

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT		1. CONTRACT ID CODE	PAGE OF PAGES 1 35
2. AMENDMENT/MODIFICATION NO. 030	3. EFFECTIVE DATE 09/30/2009	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)
6. ISSUED BY Office of River Protection U.S. Department of Energy Office of River Protection P.O. Box 450 Richland WA 99352	CODE 00603	7. ADMINISTERED BY (If other than Item 6) Office of River Protection U.S. Department of Energy Office of River Protection P.O. Box 450 MS: H6-60 Richland WA 99352	CODE 00603
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code) WASHINGTON RIVER PROTECTION SOLUTIONS LLC Attn: DUANE SCHMOKER PO BOX 73 720 PARK BLVD BOISE ID 837290001		(X) 9A. AMENDMENT OF SOLICITATION NO.	9B. DATED (SEE ITEM 11)
CODE 806500521	FACILITY CODE	X 10A. MODIFICATION OF CONTRACT/ORDER NO. DE-AC27-08RV14800	10B. DATED (SEE ITEM 11) 05/29/2008

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

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

12. ACCOUNTING AND APPROPRIATION DATA (If required)

See Schedule

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

CHECK ONE	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
X	C THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: FAR 52.243-2 Changes - Cost Reimbursement (Aug 1987)
	D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor is not, is required to sign this document and return 1 copies to the issuing office.

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

(Continued on page 2)

Subj to Retent: N

FOB: Destination

Period of Performance: 06/20/2008 to 09/30/2013

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

5A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Susan E. Bechtol	
5B. CONTRACTOR/OFFEROR ORIGINAL SIGNED BY <i>(Signature of person authorized to sign)</i>	15C. DATE SIGNED 10/01/09	16B. UNITED STATES OF AMERICA ORIGINAL SIGNED BY <i>(Signature of Contracting Officer)</i>	16C. DATE SIGNED 10/01/2009

NSN 7540-01-152-8070
Previous edition unusable

STANDARD FORM 30 (REV. 10-83)
Prescribed by GSA
FAR (48 CFR) 53.243

1. The purpose of this bilateral modification is to definitize two change orders issued under contract modifications A015 and 020. This modification includes revisions to the following sections of the contract:
 - a. Section B, which incorporates the negotiated cost and fee for the ARRA funded scope.
 - b. Section H, which incorporates a change to Clause H-47, Recovery Act Modification Definitization. The clause was modified by adding paragraph (d) "Reopener Clause" because the negotiated price is subject to renegotiation pending results of DCAA's audit report of the Contractor's Recovery Act proposal submitted in response to the change orders.
 - c. Section J-15, which incorporates changes in milestones and deletion of Recovery Act scope that was not definitized at this time.

2. This modification does not adjust the amount of funding obligated to date. This modification definitizes \$299,728,838 of the \$322,655,000 ARRA funding obligated to the contract. The remaining ARRA funds not definitized by this modification may be definitized at a later date or the funds may be deobligated from the contract.

3. The negotiated price for the Recovery Act scope definitized by this modification is:

Cost: \$279,593,600

Fee: \$20,135,238

Total Price: \$299,728,838

The total amount of cost and fee removed from the option periods as a result of accelerating scope is \$329,610,271, which results in a net credit of \$(29,881,432) and a revised total contract price of \$7,071,637,568, which includes transition, base and option periods.

4. All other terms and conditions remain unchanged.
5. By signing this modification the Contractor hereby acknowledges the following:

Contractor's Statement of Release: In consideration of the modification(s) agreed to herein as complete equitable adjustments for the Contractor's American Reinvestment and Recovery Act (Recovery Act) proposal dated July 13, 2009 "proposals for adjustment," the Contractor hereby releases the Government from any and all liability under this contract for further equitable adjustments attributable to such facts or circumstances giving rise to the "proposal(s) for adjustment" except for those adjustments resulting from the DCAA audit report on the Contractor's Recovery Act proposal, in accordance with contract clause H-14(d).

PART I – THE SCHEDULE

SECTION B

SUPPLIES OR SERVICES AND PRICES/COSTS

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B.1 TYPE OF CONTRACT

This is a performance-based Cost-Plus-Award Fee Contract to directly support the environmental clean-up mission with a fee structure that provides a strong financial motivation for the Contractor to furnish safe, compliant, cost-effective and energy-efficient services to further the U.S. Department of Energy (DOE) Office of River Protection (ORP) mission to store, retrieve and treat Hanford tank waste, store and dispose of treated waste, and close the tank farm waste management areas to protect the Columbia River.

B.2 ITEM(S) BEING ACQUIRED

- (a) The Contractor shall, in accordance with the terms of this Contract (Contract refers solely to the Tank Operations Contract), provide the personnel, equipment, materials, supplies, and services, and do all things necessary for, or incident to, providing its best efforts to perform all requirements of this Contract.
- (b) For purposes of cost collection, reporting, work authorization, and administration of the Contract fee structure, the Contract consists of 23 activities divided among six (7) Contract Line Item Numbers (CLINs) and authorized in accordance with the Section B Clause entitled, *DOE Authorization of Work*. The activities identified below are further defined in Section J Attachment entitled, *Supplemental Work Description Tables*:
 - (1) *CLIN 1 – Base Operations*:
 - a. Sub-CLIN 1.1: Transition;
 - b. Sub-CLIN 1.2: Safe, Compliant Operations; and
 - c. Sub-CLIN 1.3: Analytical Laboratory Support.
 - (2) *CLIN 2 – Single-Shell Tank (SST) Retrieval and Closure*:
 - a. Sub-CLIN 2.1: Single-Shell Tank Retrieval; and
 - b. Sub-CLIN 2.2: Single-Shell Tank Farm (Waste Management Area) Closure.
 - (3) *CLIN 3 – Waste Treatment and Immobilization Plant (WTP) Support*:
 - a. Sub-CLIN 3.1: Treatment Planning, Waste Feed Delivery, and WTP Transition;
 - b. Sub-CLIN 3.2: WTP Operational Readiness;
 - c. Sub-CLIN 3.3: Immobilized High-Level Waste (IHLW) Storage and Shipping Facility Construction; and
 - d. Sub-CLIN 3.4: Upgrade and Operate the Effluent Treatment Facility (ETF).
 - (4) *CLIN 4 – Supplemental Treatment*:
 - a. Sub-CLIN 4.1: Demonstration Bulk Vitrification System (DBVS) Construction and Operations;

- b. Sub-CLIN 4.2: Extended Demonstration Bulk Vitrification System Operations;
 - c. Sub-CLIN 4.3: Supplemental Treatment Design
 - d. Sub-CLIN 4.4: Supplemental Treatment Construction and Operations
 - e. Sub-CLIN 4.5: Transuranic Tank Waste Treatment and Packaging.
- (5) *CLIN 5 – Early Feed and Operation of the WTP Low Activity Waste (LAW) Facility:*
- a. Sub-CLIN 5.1: Tank Selection, Retrieval, Pretreatment and Feed Delivery Design;
 - b. Sub-CLIN 5.2: Retrieval, Pretreatment and Feed Delivery Construction and Operations;
 - c. Sub-CLIN 5.3: (moved to Sub-CLIN 3.4)
 - d. Sub-CLIN 5.4: LAW/BOF/LAB Operations.
- (6) *CLIN 6 – Pension and Welfare Plans:*
- a. Sub-CLIN 6.1: Hanford Employee Retirement and Benefit Plan Management; and
 - b. Sub-CLIN 6.2: Legacy Pension and Benefit Plan Management.
- (7) *CLIN 7 – American Recovery and Reinvestment Act (ARRA) Workslope:*
- a. Sub-CLIN 7.1: ARRA workslope under Sub-CLIN 1.2 – Safe, Compliant Operations;
 - b. Sub-CLIN 7.2: ARRA workslope under Sub-CLIN 1.3 – Analytical Laboratory Support;
 - c. Sub-CLIN 7.3: ARRA workslope under Sub-CLIN 3.1 – Treatment Planning, Waste Feed Delivery, and WTP Transition; and
 - d. Sub-CLIN 7.4: ARRA workslope under Sub-CLIN 3.3 – Immobilized High-Level Waste (IHLW) Storage and Shipping Facility Construction
 - e. Sub-CLIN 7.5: ARRA workslope under Sub-CLIN 3.4 - Upgrade and Operate the Effluent Treatment Facility (ETF).

