

AMENDMENT 1

INTERAGENCY AGREEMENT

BETWEEN

THE UNITED STATES DEPARTMENT OF ENERGY
NATIONAL NUCLEAR SECURITY ADMINISTRATION

AND

THE UNITED STATES DEPARTMENT OF THE ARMY
IA NO. DE-AI56-08SR-22606

- I. The U.S. Department of the Army Corps of Engineers ("COE") and the U.S. Department of Energy, National Nuclear Security Administration ("NNSA") ("the Parties") executed an Interagency Agreement ("IA") on February 27, 2008. The IA is hereby amended to make an administrative change to the IA number.
- II. The Interagency Agreement number is changed from DE-AC56-08SR00001 to DE-AI56-08SR-22606.
- III. All other terms and conditions remain unchanged.



CAROL MCCAUSLIN
Contracting Officer
National Nuclear Security Administration
Savannah River Site Office

Date: 3/3/08

INTERAGENCY AGREEMENT
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THE UNITED STATES DEPARTMENT OF ENERGY
NATIONAL NUCLEAR SECURITY ADMINISTRATION
AND
THE UNITED STATES DEPARTMENT OF THE ARMY
IA NO. DE-AC56-08SR00001

I PURPOSE

This Interagency Agreement for "Construction Management Services," hereinafter designated "IA," is entered into by and between the U.S. Department of the Army Corps of Engineers, South Atlantic Division ("USACE") and the U.S. Department of Energy, National Nuclear Security Administration ("NNSA") ("the Parties") for the purpose of establishing a mutual framework governing the responsibilities of the parties for the provision of engineering and related services, construction management, project management, contracting/acquisition management, economic modeling and other technical support to the NNSA (NA-262) for the construction management of the Pit Disassembly and Conversion Facility project (PDCF) at the Savannah River Site, Aiken, SC. Construction Management services shall include interface with other project participants to include Los Alamos National Laboratory, Washington Group International, Savannah River Site Management and Operations Contractor, Mixed Oxide Fuel Fabrication Facility (MFFF) federal project director, Waste Solidification Building (WSB) federal project director and other Fissile Materials Disposition program interfaces.

II AUTHORITY

This IA is executed under authority of the Economy in Government Act, 31 U.S.C. 1535. The placement of all orders for services under this agreement shall comply with Federal Acquisition Regulation Subpart 17-5 Interagency Acquisitions under the Economy Act, DOE directives and Department of Defense Federal Acquisition Regulation Supplement ("DFARS"), Subpart 217.5, Interagency Acquisitions under the Economy Act.

III APPLICABLE LAWS

This IA and all documents and actions pursuant to it shall be governed by the applicable statutes, regulations, directives, and procedures of the United States. Unless otherwise required by law, all work undertaken by the USACE shall be governed by USACE policies and procedures except for NNSA site safety, security, quality assurance or other policies and procedures critical to NNSA and the site's mission.

IV PROCEDURES

A. NNSA and USACE shall complete a separate Management Plan that designates the roles, responsibilities, methods, and procedures to be followed in the execution of work

performed under this IA. Task Orders shall be issued to order actual work and shall specify work scope, schedule, cost and other requirements specific to the work required for the successful execution of the PDCF project.

V SCOPE OF WORK

The work will be performed within the framework of a statement of work contained in specific Task Orders to be executed pursuant to this IA. The USACE may enter into contracts if required to provide necessary services pursuant to this IA and any Task Orders issued under this IA. Nothing in this IA shall be construed to require the NNSA to use the USACE or to require the USACE to provide any goods or services to the NNSA, except as may be set forth in Task Orders.

VI TASK ORDERS

Task Orders will be issued under this IA to identify specific work requirements including scope, cost, schedule, and to obligate funds. Task Orders from NNSA to the USACE will be issued and documented in accordance with the management plan procedures. These documents also will serve to confirm agreement, understanding, and acceptance of the specific work requirements. No work under this agreement shall commence until a properly executed Task Order is made available to and accepted by the USACE and funds are obligated to cover the cost of work defined in the Task Order. Where work under a Task Order is to be incrementally funded, USACE shall implement the necessary controls to ensure costs incurred shall not exceed available obligated funds, as further described in paragraph X.B. All Task Orders shall comply with the requirements of the Economy Act.

