

PART I -THE SCHEDULE

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## **SECTION H - SPECIAL CONTRACT REQUIREMENTS**

### **H.1 DEFINITIONS**

- (a) The term "Act" means the West Valley Demonstration Project Act (P.L. 96-368), unless specifically identified otherwise.
- (b) The term "Records" means both Government-owned and contractor-owned records developed with Government funds.
- (c) The term "Project Premises" means the land as specified in the Cooperative Agreement.
- (d) The term "Project Facilities" means the facilities described in the Cooperative Agreement.
- (e) The term "Additional Facilities" means the facilities described in the Cooperative Agreement.
- (f) The term "NYSERDA" means the New York State Energy Research and Development Authority.
- (g) The term "Center" means the Western New York Nuclear Service Center at West Valley New York.
- (h) The term "WVDP" means the West Valley Demonstration Project.
- (i) The term "Cooperative Agreement" means the Cooperative Agreement entered into between DOE and NYSERDA effective October 1, 1980 as amended September 18, 1981.
- (j) The term "Retained Premises" means the land as specified in the Cooperative Agreement.
- (k) The term "DOE" means the Department of Energy.
- (l) The term "CO" means the Contracting Officer.
- (m) The term "COR" means the Contracting Officer Representative.
- (n) The term "FAR" means the Federal Acquisition Regulation.
- (o) The term "DEAR" means the Department of Energy Acquisition Regulation.
- (p) The term "NEPA" means the National Environmental Policy Act of 1969.
- (q) The term "ISMS" means Integrated Safety Management System.
- (r) The term "ES&H" means Environment, Safety and Health.

### **H.2 NO THIRD PARTY BENEFICIARIES**

This contract is for the exclusive benefit and convenience of the parties hereto. Nothing contained herein shall be construed as granting, vesting, creating, assigning or conferring any right of action or any other right or benefit upon past, present or future employees of the Contractor, or upon any other third party. This provision is not intended to limit or impair the rights which any person may have under applicable Federal statutes.

### **H.3 PROGRAMMATIC RISKS AND UNCERTAINTIES**

- (a) Completion of the Performance Work Statement (PWS) will require the DOE and the Contractor to successfully resolve, mitigate, eliminate, or avoid various types of risk. Risks to the workers, public, and the environment are managed through the Environment, Safety, Health and Quality Assurance (ESH&QA) Program identified in Section C.1.1.1 and the and Integrated Safety Management (ISM) System

identified in Section C.1.1. Risks to project schedule and cost shall be managed within the Project Control System identified in Section H, Clause H.18. The Contractor shall identify, quantify, and develop mitigation strategies for all project schedule and cost risks into the Risk Management Plan. The Risk Management Plan shall identify and incorporate risk mitigation alternatives and the costs associated with the alternatives in the Risk Management Plan as required by Section H.18 to manage other project and regulatory uncertainties. The Risk Management Plan is a project baseline document and is included as part of the project baseline documents required in Section H, Clause H.18.

- (b) The Contractor shall identify significant project and regulatory uncertainties contained within the PWS that, in its opinion, provide a significant risk to cost and schedule. The Contractor shall describe its approach to eliminate, avoid or mitigate these risks in the Risk Management Plan. The Contractor shall implement the actions described and eliminate, avoid or mitigate the risks during performance of the contract.
- (c) When developing approaches to eliminate, avoid or mitigate risks to cost and schedule, the Contractor shall propose an allocation of risk responsibility to the organization best suited to manage the risk. This can result in the Contractor assuming total responsibility, the DOE assuming total responsibility, or a clearly defined method of sharing risk responsibility between the DOE and the Contractor.

#### **H.4 MODIFICATION AUTHORITY**

Notwithstanding any of the other provisions of this Contract, the Contracting Officer (CO) shall be the only individual under this Contract authorized to:

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

#### **H.5 RESERVED**

#### **H.6 DOE CONTRACT ADMINISTRATION AND OVERSIGHT**

- (a) The WVDP presents significant work scope challenges to the Contractor, and makes it imperative that the DOE has a focused approach for providing oversight of Contractor work to provide effective DOE oversight of project work. The DOE oversight will be consistent with their approved Contract Management Plan, and shall include review of Contractor progress reports submitted by the Contractor, direct observation by DOE employees, evaluation of all deliverables, and assessment of work in progress.
- (b) The DOE oversight activities will focus on the safe, efficient cost effective accomplishment of contract work scopes. Oversight will be tailored commensurate with the level of difficulty and degree of importance to DOE of the work being performed. This is a performance based contract and although there will always be a certain level of DOE oversight required, DOE expects that those areas wherein the Contractor is skillfully and successfully meeting Contract requirements will require a much lower degree of oversight than any areas in which the Contractor's performance is viewed as marginal or unsuccessful. The Contractor shall respond to DOE oversight and to concerns, findings and observations as identified by the CO or COR during the conduct of these oversight activities. The areas of oversight

are:

- (1) Project Management Oversight: This includes daily field inspections and the monthly assessment of project status, which will be used to determine and validate project performance.
- (2) Contract Management Oversight: Administration and monitoring of the prime contract will be in accordance with the contract terms and conditions which include, but are not limited to, the oversight required under FAR Subchapter G – Contract Management (FAR Parts 42-51) and its supplements.
- (3) Financial Management Oversight: The DOE will review all budgetary data submitted by the Contractor to be provided into the Integrated Planning, Accountability, and Budgeting System (IPABS). The DOE will monitor and audit Contractor funds management practices and procedures to ensure compliance with applicable regulations and statutes.
- (4) Daily Oversight: The DOE Project Director, Facility Representatives and/or Subject Matter Experts will conduct daily oversight and assessments. The purpose of these contacts will be to assess performance. In addition to this daily involvement, the Contractor shall support:
  - (i) Management walkthroughs conducted in areas of the project or locations where work is ongoing.
  - (ii) Specific tours of buildings during the decontamination activities or just prior to demolition, removal or soil excavations.
  - (iii) Periodic walkthroughs by the regulators, site/facility owner or DOE Headquarters personnel.
  - (iv) Employee concerns elevated to the DOE for evaluation.
- (5) Main Plant Process Building (MPPB) Sequenced Approach to Demolition Oversight: The Contractor will provide a written sequenced approach to the demolition of the MPPB no later than 180 days prior to the commencement of the MPPB demolition. The contractor and DOE will partner to establish hold points in the sequenced approach document where the Contractor's continuation of the demolition work will be subject to DOE's review and approval. The contractor will supply DOE with supporting documentation (i.e. air modeling calculations, WIP field Changes) as requested by DOE.

For each phase of demolition, upon substantial completion of the previous phase, the Contractor shall provide sufficient documentation in order that DOE may approve the start of the next phase of demolition. DOE will provide approval status within 30 calendar days of receipt of sufficient documentation to make a determination (the 30 day review does not apply to WIP field changes).

DOE will review and approve all changes related to the execution of the Contractor's demolition plan and changes to any engineering, administrative, or regulatory controls. DOE will provide approval status of changes (e.g. WIP field changes) within 7 calendar days from receipt of information.

## **H.7 STOP-WORK AND SHUTDOWN AUTHORIZATION**

- (a) All Contractor and the Department of Energy (DOE) employees have the right to

stop any activity, regardless of who is performing the activity, if continuation of that activity would be considered an imminent health and safety hazard.

- (b) "Imminent Health and Safety Hazard" is a given condition or situation which, if not immediately corrected, could result in a serious injury or death, including exposure to radiation and toxic/hazardous chemicals.
- (c) Stop-Work: In the event of an imminent health and safety hazard, identified by facility line management or operators or facility health and safety personnel overseeing facility operations, or other individuals; the individual or group identifying the imminent hazard situation shall immediately take actions to eliminate or mitigate the hazard (i.e., by directing the operator/implementer of the activity or process causing the imminent hazard to stop work, or by initiating emergency response actions or other actions) to protect the health and safety of the workers and the public and to protect DOE facilities and the environment.

In the event an imminent health and safety hazard is identified, the individual or group identifying the hazard should coordinate with an appropriate Contractor official who will direct the stop work or other actions, as required. Such mitigating action should subsequently be coordinated with the DOE and Contractor management. The suspension or stop-work order should be promptly confirmed in writing from the DOE Contracting Officer.

- (d) Contractor and the DOE employees have the right to recommend a facility shutdown, regardless of who is performing the activity, if continuation of that activity would be considered an imminent danger in relation to the Facility Safety Envelope.
- (e) "Imminent Danger in relation to the Facility Safety Envelope" is a condition, situation, or proposed activity which, if not terminated, could cause, prevent mitigation of, or seriously increase the risk of (1) Radiation Exposure, (2) Fire/Explosion, and/or (3) Hazardous Chemical Exposure.
- (f) Shutdown: In the event of an imminent danger in relation to the Facility Safety Envelope or a non-imminent health and safety hazard identified by facility line management or operators, facility health and safety personnel overseeing facility operations, or other individuals; the individual or group identifying the potential health and safety hazard may recommend facility shutdown in addition to any immediate actions needed to mitigate the situation. However, the recommendation must be coordinated with Contractor management, and the DOE Project Director. Any written direction to suspend operations shall be issued by the Contracting Officer, pursuant to the Section F clause entitled FAR 52.242-15 Stop Work Order.
- (g) Facility Representatives: DOE personnel designated as Facility Representatives (FR) provide the technical oversight of operations. The FR has the authority to "stop work," which may apply to the suspension of operations of an entire plant, activity, or job. This stop-work authority will be used for an operation of a facility which is performing work the FR believes:
  - (1) Poses an imminent danger to health and safety of workers or the public if allowed to continue;
  - (2) Could adversely affect the safe operation of, or could cause serious damage to the facility if allowed to continue; or
  - (3) Could result in the release of radiological or chemical hazards to the environment in excess of regulatory limits.
- (h) The CO may at any time during the performance of this contract issue an order stopping work in whole or in part due to environmental, safety, and health reasons.
- (i) This clause flows down to all subcontractors at all tiers. Therefore, the Contractor

shall insert a clause, modified appropriately to substitute “contractor representatives” for “the Contracting Officer” in all subcontracts.

## H.8 KEY PERSONNEL REPLACEMENT

The personnel specified below are hereby considered “Key Personnel” for the purposes of DEAR Clause 952.215-70, Key Personnel, in Section I:

<b>NAME</b>	<b>TITLE</b>
John Rendall	General Manager
Kelly Wooley	Deputy General Manager
Kenneth Whitham	ESH&Q Manager
Elizabeth Lowes	Regulatory Strategy Manager
Thomas Dogal	Facility Disposition Manager

All designated Key Personnel, are considered to be essential to the work being performed hereunder. The General Manager, Deputy General Manager and ESH&Q Manager are required Key Personnel positions. The Contractor shall maintain a minimum of five (5) Key Personnel throughout the contract period. Any changes to the Key Personnel positions and/or the Key Personnel individuals specified above that are proposed by the Contractor after contract award will be made solely at the discretion of the CO. Unless, approved in writing by the CO, no Key Personnel position can remain unfilled by a permanent replacement for more than 60 days. Any time a designated Key Personnel is replaced or removed, for any reason determined by the CO to be under the Contractor’s control, within three (3) years of contract award, or within three (3) years of being placed in the position, whichever is later, the Contractor shall forfeit \$500,000 in fee if said Key Personnel is the General Manager, and \$250,000 in fee for each occurrence with all other Key Personnel. Likewise, if within three (3) years of contract award, or within three (3) years of being placed in the position, whichever is later, any Key Personnel voluntarily resigns, the Contractor shall forfeit \$ 500,000 in fee if said Key Personnel is the Contractor’s General Manager, and \$250,000 in fee for each occurrence with all other Key Personnel. The Contractor may request, in writing, that the CO waive all or part of these reductions in fee, if special circumstances exist. The CO shall have unilateral discretion to waive or not to waive all or part of a fee reduction.

## H.9 CONTRACTOR GENERAL MANAGER

- (a) The Contractor shall designate a General Manager, and shall also designate a Deputy General Manager who will be the Contractor’s authorized supervisors for technical and administrative performance of all work performed under the contract. The General Manager shall be the point of contact between the Contractor and the COR under this contract. In the absence of the General Manager, the Deputy General Manager shall be the point of contact between the Contractor and the COR. The position of the General Manager is considered essential to the smooth efficient operation of the contract and must remain filled at all times. In the event the General Manager position is vacated, assumption of the responsibilities by the Deputy General Manager is required.
- (b) The Contractor’s General Manager and, in his/her absence, the Deputy General Manager shall receive and execute, on behalf of the Contractor, such technical

directions as the CO or COR may issue within the terms and conditions of the contract.

## **H.10 WORKFORCE TRANSITION AND EMPLOYEE HIRING PREFERENCES**

- (a) Incumbent Employees Hiring Preferences: The Contractor shall use the transition period to make hiring decisions and to establish the management structures necessary to conduct an employee relations program. In establishing an initial workforce, and through the first six months after Contract award, the Contractor shall give a first preference in hiring for vacancies in non-managerial positions under this Contract to qualified Incumbent Employees (see definition in (a)(1) below). This requirement does not apply to the Contractor's hiring of management staff (i.e., first line supervisors and above).
- (1) Incumbent employees are the employees who are on the regular payroll of the incumbent contractor, West Valley Environmental Services Company, at the time that the responsibility for contract performance is assumed by the successor contractor.
- (b) After the Workforce Transition Period and continuing throughout the remaining period of performance under this contract, the contractor shall give a preference in hiring for vacancies to individuals who are eligible for the hiring preference contained in the Clause Section I of this contract entitled "DEAR 952.226-74, Displaced Employee Hiring Preference" and with the provisions of any applicable Work Force Restructuring Plan, as amended from time to time regarding the preferential hiring of employees.

## **H.11 EMPLOYEE COMPENSATION: PAY AND BENEFITS**

- (a) Contractor Employee Compensation Plan  
The Contractor shall submit, for Contracting Officer approval, within 30 days of Contract award, a Contractor Employee Compensation Plan (to be submitted during contract transition only) demonstrating how the Contractor will comply with the requirements of this Contract. The Contractor Employee Compensation Plan shall describe the Contractor's policies regarding compensation, pensions and other benefits, and how these policies will support at reasonable cost the effective recruitment and retention of a highly skilled, motivated, and experienced workforce.

A description of the Contractor Employee Compensation Program should include the following components;

- a. Philosophy and strategy for all pay delivery programs.
- b. System for establishing a job worth hierarchy.
- c. Method for relating internal job worth hierarchy to external market.
- d. System that links individual and/or group performance to compensation decisions.
- e. Method for planning and monitoring the expenditure of funds.
- f. Method for ensuring compliance with applicable laws and regulations.
- g. System for communicating the programs to employees.
- h. System for internal controls and self-assessment.
- i. System to ensure that reimbursement of compensation, including



stipends, for employees who are on joint appointments with a parent or other organization shall be on a pro-rated basis.