B.3 OBLIGATION AND AVAILABILITY OF FUNDS

- (a) Obligation of Funds. Pursuant to the Section I Clause entitled, FAR 52.232-22 Limitation of Funds, total funds in the amount of \$758,811,085.90 have been allotted for obligation and are available for payment of services provided from the effective date of the Notice to Proceed through September 30, 2013.

Of the total identified above, \$322,655,000.00 in Recovery Act funds have been allotted for obligation and are available for payment of services provided from the effective date of this modification through September 30, 2011. (Subject to Section I clause 52.216-24 Limitation of Government Liability).

- (b) Availability of Funds. Except as may be specifically provided in the Section I Clause entitled, *DEAR 952.250-70, Nuclear Hazards Indemnity Agreement*, the duties and obligations of DOE hereunder calling for the expenditure of appropriated funds shall be subject to the availability of funds appropriated by the U.S. Congress that DOE may legally spend for such purposes.
- (c) No fee shall be paid to the contractor for the Recovery Act work, including provisional, prior to the negotiation of any equitable adjustment in the fee and the subsequent modification of the contract to reflect the mutual agreement between the contractor and the Contracting Officer.

B.4 CONTRACT COST AND CONTRACT FEE

This Section establishes the *Total Contract Cost* and *Contract Fee*. Within Table B.4-1:

- (a) *Contract Period* is defined as the *Transition Period, Base Period, and Option Period(s)* (if exercised) described in the Section F Clause entitled, *Period of Performance*.
- (b) *Contract Cost* is defined as all costs initially proposed by the Contractor.
- (c) *Available Fee* is defined as the maximum amount of fee that may be earned under the Contract by Contract period.
- (d) *Contract Price* in Table B.4-1 is the sum of *Contract Cost* and *Available Fee*, in each year of Contract performance.
- (e) *Total Contract Cost* is defined as the cumulative *Contract Cost* for all Contract periods.
- (f) *Total Available Fee* is defined as the cumulative *Available Fee* for all Contract periods.
- (g) *Total Contract Price* is defined as the sum of *Total Contract Cost* and *Total Available Fee*.
- (h) *Contract Line Item Number (CLIN)* references a specific category of work as defined in the Section C, *Statement of Work*. Proposed costs shall be appropriately categorized into the individual CLINs in Table B.4-1.
- (i) *Contract Cost, Contract Price, and Available Fee* by Fiscal Year and by Sub-CLIN will be adjusted annually by the Contracting Officer upon approval of the Performance Measurement Baseline, and whenever changes affecting the table are made under the Section I Clause entitled, *Changes – Cost Reimbursement*.

B.5 CHANGES TO CONTRACT COST AND CONTRACT FEE

- (a) Funding.
 - (1) DOE intends to obligate funding to the Contract in accordance with the *Contract Price* shown by fiscal year in Table B.4-1, *Contract Cost and Contract Fee*. The Contractor shall not be entitled to an equitable adjustment to *Available Fee* if the obligated funding by fiscal year is within 10% of the amount shown in Table B.4-1.

- (2) If DOE does not obligate funding within the parameters detailed in paragraph (a)(1) above, the Contracting Officer may initiate a change or consider a request for an equitable adjustment to the *Contract Price* and/or Schedule in accordance with the Section I Clause entitled, *FAR 52.243-2, Changes – Cost Reimbursement, Alternates II, III, and IV.*
- (b) Performance Risk.
 - (1) Changes to *Total Available Fee* will accurately reflect the corresponding changes to the Contract with respect to performance risk as determined by DEAR 915.404-4-70, DOE structured profit and fee system and implemented by the profit-analysis factors defined in FAR 15.404-4, *Profit*. Accordingly, changes to the Contract resulting in an increase or decrease to the Contractor's performance risk as defined in FAR 15.404-4(d)(1), shall cause a proportionate increase or decrease to the *Total Available Fee*.
 - (2) If performance risk changes, the Contracting Officer may initiate a change or consider a request for equitable adjustment to Contract Price and/or Schedule in accordance with the Section I Clause entitled, *FAR 52.243-2, Changes – Cost Reimbursement, Alternates II, III, and IV.*

Table B.4-1, Contract Cost and Contract Fee
 (\$'s in K)

Transition Period – FY 2008							
CLIN 1 Base Operations	Sub-CLIN 1.1	5,494					
	Contract Cost	5,494					
Totals	Contract Price	5,494					
Base Period							
		FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	Totals
CLIN 1 Base Operations	Sub-CLIN 1.2	125,350	122,759	125,362	134,704	147,817	655,992
	Sub-CLIN 1.3	14,120	14,379	16,681	17,434	17,899	80,512
CLIN 2 SST Retrieval and Closure	Sub-CLIN 2.1	39,375	29,166	44,854	59,798	66,610	239,803
	Sub-CLIN 2.2	7,434	9,970	6,552	17,389	11,927	53,272
CLIN 3 WTP Support	Sub-CLIN 3.1	9,605	14,549	20,816	17,553	21,056	83,579
	Sub-CLIN 3.2	3,045	3,115	3,187	3,247	3,335	15,929
	Sub-CLIN 3.3	926	0	830	4,272	1,350	7,378
	Sub-CLIN 3.4	16,536	17,333	23,879	19,024	15,145	91,918
CLIN 4 Supplemental Treatment	Sub-CLIN 4.1	49,228	37,388	19,799	13,895	4,689	125,000
	Sub-CLIN 4.2	0	0	22	308	6,353	6,682
	Sub-CLIN 4.3	0	101	382	389	9,149	10,021
	Sub-CLIN 4.4	0	104	396	471	676	1,647
	Sub-CLIN 4.5	9,533	5,686	17,008	9,751	9,932	51,910
CLIN 5 Early Feed and Operation of WTP LAW Facility	Sub-CLIN 5.1	34,118	6,848	2,674	1,973	2,648	48,261
	Sub-CLIN 5.2	0	34,417	49,008	43,452	35,379	162,257
	Sub-CLIN 5.3	0	0	0	0	0	0
	Sub-CLIN 5.4	0	0	0	0	0	0
CLIN 6 Pension and Welfare Plans	Sub-CLIN 6.1	20,036	21,877	23,836	25,948	27,376	119,074
	Sub-CLIN 6.2	105,842	112,696	120,939	127,189	123,003	589,669
Base Contract Sub-Totals	Contract Cost	435,148	430,387	476,225	496,797	504,345	2,342,903
	Available Fee	15,675	TBD by DOE	TBD by DOE	TBD by DOE	TBD by DOE	111,677
	Contract Price	450,823	Total	Total	Total	Total	2,454,579
CLIN 7 American Recovery and Reinvestment Act (ARRA) Workscope	Sub-CLIN 7.1	29,362	85,634	63,201	0	0	178,197
	Sub-CLIN 7.2	2,661	17,260	11,791	0	0	31,712
	Sub-CLIN 7.3	5,756	26,731	26,448	0	0	58,935
	Sub-CLIN 7.4	0	0	0	0	0	0
	Sub-CLIN 7.5	539	6,943	3,268	0	0	10,749
ARRA Sub-Totals	Cost	38,318	136,567	104,708	0	0	279,594
	Fee	2,742	9,844	7,549	0	0	20,135
	Price	41,060	146,411	112,257	0	0	299,729
Total Contract Price	Contract Cost	473,466	566,954	580,933	496,797	504,345	2,622,497
	Available Fee	18,417	TBD by DOE	TBD by DOE	TBD by DOE	TBD by DOE	131,812
	Contract Price	491,883	Total	Total	Total	Total	2,754,309

* Note – Available fee does not include “Stretch Fee”.

