

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			1. CONTRACT ID CODE	PAGE OF PAGES 1 26
2. AMENDMENT/MODIFICATION NO. M109	3. EFFECTIVE DATE See block 16c	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)	
6. ISSUED BY U.S. Department of Energy Richland Operations Office P. O. Box 550, MSIN A7-80 Richland, WA 99352		7. ADMINISTERED BY (If other than Item 6) Same as item 6. DOE Contracting POC: J. J. Short (509) 376-2882		
8. NAME AND ADDRESS OF CONTRACTOR (No. Street, county, State and ZIP: Code) Washington Closure Hanford LLC (WCH) 2620 Fermi Avenue Richland, Washington 99354		9A. AMENDMENT OF SOLICITATION NO. <input checked="" type="checkbox"/>		
		9B. DATED (SEE ITEM 11)		
		10A. MODIFICATION OF CONTRACT/ORDER NO. DE-AC06-05RL14655		
		10B. DATED (SEE ITEM 13) 03/23/05		
CODE	FACILITY CODE			

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 one (1) copy 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 ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATA 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 data specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

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


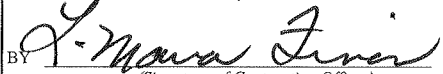
<input checked="" type="checkbox"/>	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
<input type="checkbox"/>	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
<input type="checkbox"/>	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
<input checked="" type="checkbox"/>	D. OTHER Specify type of modification and authority) Mutual agreement of the parties

E. IMPORTANT: Contractor is not, is required to sign this document and return 2 copies to the issuing office.

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

A. The purpose of this modification is to revise Section H, "Special Contract Requirements" clause H.9 "Stop-Work and Shutdown Authorization." Pages H-i, H-ii, H-8 to H-29 are replaced by the revised pages H-i, H-ii, H-8 to H-30 as attached

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

15A. NAME AND TITLE OF SIGNER (Type or print) C. G. Spencer, President		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) L. Maria Finar Contracting Officer	
15B. CONTRACTOR/OFFEROR  (Signature of person authorized to sign)	15C. DATE SIGNED 5/18/09	16B. UNITED STATES OF AMERICA BY  (Signature of Contracting Officer)	16C. DATE SIGNED 18 May 09

PART I - THE SCHEDULE
SECTION H
SPECIAL CONTRACT REQUIREMENTS

TABLE OF CONTENTS

H.1	INCUMBENT EMPLOYEES HIRING PREFERENCES.....	1
H.2	PAY AND BENEFITS.....	1
H.3	LABOR RELATIONS.....	4
H.4	WORKFORCE RESTRUCTURING.....	4
H.5	DETERMINATION OF APPROPRIATE LABOR STANDARDS.....	5
H.6	WORKERS' COMPENSATION.....	5
H.7	IMPLEMENTATION OF THE HANFORD SITE STABILIZATION AGREEMENT.....	6
H.8	RADIOLOGICAL DOSIMETRY SERVICES AND RECORDS, AND OCCUPATIONAL MEDICAL SERVICES AND RECORDS.....	8
H.9	STOP-WORK AND SHUTDOWN AUTHORIZATION.....	8
H.10	CONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATION OR ALLEGED VIOLATIONS, FINES, AND PENALTIES.....	11
H.11	ALLOCATION OF RESPONSIBILITIES FOR CONTRACTOR ENVIRONMENTAL COMPLIANCE ACTIVITIES.....	11
H.12	ENVIRONMENTAL RESPONSIBILITY.....	12
H.13	SELF-PERFORMED WORK.....	13
H.14	EMERGENCY CLAUSE.....	13
H.15	ADVANCE UNDERSTANDING ON COSTS.....	14
H.16	PAYMENTS AND ADVANCES.....	14
H.17	FINANCIAL MANAGEMENT SYSTEM REQUIREMENTS.....	16
H.18	INVOICED AMOUNTS.....	17
H.19	ALTERNATIVE DISPUTE RESOLUTION (ADR).....	18
H.20	LITIGATION MANAGEMENT PLAN.....	18
H.21	ADMINISTRATION OF SUBCONTRACTS.....	19

H.22	DISPOSITION OF INTELLECTUAL PROPERTY – FAILURE TO COMPLETE CONTRACT PERFORMANCE	19
H.23	PRIVACY ACT SYSTEMS OF RECORDS	19
H.24	OTHER GOVERNMENT CONTRACTORS	20
H.25	KEY PERSONNEL	20
H.26	RESPONSIBLE CORPORATE OFFICIAL	22
H.27	MENTOR-PROTÉGÉ PROGRAM	22
H.28	SMALL BUSINESS SUBCONTRACTING FEE REDUCTION	22
H.29	LOBBYING RESTRICTION (ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 2003)	23
H.30	NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS – SENSE OF CONGRESS	23
H.31	RESERVED	23
H.32	SPECIAL VOLUNTARY RETIREMENT PROGRAM (SVRP) PAYMENT AUTHORIZATION	23
H.33	OTHER CONTRACTORS	24
H.34	EXCLUSIVE BENEFIT OF CONTRACTING PARTIES	25
H.35	SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (APR 2009)	26
H.36	MODIFICATION DEFINITIZATION	28
H.37	BASELINE AND REPORTING REQUIREMENTS FOR WORK PERFORMED UNDER THE RECOVERY ACT	28

of pay, daily and weekly number of hours worked, and dates and hours of the day within which work was performed, deductions made, and amounts for wages and other compensation covered by Paragraphs (c) (d) (e) (f) and (g) hereof. The Contractor agrees to make these records available for inspection by the Contracting Officer and will permit him/her to interview employees during working hours on the job.

- (i) The Contractor agrees to insert the provisions of this clause including this Paragraph (k) in all subcontracts for the performance of work subject to the Davis-Bacon Act.

A copy of the Hanford Site Stabilization Agreement is located at:

<http://www.hanford.gov>

The Department of Labor wage determinations for the Davis-Bacon Act and Service Contract Act are located at:

<http://www.wdol.gov>

H.8 RADIOLOGICAL DOSIMETRY SERVICES AND RECORDS, AND OCCUPATIONAL MEDICAL SERVICES AND RECORDS

- (a) The Contractor shall obtain radiological dosimetry services and occupational medical services as a mandatory Hanford Site Service for all Contractor and subcontractor employees performing hazardous work that may expose workers to chemical, physical (including radiological), biological, and/or similar hazards. The Contractor shall identify required radiological dosimetry and occupational medical services as required by Section C.4, *Government-Furnished Services and Information (GFS/I)*.
- (b) Radiological dosimetry services are a mandatory Hanford Site Service under this Contract and are provided by the Pacific Northwest National Laboratory (PNNL). Radiological dosimetry services include: external dosimetry; in vivo measurement services; in vitro measurement services; and radiological records services. The Section I clause entitled *Access to and Ownership of Records* is implemented as follows with respect to radiological records: All radiological exposure records generated during the performance of Hanford-related activities will be maintained by PNNL and are the property of DOE.
- (c) Occupational medical services are a mandatory Hanford Site Service under this Contract and are provided by the Hanford Site Occupational Medical Contractor (HSOMC). The Section I clause entitled *Access to and Ownership of Records* is implemented as follows with respect to occupational medical records: All occupational medical records generated during the performance of Hanford-related activities will be maintained by the Hanford Site occupational medical services provider and are the property of DOE.