(b) Total Compensation System

The Contractor shall develop, implement and maintain formal policies, practices and procedures to be used in the administration of its compensation system consistent with FAR 31.205-6 and DEAR 970.3102-05-6; "Compensation for Personal Services". DOE-approved standards (e.g., set forth in an advance understanding or appendix), if any, shall be applied to the Total Compensation System. The Contractor's Total Compensation System shall be fully documented, consistently applied, and acceptable to the Contracting Officer. Costs incurred in implementing the Total Compensation System shall be consistent with the Contractor's documented Contractor Employee Compensation Plan as approved by the Contracting Officer.

(c) Reports and Information

The contractor shall provide the Contracting Officer with the following reports and information with respect to pay and benefits provided under this Contract:

- (1) An Annual Contractor Salary-Wage Increase Expenditure Report to include, at a minimum, breakouts for merit, promotion, variable pay, special adjustments, and structure movements for each pay structure showing actual against approved amounts; and planned distribution of funds for the following year.
- (2) A list of the top five most highly compensated executives as defined in FAR 31.205-6(p)(4)(ii) and their total cash compensation at the time of Contract award, and at the time of any subsequent change to their total cash compensation. This should be the same information provided to the System for Award Management (SAM) per FAR 52.204-10.
- (3) An Annual Compensation and Benefits Report no later than March 1<sup>st</sup> of each year.

(d) Pay and Benefit Programs

The Contractor shall establish pay and benefit programs for Incumbent Employees and Non-Incumbent Employees as defined in paragraphs (1) and (2) below; provided, however, that employees scheduled to work fewer than 20 hours per week receive only those benefits required by law. Employees are eligible for benefits, subject to the terms, conditions, and limitations of each benefit program.

- (1) Incumbent Employees are those employees of West Valley Environmental Services LLC who hold regular appointments or who are regular employees of the incumbent Contractor.
  - (A) Pay. Subject to the Workforce Transition Clause, the Contractor shall provide equivalent base pay to Incumbent Employees as compared to pay provided by West Valley Environmental Service LLC for at least the first year of the term of the Contract.
  - (B) Pension and Other Benefits. The Contractor shall provide a total

package of benefits to Incumbent Employees comparable to that provided by West Valley Environmental Services LLC. Comparability of the total benefit package shall be determined by the Contracting Officer in his/her sole discretion.

Incumbent Employees shall remain in their existing pension plans (or comparable successor plans if continuation of the existing plans is not practicable) pursuant to pension plan eligibility requirements and applicable law. The Contractor shall carry over the length of service credit and leave balances accrued as of the date of the Contractor's assumption of contract performance. Comparability of the total benefit package shall be determined by the Contracting Officer in his/her sole discretion.

(2) Non-Incumbent Employees are new hires, i.e., employees other than Incumbent Employees who are hired by the Contractor after date of award. All Non-Incumbent Employees shall receive a total pay and benefits package that provides for market-based retirement and medical benefit plans that are competitive with the industry from which the Contractor recruits its employees and in accordance with Contract requirements.

(3) Cash Compensation

(A) The Contractor shall submit the below information, as applicable, to the Contracting Officer for a determination of cost allowability for reimbursement under the Contract:

- (i) Any proposed major compensation program design changes prior to implementation.
- (ii) Variable pay programs/incentives. If not already authorized under Appendix A of the contract, a justification shall be provided with proposed costs and impacts to budget, if any.
- (iii) In the absence of Departmental policy to the contrary (e.g., Secretarial pay freeze) a Contractor that meets the criteria, as set forth below, is not required to submit a Compensation Increase Plan (CIP) request to the Contracting Officer for an advance determination of cost allowability for a Merit Increase fund or Promotion/Adjustment fund:

- The Merit Increase fund does not exceed the mean percent increase included in the annual Departmental guidance providing the WorldatWork Salary Budget Survey's salary increase projected for the CIP year. The Promotion/Adjustment fund does not exceed (0.8%) percent in total.
- The budget used for both Merit Increase funds and Promotion/Adjustment funds shall be based on the payroll for the end of the previous CIP year.
- Salary structure adjustments do not exceed the mean WorldatWork structure adjustments projected for the CIP year and communicated through the annual Department

- CIP guidance.
- Please note: No later than the first day of the CIP cycle, Contractors must provide notification to the Contracting Officer of planned increases and position to market data by mutually agreed-upon employment categories. No presumption of allowability will exist for employee job classes that exceed market position.
- (iv) If a Contractor does not meet the criteria included in (iii) above, a CIP must be submitted to the Contracting Officer for an advance determination of cost allowability. The CIP should include the following components and data:
- (1) Comparison of average pay to market average pay.
  - (2) Information regarding surveys used for comparison.
  - (3) Aging factors used for escalating survey data and supporting information.
  - (4) Projection of escalation in the market and supporting information.
  - (5) Information to support proposed structure adjustments, if any.
  - (6) Analysis to support special adjustments.
  - (7) Funding requests for each pay structure to include breakouts of merit, promotions, variable pay, special adjustments, and structure movement. (a) The proposed plan totals shall be expressed as a percentage of the payroll for the end of the previous CIP year. (b) All pay actions granted under the compensation increase plan are fully charged when they occur regardless of time of year in which the action transpires and whether the employee terminates before year end. (c) Specific payroll groups (e.g., exempt, nonexempt) for which CIP amounts are intended shall be defined by mutual agreement between the Contractor and the Contracting Officer. (d) The Contracting Officer may adjust the CIP amount after approval based on major changes in factors that significantly affect the plan amount (for example, in the event of a major reduction in force or significant ramp-up).
  - (8) A discussion of the impact of budget and business constraints on the CIP amount.
  - (9) Comparison of pay to relevant factors other than market average pay.
- (v) After receiving DOE CIP approval or if criteria in (d)(3)(A)(iii) was met, contractors may make minor shifts of up to 10% of approved CIP funds by employment category (e.g., Scientist/Engineer, Admin, Exempt, Non-Exempt) without obtaining DOE approval.
- (vi) Individual compensation actions for the top Contractor official (e.g., laboratory director/plant manager or equivalent) and Key

Personnel not included in the CIP. For those Key Personnel included in the CIP, DOE will approve salaries upon the initial contract award and when Key Personnel are replaced during the life of the contract. DOE will have access to all individual salary reimbursements. This access is provided for transparency; DOE will not approve individual salary actions (except as previously stated).

- (B) The Contracting Officer's approval of individual compensation actions will be required only for the top Contractor official (e.g., laboratory director/plant manager or equivalent) and Key Personnel as stated in (d)(3)(A)(vi) above. The base salary reimbursement level for the top Contractor official establishes the maximum allowable base salary reimbursement under the contract. Unusual circumstances may require a deviation for an individual on a case-by-case basis. Any such deviations must be approved by the Contracting Officer.
- (C) Severance Pay is not payable to an employee under this Contract if the employee:
  - (i) Voluntarily separates, resigns or retires from employment,
  - (ii) Is offered employment with a successor/replacement Contractor,
  - (iii) Is offered employment with a parent or affiliated company, or
  - (iv) Is discharged for cause.
- (D) Service Credit for purposes of determining severance pay does not include any period of prior service for which severance pay has been previously paid through a DOE cost-reimbursement contract.

(e) Pension and Other Benefit Programs

- (1) No presumption of allowability will exist when the Contractor implements a new benefit plan, or makes changes to existing benefit plans that increase costs or are contrary to Departmental policy or written instruction or until the Contracting Officer makes a determination of cost allowability for reimbursement for new or changed benefit plans. Changes shall be in accordance with and pursuant to the terms and conditions of the contract. Advance notification, rather than approval, is required for changes that do not increase costs and are not contrary to Departmental policy or written instruction.
- (2) Cost reimbursement for Employee pension and other benefit programs sponsored by the Contractor will be based on the Contracting Officer's approval of Contractor actions pursuant to an approved "Employee Benefits Value Study" and an "Employee Benefits Cost Survey Comparison" as described below.
- (3) Unless otherwise stated, or as directed by the Contracting Officer, the Contractor shall submit the studies required in paragraphs (A) and (B) below. The studies shall be used by the Contractor in calculating the cost of benefits

under existing benefit plans. An Employee Benefits Value (Ben-Val) Study Method using no less than 15 comparator organizations and an Employee Benefits Cost Survey Comparison method shall be used in this evaluation to establish an appropriate comparison method. In addition, the Contractor shall submit updated studies to the Contracting Officer for approval prior to the adoption of any change to a pension or other benefit plan which increases costs.

- (A) The Ben-Val, every two years for each benefit tier (e.g., group of employees receiving a benefit package based on date of hire), which is an actuarial study of the relative value (RV) of the benefits programs offered by the Contractor to Employees measured against the RV of benefit programs offered by the Contracting Officer approved comparator companies. To the extent that the value studies do not address post retirement benefits other than pensions, the Contractor shall provide a separate cost and plan design data comparison for the post retirement benefits other than pensions using external benchmarks derived from nationally recognized and Contracting Officer approved survey sources and,
  - (B) An Employee Benefits Cost Study Comparison, annually for each benefit tier that analyzes the Contractor's employee benefits cost for employees as a percent of payroll and compares it with the cost as a percent of payroll, including geographic factor adjustments, reported by the U.S. Department of Labor's Bureau of Labor Statistics or other Contracting Officer approved broad based national survey.
- (4) When the net benefit value exceeds the comparator group by more than five percent, the Contractor shall submit a corrective action plan to the Contracting Officer for approval, unless waived in writing by the Contracting Officer.
  - (5) When the benefit costs as a percent of payroll exceeds the comparator group by more than five percent, when and if required by the Contracting Officer, the Contractor shall submit an analysis of the specific plan costs that result in or contribute to the percent of payroll exceeding the costs of the comparator group and submit a corrective action plan if directed by the Contracting Officer.
  - (6) Within two years, or longer period as agreed to between the Contractor and the Contracting Officer, of the Contracting Officer acceptance of the Contractor's corrective action plan, the Contractor shall align employee benefit programs with the benefit value and the cost as a percent of payroll in accordance with its corrective action plan.
  - (7) The Contractor may not terminate any benefit plan during the term of the Contract without the prior approval of the Contracting Officer in writing.
  - (8) Cost reimbursement for post-retirement benefits other than pensions (PRBs) is contingent on DOE approved service eligibility requirements for PRB that shall be based on a minimum period of continuous employment service not less than 5 years under a DOE cost reimbursement contract(s) immediately

prior to retirement. Unless required by Federal or State law, advance funding of PRBs is not allowable.

- (9) Each Contractor sponsoring a defined benefit pension plan and/or postretirement benefit plan will participate in the plan management process which includes written responses to a questionnaire regarding plan management, providing forecasted estimates of future reimbursements in connection with the plan(s) and participating in a conference call to discuss the Contractor submission (see (g)(6) below for Pension Management Plan requirements).
- (10) Each Contractor will respond to quarterly data calls issued through iBenefits, or its successor system.

(f) Establishment and Maintenance of Pension Plans for which DOE Reimburses Costs

- (1) Employees working for the Contractor shall only accrue credit for service under this Contract after the date of Contract award.
- (2) Except for Commingled Plans in existence as of the effective date of the Contract, any pension plan maintained by the Contractor for which DOE reimburses costs, shall be maintained as a separate pension plan distinct from any other pension plan that provides credit for service not performed under a DOE cost-reimbursement contract. When deemed appropriate by the Contracting Officer, Commingled Plans shall be converted to Separate Plans at the time of new contract award or the extension of a contract.

(g) Basic Requirements

The Contractor shall adhere to the requirements set forth below in the establishment and administration of pension plans that are reimbursed by DOE pursuant to cost reimbursement contracts for management and operation of DOE facilities and pursuant to other cost reimbursement facilities contracts. Pension Plans include Defined Benefit and Defined Contribution plans.

- (1) The Contractor shall become a sponsor of the existing pension and other benefit plans (or comparable successor plans), including other PRB plans, as applicable, with responsibility for management and administration of the plans. The Contractor shall be responsible for maintaining the qualified status of those plans consistent with the requirements of ERISA and the Internal Revenue Code (IRC). The Contractor shall carry over the length of service credit and leave balances accrued as of the date of the Contractor's assumption of Contract performance.
- (2) Each Contractor defined benefit and defined contribution pension plan shall be subjected to a limited-scope audit annually that satisfies the requirements of ERISA section 103, except that every third year the Contractor must conduct a full-scope audit of defined benefit plan(s) satisfying ERISA section 103. Alternatively, the Contractor may conduct a full-scope audit satisfying ERISA section 103 annually. In all cases, the Contractor must submit the audit results to the Contracting Officer. In years in which a limited scope audit is conducted, the Contractor must provide the Contracting Officer with a copy of the qualified trustee or custodian's certification regarding the investment information that provides the basis for the plan sponsor to satisfy reporting requirements under ERISA section 104.

While there is no requirement to submit a full scope audit for defined contribution plans, contractors are responsible for maintaining adequate controls for ensuring that defined contribution plan assets are correctly recorded and allocated to plan participants.

- (3) For existing Commingled Plans, the Contractor shall maintain and provide annual separate accounting of DOE liabilities and assets as for a Separate Plan.
- (4) For existing Commingled Plans, the Contractor shall be liable for any shortfall in the plan assets caused by funding or events unrelated to DOE contracts.
- (5) The Contractor shall comply with the requirements of ERISA if applicable to the pension plan and any other applicable laws.
- (6) The Pension Management Plan (PMP) shall include a discussion of the Contractor's plans for management and administration of all pension plans consistent with the terms of the Contract. The PMP shall be submitted in the iBenefits system or its successor system no later than January 31<sup>st</sup> of each applicable year. A full description of the necessary reporting will be provided in the annual management plan data request. Within sixty (60) days after the date of the submission, appropriate Contractor representatives shall participate in a conference call to discuss the Contractor's PMP submission and any other current plan issues or concerns.