Table B.4-1, Contract Cost and Contract Fee (continued)

		Option Period 1			
		FY 2014	FY 2015	FY 2016	Totals
CLIN 1 Base Operations	Sub-CLIN 1.2	141,664	100,698	140,688	383,049
	Sub-CLIN 1.3	17,860	18,271	15,561	51,692
CLIN 2 SST Retrieval and Closure	Sub-CLIN 2.1	53,635	62,370	74,091	190,096
	Sub-CLIN 2.2	13,087	13,619	7,172	33,879
CLIN 3 WTP Support	Sub-CLIN 3.1	23,597	17,359	19,307	60,262
	Sub-CLIN 3.2	3,412	3,220	3,307	9,938
	Sub-CLIN 3.3	3,676	17,845	35,469	56,990
CLIN 4 Supplemental Treatment	Sub-CLIN 4.1	0	0	0	0
	Sub-CLIN 4.2	0	0	0	0
	Sub-CLIN 4.3	12,086	22,176	33,154	67,416
	Sub-CLIN 4.4	8,002	122,533	284,921	338,468
	Sub-CLIN 4.5	3,409	2,944	0	6,353
CLIN 5 Early Feed and Operation of WTP LAW Facility	Sub-CLIN 5.1	436	0	0	436
	Sub-CLIN 5.2	10,092	21,416	21,908	53,416
	Sub-CLIN 5.3	15,801	15,530	8,561	39,894
	Sub-CLIN 5.4	90,880	124,209	127,237	342,327
CLIN 6 Pension and Benefit Plans	Sub-CLIN 6.1	29,972	32,846	36,029	98,848
	Sub-CLIN 6.2	119,377	116,094	113,495	348,965
Base Contract Totals	Contract Cost	546,986	691,131	920,902	2,159,016
	Available Fee	TBD by DOE	TBD by DOE	TBD by DOE	115,598
	Contract Price	Total	Total	Total	2,274,614

Table B.4-1, Contract Cost and Contract Fee (continued)

Option Period 2				
		FY 2017	FY 2018	Totals
CLIN 1 Base Operations	Sub-CLIN 1.2	176,816	170,985	347,801
	Sub-CLIN 1.3	13,881	14,543	28,065
CLIN 2 SST Retrieval and Closure	Sub-CLIN 2.1	69,902	43,482	113,384
	Sub-CLIN 2.2	3,783	2,357	6,140
CLIN 3 WTP Support	Sub-CLIN 3.1	9,705	4,009	13,714
	Sub-CLIN 3.2	3,356	3,420	6,776
	Sub-CLIN 3.3	25,165	19,552	44,717
CLIN 4 Supplemental Treatment	Sub-CLIN 4.1	0	0	0
	Sub-CLIN 4.2	0	0	0
	Sub-CLIN 4.3	0	0	0
	Sub-CLIN 4.4	448,611	268,471	717,082
	Sub-CLIN 4.5	0	0	0
CLIN 5 Early Feed and Operation of WTP LAW Facility	Sub-CLIN 5.1	0	0	0
	Sub-CLIN 5.2	22,412	22,928	45,340
	Sub-CLIN 5.3	13,086	17,239	30,325
	Sub-CLIN 5.4	131,281	134,315	265,595
CLIN 6 Pension and Benefit Plans	Sub-CLIN 6.1	39,561	43,479	83,039
	Sub-CLIN 6.2	111,372	109,543	220,915
Base Contract Totals	Contract Cost	1,068,572	854,324	1,922,895
	Available Fee	TBD by DOE	TBD by DOE	114,325
	Contract Price	Total	Total	2,037,220

Contract Totals		
Total: Transition, Base & Option Periods	Contract Cost	6,709,902
	Available Fee	361,735
	Contract Price	7,071,637

B.6 BASIS FOR TOTAL AVAILABLE FEE

The cost basis for *Total Available Fee* shall be the *Total Contract Cost*, excluding:

- (a) Pass-through funding provided to other contractors for Hanford Site services identified in the Section J Attachment entitled, *Hanford Site Services and Interface Requirements Matrix*;
- (b) Costs associated with sponsorship, management, administration and/or contributions for Legacy Plans (set forth in the Section H Clause entitled, *Employee Compensation: Pay and Benefits*) administered under this Contract; and
- (c) Costs associated with sponsorship, management, administration and/or contributions for any defined benefit pension plan.

Employee benefit plan costs shall be included in the *Contract Price* by fiscal year and by Contract period shown in Table B.4-1, *Contract Cost and Contract Fee*.

B.7 FEE STRUCTURE

- (a) The Contracting Officer reserves the unilateral discretion to determine the amount of *Available Fee* for the *Base Period* and *Option Period(s)* (if exercised), to each fiscal year and Sub-CLIN as described in this Clause; and as adjusted in the Section B Clause entitled, *Changes to Contract Cost and Contract Fee*. The Contractor will have the opportunity to earn 100% of the *Available Fee* within a Contract period, for work authorized in accordance with the Section B Clause entitled, *DOE Authorization of Work* and as adjusted in the Section B Clause entitled, *Changes to Contract Cost and Contract Fee*.
- (b) The *Available Fee* shown in Table B.4-1, *Contract Cost and Contract Fee*, can be earned through objective fee components and/or subjective fee components. The performance measures for these components and *Available Fee* for the period allocated to the fiscal year are provided in the Section J Attachment entitled, *Performance Evaluation and Measurement Plan (PEMP)*. The PEMP may contain annual and multi-year performance measures.
 - (1) *Available Fee* for the period allocated to annual performance measures may only be earned in that fiscal year. Allocated *Available Fee* for the fiscal year not earned in the fiscal year for an annual performance measure is unavailable and not payable to the Contractor. The Contractor forfeits any rights to unearned fee. The Contracting Officer reserves the unilateral discretion to determine how any unearned fee will be utilized.
 - (2) *Available Fee* for the period allocated to fiscal years for multi-year performance measures may be earned incrementally or upon final fee determination. Allocated *Available Fee* not earned for a multi-year performance measure is unavailable and not payable to the Contractor. The Contractor forfeits any rights to unearned fee. The Contracting Officer reserves the unilateral discretion to determine how any unearned fee will be utilized.

- (3) *Provisional Fee* is defined as *Available Fee* that is paid contingently during an annual performance period. *Provisional Fee* may become earned fee upon the final fee determination.
 - (4) *Incremental Fee* is defined as *Available Fee* that the Contractor may earn by achieving a specific, fee-bearing performance measure event, subject to withholding in accordance with Section B Clause entitled, Fee Determination and Payment.
 - (5) Individual performance measures may require the Contractor to exceed approved baseline performance to earn 100% of the fee allocated to that performance measure.
- (c) The Contracting Officer will prepare and issue performance measures prior to the start of each fiscal year. The Contracting Officer may provide draft performance measures for Contractor review and input; however, the Contracting Officer reserves the unilateral discretion to issue the performance measures without Contractor review.

B.8 FEE DETERMINATION AND PAYMENT

- (a) Fee earned under this Contract will be paid in accordance with the specific criteria defined in the PEMP and the Clauses in Section B. Monthly provisional payments of fee may be authorized by the Contracting Officer and will be made in accordance with paragraph (b) of this Clause.
- (b) For annual performance measures that do not have specific, incremental, fee-bearing performance measure events, the Contractor may request Contracting Officer approval to execute a monthly draw of *Provisional Fee* payments from the Special Financial Institution Account. The Contractor may request a monthly *Provisional Fee* payment of up to 7.5% of fee allocated to such performance measures, subject to a maximum payment of 80% of fee allocated to such performance measures, and also subject to withholding by DOE as described in paragraphs (e) and (f) of this Clause.
- (c) The Contractor shall request Contracting Officer acceptance of a specific, incremental, fee-bearing performance measure event. Following Contracting Officer acceptance of a specific, incremental, fee-bearing performance measure event, the Contractor may request Contracting Officer approval to execute a draw of *Incremental Fee* from the Special Financial Institution Account, subject to withholding by the Contracting Officer as described in paragraphs (e) and (f) of this Clause and the Section B Clause entitled, *Fee Reductions*.
- (d) At the end of each year of Contract performance, the Fee Determining Official will make a final *Fee Determination* using the PEMP described in the Section B Clause entitled, *Fee Structure*. In the event that fee overpayment results from the *Provisional Fee* payments provided for in this Clause, the Contractor shall reimburse the unearned fee overpayment within 30 days of notification, to the Contracting Officer payable with interest in accordance with the Section I Clause entitled, *FAR 52.232-17, Interest*.
- (e) Withholding of *Incremental* and *Provisional Fee* Payments for adverse Contract Performance.