H.9 STOP-WORK AND SHUTDOWN AUTHORIZATION

- (a) Definitions:

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

Adversely Affects Safe Operation of Facility or Serious Facility Damage: A condition, situation, or activity that if not terminated or mitigated could reasonably be expected to

result in: nuclear criticality; facility fire/explosion; major facility or equipment damage or loss; or, a facility evacuation response.

Stop Work Criteria:

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

(b) DOE Stop Work Order.

In accordance with Section I, *Contract Clause*, I.143, DEAR 970.5223-1 *Integration of Environment, Safety, and Health into Work Planning and Execution* the DOE Contracting Officer has the ability to issue a DOE Stop Work Order stopping work in whole or in part if:

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

In addition, a DOE Stop Work Order can be initiated if the Stop Work Criteria as defined in Section H.9 (a) is met dependent on the severity and extent of the condition.

The DOE Stop Work Order shall be executed in accordance with Section F, *Deliverables or Performance*, F.3 FAR 52.242-15, STOP-WORK ORDER

(c) DOE Stop Work Action.

DOE personnel provide safety oversight of contractor operations and have the authority to initiate a DOE Stop Work Action if the Stop Work Criteria as defined in Section H.9 (a) is met. DOE personnel have the authority to shutdown an entire facility, activity, or job. Following a DOE Stop Work Action the contractor shall:

1. immediately stop the identified activity or activities (up to and including entire plant shutdown);
2. place the area, activity, facility, etc. into a safe condition;
3. determine actions necessary to address the unsafe condition;
4. provide proposed corrective actions to the DOE initiator of the DOE Stop Work Action;

5. prior to restarting work, inform the DOE initiator that the corrective actions allowing for restart have been completed;
6. restart work only after the unsafe condition is mitigated and the DOE has given verbal direction to allow restart; and
7. if requested, provide DOE a Corrective Action Plan subsequent to the resumption of work in accordance with contractual requirements.

(d) Contractor Stop Work Action

1. The contractor shall establish a stop work process/procedure that:
 - a. meets the requirement of 10 CFR 851.20, *Management responsibilities and worker rights and responsibilities*
 - b. at a minimum uses the Stop Work Criteria defined in Section H.9 (a) for when a Contractor Stop Work Action is required; and
 - c. meets the tenets of the "Stop Work Policy."
2. Upon initiating a Contractor Stop Work Action the contractor shall:
 - a. immediately stop the identified activity or activities (up to and including entire plant shutdown);
 - b. place the area, activity, facility, etc. into a safe condition;
 - c. notify the DOE Facility Representative if the Contractor's Stop Work Action meets the Stop Work Criteria defined in Section H.9 (a), or notification of facility management is required for the issue;
 - d. determine actions necessary to address the unsafe condition;
 - e. restart work only after the unsafe condition is mitigated.

(e) Stop Work Policy.

The following represent the site's Stop Work Policy:

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

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

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

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

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

H.10 CONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATION OR ALLEGED VIOLATIONS, FINES, AND PENALTIES

- (a) The Contractor shall accept, in its own name, service of notices of violation (NOV) or alleged violations (NOAV) issued by Federal or State regulators to the Contractor resulting from the Contractor's performance of work under this Contract, without regard to liability. The allowability of the costs associated with fines and penalties shall be subject to the other provisions of this Contract.
- (b) The Contractor shall notify DOE promptly when it receives service from the regulators of NOV/NOAVs and fines and penalties.

H.11 ALLOCATION OF RESPONSIBILITIES FOR CONTRACTOR ENVIRONMENTAL COMPLIANCE ACTIVITIES

- (a) This clause allocates the responsibilities of DOE and the Contractor, referred to collectively as the "parties," for implementing the environmental requirements at facilities within the scope of the Contract. In this clause, the term "environmental requirements" means requirements imposed by applicable Federal, State, and local environmental laws and regulations, including, without limitation, statutes, ordinances, regulations, court orders, consent decrees, administrative orders, or compliance agreements including the *Hanford Federal Facility Agreement and Consent Order*, consent orders, permits, and licenses.
- (b) Liability and responsibility for civil fines or penalties arising from or related to violations of environmental requirements shall be borne by the party causing the violation irrespective of the fact that the cognizant regulatory authority may assess any such fine or penalty upon either party or both parties without regard to the allocation of responsibility or liability under this Contract. This contractual allocation of liability for any such fine or penalty is effective regardless of which party signs permit applications, manifests, reports, or other required documents, is a permittee, or is the named subject of an enforcement action or assessment of a fine or penalty.
- (c) Regardless of which party to this Contract is named subject of an enforcement action for noncompliance with environmental requirements by the cognizant regulatory authority, provisions of this Contract related to allowable costs will govern liability for payment of any fine or penalty. If the named subject of an enforcement action or assessment of a fine or penalty is DOE and the fine or penalty would not otherwise be reimbursable under

the allowable cost provisions of this Contract if the Contractor was the named subject of the enforcement action, the Contractor will either pay the fine or penalty or reimburse DOE (if DOE pays the fine or penalty).

H.12 ENVIRONMENTAL RESPONSIBILITY

(a) Tri-Party Agreement.

The DOE, the U.S. Environmental Protection Agency Region 10 (EPA), and the Washington State Department of Ecology (Ecology) have entered into the Hanford Federal Facility Agreement and Consent Order (referred to as the Tri-Party Agreement [TPA]) to ensure compliance with the Resource Conservation and Recovery Act and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended. The TPA sets forth certain requirements and milestones for cleanup activities at the Hanford Site. The Contractor agrees to plan and perform the work under this Contract in accordance with the TPA and achievement of current and future milestones in the TPA.

(b) Environmental Permits.

This clause addresses the following permit scenarios where: the Contractor is the sole permittee; the Contractor and DOE are joint permittees; and multiple Contractors are permittees.