(h) Reimbursement of Contractors for Contributions to Defined Benefit (DB) Pension Plans

- (1) Contractors that sponsor single employer or multiple employer defined benefit pension plans will be reimbursed for the annual required minimum contributions under the Employee Retirement Income Security Act (ERISA), as amended by the Pension Protection Act (PPA) of 2006 and any other subsequent amendments. Reimbursement above the annual minimum required contribution will require prior approval of the Contracting Officer. Minimum required contribution amounts will take into consideration all pre-funding balances and funding standard carryover balances. Early in the fiscal year but no later than the end of November, the Contractor requesting above the minimum may submit/update a business case for funding above the minimum if preliminary approval is needed prior to the Pension Management Plan process. The business case shall include a projection of the annual minimum required contribution and the proposed contribution above the minimum. The submission of the business case will provide the opportunity for the Department to provide preliminary approval, within 30 days after contractor submission, pending receipt of final estimates, generally after January 1<sup>st</sup> of the calendar year. Final approval of funding will be communicated by the Head of Contracting Activity (HCA) when discount rates are finalized and it is known whether there are any budget issues with the proposed contribution amount.
- (2) Contractors that sponsor multi-employer DB pension plans will be reimbursed for pension contributions in the amounts necessary to ensure that the plans are funded to meet the annual minimum requirement under ERISA, as amended by the PPA. However, reimbursement for pension contributions above the annual minimum contribution required under ERISA,

as amended by the PPA, will require prior approval of the Contracting Officer and will be considered on a case by case basis. Reimbursement amounts will take into consideration all pre-funding balances and funding standard carryover balances. Early in the fiscal year but no later than the end of November, the Contractor requesting above the minimum may submit/update a business case for funding above the minimum if preliminary approval is needed prior to the Pension Management Plan process. The business case shall include a projection of the annual minimum required contribution and the proposed contribution above the minimum. The submission of the business case will provide the opportunity for the Department to provide preliminary approval, within 30 days after contractor submission, pending receipt of final estimates, generally after January 1<sup>st</sup> of the calendar year. Final approval of funding will be communicated by the HCA when discount rates are finalized and it is known whether there are any budget issues with the proposed contribution amount.

(i) Reporting Requirements for Designated Contracts

The following reports shall be submitted to DOE as soon as possible after the last day of the plan year by the Contractor responsible for each designated pension plan funded by DOE but no later than the dates specified below:

- (1) Actuarial Valuation Reports. The annual actuarial valuation report for each DOE-reimbursed pension plan and when a pension plan is commingled, the Contractor shall submit separate reports for DOE's portion and the plan total by the due date for filing IRS Form 5500.
- (2) Forms 5500. Copies of IRS Forms 5500 with Schedules for each DOE-funded pension plan, no later than that submitted to the IRS.
- (3) Forms 5300. Copies of all forms in the 5300 series submitted to the IRS that document the establishment, amendment, termination, spin-off, or merger of a plan submitted to the IRS.

(j) Changes to Pension Plans

At least sixty (60) days prior to the adoption of changes to a pension plan, the Contractor shall submit the information required below, to the Contracting Officer. The Contracting Officer must approve plan changes that increase costs as part of a determination as to whether the costs are deemed allowable pursuant to FAR 31.205-6, as supplemented by DEAR 970.3102-05-6.

- (1) For proposed changes to pension plans and pension plan funding, the Contractor shall provide the following to the Contracting Officer:
  - (A) a copy of the current plan document (as conformed to show all prior plan amendments), with the proposed new amendment indicated in redline/strikeout,
  - (B) an analysis of the impact of any proposed changes on actuarial accrued liabilities and costs,
  - (C) except in circumstances where the Contracting Officer indicates that it is unnecessary, a legal explanation of the proposed changes from the counsel used by the plan for purposes of compliance with all legal requirements applicable to private sector defined benefit pension plans,
  - (D) the Summary Plan Description, and



- (E) any such additional information as requested by the Contracting Officer.
- (2) Contractors shall submit new benefit plans and changes to plan design or funding methodology with justification to the Contracting Officer for approval, as applicable (see (e)(1) above). The justification must:
  - (A) demonstrate the effect of the plan changes on the contract net benefit value or percent of payroll benefit costs,
  - (B) provide the dollar estimate of savings or costs, and
  - (C) provide the basis of determining the estimated savings or cost.

(k) Terminating Operations

When operations at a designated DOE facility are terminated and no further work is to occur under the prime contract, the following apply:

- (1) No further benefits for service shall accrue.
- (2) The Contractor shall provide a determination statement in its settlement proposal, defining and identifying all liabilities and assets attributable to the DOE contract.
- (3) The Contractor shall base its pension liabilities attributable to DOE contract work on the market value of annuities or lump sum payments or dispose of such liabilities through a competitive purchase of annuities or lump sum payouts.
- (4) Assets shall be determined using the “accrual-basis market value” on the date of termination of operations.
- (5) DOE and the Contractor(s) shall establish an effective date for spinoff or plan termination. On the same day as the Contractor notifies the IRS of the spinoff or plan termination, all plan assets assigned to a spun-off or terminating plan shall be placed in a low-risk liability matching portfolio until the successor trustee, or an insurance company, is able to assume stewardship of those assets.

(l) Terminating Plans

- (1) DOE Contractors shall not terminate any pension plan (Commingled or site specific) without requesting Departmental approval at least 60 days prior to the scheduled date of plan termination.
- (2) To the extent possible, the Contractor shall satisfy plan liabilities to plan participants by the purchase of annuities through competitive bidding on the open annuity market or lump sum payouts. The Contractor shall apply the assumptions and procedures of the Pension Benefit Guaranty Corporation.
- (3) Funds to be paid or transferred to any party as a result of settlements relating to pension plan termination or reassignment shall accrue interest from the effective date of termination or reassignment until the date of payment or transfer.
- (4) If ERISA or IRC rules prevent a full transfer of excess DOE reimbursed assets from the terminated plan, the Contractor shall pay any deficiency directly to DOE according to a schedule of payments to be negotiated by the parties.
- (5) On or before the same day as the Contractor notifies the IRS of the spinoff or plan termination, all plan assets assigned to a spun-off or terminating plan

shall be placed in a low-risk liability matching portfolio until the successor trustee, or an insurance company, is able to assume stewardship of those assets.

- (6) DOE liability to a Commingled pension plan shall not exceed that portion which corresponds to DOE contract service. The DOE shall have no other liability to the plan, to the plan sponsor, or to the plan participants.
- (7) After all liabilities of the plan are satisfied, the Contractor shall return to DOE an amount equaling the asset reversion from the plan termination and any earnings which accrue on that amount because of a delay in the payment to DOE. Such amount and such earnings shall be subject to DOE audit. To effect the purposes of this paragraph, DOE and the Contractor may stipulate to a schedule of payments.

(m) Special Programs

Contractors must advise DOE and receive prior approval for each early-out program, window benefit, disability program, plan-loan feature, employee contribution refund, asset reversion, or incidental benefit.

(n) Definitions

- (1) Commingled Plans. Cover employees from the Contractor's private operations and its DOE contract work.
- (2) Current Liability. The sum of all plan liabilities to employees and their beneficiaries. Current liability includes only benefits accrued to the date of valuation. This liability is commonly expressed as a present value.
- (3) Defined Benefit Pension Plan. Provides a specific benefit at retirement that is determined pursuant to the formula in the pension plan document.
- (4) Defined Contribution Pension Plan. Provides benefits to each participant based on the amount held in the participant's account. Funds in the account may be comprised of employer contributions, employee contributions, investment returns on behalf of that plan participant and/or other amounts credited to the participant's account.
- (5) Designated Contract. For purposes of this clause, a contract (other than a prime cost reimbursement contract for management and operation of a DOE facility) for which the Head of the Departmental Contracting Activity determines that advance pension understandings are necessary or where there is a continuing Departmental obligation to the pension plan.
- (6) Pension Fund. The portfolio of investments and cash provided by employer and employee contributions and investment returns. A pension fund exists to defray pension plan benefit outlays and (at the option of the plan sponsor) the administrative expenses of the plan.
- (7) Separate Accounting. Account records established and maintained within a commingled plan for assets and liabilities attributable to DOE contract service. NOTE: The assets so represented are not for the exclusive benefit of any one group of plan participants.
- (8) Separate Plan. Must satisfy IRC Sec. 414(1) definition of a single plan, designate assets for the exclusive benefit of employees under DOE contract, exist under a separate plan document (having its own Department of Labor plan number) that is distinct from corporate plan documents and identify the Contractor as the plan sponsor.
- (9) Spun-off Plan. A new plan which satisfies IRC Reg 1.414(1)-1 requirements

for a single plan and which is created by separating assets and liabilities from a larger original plan. The funding level of each individual participant's benefits shall be no less than before the event, when calculated on a "plan termination basis."

## **H.12 POST-CONTRACT RESPONSIBILITIES FOR PENSION AND OTHER BENEFIT PLANS**

- (a) If this contract expires or terminates and DOE has awarded a contract under which a new contractor becomes a sponsor and assumes responsibility for management and administration of the pension or other benefit plans covering active or retired contractor employees with respect to service at the West Valley Demonstration Project (collectively, the "Plans"), the Contractor shall cooperate and transfer to the new contractor its responsibility for sponsorship, management and administration of the Plans consistent with direction from the Contracting Officer. If a Commingled Plan is involved, the contractor shall:
- (1) Spin off the DOE portion of any Commingled Plan used to cover employees working at the DOE facility into a separate plan. The new plan will normally provide benefits similar to those provided by the commingled plan and shall carry with it the DOE assets on an accrual basis market value, including DOE assets that have accrued in excess of DOE liabilities.
  - (2) Bargain in good faith with DOE or the successor contractor to determine the assumptions and methods for establishing the liabilities involved in a spinoff. DOE and the contractor(s) shall establish an effective date of spinoff. On or before the same day as the contractor notifies the IRS of the spinoff or plan termination, all plan assets assigned to a spun-off or terminating plan shall be placed in a low-risk liability matching portfolio until the successor trustee, or an insurance company is able to assume stewardship of those assets.
- (b) If this Contract expires or terminates and DOE has not awarded a contract to a new contractor under which the new contractor becomes a sponsor and assumes responsibility for management and administration of the Plans, or if the Contracting Officer determines that the scope under the Contract has been completed (any one such event may be deemed by the Contracting Officer to be "Contract Completion" for the purposes of this clause), whichever is earlier, and notwithstanding any other obligations and requirements concerning expiration or termination under any other clause of this Contract, the following actions shall occur regarding the Contractor's obligations regarding the Plans at the time of Contract completion:
- (1) Subject to subparagraph (2) below and notwithstanding any legal obligations independent of the Contract the Contractor may have regarding responsibilities for sponsorship, management, and administration of the Plans, the Contractor shall remain the sponsor of the Plans, in accordance with applicable legal requirements.
  - (2) The parties shall exercise their best efforts to reach agreement on the Contractor's responsibilities for sponsorship, management and administration of the Plans prior to or at the time of Contract Completion. However, if the parties have not reached agreement on the Contractor's responsibilities for sponsorship, management and administration of the Plans

prior to or at the time of Contract Completion, unless and until such agreement is reached, the Contractor shall comply with written direction from the Contracting Officer regarding the Contractor's responsibilities for continued provision of pension and welfare benefits under the Plans, including but not limited to continued sponsorship of the Plans, in accordance with applicable legal requirements. To the extent the contractor incurs costs in implementing direction from the Contracting Officer, the Contractor's costs will be reimbursed pursuant to applicable Contract provisions.

### **H.13 LABOR RELATIONS**

- (a) The Contractor shall respect the right of employees to organize and to form, join, or assist labor organizations, to bargain collectively through their chosen labor representatives, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of these activities.
- (b) 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, including those for pension and medical benefit costs, 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. During the collective bargaining process, the Contractor shall obtain the approval of the Contracting Officer before proposing or agreeing to changes in any pension or other benefit plans.
  - (1) The contractor will seek to maintain harmonious bargaining relationships that reflect a judicious expenditure of public funds, equitable resolution of disputes and effective and efficient bargaining relationships consistent with the requirements of FAR Subpart 22.1 and DEAR Subpart 970.2201 and all applicable Federal and state labor relations laws.
  - (2) The contractor will notify the Contracting Officer or designee in a timely fashion of all labor relations issues and matters of local interest including organizing initiatives, unfair labor practice, work stoppages, picketing, labor arbitrations, and settlement agreements and will furnish such additional information as may be required from time to time by the Contracting Officer.

### **H.14 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 there under.

### **H.15 WORKFORCE RESTRUCTURING**

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- (a) The Contractor shall regulatory analyze workforce requirements and will develop appropriate workforce restructuring strategies to ensure continued availability of the critical workforce knowledge, skills, and abilities necessary for performance under this Contract.
- (b) When the Contractor determines that a change in the workforce is necessary, the Contractor shall accomplish the workforce restructuring in a manner consistent with the DOE General Workforce Restructuring Plan, if applicable, in effect for the facility or site. The General Plan lays out how contractor workforce restructuring will be conducted at the applicable site in a manner that is consistent with DOE policy.

The Contractor is only required to provide notification of Self-Select Voluntary Separation Programs (SSVSP) of 100 or more if consistent with the following parameters: 1) in accordance with approved laboratory and contractor policies and contract requirements; 2) no enhanced benefits (severance or pension); 3) no backfilling or re-employment of employees for a one-year period after severance is paid; 4) business case submitted 5 business days in advance of notification date that includes maximum number of voluntary separations, maximum dollars, positions/skills impacted; reasons separations are needed, including how conducting a SSVSP will better position the contractor to conduct the mission work; copies of the self-select application and any employee waivers or releases of claims, and a communication plan; and 5) voluntary separations offered to employees in a non-discriminatory and legally compliant manner. There is no backfilling where a separating employee is replaced by an internal candidate so long as:

- (A) The separating employee is leaving voluntarily;
  - (B) The internal replacement is a regular, permanent employee on the contractor's payroll, not a temporary hire, staff augmentee or someone serving under a post-doctoral program, or other short term program;
  - (C) The replacement results in a net reduction in headcount and costs of regular employees;
- and
- (D) The replacement is accomplished in an otherwise legally compliant manner, including no unlawful intent to discriminate based upon age.
- (c) The Contractor shall ensure it does not hire or rehire individuals who volunteered for termination during a Self-Select Voluntary Separation Program, at any DOE or NNSA site, during the one-year period following the separation. If an employee is hired or rehired prior to the one-year period, the employee may be required to pay back, to the contractor who provided the severance payment, all or a pro-rata amount of the severance received under the Voluntary Separation Program.
  - (d) The Contractor must prepare and submit to the Contracting Officer a specific workforce restructuring plan (Specific Plan), as described below in paragraph (e), if the Contractor intends to reduce its workforce by 100 or more employees through an involuntary separation action within a rolling 12-month period.
  - (e) The Contractor's Specific Plan shall lay out how the Contractor will conduct its workforce restructuring action at the site. The Contractor's Specific Plan for reducing 100 or more employees through an involuntary separation action shall be submitted to the Contracting Officer for approval at least 60 days in advance of the first communication planned to be given

to the employees and public. Any other Specific Plans must be submitted just in advance of the first communication planned to be given to the employees and public. The templates for contractor Involuntary Separation Plan, as well as the General Release and Waiver Forms, are available online at: <http://www.energy.gov/gc/services/technology-transfer-and-procurement/office-assistant-general-counsel-labor-and-pension>

- (f) Pay-in-lieu of notice beyond two work-weeks requires written advance Contracting Officer approval. The Contractor shall submit the request to the Contracting Officer as part of the Workforce Restructuring package submitted for approval in (e) above, and include the number of days of pay-in-lieu of notice requested, above two work-weeks, a detailed business justification, and the associated costs.
- (g) The Contractor is encouraged to consider use of employee waivers and releases. DOE has developed a model waiver and release of claims. The forms are available online at the website set forth in (e) above. Any deviation from the models must be approved by the Contracting Officer.
- (h) The Contractor must perform an adverse impact analysis (also known as a diversity analysis) as part of its determination to undertake involuntary separation action(s). A copy of the diversity analysis for involuntary separation action(s) affecting 100 or more contractor employees within a rolling 12-month period shall be submitted to the Contracting Officer and DOE or National Nuclear Security Administration (NNSA) site counsel, as applicable, prior to notification of employees selected for involuntary separation.
- (i) The Contracting Officer will review and approve any Specific Plan or diversity analysis submitted for review affecting the reduction of 100 or more employees through an involuntary separation action within 10 business days after submission of a complete package by the Contractor unless the Contractor is notified of issues necessitating an extension of time. Should DOE request additional information from the Contractor regarding any Specific Plan or diversity analysis, the Contractor will respond to such request within 3 business days.
- (j) The Contractor is responsible and accountable for conducting and defending all voluntary and involuntary separation actions in compliance with applicable laws, regulations, and the contract terms and conditions.
- (k) Questions of cost allowability related to: a) any SSVSPs for which the Contractor provides only notification, or b) any involuntary separation program(s) conducted without Contracting Officer approval will be resolved consistently with applicable laws and regulations and with the terms and conditions of this contract, including, but not limited to, Department of Energy Acquisition Regulation (DEAR) at 48 C.F.R. 952.231-71(f).