- (1) Withholding of *Incremental* and *Provisional Fee* Payments. If the Contractor demonstrates adverse performance, the Contracting Officer reserves the unilateral discretion to withhold *Incremental* and *Provisional Fee* Payments. Withheld Fee Payments are not subject to interest for the amount(s) of the withheld fee payment(s) under 5 CFR 1315, *Prompt Payment*.
 - (2) Release of Withheld *Incremental* and *Provisional Fee* Payments. The Contracting Officer may release withheld *Incremental* and *Provisional Fee* Payments and resume making *Incremental* and *Provisional Fee* Payments when the Contractor demonstrates sustained recovery in performance.
- (f) Withholding of *Incremental* and *Provisional Fee* Payments for bankruptcy or other issues with guarantor company(ies)⁴.
- (1) Withholding of *Incremental* and *Provisional Fee*. In order to assure the Contractor's ability to repay any *Incremental* and *Provisional Fee* Payments that are determined to be in excess of the total fee earned, the Contracting Officer reserves the unilateral discretion to discontinue *Incremental* and *Provisional Fee* payments, in the event that a guarantor company files bankruptcy, is acquired by other owners, or impacted by other events that arise with the Contractor's guarantor company(ies) that can jeopardize DOE's ability to recover excess *Incremental Payment* and *Provisional Fee* Payments. Withheld Fee Payments are not subject to interest for the amount(s) of the withheld fee payment(s) under 5 CFR 1315, *Prompt Payment*.
 - (2) Release of Withheld *Incremental* and *Provisional Fee* Payments. Following receipt of evidence that bankruptcy or other issues do not affect the ability of the Contractor to continue to perform the obligations under the Contract, the Contracting Officer may release all *Incremental* and *Provisional Fee* Payments and resume making *Incremental* and *Provisional Fee* Payments.

B.9 FEE REDUCTIONS

- (a) All earned fee in each year of Contract performance is subject to reductions imposed by the terms and conditions of this Contract, including, but not limited to:
 - (1) Section B Clause entitled, *Fee Determination and Payment*;
 - (2) Section B Clause entitled, *Small Business Subcontracting Fee Reduction*;
 - (3) Section B Clause entitled, *DEAR 970.5215-3, Conditional Payment of Fee, Profit, and Other Incentives – Facility Management Contracts (Alternate II) [DEVIATION]*;
 - (4) Section B Clause entitled, *Conditional Payment of Fee (CPOF) DOE Office of River Protection Site-Specific Performance Criteria/Requirements*;
 - (5) Section E Clause entitled, *FAR 52.246-3, Inspection of Supplies – Cost Reimbursement*;

⁴ Guarantor Company(ies) is defined as the company(ies) executing the performance guarantee (s) in Section H Clause entitled, *Performance Guarantee Agreement*.

- (6) Section E Clause entitled, *FAR 52.246-5, Inspection of Services – Cost Reimbursement*;
 - (7) Section H Clause entitled, *Key Personnel*;
 - (8) Section I Clause entitled, *FAR 52.203-10, Price or Fee Adjustment for Illegal or Improper Activity*;
 - (9) Section I Clause entitled, *FAR 52.215-11, Price Reduction for Defective Cost or Pricing Data – Modifications*;
 - (10) Section I Clause entitled, *FAR 52.215-13, Subcontractor Cost or Pricing Data – Modifications*; and
 - (11) Section I Clause entitled, *FAR 52.243-2, Changes – Cost Reimbursement*.
- (b) The maximum fee reduction in any one (1) year of Contract performance is the allocated *Available Fee*, as defined in the Section J Attachment entitled, *Performance Evaluation and Measurement Plan*, that can be earned in the year the event occurred.

B.10 SMALL BUSINESS SUBCONTRACTING FEE REDUCTION

- (a) For the purpose of implementing this Clause, the percentage goals established in the Section J Attachment entitled, *Small Business Subcontracting Plan*, will remain in effect for the duration of the Contract, except as modified in accordance with the Section B Clause entitled, *Changes to Contract Cost and Contract Fee*. The Contractor shall submit annual updates to the narrative elements of the *Small Business Subcontracting Plan* by December 31 of each year.
- (b) The Contractor's performance in meeting small business performance percentage goals in accordance with the Section H Clause entitled, *Self-Performed Work*, providing meaningful involvement for small businesses, and entering into the required Mentor-Protégé Agreement(s) will be evaluated after the:
 - (1) Three year period concluding at the end of the 3rd year of Contract performance;
 - (2) Two year period concluding at the end of the 5th year of Contract performance; and, if *Option Period 1* is exercised;
 - (3) If *Option Period 1* is exercised – two year period concluding at the end of the 7th year of Contract performance; and
 - (4) At the end of the Contract period of performance.
- (c) The Contracting Officer will consider the Contractor's performance in meeting small business percentage goals and entering into the required Mentor-Protégé Agreement(s) when making a decision on the *Option Period(s)* authorization.

- (d) If the Contractor has not met any or all of the subcontracting goals, has failed to provide meaningful involvement for small business, and/or has failed to enter into the required Mentor-Protégé Agreement(s) during the above specified periods, the Contracting Officer may reduce the earned fee by an amount up to 10% of total earned fee in each period of the four (4) multi-year periods described above.
- (e) At Contract completion, the total amount of fee reduction for failure to meet its subcontracting goals shall be offset by any amount of liquidated damages assessed in accordance with the Section I Clause entitled, *FAR 52.219-16, Liquidated Damages – Subcontracting Plan*. The fee reduction amount will be a unilateral determination by the Contracting Officer and a permanent reduction in the earned fee under this Contract.
- (f) Any reduction for failure to meet the requirements of the Section H Clause entitled, *Mentor-Protégé Program*, shall be in addition to any liquidated damages assessed in accordance with the Section I Clause entitled, *FAR 52.219-16, Liquidated Damages – Subcontracting Plan*. The fee reduction amount will be a unilateral determination by the Contracting Officer and a permanent reduction in the earned fee under this Contract.

B.11 ALLOWABILITY OF SUBCONTRACTOR FEE

- (a) If the Contractor is part of a teaming arrangement as described in FAR Subpart 9.6, *Contractor Team Arrangements*, the team shall share in the *Total Available Fee* as shown in Table B.4-1. Separate additional subcontractor fee is not an allowable cost under this Contract for individual team members, or for a subcontractor, supplier, or lower-tier subcontractor that is a wholly-owned, majority-owned, or affiliate of any team member.
- (b) The subcontractor fee restriction in paragraph (a) does not apply to members of the Contractor's team that are: (1) small business(es); (2) Protégé firms as part of an approved Mentor-Protégé relationship under the Section H Clause entitled, *Mentor-Protégé Program*; (3) subcontractors under a competitively awarded firm-fixed price or firm-fixed unit price subcontract; or (4) commercial items as defined in FAR Subpart 2.1, *Definitions of Words and Terms*.

B.12 DEAR 970.5215-3, CONDITIONAL PAYMENT OF FEE, PROFIT, AND OTHER INCENTIVES – FACILITY MANAGEMENT CONTRACTS (ALTERNATE II) (JAN 2004) [DEVIATION]

- (a) General.
 - (1) The payment of earned fee, fixed fee, profit, or share of cost savings under this Contract is dependent upon:
 - (i) The Contractor's or contractor employees' compliance with the terms and conditions of this Contract relating to environment, safety, health and quality (ESH&Q), which includes worker safety and health, including performance under an approved Integrated Safety Management System (ISMS); and

- (ii) The Contractor's or contractor employees' compliance with the terms and conditions of this Contract relating to the safeguarding of Restricted Data and other classified information.
 - (2) The ESH&Q performance requirements of this Contract are set forth in its ESH&Q terms and conditions, including the DOE-approved Contractor ISMS or similar document. Financial incentives for timely mission accomplishment or cost effectiveness shall never compromise or impede full and effective implementation of the ISMS and full ESH&Q compliance.
 - (3) The performance requirements of this Contract relating to the safeguarding of Restricted Data and other classified information are set forth in the Section I Clause entitled, *FAR 52.239-1, Privacy or Security Safeguards (AUG 1996)*, and *DEAR 970.5204-2, Laws, Regulations, and DOE Directives*, as well as in other terms and conditions.
 - (4) If the Contractor does not meet the performance requirements of this Contract relating to ESH&Q or to the safeguarding of Restricted Data and other classified information during any performance evaluation period established under the Contract, otherwise earned fee, fixed fee, profit or share of cost savings may be unilaterally reduced by DOE.
- (b) Reduction Amount.
- (1) The amount of earned fee, fixed fee, profit, or share of cost savings that may be unilaterally reduced will be determined by the severity of the performance failure pursuant to the degrees specified in paragraphs (c) and (d) of this Clause.
 - (2) If a reduction of earned fee, fixed fee, profit, or share of cost savings is warranted, unless mitigating factors apply, such reduction shall not be less than 26% nor greater than 100% of the amount of earned fee, fixed fee, profit, or the Contractor's share of cost savings for a first degree performance failure, not less than 11% nor greater than 25% for a second degree performance failure, and up to 10% for a third degree performance failure.
 - (3) In determining the amount of the reduction and the applicability of mitigating factors, DOE will consider the Contractor's overall performance in meeting the ESH&Q or security requirements of the Contract. Such consideration will include performance against any site specific performance criteria/requirements that provide additional definition, guidance for the amount of reduction, or guidance for the applicability of mitigating factors. In all cases, DOE will consider mitigating factors that may warrant a reduction below the applicable range (see *48 CFR 970.1504-1-2*). The mitigating factors include, but are not limited to, the following ((v), (vi), (vii) and (viii) apply to ESH&Q only).
 - (i) Degree of control the Contractor had over the event or incident.
 - (ii) Efforts the Contractor had made to anticipate and mitigate the possibility of the event in advance.