- (1) Contractor as Sole Permittee. To the extent permitted by law and subject to other applicable provisions of the contract that impose responsibilities on DOE, and provisions of law that impose responsibilities on DOE or third parties, the Contractor shall be responsible for obtaining in its own name, shall sign, and shall be solely responsible for compliance with all permits, authorizations and approvals from Federal, State, and local regulatory agencies which are necessary for the performance of the work required of the Contractor under this Contract. Under this permit scenario, that Contractor shall make no commitments or set precedents that are detrimental to DOE or other Contractors. The Contractor shall coordinate its permitting activities with DOE, and with other Hanford Site Contractors which may be affected by the permit or precedent established therein, prior to taking the permit action.
- (2) Contractor and DOE as Joint Permittees. Where determined appropriate by DOE, required by law, or required by applicable regulatory agencies, DOE shall sign permits as owner or as owner/operator with the Contractor as operator or co-operator, respectively. DOE will co-sign Hazardous Waste permit applications as owner/operator where required by applicable law. In this scenario, the Contractor must coordinate its actions with DOE. DOE is responsible for timely notification to the Contractor of any issues or changes in the regulatory environment that impact or may impact Contractor implementation of any permit requirement. The Contractor is responsible for timely notification to DOE of any issues or changes in the regulatory environment that impact or may impact Contractor implementation of any permit requirement. Notification need not be in writing.
- (3) Multiple Contractors as Permittees. Where determined appropriate by DOE, in situations where multiple Contractors are operators or co-operators of operations requiring environmental permits, DOE may sign such permits as owner or co-operator and affected Contractors shall sign as operators, or co-operators. In this scenario, the Contractor must coordinate as appropriate with DOE and other Contractors affected by the permit.

(c) Financial Responsibility.

DOE agrees that if bonds, insurance, or administrative fees are required as a condition for permits obtained by Contractor under this Contract, such costs shall be allowable. In the event such costs are determined by DOE to be excessive or unreasonable, DOE shall provide the regulatory agency with an acceptable form of financial responsibility. Under no circumstances shall the Contractor or its parent be required to provide any corporate resources or corporate guarantees to satisfy such regulatory requirements.

H.13 SELF-PERFORMED WORK

- (a) Unless otherwise approved in advance by the Contracting Officer, the percentage of work which may be self-performed by the large business(es) of the Contractor team arrangement (as described in FAR 9.601), shall be limited collectively to not more than 40% of the contract value (defined as the sum of Target Cost plus Target Fee). This limitation does not apply to any small business member of the Contractor team arrangement. Unless otherwise approved in advance by the Contracting Officer, the remainder of the work to subcontractors outside of the Contractor team arrangement shall be performed through competitive procurements with an emphasis on fixed-price subcontracts.
- (b) At least 30% of the total contract value shall be performed by small business. Small business members of the Contractor team arrangement, as well as subcontractors selected after Contract award, count toward fulfillment of this requirement and other small business goals in this Contract.
- (c) The Contractor shall manage the team arrangement and the performance of work under this Contract to eliminate wherever possible, and mitigate where necessary, any potential conflicts of interest between the self-performed work by the Contractor team arrangement and the subcontracted work outside the Contractor team arrangement.
- (d) Reporting requirements to confirm compliance with these thresholds and limitations are described in Contract Section C.5.4 *Project Performance Information and Measurement*, Deliverable C.5.4.2 *Monthly Performance Report*.

H.14 EMERGENCY CLAUSE

- (a) The RL Manager or designee shall have sole discretion to determine when an emergency situation exists at the Hanford Site, except for River Protection Project facilities, affecting site personnel, the public health, safety, the environment, or security. The Manager, Office of River Protection (ORP), or designee has the discretion to determine whether an emergency situation exists under the Waste Treatment and Immobilization Plant contract and other ORP contract areas of work that might affect RL workers. In the event that either the RL or ORP Manager or designee determines such an emergency exists, the RL Manager or designee will have the authority to direct any and all activities of the Contractor and subcontractors necessary to resolve the emergency situation. The RL Manager or designee may direct the activities of the Contractor and subcontractors throughout the duration of the emergency.
- (b) The Contractor shall include this clause in all subcontracts at any tier for work performed at the Hanford Site.

H.15 ADVANCE UNDERSTANDING ON COSTS

The DOE and the Contractor will, within 60 days after Contract award, reach advance understandings regarding certain costs under this Contract. Such advance understandings enable both DOE and the Contractor to determine the allocability, allowability, and reasonableness of such costs prior to their incurrence, thereby avoiding subsequent disallowances and disputes, and facilitating prudent expenditure of public funds. It is expected that costs covered by such advance understandings will include employee travel and relocation, corporate home office, employee compensation and benefits, and facilities capital costs of money. Generally, DOE expects the incurrence of costs to be consistent with the Contractor's corporate-wide policies consistently and uniformly applied throughout its domestic operations subject to the specific limitations, conditions, and exclusions of subpart 31.2 of FAR as supplemented by Department of Energy Acquisition Regulation (DEAR) 931.2. Advance understandings will be appended to the Contract in Section J, Attachment J-6, *Advance Agreements, Personnel, and Related Costs*.

H.16 PAYMENTS AND ADVANCES

- (a) Payment of Fee Amounts. Fee payments will be made by direct payment as determined by the Contracting Officer. The Contracting Officer may offset against any such fee payment the amounts owed to the Government by the Contractor, including any amounts owed for disallowed costs under this Contract. No fee payments may be withdrawn against the payments cleared financing arrangement without prior written approval of the Contracting Officer.
- (b) Payments on Account of Allowable Costs. The Contracting Officer and the Contractor shall agree as to the extent to which payment for allowable costs or payments for other items specifically approved in writing by the Contracting Officer (e.g., negotiated fixed amounts) shall be made from advances of Government funds. When pension contributions are paid by the Contractor to the retirement fund less frequently than quarterly, accrued costs therefor shall be excluded from costs for payment purposes until such costs are paid. If pension contributions are paid on a quarterly or more frequent basis, accrual therefor may be included in costs for payment purposes, provided that they are paid to the fund within 30 days after the close of the period covered. If payments are not made to the fund within such 30-day period, pension contribution costs shall be excluded from cost for payment purposes until payment has been made.
- (c) Special Financial Institution Account Use. All advances of Government funds shall be withdrawn pursuant to a payments cleared financing arrangement prescribed by DOE in favor of the financial institution or, at the option of the Government, shall be made by direct payment or other payment mechanism to the Contractor, and shall be deposited only in the special financial institution account referred to in the Special Financial Institution Account Agreement, which is incorporated into this Contract in Section J, Attachment J-7. No part of the funds in the special financial institution account shall be commingled with any funds of the Contractor or used for a purpose other than that of making payments for costs allowable and, if applicable, fees earned under this Contract, negotiated fixed amounts, or payments for other items specifically approved in writing by the Contracting Officer. If the Contracting Officer determines the balance of such special financial institution account exceeds the Contractor's current needs, the Contractor shall promptly make such disposition of the excess as the Contracting Officer may direct.
- (d) Title to Funds Advanced. Title to the unexpended balance of any funds advanced and of any special financial institution account established pursuant to this clause shall remain in the Government and be superior to any claim or lien of the financial institution of deposit or others. It is understood that an advance to the Contractor hereunder is not a loan to

the Contractor, and will not require the payment of interest by the Contractor, and that the Contractor acquires no right, title or interest in or to such advance other than the right to make expenditures therefrom, as provided in this clause.