## **H.16 PERSONNEL SECURITY CLEARANCES**

- (a) The contractor is required to conduct pre-employment investigative screening of its prospective employees in order to ensure trustworthiness and reliability. The contractor shall provide certification to the Contracting Officer (CO) that an investigative screening has been completed prior to employment. The certification shall include verification of identity, previous employment and education, and the results of credit and law enforcement checks.
- (b) Security Police Officers assigned by the contractor to work at the DOE site will be required to obtain a security clearance. The level of clearance is as follows:

Clearance level

L – confidential

Under this contract, contractor personnel may be required to have an “L” clearance level. **Key Personnel (FOR PURPOSES OF THIS CLAUSE, KEY PERSONNEL REFERS TO MEMBERS OF THE BOARD OF DIRECTORS AND THE PROJECT GENERAL MANAGER) shall be required to have or be able to obtain an “L” clearance level.**

- (c) This requirement may be waived by the CO for personnel not involved with classified information while clearances are being processed, or for personnel associated with the program for short periods of time, such as consultants.
- (d) The contractor shall retrieve and dispose of badges for employees: 1) who are no longer working on the contract; 2) who no longer require access; 3) when their badge expires; or 4) when the contract expires or is terminated.

## H.17 GOVERNMENT FURNISHED SERVICES AND ITEMS

The DOE and the Contractor recognize that implementation of the PWS is dependent upon many activities, including the provision of Government Furnished Services and Items (GFSI) to the Contractor. The Government will make available to the Contractor in the performance of the contract all items listed in the Property List.

In addition to the items listed in the Property List, Table H-1 provides a description of the services and systems to be provided by DOE to the Contractor under this contract. DOE is committed to providing effective support to the Contractor throughout the period of Contract performance, and the Contractor may request that DOE consider providing additional GFS/I. To manage the GFS/I to be furnished under the Contract and to evaluate the additional GFS/I that may be required by the Contractor, the Contractor shall submit for DOE approval:

- GFS/I Request: a 12-month advance projection of GFS/I to be furnished under the Contract, to be submitted within 60 days of contract award and prior to each fiscal year; and
- GFS/I Update (if needed): a quarterly update to the projection of GFS/I to be furnished under the Contract, to be submitted prior to each quarter.

DOE will review the GFS/I Request and GFS/I Update. If DOE can support the additional Contractor-requested GFS/I, DOE will notify the Contractor within 30 days that the additional Contractor-requested GFS/I can be provided, and will provide the Contractor details regarding the DOE action(s). The supported GFS/I will be added to Table H.1, Detailed Description of Government Furnished Services and Items, as a DOE commitment to the Contractor.

If DOE cannot support a Contractor request, DOE will notify the Contractor within 30 days that the requested GFS/I cannot be provided, and there will be no DOE commitment to the Contractor to furnish the GFS/I.

For the additional Contractor-requested GFS/I, DOE will use its best efforts to meet additional GFS/I commitments to the Contractor. However, in the event that DOE is unable, for any reason, to provide the Contractor with its requested additional GFS/I, the Contractor remains fully and solely responsible for obtaining the needed services and/or information in a timely manner and without any further recourse against DOE.

<b>Table H.1 DETAILED DESCRIPTION OF GOVERNMENT FURNISHED SERVICES AND ITEMS</b>		
<b>Scope</b>	<b>Requirement</b>	<b>GFS/I</b>
The Contractor shall support DOE EM by performing infrastructure support as described in Section C, PWS.	DOE shall ensure Government controlled data systems are available for Contractor access as needed to provide infrastructure activities	<p>DOE will ensure the following systems are available to the Contractor throughout the period of performance of this contract:</p> <ul style="list-style-type: none"> <li>• Integrated Planning Accountability and Budget System (IPABS)</li> <li>• Facility Information Management System (FIMS) Computerized Accident/Incident Reporting System (CAIRS)</li> <li>• Non-Compliance Tracking System (NTS) database</li> <li>• Occurrence Reporting and Processing System (ORPS)</li> <li>• Foreign Access Central Tracking System (FACTS) database</li> <li>• Federal Telephone System</li> <li>• Access Condition Assessment Information System (CAIS)</li> <li>• Work Force Information System (WFIS)</li> <li>• Primavera P6 Professional Project Management Scheduling Software (DOE-EM will provide the most current version and any licenses and maintenance fees)</li> </ul>



<p>The Contractor shall submit documentation, reports, etc., to DOE during performance of the activities in the PWS.</p>	<p>DOE shall provide comments and/or approval of documentation, reports, etc.</p>	<p>DOE will use its best efforts to provide comments and/or approval of documentation, reports, etc., in a timely manner. Typical response times include: Project Baseline: 30 business days Baseline Changes: 30 business days Regulatory Submittals (with the exception of the RCRA Part B Permit Application): 30 business days General Correspondence: 5 business days Project Plans: 20 business days The above time frames do not apply to documents or submittals that require review, concurrence, or approval at any level other than local WVDP personnel.</p>
<p>The Contractor shall store, characterize, process, package, ship and dispose of waste in accordance with applicable laws, regulations and DOE directives.</p>	<p>DOE shall provide disposal rates and requirements for waste disposal using the Low Level/Mixed Low Level Radioactive and Hazardous Waste Treatment ID/IQ contracts or the Nevada National Security Site (NNSS).</p>	<p>DOE will make the Low Level/Mixed Low Level Radioactive and Hazardous Waste Treatment ID/IQ contracts available for use as necessary by the Contractor. DOE will provide the NNSS estimated disposal rates annually by September 30.</p>
<p>The Contractor shall maintain, safeguard, and disposition records acquired from a predecessor contractor in accordance with applicable federal laws, regulations and DOE Directives as described in <i>Records Management</i> in C.1.3.3.</p>	<p>DOE shall review/inspect the Government Records before release to the successor contractor.</p>	<p>Records acquired from a predecessor contractor(s) for the performance of work under this contract are being provided as Government Furnished Items.</p>

***Note: The review/inspection of records from a predecessor contractor, prior to being released to a successor contractor will typically take place during the contract close-out phase to ensure records have been managed appropriately and can be turned over to a successor contractor. The listing of records as Government-Furnished Services and Items (GFS&I) does not make records Government “Property” in the sense that records cannot be donated or given away under Property regulations.***

## **H.18 PROJECT CONTROL SYSTEMS AND REPORTING REQUIREMENTS**

### **A. Project Control System**

1. The Contractor shall establish, maintain and use a project control system that accurately reflects the project status relative to cost and schedule performance, and tracks changes to the

baseline. This system shall be fully integrated with the financial accounting system to ensure consistent reporting of costs. The Contractor shall maintain a project control system in accordance with the following requirements:

- i. Attachment 1 to DOE Order 413.3B, Program and Project Management for the Acquisition of Capital Assets, November 29, 2010, and its implementing Guide 413.3-1.
- ii. American National Standards Institute, Earned Value Management System Guidelines ANSI/EIA-748-B - August 2006
- iii. Code of Federal Regulations, 48 C.F.R. Subpart 34.2—Earned Value Management System
- iv. Work Breakdown Structures, MIL-HDBK-881A
- v. Data Item Description, DI-MGMT-81334C, Contract Work Breakdown Structure
- vi. Data Item Description, DI-MGMT-81650, Integrated Master Schedule (IMS)
- vii. Data Item Description, DI-MGMT-81466A, Contract Performance Report (CPR)
- viii. Integrated Planning, Accountability, and Budgeting System Information Systems (IPABS-IS) Data Requirements, August 26, 2006
- ix. Integrated Planning, Accountability, and Budgeting System (IPABS) Handbook, February 16, 1999
- x. HQ Baseline Change Control Charter, Office of Environmental Management, Rev. 0, June 23, 1999
- xi. DOE G 430.1-1, Cost Estimating Guide
- xii. Primavera Project Manager most current version, for scheduling activities to ensure standardization as required by DOE-EM and to allow integration with the EM Integrated Schedule (IS).
- xiii. Costs incurred in performance of this contract shall be reported in compliance with the Environmental Cost Element Structure (ECES), ASTM International Designation E: 2150-04 and in a format ready for incorporation into DOE's Environmental Cost Analysis System (ECAS) database.

2. The Contractor shall provide the Contracting Officer (CO) with a detailed written Earned Value Management System Description (EVMSD) of the proposed project control system for review and approval within 60 days after award of this contract. The system description shall be in compliance with items (i) through (vii) of the requirements noted in Section A.1. The Contractor shall follow all requirements identified in Attachment 1 of DOE O 413.3B for both Capital Asset Projects and Operations until further guidance for Operations is provided excluding the Critical Decision process and PARS II reporting. The Department of Energy (DOE) Contracting Officer Representative (COR) or designated representatives will conduct a compliance review of the Contractor's proposed EVMSD to determine if the EVMSD and procedures meet the intent of this contract clause within approximately 30 days after the Contractor's submission of their EVMSD.

3. The Contractor shall provide the CO, or designated authorized representatives, access to any and all information and documents comprising the Contractor's project control and reporting system.

4. The Contractor shall obtain certification that its EVMS is in conformance with ANSI/EIA-748 standards as needed under the guidance of DOE O 413.3.

## B. Baseline Development

1. The Contractor shall develop and submit for approval by the DOE-WVDP Director, a Performance Measurement Baseline (PMB) consistent with the terms and conditions of this contract and the Contractor's proposal within 60 days after the contract award date. The PMB shall be developed in accordance with the applicable requirements noted in Section A.1 and include the first six (6) month baseline with the scope, schedule and budget for the work identified in the Performance Work Statement (PWS). The PMB must be consistent with the Contractor's proposal, including the Work Breakdown Structure, for the first six (6) months of the contract. The PMB may include contract changes that have been incorporated into the contract through FAR 52-243.2 "Changes – Cost Reimbursement" (Section I.88) or as otherwise directed by the CO. If applicable, the PMB shall include key performance measures and milestones (regulatory and DOE). The PMB must match the PWS and align with the budget and funding profile as set forth in the contract and any modifications. Only a PMB to measure Earned Value is required at this time.

2. Within six (6) months of contract award, the Contractor shall develop and submit for approval by the DOE-WVDP Director, a Contract Budget Baseline (CBB) consistent with the terms and conditions of this contract and the Contractor's proposal. The baseline shall be developed in accordance with items (i) through (vii) of the requirements noted in Section A.1 and include the CBB for the entire contract with a detailed development of the scope, schedule and budget for the work identified in the Performance Work Statement (PWS). The CBB shall include key performance measures and milestones (regulatory, DOE, and incentive). The CBB must include all scope in the PWS and not exceed the Total Amount of Contract. The Work Breakdown Structure (WBS) for the work scope shall be the same as the WBS provided by DOE and used in the Contractor's proposal to at least level 3. Changes from the WBS structure used in the Contractor's proposal must be approved by the DOE-WVDP Director. The WBS for the work scope shall provide the basis for all project control system components, including estimating, scheduling, budgeting, performing, managing, and reporting, as required under this contract.

3. Schedules shall be developed and be consistent with items (i) through (vii) of the requirements noted in Section A.1. All project work scope shall be included regardless of funding source. Each Project will have assigned duration based on work scope. Activity logic links shall depict all work scope constraints and decision points and shall be integrated into a total project network schedule. The project schedule shall clearly depict critical path activities and milestones. Activities shall be resource loaded at the lowest practical level of the WBS, but at a minimum at the work package level at least two levels below the PBS to develop time-phased budgets that are integrated. Labor resources shall be loaded based upon a staffing analysis. EVM analysis will be performed at the level approved in the EVMSD with the ability to total to the project level.

Reporting may be specified at lower levels for complicated, high cost or high-risk items. EM DOE will provide Primavera licenses and maintenance fees associated with the license.

### C. Project Reporting

1. For reporting purposes, all CBB data needs to have the ability to roll-up to the Project Level and Project Baseline Summary (PBS) level.
2. The Contractor shall provide on a monthly basis a Project Performance Report. The Project Performance Report shall include an Executive Summary regarding scope, Formats 1 through 5 including Performance Curves, financial status, Performance Measures and Milestone updates, Change Control Log, changes to the Risk Register, Safety Performance, and critical technical and program issues. The report shall be delivered to the CO by the fifteenth of each month with the earned value analysis of the prior month (e.g. November results reported by the fifteenth day of December). A copy of the Monthly Progress Report shall be electronically distributed to the DOE, Office of Project Assessment at: [ContractorsMPR@hq.doe.gov](mailto:ContractorsMPR@hq.doe.gov) for placement on the EM Portal at the same time it is transmitted to the Contracting Officer.
3. The Contractor shall be responsible for data entry in the Integrated Planning, Accountability and Budgeting System (IPABS) for all projects, if requested, for DOE review and approval. The data entry shall be in compliance with items (vii) through (ix) of the requirements noted in Section A.1.
4. The Contractor shall be responsible for data entry in the Project Assessment and Reporting System (PARS II) for all Capital Asset Projects for DOE review. The data entry shall be in compliance with item (i) of the requirements noted in Section A.1.
5. The Contractor will support all other reporting requirements and data calls on an as needed basis, including but not limited to, Monthly Project Reviews.