- (iii) Contractor self-identification and response to the event to mitigate impacts and recurrence.
 - (iv) General status (trend and absolute performance) of: ESH&Q and compliance in related areas; or of safeguarding Restricted Data and other classified information and compliance in related areas.
 - (v) Contractor demonstration to the Contracting Officer's satisfaction that the principles of industrial ESH&Q standards are routinely practiced (e.g., Voluntary Protection Program, ISO [International Organization for Standardization] 14000, *Environmental Management System Standards*).
 - (vi) Event caused by "Good Samaritan" act by the Contractor (e.g., off-site emergency response).
 - (vii) Contractor demonstration that a performance measurement system is routinely used to improve and maintain ESH&Q performance (including effective resource allocation) and to support DOE corporate decision-making (e.g., policy, ESH&Q programs).
 - (viii) Contractor demonstration that an Operating Experience and Feedback Program is functioning that demonstrably affects continuous improvement in ESH&Q by use of lessons-learned and best practices inter- and intra-DOE sites.
- (4) (i) The amount of fee, fixed fee, profit, or share of cost savings that is otherwise earned by a Contractor during an evaluation period may be reduced in accordance with this Clause if it is determined that a performance failure warranting a reduction under this Clause occurs within the evaluation period.
- (i) The amount of reduction under this Clause, in combination with any reduction made under any other clause in the Contract, shall not exceed the amount of fee, fixed fee, profit, or the Contractor's share of cost savings that is otherwise earned during the evaluation period.
- (iii) For the purposes of this clause, earned fee, fixed fee, profit, or share of cost savings for the evaluation period shall mean the amount determined by DOE or fee determination official as otherwise payable based on the Contractor's performance during the evaluation period. Where the Contract provides for financial incentives that extend beyond a single evaluation period, this amount shall also include: any provisional amounts determined otherwise payable in the evaluation period; and, if provisional payments are not provided for, the allocable amount of any incentive determined otherwise payable at the conclusion of a subsequent evaluation period. The allocable amount shall be the total amount of the earned incentive divided by the number of evaluation periods over which it was earned.

- (iv) The Government will effect the reduction as soon as practicable after the end of the evaluation period in which the performance failure occurs. If the Government is not aware of the failure, it will effect the reduction as soon as practical after becoming aware. For any portion of the reduction requiring an allocation the Government will effect the reduction at the end of the evaluation period in which it determines the total amount earned under the incentive. If at any time a reduction causes the sum of the payments the Contractor has received for fee, fixed fee, profit, or share of cost savings to exceed the sum of fee, fixed fee, profit, or share of cost savings the Contractor has earned (provisionally or otherwise), the Contractor shall immediately return the excess to the Government. (What the Contractor "has earned" reflects any reduction made under this or any other Clause of the Contract.)
- (v) At the end of the Contract:
 - (A) The Government will pay the Contractor the amount by which the sum of fee, fixed fee, profit, or share of cost savings the Contractor has earned exceeds the sum of the payments the Contractor has received; or
 - (B) The Contractor shall return to the Government the amount by which the sum of the payments the Contractor has received exceeds the sum of fee, fixed fee, profit, or share of cost savings the Contractor has earned. (What the Contractor "has earned" reflects any reduction made under this or any other Clause of the Contract.)
- (c) Environment, Safety, Health and Quality (ESH&Q). Performance failures occur if the Contractor does not comply with the Contract ESH&Q terms and conditions, including the DOE-approved Contractor ISMS. The degrees of performance failure under which reductions of earned or fixed fee, profit, or share of cost savings will be determined are:
 - (1) First Degree: Performance failures that are most adverse to ESH&Q. Failure to develop and obtain required DOE approval of an ISMS is considered first degree. The Government will perform necessary review of the ISMS in a timely manner and will not unreasonably withhold approval of the Contractor's ISMS. The following performance failures or performance failures of similar import will be considered first degree.
 - (i) Type A accident (defined in DOE Order 225.1A, *Accident Investigations*); and
 - (ii) Two (2) Second Degree performance failures during an evaluation period.
 - (2) Second Degree: Performance failures that are significantly adverse to ESH&Q. They include failures to comply with an approved ISMS that result in an actual injury, exposure, or exceedence that occurred or nearly occurred but had minor practical long-term health consequences. They also include breakdowns of the Safety Management System. The following performance failures or performance failures of similar import will be considered second degree:

- (i) Type B accident (defined in DOE Order 225.1A).
 - (ii) Non-compliance with an approved ISMS that results in a near miss of a Type A or B accident. A near miss is a situation in which an inappropriate action occurs, or a necessary action is omitted, but does not result in an adverse effect.
 - (iii) Failure to mitigate or notify DOE of an imminent danger situation after discovery, where such notification is a requirement of the Contract.
- (3) Third Degree: Performance failures that reflect a lack of focus on improving ESH&Q. They include failures to comply with an approved ISMS that result in potential breakdown of the System. The following performance failures or performance failures of similar import will be considered third degree:
- (i) Failure to implement effective corrective actions to address deficiencies/non-compliances documented through: external (e.g., Federal) oversight and/or reported per ~~DOE Order 232.1A~~ [DOE Manual 232.1A, *Occurrence Reporting and Processing of Operations Information*] requirements; or internal oversight of ~~DOE Order 440.1A~~ [10 CFR 830, 10 CFR 835, 10 CFR 850, and 10 CFR 851] requirements.
 - (ii) Multiple similar non-compliances identified by external (e.g., Federal) oversight that in aggregate indicate a significant programmatic breakdown.
 - (iii) Non-compliances that either have, or may have, significant negative impacts to the worker, the public, or the environment or that indicate a significant programmatic breakdown.
 - (iv) Failure to notify DOE upon discovery of events or conditions where notification is required by the terms and conditions of the Contract.
- (d) Safeguarding Restricted Data and Other Classified Information. Performance failures occur if the Contractor does not comply with the terms and conditions of this Contract relating to the safeguarding of Restricted Data and other classified information. The degrees of performance failure under which reductions of fee, profit, or share of cost savings will be determined are as follows:
- (1) First Degree: Performance failures that have been determined, in accordance with applicable law, DOE regulation, or directive, to have resulted in, or that can reasonably be expected to result in, exceptionally grave damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered first degree:

- (i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating a risk of, loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, or any classification level of information in a Special Access Program (SAP), information identified as sensitive compartmented information (SCI), or high risk nuclear weapons-related data.
 - (ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.
 - (iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.
 - (iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.
- (2) Second Degree: Performance failures that have been determined, in accordance with applicable law, DOE regulation, or directive, to have actually resulted in, or that can reasonably be expected to result in, serious damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered second degree:
- (i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.
 - (ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Secret Restricted Data, or other information classified as Secret.
 - (iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Restricted Data or other classified information regardless of classification (except for information covered by paragraph (d)(1)(iii) of this Clause).
 - (iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Secret Restricted Data or other classified information classified as Secret.

- (3) Third Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, undue risk to the common defense and security. In addition, this category includes performance failures that result from a lack of Contractor management and/or employee attention to the proper safeguarding of Restricted Data and other classified information. These performance failures may be indicators of future, more severe performance failures and/or conditions, and if identified and corrected early would prevent serious incidents. The following are examples of performance failures or performance failures of similar import that will be considered third degree:
- (i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Restricted Data or other information classified as Confidential.
 - (ii) Failure to promptly report alleged or suspected violations of laws, regulations, or directives pertaining to the safeguarding of Restricted Data or other classified information.
 - (iv) Failure to identify or timely execute corrective actions to mitigate or eliminate identified vulnerabilities and reduce residual risk relating to the protection of Restricted Data or other classified information in accordance with the Contractor's Safeguards and Security Plan or other security plan, as applicable.
 - (iv) Contractor actions that result in performance failures which unto themselves pose minor risk, but when viewed in the aggregate indicate degradation in the integrity of the Contractor's safeguards and security management system relating to the protection of Restricted Data and other classified information.
- (e) Minimum requirements for specified level of performance.
- (1) At a minimum the Contractor must perform the following:
 - (i) The requirements with specific incentives which do not require the achievement of cost efficiencies in order to be performed at the level of performance set forth in Section C, *Statement of Work*, work authorization directive(s), or similar document unless an otherwise minimum level of performance has been established in the specific incentive;
 - (ii) All of the performance requirements directly related to requirements specifically incentivized which do not require the achievement of cost efficiencies in order to be performed at a level of performance such that the overall performance of these related requirements is at an acceptable level; and
 - (iii) All other requirements at a level of performance such that the total performance of the Contract is not jeopardized.