- (e) Financial Settlement. The Government will promptly pay to the Contractor the unpaid balance of allowable costs (or other items specifically approved in writing by the Contracting Officer) and fee upon termination of the work, expiration of the term of the Contract, or completion of the work and its acceptance by the Government after:
- (1) Compliance by the Contractor with DOE's patent clearance requirements, and
 - (2) The furnishing by the Contractor of:
 - (i) An assignment of the Contractor's rights to any refunds, rebates, allowances, accounts receivable, collections accruing to the Contractor in connection with the work under this Contract, or other credits applicable to allowable costs under the Contract;
 - (ii) A closing financial statement;
 - (iii) The accounting for Government-owned property required by the Section I clause entitled *Property*; and
 - (iv) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this Contract subject only to the following exceptions:
 - (A) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible to exact statement by the Contractor;
 - (B) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this Contract; provided that such claims are not known to the Contractor on the date of the execution of the release; and provided further that the Contractor gives notice of such claims in writing to the Contracting Officer promptly, but not more than one (1) year after the Contractor's right of action first accrues. In addition, the Contractor shall provide prompt notice to the Contracting Officer of all potential claims under this clause, whether in litigation or not (see also Section I clause entitled DEAR 952.231-71 *Insurance-Litigation and Claims*);
 - (C) Claims for reimbursement of costs (other than expenses of the Contractor by reason of any indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this Contract relating to patents; and
 - (D) Claims recognizable under the clause entitled, *Nuclear Hazards Indemnity Agreement*.
 - (3) In arriving at the amount due the Contractor under this clause, there shall be deducted:

- (i) Any claim which the Government may have against the Contractor in connection with this Contract;
- (ii) Deductions due under the terms of this Contract, and not otherwise recovered by or credited to the Government. The unliquidated balance of the special financial institution account may be applied to the amount due and any balance shall be returned to the Government forthwith;
- (iii) Claims. Claims for credit against funds advanced for payment shall be accompanied by such supporting documents and justification as the Contracting Officer shall prescribe;
- (iv) Discounts. The Contractor shall take and afford the Government the advantage of all known and available cash and trade discounts, rebates, allowances, credits, salvage, and commissions unless the Contracting Officer finds that action is not in the best interest of the Government;
- (v) Collections. All collections accruing to the Contractor in connection with the work under this Contract, except for the Contractor's fee and royalties or other income accruing to the Contractor from technology transfer activities in accordance with this Contract, shall be Government property and shall be processed and accounted for in accordance with applicable requirements imposed by the Contracting Officer pursuant to the laws, regulations, and DOE directives clause of this Contract and, to the extent consistent with those requirements, shall be deposited in the special financial institution account or otherwise made available for payment of allowable costs under this Contract, unless otherwise directed by the Contracting Officer;
- (vi) Direct Payment of Charges. The Government reserves the right, upon ten days written notice from the Contracting Officer to the Contractor, to pay directly to the persons concerned, all amounts due which otherwise would be allowable under this Contract. Any payment so made shall discharge the Government of all liability to the Contractor therefore; and
- (vii) Determining Allowable Costs. The Contracting Officer shall determine allowable costs in accordance with the Federal Acquisition Regulation Subpart 31.2 and the Department of Energy Acquisition Regulation Subpart 931.2 in effect on the date of this Contract and other provisions of this Contract.

H.17 FINANCIAL MANAGEMENT SYSTEM REQUIREMENTS

- (a) The Contractor shall operate and maintain a financial management system that:
 - (1) Conforms with Generally Accepted Accounting Principles, Federal Financial Accounting Standards, and Cost Accounting Standards, except as modified by DOE requirements;
 - (2) Provides accurate, reliable, and auditable financial and statistical data on a timely basis;
 - (3) Ensures accountability for all assets;
 - (4) Supports financial planning and budget formulation, validation, execution, and the recasting or changing of DOE funding or task codes such as Budget and

- Reporting Classification (BRC) Numbers, Program Task Numbers, and local projects/tasks;
- (5) Maintains proper funding authorization;
 - (6) Provides sufficient management controls per the Section I clause entitled *DEAR 970.5203-1 Management Controls*, and internal controls;
 - (7) Integrates and reports the financial information for subcontractors; and
 - (8) Provides all other necessary financial reports, which shall include accumulating and reporting indirect and support costs by function. The Contractor may be requested, periodically, to provide detail cost element information at the institutional level using standard definitions and applications.
- (b) The Contractor shall provide monthly electronic invoices (or data supporting payments cleared financing arrangement drawdowns), and cost accrual and accrual reversal records to the Contracting Officer. Within the electronic invoice submission, the Contractor shall provide all invoice data elements required to:
- (1) Determine that all costs invoiced by the Contractor were necessary and reasonable per the terms and conditions of the Contract. This includes, but is not limited to: invoice number, billing period, Work Breakdown Structure number, purchase order number and line item, quantity/hours, description of goods or services provided, cost type, cost categories, unit price, amount, and adders.
 - (2) Properly record all Contract costs and payments in the DOE accounting system. This includes, but is not limited to: Reporting Entity, Financial Plan, Local Organization, Fund-Code, Control Program Number (i.e., Budget and Reporting Numbers), Program Task Number, Project Baseline Summaries (PBS) numbers, the fiscal year the funds were provided, the project/task number, Object Class, sub-object classes, Other Party Identifiers, and Budget Reference Numbers for plant and equipment line item number (if applicable).
- Upon request, the Contractor shall also provide written documentation to support the electronic invoices to the Contracting Officer or his designate.
- (c) Centralized Business Management System (BMS) services are available from the assigned provider on a cost reimbursable basis. If a determination is made that said services will not be used, the Contracting Officer shall be notified within 60 days after Contract award. DOE reserves the right to direct utilization of Central BMS services at any time.
 - (d) The Contractor shall submit a plan for Contracting Officer approval of any substantive change to the financial management system or subsystems at least 60 days in advance of implementation. This plan must identify the cost and schedule for changing from the existing financial systems, and provide a comparison of the capabilities of the new system(s) to the existing system(s). Any new system modifications are subject to review and audit.

H.18 INVOICED AMOUNTS

In addition to the information required by other sections of this Contract, the Contractor shall provide incurred cost data coded in a DOE defined format via computer. This incurred cost data must be fully edited against DOE codes such as BCR codes. The Contractor shall deliver the

fully edited incurred cost data to DOE on the same day the payment is requested unless directed otherwise by DOE.