### D. Baseline Change Management

1. No changes to the Total Project Cost (TPC) shall occur without prior approval from the CO. Once approved by the CO, the Contractor can begin the Baseline Change process that was approved in the EVMSD. Any changes to the Contract Budget Baseline (CBB) shall be timely, formal, and documented. Baseline changes need to be incorporated throughout all project management documentation and provided to DOE.

## H.19 STAKEHOLDER INTERACTION

The Contractor shall, in addition to its own employees, engage in cooperative interactions through and with these organizations, including but not limited to:

U.S. Nuclear Regulatory Commission (NRC)  
U.S. Environmental Protection Agency (USEPA)  
New York State Department of Environmental Conservation (NYSDEC)

New York State Energy Research and Development Authority (NYSERDA)  
Occupational Safety and Health Administration (OSHA)  
Department of Energy Environmental Management Consolidated Business Center  
(EMCBC)  
Department of Energy Headquarters (DOE-HQ)  
Congressional Staff  
U.S. Department of Labor (DOL)  
Inspector General (IG)  
U.S. Attorney's Office  
Government Accountability Office (GAO)  
Defense Contract Audit Agency (DCAA)  
West Valley Citizens Task Force  
Coalition on West Valley Nuclear Wastes  
Seneca Nation of Indians  
Local Emergency Responders and Law Enforcement  
Other State and Federal Agencies, as applicable.

## **H.20 PAPERLESS DIRECTIVE PROCESSING SYSTEM**

- (a) The Contractor, in addition to complying with applicable laws, rules, and other regulations, shall comply with those DOE Orders and other Directives applicable to contractors, with the applicable departmental policies, plans, programs, and management directives, and with all changes to assigned work as agreed to by the Contractor and the CO or designee.
- (b) DOE has developed a list of applicable DOE Directives, and is appended to the Contract as Section J, Attachment J-2. The Contractor shall comply with the directives identified in such list. The Contractor shall make no claim, including a claim for equitable adjustment under the Changes clauses of this contract, for additional costs, fee or extension of time of performance relating to compliance with the directives in such list.
- (c) The Baseline List of Directives Applicable to the Contract will be revised and issued, by the DOE CO, as a contract modification, as necessary. The CO may direct the Contractor to comply with additional DOE directives and local directives and revisions thereto, as follows:
  - (1) Pursuant to and in accordance with the "Changes" clause of the contract with respect to changes in directives within the general scope of this contract,
  - (2) Pursuant to any Environment, Safety, and Health provisions of this contract, and in accordance with the Changes clause of this contract with respect to changes in directives involving safety, environment, health and quality.
- (d) At least once a month, the Contractor will extract orders, directives, manuals, technical orders, guides etc directly from the DOE Paperless Directive System utilizing the Internet as notification of their availability by DOE electronic prompting. Copies of DOE directives may be obtained without charge from the CO or by citing the number of this contract in a written request sent to the following address:

US DOE  
Distribution Section  
Forrestal Building  
Washington, DC 20585

- (e) The CO and his/her representative(s) expressly authorized in writing to do so are

the only government officials authorized to provide explanations as to the applicability of directives. The CO is the only Government Official authorized to resolve conflicting requirements involving directives and their applicability to the Contract.

- (f) Upon extraction of new or revised orders, directives, manuals, technical orders, guides etc the Contractor shall review it for consistency with the other terms of this contract and for impacts on funding, manpower and other provisions of the contract. If the Contractor considers the document to be consistent with the other terms of this contract and it can be implemented within existing funds, manpower, and other provisions of the contract and implementation is not anticipated to require an increase to the contract value, or to have a negative impact on the contract schedule, or other obligations of the Contractor, the Contractor shall establish an implementation schedule, and so advise DOE within 30 calendar days of receipt. In the event the Contractor considers the directive to be inconsistent with the other terms of this contract or the requirements of the directive cannot be implemented without an increase to the contract value and within existing funding, manpower, and other provisions of the contract, the Contractor shall so advise the Contracting Officer (CO) within 30 calendar days of receipt. Such notice shall include the basis for the claimed inconsistency the projected cost of implementation, including an explanation of the need for a contract increase, and identification in excess of current funding, manpower, and other provisions of the contract. After evaluation of the Contractor's position, the CO shall issue direction to the Contractor, pursuant to the clause entitled "Changes" concerning appropriate implementation of the directive.
- (g) The Contractor will, at least quarterly, notify DOE of those Directives extracted. The Contractor cognizant personnel will review these Directives and recommend for concurrence disposition of the Directives to DOE-WV.
- (h) Upon agreement between the Contractor and DOE, the Directive will be implemented as outlined in a Contractor Management Summary or Implementation Plan, whichever is appropriate, and the Directive added to the Baseline List of Directives Applicable to the Contractor and issued by the CO. The same process will be utilized for deletion of Directives.
- (i) The Contractor shall incorporate the substance of this clause with respect to applicable directives, excluding any reference to the Changes clause, in subcontracts for performance of work at the site and as directed by the CO.

## H.21 PRIVACY ACT SYSTEMS OF RECORDS

The Contractor shall design, develop, or operate the following systems of records on individuals to accomplish an agency function pursuant to the clause in Section I, FAR 52.224-2, Privacy Act:

### DOE System Title/Number

DOE-5	Personnel Records of Former Contractor Employees
DOE-10	Energy Employees Occupational Illness Compensation Program Act Files
DOE-13	Payroll and Leave Records
DOE-23	Property Accountability System
DOE-28	General Training Records
DOE-33	Personnel Medical Records
DOE-35	Personnel Radiation Exposure Records

DOE-38	Occupational and Industrial Accident Reports
DOE-43	Personnel Security Clearance Files
DOE-51	Employee and Visitor Access Control Records
DOE-52	Access Control Records of International Visits, Assignments, and Employment at DOE Facilities and Contractor Sites
DOE-55	FOIA/PA Requests for Records
DOE-88	Epidemiologic and other Health Studies, Surveys and Surveillances

The above list shall be revised from time to time by the CO as may be necessary to keep it current. Such changes will be formally incorporated by modification.

The Contractor shall prepare/revise and submit for DOE Privacy Act Officer approval, in accordance with Section I, FAR 52.224-2, Privacy Act, and DOE O 206.1, DOE Privacy Program: (1) a list of the systems of records that fall under the Privacy Act; (2) the design, development, or operation work that will be performed; and (3) the responsibility of each system. Systems currently covered by the Privacy Act can be found in the Federal Register at the following web site:

<http://management.energy.gov/documents/FinalPASORNCompilation.1.8.09.pdf>.

## **H.22 PRICE ANDERSON AMENDMENTS ACT NONCOMPLIANCE**

The Contractor shall maintain an internal Price Anderson Amendments Act (PAAA) noncompliance identification, tracking, reporting and corrective action system and shall provide access to and fully support DOE reviews of the system. The Contractor shall be accountable for ensuring that subcontractors adhere to the PAAA requirements.

## **H.23 DISPOSITION OF INTELLECTUAL PROPERTY-FAILURE TO COMPLETE**

- (a) In the event of a termination for default or termination for convenience, DOE may take possession of all technical information, including limited rights data and data obtained from subcontractors, licensors, and licensees, necessary for the design, construction, operation, cleanup and closure of the facility, subject to the Rights in Data -Facilities clause of this contract. Technical information includes, but is not limited to, designs, operation manuals, flowcharts, software, work progress reports, and any other information necessary for the design, construction, operation, cleanup and closure of the facility.
- (b) Upon request, the Contractor agrees to grant to the Government an irrevocable, nonexclusive, paid-up license in and to any intellectual property, including any technical information and limited rights data, which are owned or controlled by the Contractor, at any time through completion or termination of this contract and which are necessary for the continued design, construction, operation, cleanup and closure of the facility, (1) to practice or to have practiced by or for the Government at the facility, and (2) to transfer such license to future contractors for the design, construction, operation, cleanup and closure of the facility. 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.
- (c) In addition, the Contractor will take all necessary steps to assign permits, authorizations, and any licenses in any third party intellectual property for the

design, construction, cleanup and closure of the facility to DOE or such other third party as DOE may designate.

- (d) The obligations under this clause are not dependent upon any payments by the Government. The obligations arise immediately upon the request of the CO.

#### **H.24 COMPLIANCE WITH FIPS PUB 201**

This contract involves the acquisition of hardware, software, or services related to physical access to Federal premises or electronic authentication or access control to a Federal agency's computer systems and electronic infrastructure. Any such hardware, software, or services delivered under this contract shall comply with FIPS Pub 201, and FIPS Pub 201 shall take precedence over any conflicting performance requirement of this contract. Should the Contractor find that the Performance Work Statement or specifications of this contract do not conform to FIPS Pub 201, it shall notify the Contracting Officer of such nonconformance and shall act in accordance with instructions of the Contracting Officer.

#### **H.25 OVERTIME CONTROL PLAN**

Notwithstanding any other provision in this contract, if the aggregate overtime premium pay as a percent (%) of base salary exceeds 2 % for non-represented employees or 10% for represented employees, the contractor shall submit to the Contracting Officer separate annual Overtime Control Plans in accordance with the Section I Clause entitled, FAR 52.222-2, Payment for Overtime Premiums.

#### **H.26 STANDARD INSURANCE REQUIREMENTS**

In accordance with FAR clause 52.228-7, entitled "Insurance -Liability to Third Persons," the following kinds and minimum amounts of insurance are required during the performance of this contract:

- (a) Worker's compensation and employer's liability insurance:
  - (1) The amount required by the state in which work is performed under applicable workers' compensation and occupational disease statutes.
  - (2) Employer's liability insurance in the amount of \$100,000.
- (b) General liability insurance. Bodily injury liability coverage written on the comprehensive form of policy of at least \$500,000 per occurrence.
- (c) Automobile liability insurance. Coverage shall be provided on a comprehensive basis. It shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performance of this contract. Policies covering automobiles operated in the United States shall provide coverage of at least \$200,000 per person and \$500,000 per occurrence for bodily injury and \$20,000 per occurrence for property damage.
- (d) The amount of liability coverage on other policies shall be commensurate with any legal requirements of the state and locality, plus sufficient to meet normal and customary claims.

#### **H.27 WAGE DETERMINATION RATES**

In the performance of this contract, the Contractor shall comply with the requirements of Service Contract Act Wage Determination No. 2005-2371 in Section J, Attachment J-5 and Davis-Bacon General Decision No. NY100008 in Section J, Attachment J-4. Revised wage determinations shall be required from the Department of Labor and incorporated



into this contract at least once every two (2) years but not more often than yearly.

#### **H.28 LOBBYING RESTRICTION (ENERGY & WATER DEVELOPMENT AND RELATED AGENCIES APPROPRIATIONS ACT, 2010)**

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 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

#### **H.29 SALE OF PERSONAL PROPERTY**

If the contractor acquires property under this contract that is later determined to be excess/surplus property and the contractor receives approval from the Contracting Officer to sell such property, the proceeds from the sale shall be handled as a credit to the contractor's contract cost. The contractor shall issue a credit on its voucher that is submitted to the U.S. Department of Energy for reimbursement of cost documenting the sale of such property.

#### **H.30 ALLOCATION OF LIABILITY FOR FINES AND PENALTIES TO RESPONSIBLE PARTY**

- (a) Liability and responsibility for civil fines or penalties arising from or related to violations of environmental, safety, health or quality requirements shall be borne by the party that causes the violation (contractor's, subcontractors, teaming partners, joint ventures, etc.). This clause resolves liability for fines and penalties though the cognizant regulatory authority may assess such fines or penalties upon either party or both parties without regard to the allocation of responsibility or liability under this contract. The allocation of liability for such fine or penalty is effective regardless of which party signs permit application, manifest, reports or other required documents, is a permittee, or is named subject of an enforcement action or assessment of a fine or penalty.
- (b) Regardless of which party to this contract is the named subject (Contractor or DOE) of an enforcement action for compliance with the environmental, safety, and health, or quality requirements by the cognizant regulatory authority, liability for payment of any fine or penalty as a result of Contractor action or inactions, is the responsibility of the Contractor and not reimbursable under this contract. Any fines and penalties incurred by DOE as a result of Contractor actions or inactions will be reimbursed to DOE and are also unallowable. Cost of fines and penalties resulting from violations of, or the Contractor failure to comply to comply with federal, state, local, or foreign laws and regulations are unallowable except under the conditions stipulated at FAR 31.205-15.

#### **H.31 PERMITS, APPLICATIONS, LICENSES, AND OTHER REGULATORY DOCUMENTS**

- (a) The Contractor must obtain any licenses, permits, other approvals or authorizations for conducting all activities under the contract. The Contractor shall be responsible for becoming a party to all regulatory compliance agreements, permits, licenses, and certifications associated with the scope under this contract

including those previously executed. The Contractor is responsible for complying with all permits, licenses, certifications, authorizations and approvals from federal, state, and local regulatory agencies that are necessary for all activities under this contract (hereinafter referred to collectively as "permits"). Section C, Attachment C-6, describes permits currently held by WVDP. Except as specifically provided in this section and to the extent not prohibited by law or cognizant regulatory authority, the Contractor (or, if applicable, its subcontractors) will be the sole permittee/licensee for any such permits/licenses required for its activities. The Contractor must take all appropriate actions to obtain transfer of existing permits/licenses, and DOE will use all reasonable means to facilitate transfer of existing permits/licenses. If DOE determines it is appropriate or if DOE is required by cognizant regulatory authority to sign permit/licenses applications, DOE may elect to sign as co-operator or similar designation, but the Contractor (or, if applicable, its subcontractors) must also sign as operator or similar designation reflecting its responsibility under the permit/licenses unless DOE waives this requirement in writing.