- (2) The evaluation of the Contractor's achievement of the level of performance shall be unilaterally determined by the Government. To the extent that the Contractor fails to achieve the minimum performance levels specified in Section C, *Statement of Work*, work authorization directive(s), or similar document, during the performance evaluation period, the DOE Operations/Field Office Manager, or designee, may reduce any otherwise earned fee, fixed fee, profit, or shared net savings for the performance evaluation period. Such reduction shall not result in the total of earned fee, fixed fee, profit, or shared net savings being less than 25% of the total available fee amount. Such 25% shall include base fee, if any.
- (f) Minimum requirements for cost performance.
- (1) Requirements incentivized by other than cost incentives must be performed within their specified cost constraint and must not adversely impact the costs of performing unrelated activities.
 - (2) The performance of requirements with a specific cost incentive must not adversely impact the costs of performing unrelated requirements.
 - (3) The Contractor's performance within the stipulated cost performance levels for the performance evaluation period shall be determined by the Government. To the extent the Contractor fails to achieve the stipulated cost performance levels, the DOE Operations/Field Office Manager, or designee, may reduce in whole or in part any otherwise earned fee, fixed fee, profit, or shared net savings for the performance evaluation period. Such reduction shall not result in the total of earned fee, fixed fee, profit or shared net savings being less than 25% of the total available fee amount. Such 25% shall include base fee, if any.

B.13 CONDITIONAL PAYMENT OF FEE (CPOF) DOE OFFICE OF RIVER PROTECTION SITE-SPECIFIC PERFORMANCE CRITERIA/REQUIREMENTS

This Clause supplements Section B Clause entitled, *DEAR 970.5215-3, Conditional Payment of Fee, Profit, and Other Incentives – Facility Management Contracts (Alternate II) [Deviation]* by establishing Site specific Environment, Safety, Health, and Quality (ESH&Q), and security performance criteria/requirements. Performance failures relating to the performance criteria set forth in this Clause will be processed in accordance with DEAR 970.5215-3. Site-specific performance criteria/requirements for ESH&Q, and Safeguards and Security are as follows:

- (a) Environment, Safety, Health, and Quality
 - (1) First Degree: Performance failures relating to the criteria set forth in this Clause will be processed in accordance with DEAR 970.5215-3, Alternate II [Deviation].
 - (2) Second Degree: Performance failures relating to the criteria set forth in this Clause will be processed in accordance with DEAR 970.5215-3, Alternate II [Deviation].

- (3) Third Degree: Performance failures that reflect a lack of focus on ESH&Q or failures to comply with an approved ISMS that may result in a negative impact to the public, worker or environment. The following performance failures, or events of similar import, are examples of performance failures that are considered third degree:
 - (i) Multiple similar non-compliances identified by external oversight (e.g., Federal) that in the aggregate indicate a significant programmatic breakdown.
 - (ii) Non-compliances or adverse performance trends that either have or may have negative impact to the public, worker, or environment or that indicate a programmatic breakdown.
 - (iii) Failure to notify the Contracting Officer upon discovery of events or conditions where notification is required by the terms and conditions of the Contract.
 - (iv) Failure to report required data accurately and in a timely manner.
 - (v) Failure to implement continuous improvement in ESH&Q performance through effective utilization of ISMS processes, including timely submittal of meaningful performance objectives, measurements and commitments.

- (b) Safeguards and Security
 - (1) First Degree: Performance failures relating to the performance criteria set forth in this Clause will be processed in accordance with DEAR 970.5215-3, Alternate II [Deviation].
 - (2) Second Degree: Performance failures relating to the performance criteria set forth in this Clause will be processed in accordance with DEAR 970.5215-3, Alternate II [Deviation].
 - (3) Third Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, undue risk to the common defense and security, and/or jeopardizes protection of the facility or Site security interests. The following are examples of performance failures or performance failures of similar import that will be considered third degree:
 - (i) Loss, theft, diversion, or unauthorized disclosure of information classified as Confidential.
 - (ii) Evidence that SNM data has been manipulated or falsified.
 - (iii) Inventory differences of Category IV SNM beyond alarm limits where there is no evidence that the difference is created by loss, theft, or diversion.

- (iv) Loss, theft, or diversion of Category IV quantities of SNM that is due to a failure or inadequacy of performance by the contractor.
- (v) Receipt of any topical area rating of Unsatisfactory on any DOE Safeguards and Security survey, audit, and/or inspection.
- (vi) Failure to implement corrective action(s) in response to any third degree performance failure.
- (vii) Non-compliant or adverse cyber security performance that indicates serious cyber security program degradation (e.g., negative mission impacts or compromise of sensitive information [Sensitive Unclassified Information, Personally Identifiable Information, Unclassified Controlled Nuclear Information], etc.).

B.14 DOE AUTHORIZATION OF WORK

DOE will authorize work as follows:

- (a) The Contracting Officer will authorize the Contractor to begin performance on DOE-selected Sub-CLINS.
- (b) The Contractor is authorized to conduct work in accordance with the approved *Performance Measurement Baseline* on all authorized Sub-CLINS, and subject to the limitations of the Section B Clause entitled, *Obligation and Availability of Funds*.
- (c) Prior to the completion of the *Transition Period*, DOE will provide workscope direction that will be in effect from the initiation of the *Base Period* until DOE approval of the Contractor's initial *Performance Measurement Baseline* submittal.
- (d) DOE reserves the unilateral discretion to modify the PEMP to allocate fee to the associated work.
- (e) If the Contracting Officer does not authorize the Contractor to proceed with a Sub-CLIN, the Contractor shall not be entitled to allowable costs, opportunity to earn fee, partial termination costs, and any other similar items for that Sub-CLIN, and shall not be entitled to an equitable adjustment to fee for any other Contract requirement.

H.47 RECOVERY ACT MODIFICATION DEFINITIZATION

The following clause is added. This clause applies only to the Recovery Act work specified in Section C as directed by the Contracting Officer under modification A015 in accordance with Changes – Cost Reimbursement (Aug 1987) – Alternate II (Apr 1984), Alternate III (Apr 1984), and Alternate IV (Apr 1984) until such time that the Contracting Officer and the contractor reach a mutual agreement and modify the contract definitizing the Recovery Act work.

Modification Definitization

(a) The Contractor agrees to begin promptly negotiating with the Contracting Officer the terms of a definitive modification for the Recovery Act work directed under modification A015. The Contractor agrees to submit a technical, cost, and fee proposal in accordance with the instructions contained in section 9 of modification A015.

(b) The schedule for definitizing modification A015 is as follows:

Action	Days after Receipt of Mod
Contractor submits technical, cost, and fee Proposal	60
Commence negotiations	90
Mutual agreement on definitization of Recovery Act work	120
Contractor submits certificate of current cost or pricing data	150
Execute definitization contract modification	180

(c) If agreement on a definitive modification is not reached by the target date in paragraph (b) of this section, or within any extension of it granted by the Contracting Officer, the Contracting Officer may, with the approval of the head of the contracting activity, determine a reasonable price or fee in accordance with Subpart 15.4 and Part 31 of the FAR, subject to Contractor appeal as provided in the Disputes clause. In any event, the Contractor shall proceed with completion of the contract, subject only to the clause in section I, entitled "Limitation of Government Liability," added by modification A015.

(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 either fixed-price or cost-reimbursement contracts, as determined by the Contracting Officer under this paragraph (c);
- (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) To the extent consistent with paragraph (c)(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.

(d) Reopener Clause – Pending DCAA Audit of Contractor’s Proposal. If at the time of contract definitization the DCAA Audit report is not issued, then the two parties agree that the negotiated price is subject to adjustment based on the results of the audit report. Should there be no agreement on the amount of the price adjustment contemplated by this clause, then the Contracting Officer may make a unilateral determination and modify the contract accordingly. Failure to agree with such change and the resulting contract price shall be resolved in accordance with the disputes clause of this contract.