H.19 ALTERNATIVE DISPUTE RESOLUTION (ADR)

- (a) The DOE and the Contractor both recognize that methods for fair and efficient resolution of significant disputes are essential to the successful and timely achievement of critical milestones and completion of all Contract requirements. Accordingly, the parties agree to jointly select a "standing neutral." The standing neutral will be available to help resolve disputes as they arise. Such standing neutral can be an individual, a board comprised of three independent experts, or a company with specific expertise in the Contract area. If a standing neutral cannot be agreed upon, the DOE Office of Dispute Resolution will make a selection. Specific joint ADR processes shall be developed.
- (b) The parties agree the following provision may be invoked for significant disputes upon mutual agreement of the DOE and the Contractor:
 - (1) DOE and the Contractor shall use their best efforts to informally resolve any dispute, claim, question, or disagreement by consulting and negotiating with each other in good faith, recognizing their mutual interests, and attempting to reach a just and equitable solution satisfactory to both parties. If any agreement cannot be reached through informal negotiations within 30 days after the start of negotiations, then such disagreement shall be referred to the standing neutral, pursuant to the jointly-developed ADR procedures.
 - (2) The standing neutral will not render a decision, but will assist the parties in reaching a mutually satisfactory agreement. In the event the parties are unable after 30 days to reach such an agreement, either party may request, and the standing neutral will render, a non-binding advisory opinion. Such opinion shall not be admissible in evidence in any subsequent proceedings.
- (c) If one party to this Contract requests the use of the process set forth in Paragraphs b(1) and b(2) of this clause and the other party disagrees, the party disagreeing must express its position in writing to the other party. On any such occasion, if the party requesting the above process wishes to file a claim under the Section I clause entitled *Disputes*, it must do so within 30 days of receipt of the written position from the other party.

H.20 LITIGATION MANAGEMENT PLAN

- (a) The Contractor shall maintain a legal function to support litigation, arbitration, environmental issues, procurement, employment, labor, and the Price-Anderson Amendments Act. The Contractor shall provide sound litigation management practices. Within 60 days of contract award, the contractor shall provide a Litigation Management Plan (Deliverable H.20 as shown in Section C Statement of Work) compliant with 10 CFR § 719.
- (b) As required by the Contracting Officer, the Contractor shall provide support to the Government on regulatory matters, third-party claims, and threatened or actual litigation. Support includes, but is not necessarily limited to: case preparation, document retrieval, review and reproduction, witness preparation, expert witness testimony, and assistance with discovery or other information requests responsive to any legal proceeding.

H.21 ADMINISTRATION OF SUBCONTRACTS

- (a) The administration of all subcontracts entered into and/or managed by the Contractor, including responsibility for payment hereunder, shall remain with the Contractor unless assigned at the direction of DOE.
- (b) The Government reserves the right to direct the Contractor to assign to the Government or another Contractor any subcontract awarded under this Contract.
- (c) The Contractor agrees to accept transfer of existing subcontracts as determined necessary by DOE for continuity of operations. The Contractor shall attempt to negotiate changes to the assigned subcontracts incorporating mandatory flow-down provisions at no cost. If the subcontractor refuses to accept the changes or requests price adjustments, the Contractor will notify the Contracting Officer in writing.

H.22 DISPOSITION OF INTELLECTUAL PROPERTY – FAILURE TO COMPLETE CONTRACT PERFORMANCE

The following provisions shall apply in the event the Contractor does not complete Contract performance for any reason:

- (a) Regarding technical data and other intellectual property, DOE may take possession of all technical data, including limited rights data and data obtained from subcontractors, licensors, and licensees, necessary to complete the project, as well as the designs, operation manuals, flowcharts, software, information, etc., necessary for performance of the work, in conformance with the purpose of this Contract. Proprietary data will be protected in accordance with the limited rights data provisions of the Rights in Data-Facilities clause.
- (b) The Contractor agrees to and does hereby grant to the Government an irrevocable, non-exclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice by the Contractor, and any other intellectual property, including technical data, which are owned or controlled by the Contractor, at any time through completion of this Contract and which are incorporated or embodied in the construction of the facilities or which are utilized in the operation or remediation of the facilities or which cover articles, materials or products manufactured at a facility: (1) to practice or to have practiced by or for the Government at the facility; and (2) to transfer such license with the transfer of that facility. The acceptance or exercise by the Government of the aforesaid rights and license shall not prevent the Government at anytime from contesting the enforceability, validity or scope of, or title to, any rights or patents or other intellectual property herein licensed.
- (c) In addition, the Contractor will take all necessary steps to assign permits, authorizations, leases, and any licenses in any third party intellectual property for operations,
- (d) remediation and closure of the facilities to DOE or such other third party as DOE may designate.

H.23 PRIVACY ACT SYSTEMS OF RECORDS

- (a) The Contractor shall design, develop, or adopt the following systems of records on individuals to accomplish an agency function pursuant to the contract clause entitled "Privacy Act."

<u>System No.</u>	<u>Title</u>
DOE-5	Personnel Records of Former Contractor Employees

DOE-11	Emergency Locator Records
DOE-13	Payroll & Locator Records
DOE-14	Report of Compensation
DOE-15	Payroll & Pay-Related Data for Employees of Terminated Contractors
DOE-23	Richland Property System
DOE-28	General Training Records
DOE-31	Firearms Qualifications Requirements
DOE-32	Gov't Motor Vehicle Operator Records
DOE-33	Personnel Medical Records
DOE-35	Personnel Radiation Exposure Records
DOE-40	Contractor Employees Insurance Claims
DOE-43	Personnel Security File
DOE-47	Security Investigations
DOE-51	Employee and Visitor Access Control Records
DOE-53	Access Authorization for ADP Equipment
DOE-58	General Correspondence Files

- (b) The above list shall be revised from time to time by mutual agreement between the Contractor and the Contracting Officer as necessary to keep it current. A formal modification to the contract is not required to incorporate these revisions; but the revisions become effective upon mutual agreement of the parties. The mutually agreed upon revisions shall have the same effect as if actually listed above for the purpose of satisfying the listing requirement contained in paragraph (a)(1) of the contract clause entitled "Privacy Act." The revisions will be formally incorporated per the next annual contract update modification, unless added sooner by the Contracting Officer.

H.24 OTHER GOVERNMENT CONTRACTORS

The Government may undertake or award other contracts for additional work or services. The Contractor agrees to fully cooperate with such other Contractors and Government employees and carefully integrate its own work to such other work as may be directed by the Contracting Officer. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other Contractor or by Government employees. If DOE determines that the Contractor's activities may interfere with another DOE Contractor, the Contracting Officer shall so notify the Contractor and the Contractor shall comply with any instructions the Contracting Officer may provide.

H.25 KEY PERSONNEL

- (a) Key Personnel are considered to be essential to the work being performed on this Contract. Prior to diverting to other positions or substituting any of the specified Key individuals, or proposing them as a Key Person under another Contract, the Contractor shall notify the Contracting Officer in writing at least thirty (30) days in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the work being performed under this Contract. No diversion or substitution shall be made by the Contractor without the written consent of the Contracting Officer, provided that the Contracting Officer may ratify in writing such diversion or substitution and such ratification shall constitute the consent of the Contracting Officer required by this clause. Unless approved in writing by the Contracting Officer, no Key Personnel position will remain unfilled by a permanent replacement for more than 60 days. The Key Personnel list shall be amended during the course of the Contract to add or delete Key Personnel as appropriate and approved by the Contracting Officer.
- (b) Anytime the overall RCC Project Manager is replaced or removed for any reason under the Contractor's control within two (2) years of being placed in the position, Earned and

Interim Fee will be reduced by \$1,000,000. In addition, each time any of the other Key Personnel proposed (except the Transition Manager) are replaced or removed for any reason under the Contractor's control within two (2) years of being placed in the position, Earned and Interim Fee will be reduced by \$500,000 for each removed or replaced individual.