- (b) Unless otherwise authorized by the Contracting Officer, the Contractor must submit to DOE for review and comment all permit applications, reports or other documents required to be submitted to cognizant regulatory authorities. Such draft documents must be provided to DOE within a time frame, identified by DOE, sufficient to allow DOE substantive review and comment; and DOE will perform such substantive review and comment within such time frame. When providing DOE with documents that are to be signed or co-signed by DOE, the Contractor will accompany such documents with a certification statement, signed by the appropriate Contractor corporate officer, attesting to DOE that the document has been prepared in accordance with all applicable requirements and the information is, to the best of its knowledge and belief, true, accurate, and complete.
- (c) Except as specifically provided in this clause and to the extent not prohibited by law or cognizant regulatory authority, the Contractor (or, if applicable, its subcontractors) will be the signatory for reports, hazardous waste manifests, and other similar documents required under environmental permits or applicable environmental laws and regulations.
- (d) In the event of termination or expiration of this contract, DOE will require the new Contractor to accept transfer of all environmental permits executed by the Contractor, or DOE will accept responsibility as operator for such permits, and the Contractor shall be relieved of all future liability and responsibility resulting from the acts or omissions of the successor Contractor or DOE.

## **H.32 PARTNERING**

In order to most effectively accomplish this Contract, the Government proposes to form a cohesive partnership with the Contractor. It is a way of doing business based upon trust, dedication to common goals, and an understanding and respect of each other's expectations and values. The process creates a teambuilding environment which fosters better communication and problem solving, and a mutual trust between the participants. These key elements create a climate in which issues can be raised, openly discussed, and jointly settled, without getting into an adversarial relationship. In this way, partnering is a mindset, and a way of doing business. It is an attitude toward working as a team, and achieving successful project execution. This endeavor seeks an environment that nurtures team building cooperation, and trust between the Government and the Contractor. The partnership strives to draw on the strengths of each organization in an effort to achieve a quality project done right the first time, within budget, and on schedule.

Participation in the partnership will be totally voluntary by the parties. Any cost associated with effectuating this partnership will be agreed to by both parties during Contract performance. The U.S. Army Corps of Engineers has championed partnering and their guidelines will be utilized in organizing partnering meetings and establishing a partnering agreement.

### **H.33 LEGAL MANAGEMENT PLAN**

- (a) The Contractor shall comply with all requirements of 10 CFR 719. As part of that compliance, the Contractor shall submit a Legal Management Plan in accordance with 10 CFR 719, and include the item set forth in 10 CFR 719.10 to the Contracting Officer for approval within sixty (60) days of contract award.
- (b) The Plan shall describe the Contractor's practices for managing legal costs and matters for which it procures the services of retained legal counsel. In doing so, the plan shall describe the matters in-house counsel will perform as well as anticipates performing throughout the life of the contract. The Contractor should not retain outside counsel for matters that can be performed by in-house counsel. Within this plan, the Contractor will promise to compare rates of retained legal counsel with the rates of firms in the Greater Buffalo area. Once approved by the Contracting Officer, the Plan, as well as applicable regulations and contract provisions, forms the basis for approvals by the Contracting Officer to reimburse litigation and other legal expenses performed by retained legal counsel. The Plan may be revised from time to time to conform to legal management rules or policies established or adopted by the Department of Energy.

### **H.34 AWARD FEE PLAN (applicable for Award Fee Periods prior to execution of Mod 0245. Following Mod 0245, fee will be managed according to the PEMP)**

- (a) The determination of award fee shall be based upon an award fee plan, including the criteria to be considered under each area evaluated and the percentage of award fee, if any, available for each area. The award fee plan will be unilaterally established by the Government. A copy of the plan shall be provided to the Contractor within 30 calendar days after contract transition
- (b) The award fee plan will set forth the evaluation period and the criteria upon which the Contractor will be evaluated for performance relating to any (1) technical requirements if appropriate, (2) management requirements, and (3) cost functions as selected for evaluation. The Contractor may submit a self-evaluation of performance for each period under consideration. While it is recognized that the basis for determination of the fee shall be the evaluation by the Government, the self-evaluation which is to be received within 15 days after the end of the period being evaluated will be given such consideration as the Fee Determination Official shall find appropriate.
- (c) The award fee plan may be revised unilaterally by the Government at any time during the period of performance. Notification of such changes shall be provided to the Contractor 30 calendar days prior to the start of the evaluation period to which the change will apply.

### **H.35 COOPERATION WITH OTHER SITE CONTRACTORS**

- (a) The DOE may require that activities not included in the Performance Work

Statement (PWS) be performed on or for the WVDP by other contractors or entities. DOE can require performance of any activity not covered by the PWS however the activities most likely to be performed include decontamination, demolition, and waste management activities. The Contractor is required to support and facilitate the performance of these activities as requested by the Contracting Officer or the Contracting Officers Representative, regardless of the performer. The types of support DOE anticipates will be necessary includes but is not limited to provision and coordination of Integrated Safety Management System (ISMS) oversight, infrastructure services, site and facility access, documents, data and information and access to systems.

- (b) The Contractor is expected to support, cooperate and facilitate to the degree directed by DOE all contractors and entities authorized to perform work at the WVDP. Effective support and cooperation will require open and frequent communication between the Contractor other contractors, entities and DOE to ensure that work schedules are coordinated and/or adapted to accommodate all of the work that needs to be accomplished regardless of performer, that data and information necessary to perform work is shared in a timely manner, and that requests for support services are promptly responded to. Cooperation requires that the Contractor work closely with other contractors and entities to resolve interface and communication issues, establish schedules that accommodate all work being performed regardless of performer, provide and disseminate safety information and requirements, establish work groups, participate in meetings, provide access to technical data and information, contract schedules and milestone data; discuss technical matters related to the WVDP, provide access to Contractor facilities or areas. The Contractor shall ensure that its activities in support of the other contractors and entities are fully coordinated with all parties including DOE.
- (c) None of the parties, (Contractor, other contractors, entities) will be allowed to deliberately interfere, or impede the performance of work by another party authorized to perform work on site. Deliberate interference is considered to be any action or inaction designed or intended to interfere with the ability of any party to pursue and complete work as scheduled and planned. Interference includes but is not limited to changing schedules without prior notice and coordination, omitting necessary information and/or details that materially affect any parties ability to plan or perform work, failing to turn over facilities on schedule or in the anticipated condition, failure to provide prompt accurate issue notification at the appropriate level, and failure to provide prompt notification to DOE of any actual or suspected instances of deliberate interference by any party. A determination by DOE that any party intentionally interfered with another parties ability to perform required work will result in an assessment against the culpable party in accordance with the terms and conditions of the applicable contract or agreement relative to that parties work. Under this contract intentional interference with the performance of work by another contractor or entity by the Contractor may result in a reduction in overall award fee commensurate with the Fee Determining Official's assessment of the severity of the interference.
- (d) The CO has the authority to direct any party to cease performance of any work that interferes with the work of any other party or that is considered a detriment to the ability of DOE to accomplish necessary work.
- (e) The Contractor shall provide to DOE and all parties performing work on site a schedule that identifies and integrates all work to be performed regardless of performer. The schedule shall be updated whenever a change is made and

provided to all parties. Failure to reach agreement among the parties will be elevated in writing to the DOE COR/CO for resolution.

### **H.36 COMPLIANCE WITH INTERNET PROTOCOL VERSION 6 (IPV6) IN ACQUIRING INFORMATION TECHNOLOGY**

This contract involves the acquisition of Information Technology (IT) that uses Internet Protocol (IP) technology. The contractor agrees that (1) all deliverables that involve IT that uses IP (products, services, software, etc.) comply with IPv6 standards and interoperate with both IPv6 and IPv4 systems and products; and (2) it has IPv6 technical support for fielded product management, development and implementation available. If the contractor plans to offer a deliverable that involves IT that is not initially compliant, the contractor agrees to (1) obtain the Contracting Officer's approval before starting work on the deliverable; and (2) have IPv6 technical support for fielded product management, development and implementation available. Should the contractor find that the PWS or specifications of this contract do not conform to IPv6 standards, it must notify the Contracting Officer of such nonconformance and act in accordance with the instructions of the Contracting Officer.

### **H.37 CRITICAL SUBCONTRACTORS – DESIGNATION AND CONSENT**

The following subcontracts have been determined to be critical subcontracts:

Affiliate Procurements

Joint Venture or LLC Partner Procurements

All Non-Competitive Procurements exceeding \$2,000,000

Seconded Employee Agreements

The above subcontracts require notification to, and consent by, the Contracting Officer regardless of any exceptions that may be stated in the Subcontracts clause of this contract. Consent of these subcontracts is retained by the Contracting Officer and will not be delegated. The Contracting Officer may unilaterally designate additional subcontracts as "critical" without such action constituting a basis for adjustment to any other terms of the contract.

### **H.38 SALES AND USE TAXES**

As a contractor on a contract issued by the DOE, the awardee will not be considered an agent of DOE. Based upon the decision of the State of New York Tax Appeals Tribunal in West Valley Nuclear Services Co., Inc., DTA No. 811511 (1998), the Contractor will have to pay sales and use taxes as required under Section 1116 (a) (2) of the New York State Tax Law on purchases of certain goods and services required under the contract.

### **H.39 PERFORMANCE GUARANTEE AND RESPONSIBLE CORPORATE OFFICIAL**

If the Contractor is a joint venture, limited liability company, other similar entity, or a newly formed entity, the Contractor's parent organization(s) or all member organizations shall guarantee performance of the contract as evidenced by the Performance Guarantee

Agreement in Section J, Attachment J-9. If the Contractor is a joint venture, limited liability company, or other similar entity where more than one organization is involved, the parent(s) or all member organizations shall assume joint and several liability for the performance of the contract. In the event any of the signatories to the Performance Guarantee Agreement enter into proceedings related 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 Contractor and who is accountable for the Contractor regarding Contractor performance issues:

Name: Michael Carlin

Position: Treasurer

Company/Organization: Jacobs

Address: 1999 Bryan Street, Suite 1200, Dallas, TX 75201

Phone: (214) 583-8413

Facsimile: \_\_\_\_\_

Email: \_michael.carlin@jacobs.com

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

#### **H.40 RECOGNITION OF PERFORMING ENTITY**

- (a) The Contractor and the Government recognize that the parties named below form the performing entity on which the award of this contract was based.

Contractor

CH2M HILL BWXT West Valley, LLC

Limited Liability Company Members

CH2M HILL Constructors, Inc. - (65%)

Babcock & Wilcox Technical Services Group, Inc. - (20%)

Environmental Chemical Corporation - (15%)

Protégé Subcontractor

American Demolition & Nuclear Decommissioning, Inc. aka American DND

- (b) Accordingly, the Contractor and the Government agree that:

The Contractor shall take no action to replace the components of the Offeror named in (a) above without the prior written approval of the Contracting Officer.

#### **H.41 TRANSITION TO FOLLOW-ON CONTRACT**

The Contractor recognizes that the work and services covered by this contract are vital to the DOE mission and must be maintained without interruption, both at the commencement and the expiration of this contract. It is therefore understood and further agreed in recognition of the above:

That at the expiration of the contract term or any earlier termination thereof, the Contractor shall cooperate with a successor contractor or the Government by allowing either to interview its employees for possible employment, and if such employees accept employment with the replacement Contractor, shall release such employees at the time established by the new employer or by DOE. The Contractor shall cooperate with the replacement Contractor and Government with regard to the termination or transfer arrangements for such employees to assure maximum protection of employee service credits and fringe benefits.

#### **H.42 MENTOR-PROTÉGÉ PROGRAM**

- A) Both the U.S. Department of Energy (DOE) and the Small Business Administration (SBA) have established Mentor-Protégé Programs to encourage federal prime contractors to assist small businesses, firms certified under Section 8(a) of the Small Business Act by the SBA, other small disadvantaged businesses, women-owned small businesses, historically black colleges and universities and minority institutions, other minority institutions of higher learning, and small business concerns owned and controlled by service disabled veterans in enhancing its business abilities. Within 90 days of contract award and continuing throughout the contract period of performance, the contractor shall mentor at least one active Protégé company through the DOE and/or SBA Mentor-Protégé Programs. Mentor and Protégé firms will develop and submit "lessons learned" evaluations to DOE at the conclusion of the contract.
- (B) DOE Mentor-Protégé Agreements shall be in accordance with DEAR Subpart 919.70, The Department of Energy Mentor-Protégé Program.
- (C) SBA Mentor-Protégé Agreements shall be in accordance with applicable SBA regulations.

#### **H.43 WORK STOPPAGE AND SHUTDOWN AUTHORIZATION**

- (A) Imminent Health and Safety Hazard is a given condition or situation which, if not immediately corrected, could result in a serious injury or death, including exposure to radiation and toxic/hazardous chemicals. Imminent Danger in relation to the facility safety envelope is a condition, situation, or proposed activity which, if not terminated, could cause, prevent mitigation of, or seriously increase the risk of (1) nuclear criticality, (2) radiation exposure, (3) fire/explosion, and/or (4) toxic hazardous chemical exposure.
- (B) Work Stoppage. In the event of an imminent health and safety hazard, identified by facility line management or operators or facility health and safety personnel

overviewing facility operations, or other individuals, the individual or group identifying the imminent hazard situation shall immediately take actions to eliminate or mitigate the hazard (i.e., by directing the operator/implementer of the activity or process causing the imminent hazard to stop work, or by initiating emergency response actions or other actions) to protect the health and safety of the workers and the public, and to protect U.S. Department of Energy (DOE) facilities and the environment. In the event an imminent health and safety hazard is identified, the individual or group identifying the hazard should coordinate with an appropriate contractor official, who will direct the shutdown or other actions, as required. Such mitigating action should subsequently be coordinated with the DOE and contractor management. The suspension or stop-work order should be promptly confirmed in writing from the Contracting Officer.

- (C) Shutdown. In the event of an imminent danger in relation to the facility safety envelope or a non-imminent health and safety hazard identified by facility line managers, facility operators, health and safety personnel overviewing facility operations, or by independent oversight organizations, the individual or group identifying the potential health and safety hazard may recommend facility shutdown in addition to any immediate actions needed to mitigate the situation. However, the recommendation must be coordinated with contractor management, and the DOE West Valley Demonstration Project Manager. Any written direction to suspend operations shall be issued by the Contracting Officer, pursuant to the Section F Clause entitled, FAR 52.242-15, Stop-Work Order.
  
- (C) Facility Representatives. DOE personnel designated as Facility Representatives provide the technical/safety oversight of operations. The Facility Representative has the authority to “stop work,” which applies to the shutdown of an entire plant, activity, or job. This stop-work authority will be used for an operation of a facility which is performing work the Facility Representative believes:
  - (1) Poses an imminent danger to health and safety of workers or the public if allowed to continue;
  - (2) Could adversely affect the safe operation of, or could cause serious damage to the facility if allowed to continue; or
  - (3) Could result in the release of radiological or chemical hazards to the environment in excess of regulatory limits.
  
- (E) This clause flows down to all subcontractors at all tiers. Therefore, the contractor shall insert a clause, modified appropriately to substitute “contractor representatives” for “the Contracting Officer” in all subcontracts.