VII TASK ORDERING PROCEDURES

A. NNSA shall identify work requirements and issue a request for a Task Order proposal to USACE. Upon receipt of such a request, the USACE will provide an estimate of costs and schedule to the PDCF Federal Project Director and NNSA Contracting Officer or decline to perform the work by written notification within seven (7) calendar days. Work under this IA will begin only after cost and schedule determinations are concluded between the parties, issuance of a Task Order by NNSA's Authorized Official, and acceptance of the Task Order by the USACE's Authorized Official. The Authorized Official for the NNSA is the Contracting Officer and for the USACE, the USACE PDCF Director.

B. As an alternate to the above procedure, the NNSA's Authorized Official may, under circumstances of extraordinary urgency, unilaterally issue a Task Order without first issuing a request for Task Order proposal. The USACE's Authorized Official, upon receipt of such a Task Order, may accept such Task Order and immediately commence work. Within thirty (30) calendar days after receipt of such a Task Orders, USACE shall submit a Task Order Management Plan to the NNSA's Authorized Official which is subject to review, discussion, and subsequent resubmittal. If USACE forecasts its actual

costs under the Task Order will exceed the amount specified in a Task Order issued pursuant to the this paragraph. USACE will promptly notify NNSA of the amount of additional funds necessary to complete the work under the Task Order. The NNSA shall either provide the additional funds to USACE, require that the scope of work be limited to that which can be paid for by the then-available funds, or direct termination of the work under that Task Order. For task Orders issued pursuant to this paragraph, the USACE shall not incur costs beyond the initial thirty (30) calendar day period without written authorization of the NNSA's Authorized Official. If the necessary costs are not authorized beyond the initial 30 days, the USACE may terminate the Task Order issued pursuant to this paragraph when funds specified for the Task Order are exhausted, notwithstanding Article XIV. The NNSA shall be responsible for all termination costs.

VIII DELIVERABLES/REPORTS

Task Orders issued by NNSA under this IA shall specify a scope of work, deliverables, submission requirements and periods of performance. Deliverables prepared by the USACE under a Task Order shall meet the specific requirements of the Task Order. The USACE may be required to report and submit project technical and cost management data under Earned Value Management System guidelines.

IX PROGRAM OFFICERS/OFFICIALS

The following individuals will serve as Program Officers/Officials for the purpose of this IA:

A. Officials authorized to carry out work undertaken pursuant to the IA and to authorize individual Task Orders are:

- (1) USACE PDCF Director
- (2) NNSA Contracting Officer

B. The terms, conditions, or scope of work of Task Orders may only be changed if agreed to by the NNSA Contracting Officer and the USACE PDCF Director or their designated representatives.

C. The work performed under this agreement is subject to management/monitoring by:

- (1) NNSA PDCF Federal Project Director (also Primary COR)
- (2) NNSA Contracting Officer
- (3) NNSA Alternate Contracting Officer's Representative (COR)
- (4) USACE Commander South Atlantic Division
- (5) USACE PDCF Director

D. The NNSA PDCF Federal Project Director (or designated representative) and the USACE PDCF Director (or designated representative) will be responsible for coordinating with other organizations in administrating the technical aspects of this

agreement. The NNSA Federal Project Director has the authority to give direction within the terms, conditions and work scope specified in any Task Order issued under this agreement. Changes to such specified terms, conditions and/or work scope of any Task Order shall be referred to the NNSA Contracting Officer for action.

X OBLIGATION OF FUNDS

- A. As the program proponent, NNSA shall pay all costs associated with USACE provision of services under task orders issued pursuant to this IA. NNSA will provide clear definition of funding arrangements/requirements for each Task Order. The funding arrangement/requirements will be specifically defined in the individual Task Orders. Funds will be obligated on each Task Order. NNSA shall certify at the time of signature of the Task Order the availability of funds to accomplish that task order.
- B. The NNSA shall pay all costs associated with the USACE's provision of services under task orders issued pursuant to this Interagency Agreement. USACE shall implement the necessary controls to ensure costs incurred shall not exceed available obligated funds and shall follow the procedures outlined in paragraph C of this Article.
- C. If the USACE forecasts its costs under a Task Order to exceed the amount of funds available under that Task Order, it shall promptly notify NNSA of the amount of additional funds necessary to complete the work under that Task Order. The NNSA shall either provide the additional funds to the USACE under an amendment to the Task Order, or require that the scope of work be limited to that which can be paid for by the then-available funds, or direct termination of the work under that Task Order.