**ATTACHMENT J.15
 AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA) MILESTONES
 AND PERFORMANCE MEASURES**

Program Milestone	Date	Completion Evidence	Performance Measure/Metric
Core Sampling System	Sep – 10	System Receipt Acceptance Package	2 Core Sampling Systems - Issue Functions & Requirements Doc and Spec, Complete Design, and Complete Fabrication/Acceptance Testing for the Core Sampling Systems.
Tank/Farm Upgrades for Feed Readiness		Construction Completion Package	
1. EPC AP/SY Ventilation - Design Complete 2. EPC SY Ventilation - Construction Complete	Jun- 10 Sep – 11	Approved Design Package Completion Construction Package	AP and SY Primary Vent Systems (each include 2 Exhausters, 2 HEPA Trains, and ducting and stack) – Issue Functions & Requirements Doc and Spec for both AP and SY Primary Vent Systems, Complete Design package consisting of drawings, fabrication specifications, and supporting calculations for the AP and SY Primary Vent Systems, Complete Installation SY Primary Vent System (2 Exhausters, 2 HEPA Trains, and ducting and stack), and Complete Acceptance Testing SY Primary Vent System (2 Exhausters, 2 HEPA Trains, and ducting and stack)
(agreed to delete with Tom Fletcher and CLIN 1) 4. Electrical Upgrades (SY) – Design Complete 5. Electrical Upgrades (SY) – Subcontract Awarded 6. Electrical Upgrades (SY) – Construction Complete	Jun – 10 Aug – 10 Sep – 11	Approved Design Package Subcontract is awarded Construction Completion Package	For farm (SY) perform Electrical Upgrades, Issue Functions & Requirements Doc and Spec, Complete Design package consisting of drawings, procurement and construction specifications, and supporting calculations, Issue RFP, Award Contract, Complete Installation, and Complete Acceptance Testing.

Program Milestone	Date	Completion Evidence	Performance Measure/Metric
7. Valve Funnel Replacement - Statement of Work Complete	Dec - 09	Completion of Statement of Work	8 (total pits - For 3-pits (AN-A, AN-B, & AP-VP) complete design, fabrication and installation of replacement jumpers; Issue SOW, Complete Fabrication, and Complete Installation. For other 5 Pits (AP-02A, AP-02D, AW-A, AZ-01A, AZ-VP) Complete design, fabrication and installation of valve funnels and valve positioning plates; Complete Fabrication, and Complete Installation.
8. Valve Funnel Replacement - Installation and Testing Complete	Sep - 11	Testing and Installation Completion Package	
9. DST control system upgrade (AN, AP, AW, AY/AZ, SY, X-Site) - Statement of Work Complete	Mar- 10	Completion of Statement of Work	For AN, AP, AW, AY/AZ, SY, and X-Site systems (for each farm remove old master pump shutdown circuit, connect to new master pump shutdown circuit, and perform testing), Complete SOW; For AN Issue RFP, Award Contract and Complete Modifications, For AP Issue RFP, Award Contract and Complete Modifications, For AW Issue RFP, Award Contract and Complete Modifications, For AY/AZ Issue RFP, Award Contract and Complete Modifications, For SY Issue RFP, Award Contract and Complete Modifications, and For X-site Issue RFP, Award Contract and Complete Modifications.
10. DST control system upgrade (AN, AP, AW, AY/AZ, SY, X-Site) - Installation and Testing Complete	Sep - 11	Testing and Installation Completion Package	
11. Level Rise Modifications (DSTs) - Design Complete	Dec - 09	Completion of Statement of Work	Issue SOW for Double Shell Tank Level Rise Modifications (assumes mods are performed to ~6DSTs in AP Farm), Issue RFP and Award Contract, and Complete Modifications.
12. Level Rise Modifications (DSTs) - Installation Complete	Oct - 10	Installation Completion Package	
13. AZ Farm Control System Upgrade - Statement of Work Complete	Feb - 10	Completion of Statement of Work for installation design.	Issue SOW (design for installation of a new MCS system for the 241-702-AZ Ventilation System). Complete Modifications
14. AZ Farm Control System Upgrade - Installation and Testing Complete	Jul - 11	Testing and Installation Completion Package	

Program Milestone	*Date	Completion Evidence	Performance Measure/Metric
15. AP Valve Pit Jumpers - Design Complete	May - 10	Approved Design Package	AP Valve Pit Jumpers (10 Jumpers and 48 Valves) Complete Design package consisting of drawings, specifications, and supporting calculations, Issue Functions & Requirements Doc and Spec, Complete Fabrication, Complete Installation, and Complete Acceptance Testing.
16. AP Valve Pit Jumpers - Installation and Testing Complete	Sep - 11	Testing and Installation Completion Package	
17. Exhauster D & D - Statement of Work Complete	Dec - 09	Completion of Statement of Work	AW Farm (including 2 exhaust filter trains & 2 fans and 1 stack) Complete SOW, Issue RFP and Award Contract, and Complete D&D. AN Farm (including 2 exhaust filter trains & 2 fans and 1 stack) Complete SOW, Issue RFP, Award Contract, and Complete D&D.
18. Exhauster D & D - D&D Complete	Apr - 11	Construction Completion Package	
19. Other Tank/Farm Upgrades - Statement of Work Complete	Mar - 10	Approved Design Packages	Upgrades to (110) ENRAFS, Complete 1 Vent Reliability Study. Remove obsolete equipment. Procure (4) replacement Decon Trailers.
20. Procurements awarded for Other Tank/Farm Upgrades	Jun - 10	Award Purchase order	
21. Other Tank Farm Upgrades - Installation and Testing Complete	Sep - 11	Testing and Installation Completion Package	
22. Removal of Tank Farm equipment and facilities that are out of service	Sept - 09	Construction Completion Package	SY-271 Instrument Control Auxiliary Bldg, SY 271 Standby Diesel Generator, 242-T Exhauster HEPA Filters and P-28 SY Farm Exhauster are removed.
DSTs Upgrades and Life Extension	Sep - 11	Construction Completion Package	Issue the DSTIP Lab test report, Install the AN-107 Corrosion Probe, Procure 3 Spare DST Transfer Pumps, and Complete Cathodic Protection System Upgrades.
23. Issue DSTIP Lab test report	Dec - 10	Issued Report	
24. Install AN-107 Corrosion Probe	Oct - 10	Construction Completion Package	
25. Procure Spare Transfer Pumps	Sep - 10	Award Purchase Order	
26. Complete Cathodic Protection System Upgrades	Sep - 11	Construction Completion Package	

Program Milestone	Date	Completion Evidence	Performance Measure/Metric
27. NEC Resolution and Electrical Modifications	Nov. - 09	Construction Completion Package	13 NEC issues in the AN, AP, AW, and SY farms will be corrected along with completions of 15 electrical modifications.
28. Replace 10 Drain Seals in AP, AN, AW, SY Farm	Nov - 09	Construction Completion Package	10 pit drain seals will be replaced in one or more of the AP, AN, AW, SY farms.
222-S Laboratory Upgrades and Life Extension Projects Complete	Sep - 11	Construction Completion Package	Complete SOW for 4 priority instruments in FY09, Award Procurement 10 replacement instruments, Award Contracts for 6 Life Cycle Extension Projects, Complete 6 Life Cycle Extension Projects, Complete SOW for 8 Lab Upgrade Projects, and Complete 8 Lab Upgrade Projects.
1. Complete SOWs for priority instruments (Alpha energy analyzer, gamma energy analyzer, liquid chromatograph/mass spectrometer, ion chromatograph)	Sep - 09	Statement of Work for priority instruments	
2. Procurements placed for 10 replacement instruments	Nov - 10	Award Purchase Order	
3. Award Contracts for 6 Life Cycle Extension Projects	Nov - 10	Award Purchase Order	
4. Complete 6 Life Cycle Extension Projects	Sep - 11	Construction Completion Package	
5. Complete SOW for 8 Lab Upgrade Projects	Dec - 10	Completion of Statement of Work	
6. Complete 8 Lab Upgrade Projects	Sep - 11	Construction Completion Package	
222-S Laboratory Upgrades and Life Extension Projects Complete	Sep - 10		5 replacement instruments , procured, received and installed in 222-S
7. Procurement and installation of 5 replacement instruments <ul style="list-style-type: none"> • Gas chromatograph (GC), • GC/Mass Spectrometer (CG/MS), • Gamma Energy Analyzer (GEA) [+software upgrade], • Ion Chromatograph (IC) (2 total) 	Sep - 10	Work Package Completion	
8. Complete 1 Life Cycle Extension Project,	Sep - 09	Construction Completion Package.	
9. Complete 1 Lab Upgrade Project	Sep - 09	Construction Completion Package	MO-924 Demolished