#### **H.44 EMERGENCY CLAUSE**

- (A) The U.S. Department of Energy (DOE) WVDP Director or designee shall have sole discretion to determine when an emergency situation exists at the West Valley site. In the event that either the DOE-WVDP Director or designee determines such an emergency exists, the DOE-WVDP Director or designee will have the authority to direct any and all activities of the contractor and subcontractors necessary to resolve the emergency situation. The DOE-WVDP Director 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 West Valley site.

#### **H.45 WITHDRAWAL OF WORK**

- (A) The Government may, at its option and during the performance of this contract, unilaterally have any of the work contemplated by Section C, Performance Work Statement, of this contract performed by either another contractor or to have the work performed by Government employees.
- (B) Work may be withdrawn:
  - (1) In order for the Government to conduct pilot programs;
  - (2) If the contractor's estimated cost of the work is considered unreasonable;
  - (3) For less than satisfactory performance by the contractor; or
  - (4) For any other reason deemed by the Contracting Officer to be in the best interests of the Government.
- (C) If any work is withdrawn by the Contracting Officer, the contractor agrees to fully cooperate with the new performing entity and to provide whatever support is required.

#### **H.46 USE OF DOE FACILITIES**

The contractor may conduct programs of local community assistance to mitigate adverse impacts of closure or reconfiguration of U.S. Department of Energy (DOE) facilities. Such programs may provide for the lease or transfer of DOE property at less than fair market value in accordance with the Hall Amendment (Public Law 103-160, Sections 3154 and 3155). The Contracting Officer must approve, in writing, prior to any lease or transfer of DOE property under this program. Any lease or transfer of property under this program must also be approved and executed (issued) by the DOE Certified Realty Specialist, as appropriate.

#### **H.47 INFORMATION**

- (A) Management of Information Resources. The contractor shall design and implement Information Resources Management (IRM) capabilities as required to execute this Contract in accordance with the Office of Management and Budget (OMB) Circular A-130, Management of Federal Information Resources.
- (B) Release of Information. The contractor shall provide timely, accurate, and complete responses to information requested by DOE to comply with Freedom of Information Act and Privacy Act requirements.

- (C) 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 DOE regulations and directives and Section I Clauses entitled, DEAR 952.204-2, Security Requirements and DEAR 952.204-70, Classification/Declassification.
- (D) 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 which is published after receipt thereof by the contractor or otherwise becomes part of the public domain through no fault of the contractor;
  - (3) Information which 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 which 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 the contract.

The contractor agrees, if requested by the Government, to sign an agreement identical, in all material respects, to the provisions of this subparagraph (d), with each company supplying information to the contractor under this contract, and to supply a copy of such agreement to the Contracting Officer. Upon request from 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, such an agreement shall also be signed by contractor personnel.

- (E) 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.48 GOVERNMENT-OWNED PROPERTY AND EQUIPMENT RESPONSIBILITIES FOR CONTRACT TRANSITION PERIOD**

All real and personal property currently accountable to the incumbent contractor for contract performance will be provided to the contractor. During the contract transition period, an inventory record of such property in the DOE Facilities Information Management System (FIMS) and current contractor's personal property databases will be provided to the contractor. Specifically, the following property acceptance requirements will be implemented:

- (A) The contractor shall perform a joint wall-to-wall physical inventory with the current contractor(s) of all accountable high-risk and sensitive property during the transition period and accept full accountability for the high-risk property at the end of transition.
- (B) The contractor must accept, at the end of transition, transfer of accountability for the remaining government-owned real and personal property not covered under paragraph (1), based on existing inventory records, on an "as-is, where-is" basis, or perform a wall-to-wall inventory within 120 calendar days of the effective date of the Contract. Any discrepancies from the existing inventory records shall be reported to the CO. As the formal inventories are completed, the contractor shall assume responsibility and liability for subsequent losses and damages. If the physical inventory is not accomplished within the allotted time frame, the previous contractor's records will become the inventory baseline.

#### **H.49 PARENT ORGANIZATION SUPPORT**

- (A) For on-site work, U.S. Department of Energy (DOE) fee generally provides adequate compensation for parent organization expenses incurred in the general management of this contract. The general construct of this contract results in minimal parent organization investment (in terms of its own resources, such as labor, material, overhead, etc.) in the contract work.

Accordingly, allocations of parent organization expenses are unallowable for the prime contractor, major subcontractors, and/or teaming partners, unless authorized by the Contracting Officer in accordance with this Clause.

- (B) The contractor may propose, or DOE may require, parent organization support to:
  - (1) Monitor safety and performance in the execution of contract requirements;
  - (2) Ensure achievement of contract environmental clean-up and closure commitments;
  - (3) Sustain excellence of contract key personnel;

- (4) Ensure effective internal processes and controls for disciplined contract execution;
  - (5) Assess contract performance and apply parent organization problem-solving resources on problem areas; and
  - (6) Provide other parent organization capabilities to facilitate contract performance.
- (C) The Contracting Officer may use unilateral discretion to authorize parent organization support and the corresponding indirect or direct costs. All parent organization support shall be authorized in advance by the Contracting Officer.
- (D) If parent organization support is proposed by the contractor or required by DOE, the contractor shall submit for DOE review and approval, an annual *Parent Organization Support Plan* (POSP). The Contractor shall submit its initial POSP 30 days prior to: (1) the end of the *Contract Transition Period*; or (2) the commencement date of parent organization support proposed by the contractor or required by the Government. Any subsequent POSP shall be submitted 90 days prior to the start of each year of contract performance.

#### **H.50 CONTRACT CLOSE-OUT**

The Contractor shall submit a separate plan including budget and schedule for close-out of the contract 60 days prior to the end of the period of performance as specified in Section F clause entitled "Period of Performance". The Contract Close-Out Plan shall include all remaining administrative matters necessary to close out the contract, including but not limited to: resolution of remaining and open litigation; audit of indirect costs; remaining records disposition required by the Government; or any other activities required by Section I, FAR 52.216-7, "Allowable Cost and Payment.

#### **H.51 MODIFICATION DEFINITIZATION**

- (a) The Contractor agrees to submit a technical proposal and cost and fee proposal and to promptly begin negotiating definitive terms and conditions with the Contracting Officer for the services described in Items 8 and 9 above.
- (b)
  - (1) For the services described Item 9 above, the Contractor is authorized to incur costs not to exceed \$4,500,000.00 from the date this modification is executed through February 29, 2012 or longer as agreed to by the Contractor and DOE, consistent with other contract terms and conditions and pending definitization of this change. The Contractor is required to notify DOE when the cumulative costs for these services equal 85% of the not to exceed value identified above or \$3,825,000.00.
  - (2) For the services described in Item 8 above, the Contractor is authorized to incur costs not to exceed \$200,000.00 from the date this modification is executed through February 29, 2012 or longer as agreed to by the Contractor and DOE, consistent with other contract terms and conditions and pending definitization of this change. The Contractor is required to notify DOE when the cumulative costs for these services equal 85% of the not to exceed value identified above or \$170,000.00.

- (c) The Contractor agrees to submit a technical proposal and a cost and fee proposal for the services described in Items 8 and 9 above by September 30, 2011, in accordance with the instructions contained in Attachment 6 of this modification.
- (d) If agreement on a definitive modification is not reached within 180 days of the effective date of this Modification 002 or within any extension granted by the Contracting Officer, the Contracting Officer may, with the approval of the head of the contracting activity, determine a reasonable price in accordance with Subpart 15.4 and Part 31 of the FAR, subject to Contractor appeal as provided in Clause I.76, FAR 52.233-1, Alternate 1, Disputes. In any event, the Contractor shall proceed with completion of the contract, subject only to Clause I.151, FAR 52.216-24, Limitation of Government Liability, added by this modification.
  - (1) After the Contracting Officer's determination of price or fee, the contract shall be governed by—
    - (i) All clauses required by the FAR on the date of execution of this modification for cost-reimbursement contracts, as determined by the Contracting Officer under this paragraph (d);
    - (ii) All clauses required by law as of the date of the Contracting Officer's determination; and
    - (iii) Any other clauses, terms, and conditions mutually agreed upon.
  - (2) The Contractor shall comply with Clause I.88, FAR 52.243-6, Change Order Accounting, until such time as this Modification 002 is definitized.
  - (3) To the extent consistent with paragraph (d)(1) of this section, all clauses, terms, and conditions included in this contract shall continue in effect, except those that by their nature apply only to the modification definitization.

## **H.52 PROMISES AND COMMITMENTS**

The requirements of the contract are specified in Sections B through J of the contract. These requirements are closely aligned with the overall project execution expectations described in the FINAL REQUEST FOR PROPOSALS (RFP) NO. DE-SOL-0002084.

As part of its Proposal dated December 2010, the Contractor has identified commitments towards achieving these contract requirements. The following promises, commitments and performance parameters are incorporated as contract requirements relative to execution of the work scope in accordance with Section C- PERFORMANCE WORK STATEMENT during the contract period of performance.

These promises, commitments and performance requirements shall be incorporated in the Performance Management Baseline as specified in H.18 PROJECT CONTROL SYSTEMS AND REPORTING REQUIREMENTS. Additionally, these performance requirements will be included in the evaluation criteria for qualification to receive fee in accordance with the FEE DETERMINATION PLAN.

### **Contract Award Basis**

This contract was awarded based on the evaluation of the Contractor's responsiveness to the solicitation and the determination that their proposal represented the best value and was most advantageous to the Government. Establishing best value to the Government relied heavily on Technical Evaluation Factors, emphasizing the Government's objective of

obtaining a superior Technical proposal and the performance excellence associated with its implementation.

The Technical Evaluation Factors included:

- Technical Approach,
- Key Personnel and Organizational Structure,
- Relevant Experience, and,
- Past Performance.

Each of these factors was considered a key element of the proposal and equal in importance. In making the contract award, the Government assigned significant value to assertions made by the Contractor that promoted their technical capabilities. Accordingly, the Government's expectation is that the contract scope of work will be performed as described by the promises and commitments identified in the Contractor's proposal.

### **Key Elements of the Successful Bidder's Proposal**

The Government's award of the contract was strongly supported by the identification and evaluation of key elements within the Contractor's proposal. The key elements were examined in the context of the Contractor's declarations to the Government that they would perform the scope of work safely, reliably, cost-effectively and within an accelerated schedule. Consequently, award of the contract based on these assertions conveys to the Government the right to expect that the work will be performed accordingly and entrusts the Contractor to fulfill such declarations.

### **Government Expectations**

The Government's expectations of the Contractor focus on the safe, reliable and cost-effective delivery of the WVDP Phase 1 Decommissioning – Facility Disposition PWS by August 28, 2017. These expectations will be met by implementation of the contractor's technical approach including:

- Establishing a regulatory infrastructure to enable acceleration of transition to Phase 2 scope,
- Optimizing processes, minimizing rework and eliminating generation of orphan waste,
- Workforce cross training to maximize safety, flexibility and efficiency,
- Replication of successful technical, regulatory and efficiency benefits realized early in project for subsequent activities, and,
- Implementation of programmatic improvements in the areas of work performance, supported by vigorous work planning and control, with emphasis on safe and efficient quality the first time.

### **Promises**

The Contractor's proposal identified several actions that the Government has an expectation of performance or forbearance. These include, but are not limited to:

- Effective, efficient compliance achieved through mature programs and systems with proven success, full project integration, incentivized employees and feedback loops to line management

- Risk management approach allowing project delivery as promised, on time and on budget
- Mitigate cost and schedule impacts by completing early confirmatory radiological survey; establishing work plans, safety documentation, and training that accommodate a reasonable variance in discovered conditions; and implementing an organizational approach that recognizes changed conditions and quickly implements workarounds and reprioritization of site-wide resources to ensure project delivery as promised

## **Commitments**

In their proposal, the Contractor has pledged and obligated itself to perform numerous actions for which the Government has an expectation for performance during the contract period of performance. These actions are:

- Above all else, to the safety of our workers, our customers and the surrounding communities. The approach to safety recognizes it as an enabler of productivity and that performing work safely is the most effective way to achieve superior performance. Safety is the project's first priority
- Implementation of an ISMS/ESH&Q program that reflects core values and culture, as well as the unwavering commitment to safety and quality
- A Human Performance Improvement (HPI) program will be used to improve performance. The HPI program will be directed by a steering committee that monitors and evaluates HPI effectiveness, serves as a forum for process improvement, and provides board direction for HPI priorities
- Obtain International Organization for Standardization's (ISO) 14001 registration within one year of contract handover
- Sustain and improve the project safety record
- Develop and maintain a culture based on an injury-free workplace philosophy, under which accidents are preventable and occupational injuries and illnesses are not acceptable
- Develop and use a Performance Assurance Program (PAP) to provide feedback needed for continuous ESH&Q performance. The PAP will include competent root cause analysis, identification and implementation of corrective actions, performance of effectiveness reviews, and application of lessons learned
- Ensuring that the EVMS receives and maintains certification during the first year of the contract
- Improve energy efficiency and reduce water usage

- Expedient closure starting with closure of WMA5 as a “proof of concept” test case, and aggressive facility footprint reduction of 263,000 square feet prior to FY 2017
- Provide experienced, dedicated professionals committed to partnering and delivering effective compliance and problem resolution
- Assigning essential personnel who pledge to a minimum of 2 years at WVDP in the performance of project work scope with a period of performance that require a commitment duration of 2 or more years to fulfill. Assign other essential personnel to project work scopes with less than a 2 year duration for a period not less than actual schedule duration to complete
- Maximize the extent, variety and complexity of Small Business participation because of the value it brings to WVDP
- Award 55% of the total planned subcontracted dollars to Small Business concerns in FY2012, increasing throughout the contract
- Utilize corporate reach back as an identified key element of providing all the resources available to assure successful delivery of the WVDP
- Proposal support for corporate leadership at the highest level for each of the team members

### **H.53 REQUIREMENT TO SUPPORT THE ANNUAL SITE ENVIRONMENTAL REPORT (ASER) (DEER SAMPLING AND ANALYSIS)**

The New York State Research and Development Authority (NYSERDA) sponsors an annual deer hunting program on the NYSERDA controlled property and offers hunters the ability, if requested, to have any harvested deer sampled and analyzed for radioactivity at no cost. The sampling and analysis of deer meat is available upon request with a 24 hour notice prior to hunting and is performed by the site Environmental Laboratory (ELAB). CHBWV is hereby directed to perform such sampling and analysis, if requested, in support of data collection for the ASER. The funding for this requirement will be provide by NYSERDA and will not be included in the final cost incentive fee calculation at the end of the project. However, it is requested that CHBWV maintain an accounting of all associated costs in support of this requirement. The Department of Energy will established a “Not to Exceed” amount of \$1,500.