XI DISBURSEMENT OF FUNDS

- A. The NNSA shall pay all costs associated with the USACE's provision of services under task orders issued pursuant to this IA.
- B. NNSA shall provide funding to the USACE with each task order. The funds shall be available (in advance) through the Intergovernmental Payment and Collection (IPAC) system upon execution of the Task Order. Each Task Order will identify project name, description of work, funding guidance, appropriation and authorization.
- C. The USACE shall provide summary monthly and annual cost reports (fiscal year basis) to the PD/CF Federal Project Director and Contracting Officer reflecting USACE "monthly costs incurred", "total costs incurred to date" and "balance of funds remaining" under each Task Order.
- D. Within 90 days of completing the work under a Task Order, USACE shall conduct an accounting to determine the actual costs of the work. After this

accounting is conducted. USACE will promptly return to NNSA any residual funding remaining on completed or terminated Task Orders through the IPAC system, or the NNSA shall provide any additional funds necessary to cover the actual costs as then known. This accounting shall in no way limit NNSA's duty in accordance with Article XIV to pay any costs, such as contract claims or other liability, which may become known after the final accounting.

XII PROCUREMENT POLICY

A. The parties agree that when the NNSA requests services, the USACE may supply those services by contract, including existing contracts, new contracts or in house resources. NNSA shall be afforded the opportunity to collaborate with the USACE on acquisition strategies, pre-award, award and post award decisions. USACE shall follow DOD policies and procedures when supplying services by contract and shall follow the Federal Acquisition Regulations and its applicable supplements.

B. USACE is responsible for all contracting and its subsequent administration, if required, under any Task Order issued pursuant to this IA. NNSA shall not be responsible for any contracting unless later agreement so provides.

C. The USACE may solicit and accept support for portions of work defined by Task Orders from other offices within its agency. In doing so, the USACE shall be responsible for coordination and management of work performed under such arrangement.

D. The parties agree the NNSA, as the agency that funds the USACE contracts awarded pursuant to this IA, will receive appropriate credit for goals for small business participation in federal contracts in the Small Business Goaling Report. USACE, as the agency that awards any contracts pursuant to this IA, will receive appropriate credit for accomplishments for small business participation in federal contracts in the Socio-Economic Accomplishments Report. The USACE shall report the data through the Federal Procurement Data System -- Next Generation (FPDS-NG).

XIII AMENDMENT, MODIFICATION OR TERMINATION

This IA may be terminated by mutual agreement of the NNSA and the USACE or by either party upon ninety (90) days written notice of such termination to the other. NNSA may terminate individual Task Orders issued to the USACE upon sixty (60) days written notice of such termination to the USACE. In the event of such termination, the NNSA shall continue to be responsible for all costs incurred by the USACE under task orders issued pursuant to this IA and for the costs of closing out or transferring any on-going contracts. The USACE shall provide timely cooperation to the NNSA in transferring and/or terminating all on-going contracts and activities prior to the effective date of termination.

XIV MANIFESTS AND RELATED DOCUMENTS

NNSA personnel shall execute all manifests and related documents, federal and state, that pertain to work performed under this IA by the USACE or its contractors.

XV CONTRACT CLAIMS AND DISPUTES

All claims and disputes by contractors arising under or relating to contracts awarded by the USACE shall be resolved in accordance with federal law and the terms of the individual contract. USACE shall have dispute resolution authority for these claims and shall provide for NNSA coordination, review and comment. Any contracting officer's final decision may be appealed by the contractor pursuant to the Contract Disputes Act of 1978 (41 U.S.C. § 601-613). The Armed Services Board of Contract Appeals (ASBCA) is designated as the appropriate board of contract appeals. In lieu of appealing to the ASBCA or its successor, the contractor may bring an action directly to the United States Court of Federal Claims.

