review cycle by ORP and Ecology of one (1) year. DOE will support prioritization of regulatory reviews of Temporary Authorizations (TAs) to facilitate a response within sixty (60) days of receipt of an acceptable request from the Contractor.
 - (3) All Contractor requests for code deviations and Basis of Design Change Notices (BODCN) will be responded to by DOE within thirty (30) calendar days.
 - (4) Any requirements, codes, standards, and regulations and modifications to performance requirements invoked after modification No. 384 is signed will be provided for the Contractor to assess cost and schedule impacts consistent with the terms and conditions of this Contract.
- (c) **Critical Design Inputs.** The following design parameters form a basis for the cost and schedule targets as set forth in Section B-2-F, "Incentive Fee F – Commission LBL in the DFLAW Configuration Performance Based Incentive." It is acknowledged by the parties that changes to these critical design inputs may materially impact the Contractor's ability to complete CLIN 2.1 and give rise to relief pursuant to the "Changes" Clause of this Contract.
- (1) Preliminary Hazard Category 3 (HC-3) designation of the Direct Feed Low Activity Waste (DFLAW) Effluent Management Facility (EMF) and preliminary Seismic Category IV (SC-IV) designation of the EMF, low point drain tank, valve/jumper vault, and transfer lines.
 - (2) The Waste Acceptance Criteria (WAC) and design inputs per 15-WTP-0023, "Contract No. DE-AC27-01RV14136 – Transmittal of the Revised Design," dated March 17, 2015, are the inputs to support design of DFLAW. The flow design inputs represent an acknowledgement of the ability to handle the stated transfer volumes from EMF to either the Liquid Effluent Retention Facility/Effluent Treatment Facility or return to the double-shell tank.
- (d) **Assessments.** DOE recognizes that numerous assessments impact the Contractor's ability to perform. This Contract's pricing is predicated on the number of assessments remaining generally constant with the actual experience during 2012–2015. Based on this the DOE WTP Federal Project Director will implement assessment schedule guidance that provides parameters to reduce disruption to project execution. The DOE WTP Federal Project Director will approve all internal ORP assessments prior to implementation on the WTP.
- (e) **Issue Resolution.** DOE and Contractor recognize that protracted issue resolution impedes progress to timely issue resolution that may have cost or schedule impact. If issue resolution is not achieved within thirty (30) working days at the Contractor/DOE working level the issue will be raised to the Contractor's Project Manager and DOE's Federal Project Director for input and resolution.

- (f) Funding Profile Deviation. Funding consistent with the funding profile, Section B, "Supplies or Services and Prices/Costs," Clause B.6, "Equitable Adjustments to Cost, Performance Incentives, Schedules, and Fees," is essential to the Contractor's ability to meet DOE's goals and objectives contained within this agreement. Deviations from the funding profile resulting in a material impact to the Contractor's ability to perform may form a basis for equitable relief pursuant to Section B, Clause B.6. In such an event, the Contractor agrees to promptly notify DOE of such impacts and DOE agrees to assert its best effort to equitably resolve said impacts within 180 days of receipt. In addition, if significant increases to the project funding profile are realized the available award fee amounts will be adjusted accordingly.
- (g) Project Services Allocation Administration. Project Services (PS) consists of WTP Project scope that is not directly attributable to one of the end-product facilities (Pretreatment, High-Level Waste, Low-Activity Waste, Balance of Facilities and Analytical Laboratory, **Direct Feed of Low-Activity Waste-Effluent Management Facility**). PS is traditionally level of effort supporting scope, such as, Project Management, Human Resources, Project Controls, Accounting, Information Systems and Technology, Environmental Safety & Health, Quality Assurance, Administrative Services, Security, Support Services, etc.

The current control point funding process that aligns to the end-product facilities drove the establishment of a methodology to allocate the PS costs to the funding sources. The allocation process considers the actual costs in each end-product facility and proportionally allocates the PS costs to each facility for funds management and invoicing purposes.

Effective with Contract Modification No. (384) and the establishment of the CLIN structure, an annualized PS allocation value has been incorporated into the total estimated contract cost value for CLIN 1.0, which incorporates the associated PS allocation for both CLIN 1.0 and CLIN 2.0. Table 1 in Clause B. 10, "Project Services Allocation," identifies the contract basis for the PS allocation ~~to CLIN 1.0~~ **included in the CLIN 1.0 Target**. The actual annual PS allocation percentage to CLIN 1.0 and CLIN 2.0 is dependent upon multiple variables, such as, funding relative to facility scope and costs driven by project priorities. An annual contract alignment adjustment resulting from the actual ~~CLIN 1.0~~ PS allocation being a greater or lesser percentage to **CLIN 1.0 plus CLIN 2.0**, than that shown in Table 1 is allowable, to align Contract value with the actualized annual fiscal year-end PS allocation ~~to CLIN 1.0~~.

Effective with Contract Modification 434, Project Services are to be allocated to the WBS 1.07 Direct Feed of Low-Activity Waste-Effluent Management Facility (DFLAW-EMF) facility under CLIN 2.0 in accordance with the final actual annual cost proportion of the work performed across all facilities, subject to adjustment resulting from the sum of the actual PS allocation to CLIN 1.0 and CLIN 2.0 being a greater or lesser percentage than that shown in Table 1. When established under Modification 384, CLIN 2.0 cost incentives did not contemplate an allocation of project services. Changes to CLIN 2.0 total costs based on project service allocations are cost neutral to the target cost incentive for CLIN 1.0 and CLIN 2.1.

H.54 SAFETY CONSCIOUS WORK ENVIRONMENT

The Contractor shall establish, maintain, and promote a strong safety culture and Safety Conscious Work Environment, including utilization of programs for Employee Concerns, Integrated Safety Management, and Differing Professional Opinions. Emphasis shall be placed on Leadership, Employee Engagement, and Organizational Learning behaviors and values consistent with DOE G 450.4-1C, *Integrated Safety Management System Guide*, Attachment 10.

Policies and processes that promote a work environment where employees are encouraged to raise safety concerns shall be rigorously enforced and actions taken to mitigate the potential for a chilling effect.