- (c) The Contractor may request, in writing, that the Contracting Officer waive all or part of a reduction, if special circumstances exist. The Contracting Officer shall have sole unilateral discretion to waive or not waive all or part of a reduction.

The following is a list of Key Personnel for this Contract:

Name	Position
Charles Spencer	Project Manager
Raymond Skwarek	SQH Manager
Bobby Smith	D4 Closure/Reactor ISS Closure Manager
Thomas A. Foster	Field Remediation Closure Manager
Bruce Covert	Waste Operations Manager
Thomas Wintczak	Project Integration Manager
Tony Harris	Project Services Manager
Wayne Johnson	Environmental Protection Manager

H.26 RESPONSIBLE CORPORATE OFFICIAL

The Contractor shall provide a Guarantee of performance from its parent company in the form set forth in Section J, Attachment J-3. If the Contractor is a joint venture, newly-formed Limited Liability Company (LLC), or other similar entity where more than one company is involved in a business relationship created for the purpose of this procurement, the parent companies of all the entities forming the new entity shall all provide Guarantees, which Guarantees shall provide for joint and severable liability for the performance of the Contractor. In the event any of the signatories to the Guarantee of performance enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer. Notwithstanding the provisions of this clause, the Government may contact, as necessary, the single responsible corporate official identified below, who is at a level above the Contractor and who is accountable for the performance of the Contractor, regarding Contractor performance issues.

Name: William G. Poulson
Position: Executive Vice President of Performance Assurance
Company/Organization: Energy & Environment Business Unit
URS Corporation/Washington Division
Address: 106 Newberry St. SW, Aiken, SC 29801
Phone: 803-208-3205
Facsimile: 803-502-9795
Email: William.Poulson@wgint.com

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

H.27 MENTOR-PROTÉGÉ PROGRAM

- (a) Both the DOE and the Small Business Administration (SBA) have established Mentor-Protégé Programs to encourage Federal prime contractors to assist small businesses, firms certified under Section 8(a) of the Small Business Act by the SBA, other small disadvantaged businesses, women-owned small businesses, Historically Black Colleges and Universities and Minority Institutions, other minority institutions of higher learning, and small business concerns owned and controlled by service disabled veterans in enhancing their business abilities. Within 90 days of contract award and continuing throughout the Contract period of performance, the Contractor shall mentor at least one active Protégé company through the DOE and/or SBA Mentor-Protégé Programs. Mentor and Protégé firms will develop and submit "lessons learned" evaluations to DOE at the conclusion of the contract.
- (b) DOE Mentor-Protégé Agreements shall be in accordance with Department of Energy Regulation (DEAR) 919.70.
- (c) SBA Mentor-Protégé Agreements shall be in accordance with applicable SBA regulations.

H.28 SMALL BUSINESS SUBCONTRACTING FEE REDUCTION

The Small Business Subcontracting Plan, incorporated into this Contract as Section J, Attachment J-4, contains percentage goals for awarding of subcontracts to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns. The Contractor also agrees, as a part of this Contract, to have in place, with one or more small businesses, a Mentor-Protégé program. The

Contractor's performance in meeting these goals, and supporting protégé(s) in a Mentor-Protégé agreement(s), will be evaluated at the following milestones:

- End of Third Year of Contract Performance;
- End of Sixth Year of Contract Performance; and
- End of Contract.

If, at each one of these milestones, the Contractor has not met any or all of these subcontracting goals for that milestone period, or has failed to support a protégé during that period, the Contracting Officer may reduce the final fee amount by an amount up to \$3 Million for each milestone up to a total reduction of otherwise earned fee for the contract in the amount of \$9 Million. The reduction amount shall be at the unilateral discretion of the Contracting Officer. The dollar amount of each such reduction shall be a permanent reduction in the total fee paid under this contract. For the first two milestone periods, if it has been determined that the Contractor has failed to meet such goals, or failed to have a Mentor-Protégé Program, upon establishment of an appropriate fee reduction amount for that period, the ensuing provisional fee payments shall be reduced proportionally during the next milestone period until the full milestone reduction amount has been achieved. 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 FAR 52.219-16, Liquidated Damages – Subcontracting Plan. Any reduction for failure to meet the Mentor-Protégé Program shall be in addition to any liquidated damages under FAR 52.219-16. For the purpose of implementing this clause, the percentage goals initially established in the Contractor's Small Business Subcontracting Plan will remain in effect for the duration of the contract period.

H.29 LOBBYING RESTRICTION (ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 2003)

The Contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence Congressional action on any legislation or appropriation matters pending before Congress, other than communication to Members of Congress as described in 18 USC 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

H.30 NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS – SENSE OF CONGRESS

It is the sense of Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

H.31 RESERVED

H.32 SPECIAL VOLUNTARY RETIREMENT PROGRAM (SVRP) PAYMENT AUTHORIZATION

The Contractor, Washington Closure Hanford, LLC (WCH), is authorized to reimburse, as an allowable cost, monthly payments associated with the 1996 Special Voluntary Retirement Program (SVRP) for Mr. Theodore A. Curran and Mr. Kenneth R. Porter. The monthly payments will be equal to the enhancement portion of the SVRP. As of February 1, 1997, these amounts are \$523.66 for Mr. Curran and \$752.98 for Mr. Porter. The exact amounts are to be determined by the Plan Administrator based on the actual retirement date and the joint and survivor annuity option as selected by the individuals. Each monthly payment will continue until: (1) the month immediately preceding the month each individual receives his first payment of an enhanced benefit from the Hanford Pension Plan; or (2) the month of his death or his spouse's death,

whichever is later. The Contractor shall make such payments, as allowable costs, for the terms of the contract only. Any costs related to these payments, such as administration, employer taxes, etc., are also considered allowable. The Department of Energy (DOE) will incorporate provisions in successor contracts for continuation of said payments as allowable costs. In the event there is no successor contractor, DOE will make such payments directly to the above individuals based on the conditions herein.

Payment of the above amounts may be found to be included as part of the Hanford Pension Plan, should the Internal Revenue Service (IRS) rule that such payments are qualified under the Hanford Pension Plan. A ruling by the IRS qualifying such payment under the Hanford Pension Plan will negate the monthly payments by WCH, successor contractors or the DOE.

SVRP Payments are excluded from both the target cost and target fee amounts and will be reimbursed on a cost, no fee basis. In addition, such costs will be excluded from all Cost Performance Incentive Fee payments and calculations under Section B and elsewhere in this contract. The contractor understands, however, that the pension cost for SVRP Payments will not be separately funded and is included in the funding amounts shown in the Funding Profile, Section J, Attachment J-11, entitled *RCC Funding Profile*.