Program Milestone	Date	Completion Evidence	Performance Measure/Metric
242-A Evaporator Upgrades and Life Extension Installation and Testing Complete	Sep – 11	Construction Completion Package	Procure 3 Spare 242-A Pumps, Complete 242-A Exhaust System (2 exhaust blowers and 3 Filter Trains) Design and Procurement, Complete 242-A Exhaust System (2 exhaust fans and 3 Filter Trains and asbestos abatement) installation and testing, Procure and install 242-A Instrument Upgrades (~88 Instruments), Procure 242-A Spare Parts (backlogged spare parts and critical spares).
1. Procure 3 Spare 242-A Pumps	Sep – 10	Award Purchase Order	
2. Complete 242-A Exhaust Design and Procurement	July– 10	Award Purchase Order	
3. Complete 242-A Exhaust installation and testing	Dec– 10	Construction Completion Package	
4. Procure and install 242-A Instrument Upgrades	Sep – 10	Construction Completion Package	
5. Procure 242-A Spare Parts	Dec – 10	Award Purchase Order	
6 . Complete Process Condensate (PC 5000) Leak Detection Replacement	Sep – 10	Construction Completion Package	Installation Complete
7. Complete PB-1 Pump Refurbishment	Sep – 10	Construction Completion Package	Refurbishment Complete
8. Complete 242-A Evaporator TBX-1 Replacement	Sep 30, 2011	Construction Completion Package	Panel Replaced
9. Complete Decontamination of the Condenser Room	Dec – 09	Construction Completion Package	Decontamination Complete
10. Complete Condenser Room Ductwork Asbestos Abatement & Replacement	Oct - 10	Construction Completion Package	Work Package Closed.
11. 242-A Evaporator Compressors	Sep – 09	Construction Completion Package	Installation/ Startup & Testing of new compressors completed.
12. 242-A Raw Water Service Building Upgrade	Feb -10	Construction Completion Package	Pressure control valves are installed and installation testing is complete.

Program Milestone	Date	Completion Evidence	Performance Measure/Metric
Single Shell Tank (SST) Life Extension, 1. Replace Radial Filters (~100) 2. Remove Obsolete Equipment (salt well pumping equip) 3. Complete Electrical System Upgrades	Sep - 11 Aug - 11 Aug - 11 Aug - 11	Construction Completion Package Construction Completion Package Construction Completion Package Construction Completion Package	Replace Radial Filters (~100), Remove Obsolete Equipment (salt well pumping equip) includes 16 PIC Skids and 3 Dilution Tanks. Complete Electrical System Upgrades.
Effluent Treatment Facility Upgrades	Sep - 11		
1. Testing glass formulations for Technetium retention	Sep - 11	Issuance of Final Report	Testing performed to support glass formulation for contaminate (e.g., Tc) retention
2. Short term leaching tests of grout formulations to solidify ETF waste streams	Sep - 11	Issuance of Final Report	Performance of short term leaching studies on grout formulations to demonstrate compliance with IDF waste acceptance requirements.
Waste Feed Delivery - Strategic Planning - Process control flow sheet complete for first 3 WTP Feed Tanks	Sep - 11	Strategy included in PMB update	1 strategy PMB inputs package including work scope, schedule, and costs
1. Updated WFD system specifications	May - 10	Update DST/WFD system Specifications	Update and Issue 1 DST system spec and 4 subsystem specification for DSTs
2. WFD OR Model with RAMI	Feb - 11	Complete WFD RAMI Assessment	Perform 2 Model Runs, Issue One Assessment Document
3. Process control flow sheet complete for first 3 WTP Feed Tanks.	Sep - 11	Approved flow sheet for 3 WTP Feed Tanks	Perform 3 FS Model Runs, Issue 3 Flow sheet documents
Waste Feed Delivery - Pre-Design/Design Activities for WFD	Sep - 11		
1. AW Infrastructure 30% design complete	Aug - 10	Transmittal of 30% design package from AE	Completion of Preliminary Design Package consisting of

Program Milestone	*Date	Completion Evidence	Performance Measure/Metric
			preliminary P&IDs, process flow diagram, electrical one-lines, and layout drawings.
2. AW Infrastructure design complete	Sep - 11	Approved design as evidenced by Design Review Report	Design package consisting of drawings, procurement and construction specifications, and supporting calculations.
Waste Feed Delivery - In-Farm Field Work - SL-177/SN-277 and SL-180/SN-280 Transfer Lines Upgrades - Construction Complete Documentation	Aug - 11	Approved Construction Completion Document	Installation of approximately 150 feet of transfer piping in SY Tank Farm.
1. 90% design complete	Dec - 09	Transmittal of 90% design package from AE	Design package consisting of drawings, procurement and construction specifications, and supporting calculations.
2. Piping procurement complete	Jun - 10	Receipt inspection documentation	Receipt of approximately 150 feet of transfer piping.
Waste Feed Delivery - In-Farm Field Work - SN-278/SN-279 and SN-285/SN-286 Transfer Lines Upgrades Construction Complete	Aug - 11	Approved Construction Completion Document	Installation of approximately 375 feet of transfer piping in SY Tank Farm.
1. 90% design complete	Mar - 10	Transmittal of 90% design package from AE	Design package consisting of drawings, procurement and construction specifications, and supporting calculations.
2. Piping procurement complete	Sep - 10	Receipt inspection documentation	Receipt of approximately 375 feet of transfer piping.
Waste Feed Delivery - In-Farm Field Work - AZ-1 Condensate Line Upgrade - Work Package Complete	Feb - 11	Approved Construction Completion Document	Install approximately 320 ft. of condensate line between the AZ-301 Condensate Receiver Tank and Tank 241-AZ-101
Waste Feed Delivery - In-Farm Field Work - AW COB Isolation-Work Package Complete	May - 11	Approved Construction Completion Document	Deactivation, isolation, and removal of Clean Out Boxes 3, 5, and 7 from AW Tank Farm.
Waste Feed Delivery - AW D&D (SHMS-GCS)	Sep - 10	Construction Completion Package	Equipment to be removed includes: a) The Gas Characterization System (GCS) instrumentation cabinet and associated instruments b) The Standard Hydrogen Monitoring System (SHMS) cabinet and associated

Program Milestone	Date	Completion Evidence	Performance Measure/Metric
			instrumentation
Waste Feed Delivery - SY-102 D&D (SHMS-GMS)	Sep - 10	Construction Completion Package	Equipment to be removed includes: a) A Gas Monitoring System (GMS) instrumentation cabinet and associated instruments b) A Standard Hydrogen Monitoring System (SHMS) cabinet and associated instrumentation
Waste Feed Delivery - Tank Waste Mixing for Sampling Demo - Completed Small Scale Demo and Submit Report to DOE-ORP	Jun - 11		
1. Complete small scale mixing demonstration and submit draft report to DOE-ORP	Sep - 10	Transmittal letter and draft small scale mixing demo report	Performance and documentation of four mixing demonstrations
2. Complete test loop demonstration and submit draft report to DOE-ORP	Jan - 11	Transmittal letter and draft test loop demonstration report	Performance and documentation of tests of four simulant variations
3. Complete small scale sampling demonstration and submit draft report to DOE-ORP	Jun - 11	Transmittal letter and draft small scale sampling demonstration report	Performance and documentation of tests for two sampling configurations
Waste Feed Delivery - Complete Mixer Pump Design	Mar - 11	Vendor transmittal of completed mixer pump design.	Approved vendor mixer pump design
1. Complete Mixer Pump procurement specification update	Dec - 09	Approved mixer pump procurement specification	Generic mixer pump procurement specification to support subcontract solicitation.
2. ORP approval of Mixer Pump procurement	May - 10	ORP authorization to award subcontract	
3. Place Mixer Pump design subcontract	May - 10	Subcontract signed with vendor	Completed pump fabrication subcontract
4. Complete Vendor Mixer Pump design	Mar - 11	Vendor transmittal of completed mixer pump design.	Approved vendor mixer pump design

Program Milestone	*Date	Completion Evidence	Performance Measure/Metric
Integrated, Acceptance Testing Complete on a Full-Scale Wiped Film Evaporator System	Sep - 11	Full Scale Testing and Acceptance Completion Package	
1. Complete DST and SST Pilot Scale development testing.	Sep - 10	Test Completion Report	

* Dates represent completion by the end of the month indicated.