### **H.54 CONFERENCE MANAGEMENT**

The contractor agrees that:

- a) The contractor shall ensure that contractor-sponsored conferences reflect the DOE/NNSA’s commitment to fiscal responsibility, appropriate stewardship of taxpayer funds and support the mission of DOE/NNSA 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) The definition of a conference is attached.



- 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-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)
  - 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 conference 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/NNSA. 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 non-sponsored conferences in DOE'S Conference Management Tool.
- j) Once funds have been expended on a non-sponsored 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.

## **DETERMINATION OF A CONFERENCE REVISED – JUNE 2015**

1. General Definition. "Conference" is defined in the Federal Travel Regulation as, "[a] meeting, retreat, seminar, symposium, or event that involves attendee travel. The term 'conference' also applies to training activities that are considered to be conferences under 5 C.F.R 410.404." However, this definition is only a starting point. What constitutes a conference for the purpose of this guidance is a fact based determination based on an evaluation of the criteria established in this attachment.
2. Additional Indicia of Conferences. Conferences subject to this guidance are also often referred to by names other than "conference." Other common terms used include conventions, expositions, symposiums, seminars, workshops, or exhibitions. They typically involve topical matters of interest to, and the participation of, multiple agencies and/or nongovernmental participations. Indicia of a formal conference often include but are not limited to registration, registration fees, a published substantive agenda, and scheduled speakers, or discussion panels. Individual events may qualify as conferences without meeting all of the indicia listed above, but will generally meet some of them. Please note that some training events may qualify as conferences for the purposes of this guidance, particularly if they take place in a hotel or conference center.
3. Local Conferences. Events within the local duty location that do not require advance travel authorization may also qualify as a conference for the purposes of this guidance if the event exhibits other key indicia of a conference, especially the payment of a registration, exhibitor, sponsor, or conference fee.
4. Exemptions. For the purposes of this guidance, the exemptions below apply and these types of activities should not be considered to be conferences even if the event meets the general definition of conference in section 1 above. Even where an event is considered exempt from this guidance, organizations are expected to continue to apply strict scrutiny to DOE's participation to ensure the best use of government funds and adherence with not only all applicable laws and policy, but the underlying spirit or principles, including ensuring that only personnel attend events that have a mission-essential need to do so, that expenses be kept to a minimum, and that participation in any associated social events be limited and restrained to the greatest degree practicable to avoid the appearance of impropriety. Exemptions from this guidance should be granted sparingly and only when events fully meet the definition and intent of the criteria below:

- a. Meetings necessary to carry out statutory oversight functions. This exemption would include activities such as investigations, inspections, audits, or non-conference planning site visits.
- b. Meetings to consider internal agency business matters held in Federal facilities. This exemption would include activities such as meetings that take place as part of an organization's regular course of business, do not exhibit indicia of a formal conference as outlined above, and take place in a Federal facility.
- c. Bi-lateral and multi-lateral international cooperation engagements that do not exhibit indicia of a formal conference as outlined above that are focused on diplomatic relations
- d. Formal classroom training which does not exhibit indicia of a formal conference as outlined above.
- e. Meetings such as Advisory Committee and Federal Advisory Committee meetings, Solicitation/Funding Opportunity Announcement Review Board meetings, peer review/objective review panel meetings, evaluation panel/board meetings, and program kick-off and review meetings (including those for grants and contracts).

#### **H. 55 WORKERS' COMPENSATION INSURANCE**

- (a) Contractors, other than those whose workers' compensation coverage is provided through a state funded arrangement or a corporate benefits program, shall submit to the Contracting Officer for approval all new compensation policies and all initial proposals for self-insurance (contractors shall provide copies to the Contracting Officer of all renewal policies for workers compensation).
- (b) Workers compensation loss income benefit payments when supplemented by other programs (such as salary continuation, short-term disability) are to be administered so that total benefit payments from all sources shall not exceed 100 percent of the employee's net pay.
- (c) Contractors approve all workers compensation settlement claims up to the threshold established by the Contracting Officer for DOE approval and submit all settlement claims above the threshold to DOE for approval.
- (d) The Contractor shall obtain approval from the Contracting Officer before making any significant change to its workers compensation coverage and shall furnish reports as may be required from time to time by the Contracting Officer.

#### **H. 56 RISK MANAGEMENT AND INSURANCE PROGRAMS**

Contractor officials shall ensure that the requirements set forth below are applied in the establishment and administration of DOE-funded prime cost reimbursement contracts for management and operations of DOE facilities and other designated long-lived onsite contracts for which the contractor has established separate operating business units.

##### **1. BASIC REQUIREMENTS**

- a. Maintain commercial insurance or a self-insured program, (i.e., any insurance policy or coverage that protects the contractor from the risk of legal liability for adverse actions associated with its operation, including malpractice, injury or

- negligence) as required by the terms of the contract. Types of insurance include automobile, general liability, and other third party liability insurance. Other forms of coverage must be justified as necessary in the operation of the Department facility and/or the performance of the contract, and approved by the DOE.
- b. Contractors shall not purchase insurance to cover public liability for nuclear incidents without DOE authorization (See DEAR 950,5070, Indemnification and DEAR 950.70, Nuclear Indemnification of DOE Contractors).
  - c. Demonstrate that insurance programs and costs comply with the cost limitations and exclusions at FAR 28.307, Insurance Under Cost Reimbursement Contracts; and FAR 31.205-19, DEAR 931.205-19, and DEAR 970.3102-05-19, Insurance and Indemnification.
  - d. Demonstrate that the insurance program is being conducted in the government's best interest and at reasonable cost.
  - e. The contractor shall submit copies of all insurance policies or insurance arrangements to the contracting officer no later than 30 days after the purchase date.
  - f. When purchasing commercial insurance, the contractor shall use a competitive process to ensure costs are reasonable.
  - g. Ensure self-insurance programs include the following elements:
    - (1) Compliance with criteria set for in FAR 28.308, Self-Insurance. Approval of self-insurance is predicated upon submission of verifiable proof that the self-insurance charge does exceed the cost of purchased insurance. This includes hybrid plans (i.e., commercially purchased insurance with self-insured retention (SIR) such as large deductible, matching deductible, retrospective rating cash flow plans, and other plans where insurance reserves are under the control of the insured). The SIR components of such plans are self-insurance and are subject to the approval and submission requirements of FAR 28.308, as applicable.
    - (2) Demonstration of full compliance with applicable state and federal regulations and related professional administration necessary for participation in alternative insurance programs.
    - (3) Safeguards to ensure third party claims and claims settlements are processed in accordance with approved procedures.
    - (4) Accounting of self-insurance charges.
    - (5) Accrual of self-insurance reserve. The Contracting Officer's approval is required and predicated upon the following:
      - (a) The claims reserve shall be held in a special fund or interest bearing account.
      - (b) Submission of a formal written statement to the Contracting Officer stating that use of the reserve is exclusively for the payment of insurance claims and losses, and that DOE shall receive its equitable share of any excess funds or reserve.
      - (c) Annual accounting and justification as to the reasonableness of the claims reserve submitted for Contracting Officer's review.
      - (d) Claim reserves, not payable within the year the loss occurred, are discounted to present value based on the prevailing Treasury rate.
  - h. Separately identify and account for interest cost on a Letter of Credit used to guarantee self-insured retention, as an unallowable cost and omitted from charges to the DOE contract.

- (1) Comply with the Contracting Officer's written direction for ensuring the continuation of insurance coverage and settlement of incurred and/or open claims and payments of premiums owed or owing to the insurer for prior DOE contractors.

## 2. PLAN EXPERIENCE REPORTING

The Contractor shall:

- a. Provide the Contracting Officer with annual experience reports for each type of insurance (e.g., automobile and general liability), listing the following for each category:
  - (1) The amount paid for each claim.
  - (2) The amount reserved for each claim.
  - (3) The direct expenses related to each claim.
  - (4) A summary for the year showing total number of claims.
  - (5) A total amount for claims paid.
  - (6) A total amount reserved for claims.
  - (7) The total amount of direct expenses.
- b. Provide the Contracting Officer with an annual report of insurance costs and/or self-insurance charges. When applicable, separately identify total policy expenses (e.g., commissions, premiums, and costs for claims servicing) and major claims during the year, including those expected to become major claims (e.g., those claims valued at \$100,000 or greater).
- c. Provide additional claim financial experience data as may be requested on a case-by-case basis.

## 3. TERMINATING OPERATIONS.

The Contractor shall:

- a. Ensure protection of the government's interest through proper recording of cancellation credits due to policy terminations and/or experience rating.
- b. Identify and provide continuing insurance policy administration and management requirements to a successor, other DOE contractor, or as specified by the Contracting Officer.
- c. Reach agreement with DOE on the handling and settlement of self-insurance claims incurred but not reported at the time of contract termination; otherwise, the contractor shall retain this liability.

## 4. SUCCESSOR CONTRACTOR OR INSURANCE POLICY CANCELLATION.

The contractor shall:

- a. Obtain the written approval of the Contracting Officer for any change in program direction; and
- b. Ensure insurance coverage replacement is maintained as required and/or approved by the Contracting Officer.

## **H. 57 QUALITY ASSURANCE FOR WORK AFFECTING NUCLEAR SAFETY**

The Contractor shall implement a Department of Energy (DOE) approved Quality Assurance Program (QAP) (Deliverable 70) in accordance with the current revision of the Environmental Management (EM) QAP, EM-QA-001, prior to commencement of work affecting nuclear safety. The EM QAP provides the basis to achieve quality across the EM complex for all mission-related work while providing a consistent approach to Quality Assurance (QA).

EM requires that American Society of Mechanical Engineers (ASME) NQA-1-2008, “*Quality Assurance Requirements for Nuclear Facility Applications*,” and addenda through 2009 to be implemented as part of the Contractor’s QA Program for work affecting nuclear safety. The required portions of NQA-1 to be implemented include: 1) Introduction; 2) Part I; and 3) Applicable portions of Part II. NQA-1 Parts III and IV are to be used as guidance for the Contractor’s QAP and implementing procedures.

Contractors have three options for complying with this contract requirement:

- 1) Develop and submit for DOE approval a new QAP;
- 2) Adopt the prior Contractor’s DOE-approved QAP; or
- 3) Modify the prior Contractor’s DOE-approved QAP and submit it for DOE approval.

Development of a new QAP, or adoption of an existing or modified version of a QAP from a prior contractor, does not alter a contractor’s legal obligation to comply with 10 CFR 830, other regulations affecting QA and DOE Order 414.1D.

The Contractor’s QAP shall describe the overall implementation of the EM QA requirements and shall be applied to all work performed by the Contractor (e.g., research, design/engineering, construction, operation, budget, mission, safety, and health). Specifically, the contractor’s QAP shall also describe the supply chain for electronic subcomponents, require procurement of subcomponents only from original equipment manufacturers or original equipment manufacturer authorized distributors, and require electronic subcomponents be procured from vendors with a documented successful history with the supplier.

The Contractor shall develop and implement a comprehensive Issues Management System for the identification, assignment of significance category, and processing of nuclear safety-related issues identified within the Contractor’s organization. The significance assigned to the issues shall be the basis for all actions taken by the Contractor in correcting the issue from initial causal analysis, reviews for reporting to DOE, through completion of Effectiveness Reviews, if required based on the seriousness of the issue.

The contractor shall, at a minimum, annually review and update as appropriate, their QAP. The review and any changes shall be submitted to DOE for approval. Changes shall be approved before implementation by the Contractor.

**H.58 Section 3610 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116-136**

**SEC. 3610. FEDERAL CONTRACTOR AUTHORITY.**

Notwithstanding any other provision of law, and subject to the availability of appropriations, funds made available to an agency by this Act or any other Act may be used by such agency to modify the terms and conditions of a contract, or other agreement, without consideration, to reimburse at the minimum applicable contract billing rates not to exceed an average of 40 hours per week any paid leave, including

sick leave, a contractor provides to keep its employees or subcontractors in a ready state, including to protect the life and safety of Government and contractor personnel, but in no event beyond **September 30, 2021**. Such authority shall apply only to a contractor whose employees or subcontractors cannot perform work on a site that has been approved by the Federal Government, including a federally-owned or leased facility or site, due to facility closures or other restrictions, and who cannot telework because their job duties cannot be performed remotely during the public health emergency declared on January 31, 2020 for COVID-19: Provided, That the maximum reimbursement authorized by this section shall be reduced by the amount of credit a contractor is allowed pursuant to division G of Public Law 116-127 and any applicable credits a contractor is allowed under this Act.

**Paid leave under Section 3610 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) to maintain employees and subcontractors in a ready state.**

- (a) The Contractor may submit for reimbursement and the Government (without requiring consideration but precluding additional fee) will treat as allowable (if otherwise allowable per federal regulations) the costs of paid leave (including sick leave) the Contractor or its subcontractors provide to keep employees in a ready state if--
- (1) The employees: cannot perform work on a site approved by the Federal Government (including a federally-owned or leased facility or site) due to facilities closures or other restrictions; and cannot telework because their job duties cannot be performed remotely during the public health emergency declared on January 31, 2020 for COVID-19.
  - (2) The costs are incurred from January 31, 2020 **through September 30, 2021**.
  - (3) The costs do not reflect any amount exceeding an average of 40 hours per week for paid leave.
- (b) Where other relief provided for by the CARES Act or any other Act would benefit the contractor or the contractor's subcontractors, including, but not limited to, funds available under sections 1102 and 1106 of the CARES Act, the contractor should evaluate the applicability of such benefits in seeking reimbursement under the contract.
- (c) The Contractor must represent in any request for reimbursement--
- (1) Either it: has not received, has not claimed, and will not claim any other reimbursement, including claims for reimbursement via letter of credit, for federal funds available under the CARES Act for the same purpose, including, but not limited to, funds available under sections 1102 and 1106 of the CARES Act; or if it has received, claimed, or will claim other reimbursement, that reimbursement has been reflected, or will be reflected when known, in requests for reimbursement but in no case reflected later than in its final proposal to determine allowable incurred costs.

- (2) Its request reflects or will reflect as soon as known all applicable credits, including
- (i) Tax credits, including credits allowed pursuant to division G of Public Law 116-127; and
  - (ii) Applicable credits allowed under the CARES Act, including applicable credits for loan guarantees.

(End of clause)

#### **H.59 Information Technology and Cyber Security Requirements** (*tailored*) (Mod 0293)

In the performance of the information technology and cyber security requirements of this Contract, the Contractor is responsible for compliance with the following items. Consistent with Section H clause entitled *Laws, Regulations, and DOE Directives*, omission of any applicable law or regulation from this list does not affect the obligation of the Contractor to comply with such law or regulation.

- (a) DOE Enterprise Cybersecurity Program Plan
- (b) EM Cybersecurity Program Plan