H.33 OTHER CONTRACTORS

The Contractor may, from time to time, provide products and/or services to and receive products and/or services from other Hanford Prime Contractors by Memoranda of Agreement (MOA). An MOA is used to establish a solid framework for providing work between Prime Contractors, to clarify the responsibilities and processes, and to create consistency among the Parties. The MOA will include standard definitions, work request elements, generalized decision analysis, and a rigorous dispute resolution process. The use of an MOA, and/or the use of any term contained within, does not create a subcontractor or supplier relationship.

Products and/or services provided to other Prime Contractors shall have no impact on contractual target cost or fee and shall not relieve the Contractor of any performance requirement of this contract.

Those products and/or services that the Prime Contractor chooses to use or those DOE directs the Prime Contractor to use for performance of this Contract, shall be costed and reimbursed under the terms of this Contract in accordance with Attachment J-13, Hanford Site Services.

When products and/or services between Prime Contractors are offered and accepted, DOE does not expect the requesting Prime Contractor to review or otherwise validate top-level crosscutting quality control, health, safety and/or environmental protection requirements mandated by the performing Contractor's prime contract. The requesting prime contractor may assume that such contract requirements, e.g., Integrated Safety Management System, Quality Program/Plan are acceptable to DOE.

The Prime Contractor requesting products and/or services, however, is responsible for oversight of requirements related to the specific work task(s) to ensure that the performing Prime Contractor delivers a product or service that will meet the requirements of the requesting Prime Contractor. When ordering products and/or services from a Prime Contractor source, the requesting Prime Contractor can use and rely on existing information from DOE or the performing Prime Contractor to develop and implement oversight protocols, using a graded approach, that are appropriate to the relevant task. The performing Prime Contractor will be expected by DOE and the requesting Prime Contractor to provide products and/or services in a manner that is consistent with the requirements of the performing Prime Contractor's prime contract, including quality assurance, health and safety and environmental compliance requirements, and the task instructions provided by the requesting Prime Contractor. Potential conflicts, questions, and/or

issues that may be unclear or otherwise confusing should be discussed and resolved by both parties in advance.

The requesting Prime Contractor is obligated to provide sufficient specifications, requirements, hazard information and unique quality, technical, safety and environmental requirements for the work to be performed. The performing Prime Contractor is expected to seek clarification of requirements that conflict with, or are greater than, its own baseline requirements.

The requesting Prime Contractor will notify the performing Prime Contractor of issues regarding the products and/or services provided by the performing Prime Contractor, including issues relative to delivery of specific products and/or services or the quality of the specific products and/or services provided. The Prime Contractors should work together to resolve these issues promptly. DOE should be promptly notified if the issue remains unresolved. For outstanding issue resolution, DOE senior management should involve the contractor principals, or designees, to quickly provide resolution.

The performing Prime Contractor should operate in accordance with the requirements of its prime contract, including but not limited to, requirements associated with environmental compliance, safety, health, and quality, in executing the specific activities identified by the requesting Prime Contractor as well as meeting any specific requirements identified and required by the requesting Prime Contractor. If meeting the requested requirements would be inconsistent with the performing Prime Contractor's prime contract with DOE, then the conflict should be brought to the attention of DOE and resolution developed prior to performance of the work.

H.34 EXCLUSIVE BENEFIT OF CONTRACTING PARTIES

This Contract and each and every term of this Contract is intended for the exclusive benefit of the Parties, and not for the benefit of any third party. Nothing contained in this Contract shall be construed to grant, vest, or create any right of action in any party not a party to this contract.

H.35 SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (APR 2009)

Preamble:

Work performed under this contract will be funded, in whole or in part, with funds appropriated by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (Recovery Act or Act). The Recovery Act's purposes are to stimulate the economy and to create and retain jobs. The Act gives preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds made available by it for activities that can be initiated not later than June 17, 2009.

Contractors should begin planning activities for their first tier subcontractors, including obtaining a DUNS number (or updating the existing DUNS record), and registering with the Central Contractor Registration (CCR).

Be advised that Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and related Guidance. For projects funded by sources other than the Recovery Act, Contractors should plan to keep separate records for Recovery Act funds and to ensure those records comply with the requirements of the Act.

The Government has not fully developed the implementing instructions of the Recovery Act, particularly concerning the how and where for the new reporting requirements. The Contractor will be provided these details as they become available. The Contractor must comply with all requirements of the Act. If the contractor believes there is any inconsistency between Recovery Act requirements and current contract requirements, the issues will be referred to the Contracting Officer for reconciliation.

Be advised that special provisions may apply to projects funded by the Act relating to:

- Reporting, tracking and segregation of incurred costs;
- Reporting on job creation and preservation;
- Publication of information on the Internet;
- Protecting whistleblowers; and
- Requiring prompt referral of evidence of a false claim to the Inspector General.

Definitions:

For purposes of this clause, "Covered Funds" means funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5. Covered Funds will have special accounting codes and will be identified as Recovery Act funds in the contract and/or modification using Recovery Act funds. Covered Funds must be reimbursed by September 30, 2015.

Non-Federal employer means any employer with respect to Covered Funds – the contractor or subcontractor, as the case may be, if the contractor or subcontractor is an employer; and any professional membership organization, certification of other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving Covered Funds; or with respect to Covered Funds received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor receiving the funds and any contractor or subcontractor of the State or local government; and does not mean any department, agency, or other entity of the federal government.

A. Flow Down Provision

This clause must be included in every first-tier subcontract.

B. Segregation and Payment of Costs

Contractor must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from the Recovery Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects. Where Recovery Act funds are authorized to be used in conjunction with other funding to complete projects, tracking and reporting must be separate from the original funding source to meet the reporting requirements of the Recovery Act and OMB Guidance.

Invoices must clearly indicate the portion of the requested payment that is for work funded by the Recovery Act.

C. Prohibition on Use of Funds

None of the funds provided under this agreement derived from the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

D. Wage Rates

All laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan numbered 14 of 1950 (64 Stat. 1267, 5 U.S.C. App.) and section 3145 of title 40 United States Code. See <http://www.dol.gov/esa/whd/contracts/dbra.htm> .

E. Publication

Information about this agreement will be published on the Internet and linked to the website www.recovery.gov , maintained by the Accountability and Transparency Board (the Board). The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

F. Registration requirements

Contractor shall ensure that all first-tier subcontractors have a DUNS number and are registered in the Central Contractor Registration (CCR) no later than the date the first report is due under the Section I. clause entitled "52.204-11 American Recovery and Reinvestment Act – Reporting Requirements (MAR 2009).

G. Utilization of Small Business

Contractor shall to the maximum extent practicable give a preference to small business in the award of subcontracts for projects funded by Recovery Act dollars.

H.36 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 this modification. The Contractor agrees to submit a technical, cost, and fee proposal in accordance with the instructions contained in section 9 of this modification A099.