USACE shall be responsible for handling all litigation involving disputes and appeals, and for coordinating with the Department of Justice as appropriate. The USACE shall notify the NNSA of any such litigation and afford the NNSA an opportunity to review and collaborate with the USACE on the litigation proceedings and any resulting settlement negotiations.

XVI DISPUTE RESOLUTION

The parties agree that, in the event of a dispute between the parties, the NNSA and the USACE shall use their best efforts to resolve that dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the parties.

In the event that the dispute cannot be resolved in an informal fashion, the dispute will then be elevated to Secretary of the Army and then to a representative of the Office of the Assistant Secretary of Defense (Economic Security) for USACE and a corresponding senior official for the NNSA. If an agreement still cannot be reached the USACE and the NNSA shall both request a final decision be rendered by the CFOs Council's Intra-governmental Dispute Resolution Committee.

XVII RESPONSIBILITY FOR COSTS

A. NNSA shall pay all costs associated with the USACE's provision of services under task orders issued pursuant to this IA. If liability of any kind is imposed on the United States relating to the USACE's provision of services under this IA, the USACE will accept accountability for its actions, but the NNSA shall remain responsible as the program proponent for providing such funds as are necessary to discharge the liability.

and all related costs. This obligation extends to all funds legally available to discharge this liability, including funds that may be made legally available through transfer, reprogramming or other means. Should the NNSA have insufficient funds legally available, including funds that may be made legally available through transfer, reprogramming or other means, they remain responsible for seeking additional funds from Congress for such purpose, although nothing in this IA shall be construed to imply that Congress will appropriate funds sufficient to meet this liability.

B. Notwithstanding the above, this IA does not confer any liability upon the NNSA for claims payable by the USACE under the Federal Torts Claims Act. Provided further that nothing in this IA is intended or will be construed to create any rights or remedies for any third party and no third party is intended to be a beneficiary of this IA.

XVIII PUBLIC INFORMATION

Justification and explanation of the NNSA's programs before Congress and other agencies, departments, and offices of the Federal Executive Branch shall be the responsibility of the NNSA. The USACE may provide, upon request, any assistance necessary to support the NNSA justification or explanations of the NNSA's programs conducted under this IA. In general, the NNSA is responsible for all public information. The USACE may make public announcements and respond to all inquiries relating to the ordinary procurement and contract award and the administration process without prior notice to the NNSA. The USACE shall, however, coordinate with the PDCF Federal Project Director in advance of making any other public announcements associated with this Interagency Agreement or Task Orders issued against the agreement.

XIX MISCELLANEOUS

A. Other Relationships or obligations

This IA shall not affect any pre-existing or independent relationships or obligations between the NNSA and the USACE.

B. Survival

The provisions of this IA which requires performance after the expiration or termination of this IA shall remain in force notwithstanding the expiration or termination of this IA.

C. Severability

If any provision of this IA is determined to be unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.

D. Supremacy

This IA controls in the event of a conflict between the IA and a Task Order.

XX. PDCF PROGRAM/PROJECT DECISIONS

All major decisions required by the USACE under task orders issued under this IA shall be made in a collaborative fashion between the NNSA Federal Project Director and the USACE PDCF Director.

XXI. OFFICIALS NOT TO BENEFIT

No officer, employee, special Government employee, or agent of either party shall be admitted to any share or part of this IA or to any benefit that may arise there from. This provision shall not be construed to extend to either party contracting for its use or for the public's general benefit.

XXII. EFFECTIVE PERIOD

This IA shall become effective by the latest date of signature below and shall remain in effect until amended, modified, or terminated as provided in Article XIII or upon completion of the PDCF construction activities. Completion of construction activities shall be defined as that point in time when construction management services are completed or terminated in their entirety, the PDCF project has entered its second year of operation or by a mutually executed IA completion document releasing NNSA and USACE of any further responsibilities associated with the IA.

National Nuclear Security Administration



Carol McCauslin
Contracting Officer
National Nuclear Security Administration
Savannah River Site Office

DATE: 2/27/08

U.S. Department of the Army



JOSEPH SCHROEDEL
Brigadier General, EN
Commander, South Atlantic Division

DATE: 25 Feb 2008