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

<u>Action</u>	<u>Date *</u>
Contractor submits technical, cost, and fee Proposal	60 days
Commence negotiations	140 days
Mutual agreement on definitization of Recovery Act work	160 days
Contractor submits certificate of current cost or pricing data	160 days
Execute definitization contract modification	180 days

*Date is specified as the number of calendar days after this modification is signed by both parties.

(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 this modification.

(1) After the Contracting Officer's determination of price or fee, the contract shall be governed by—

- (i) All clauses required by the FAR on the date of execution of this modification for 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 modification shall continue in effect.

H.37 BASELINE AND REPORTING REQUIREMENTS FOR WORK PERFORMED UNDER THE RECOVERY ACT

This clause defines the unique requirements for the contractor's project management baseline and associated reporting requirements to address the modified contract performance requirements as implemented in Section C. Statement of Work to be performed and funded under the provisions of the American Recovery and Reinvestment Act of 2009 (Recovery Act).
Baseline Requirements

a. For purposes of this clause the "pre-definitized period" is defined as that timeframe from the date of execution of modification number A099 directing the contractor to begin the Recovery Act work until the work is definitized in accordance with the clause in Section H entitled "Modification Definitization." All requirements for plans and deliverables during the pre-definitized period shall be based on the definitization time period estimated in the "Modification Definitization" clause.

b. During the pre-definitized period, the contractor shall develop and deliver to the Contracting Officer the following:

1. Within 30 days after execution of modification no. A099, the contractor shall provide a work plan for performance of that portion of the work specified in Section C. Statement of Work expected to be performed during the 180-day period after execution of modification no. A099. This plan shall include the following:

i. Product-oriented Work Breakdown Structure (WBS) and WBS dictionary in alignment with the statement of work, as modified for the Recovery Act work, to include performance of Recovery Act work totally within distinctly defined, separately tracked and uniquely managed WBS elements;

ii. Monthly spend plan consistent with the statement of work, completely segregating the non-Recovery Act work from the Recovery Act funded portions of the statement of work;

iii. Crosswalk of statement of work WBS elements and associated planned milestones, metrics, and estimated costs (at the 80% confidence level), at the Activity Building Block (ABB) level, between the current base program/project Near-Term Baseline (NTB) and/or Out-year Planning Estimate Range (OPER) and the Recovery Act work;

iv. Milestone list including, but not limited to, major hiring actions that create newly "created" or "retained" jobs by the contractor or first tier subcontractors in accordance with the clause in Section H, entitled "Special provisions relating to work funded under American Recovery and Reinvestment Act of 2009, key starts and completions, enforceable regulatory dates, approval of key regulatory decisions, project critical decisions, delivery of critical Government Furnished Services and Items; and

v. Planned quarterly summary of jobs "created" or "retained" by the contractor and first tier subcontractors as defined in the Section H clause entitled "Special provisions relating to work funded under the American Recovery and Reinvestment Act of 2009."

2. Within 120 days after execution of modification no. A099, the contractor shall propose a Performance Baseline for the complete work specified in Section C. Statement of Work. This baseline shall use control accounts that will be made up of work packages. The WBS elements at the lowest level should roll up within the WBS structure and clearly identify the entire work to be performed. The WBS shall clearly distinguish all non-Recovery Act work from all Recovery Act work. The proposed Performance Baseline shall include the following:

i. The contractor shall propose a performance baseline, at the a high confidence level, for the work to be performed, including the pre-definitized period and the post-definitized period. This baseline shall be based upon the work and schedule included in modification no. A099 and the contractor's cost proposal. A month-by-month baseline or budgeted cost of work scheduled (BCWS)/planned value (PV) must be developed for the complete Recovery Act work. This will be the original baseline for Recovery Act work and shall include all of the work by WBS, including both the pre- and post- definitized periods, and the contractor's defined management reserve.. The sum of these three items (estimated cost for the pre-definitized period, estimated cost for the post-definitized period, and the management reserve) shall equal the contractor's proposed estimated cost for the Recovery Act work. This performance baseline is subject to independent project review and certification before approval by the government.

ii. A network logic schedule utilizing Primavera will be developed at the activity level for each control account which includes milestones. The schedule must be resource loaded and coded to allow summarization of lower level activities through the control account for the complete Recovery Act work.

iii. The proposed Performance Baseline shall also include the planned quarterly summary of jobs "created" or "retained" by the contractor and first tier subcontractors as defined in the Section H clause entitled "Special provisions relating to work funded under American Recovery and Reinvestment Act of 2009."

Deliverables supporting the Recovery Act performance baseline shall include all deliverables required under existing contract requirements, those Recovery Act deliverable and reporting requirements specified in the section H clause entitled "Special provisions relating to work funded under American Recovery and Reinvestment Act of 2009". For all common deliverables, the data shall be clearly segregated and distinguished between non-Recovery Act work and Recovery Act work, as well as summing to complete contract totals.

These documents shall be submitted to the Contracting Officer to support DOE review and baseline approval. The Contracting Officer may identify other documents as needed to support project reviews and audits.

3. The contractor shall support resolution of IPR or External Independent Review (EIR) corrective actions for the performance baseline submitted.

c. During the pre-definitized period, the contractor shall determine the budgeted cost of work performed (BCWS)/earned value (EV) for budgeted cost for work performed (BCWP)/planned value (PV) on a monthly basis utilizing measurable units associated with each activity in the schedule (e.g., square foot reduction, number of TRU shipments, foot print reduction, etc.), as appropriate, that will allow the reporting of the contractor's progress in accordance with the reporting requirements specified in the clause in Section H entitled "Special provisions relating to work funded under American Recovery and Reinvestment Act." The associated actual cost of work performed (ACWP)/actual cost (AC), cost and schedule variances and performance indices, and variance analyses shall be reported monthly. Performance against the Recovery Act performance baseline shall be tracked separately from other work under the contract funded by other appropriations.

d. Upon negotiation of the definitive modification to the contract, the performance baseline documentation submitted in accordance with paragraph b.2 above shall be revised by the contractor to reconcile cost estimates and WBS elements, if necessary, consistent with the definitive modification.

Reporting Requirements

e. Within 30 days of definitization of the Recovery Act work, the contractor shall begin reporting against the established performance baseline in accordance with the reporting requirements specified under existing contract requirements, those reporting requirements specified in the section H. clause entitled "Special provisions relating to work funded under American Recovery and Reinvestment Act of 2009". Performance against the Recovery Act work shall be tracked and reported separately from other work under the contract funded by other appropriations.

f. These reports shall be provided to the Contracting Officer on a monthly basis.

- a. Contract Performance Report (Refer to OMB No. 0704-0188 or DD FORM 2734/1, MAR 05) :Format 1 - Work Breakdown Structure, Format 3 - Baseline, and Format 5 - Explanations and Problem Analyses.
- b. A Milestone report from Primavera reflecting status of all milestones being reported with columns for the scope, original planned date, current planned date, and the actual date the milestone was completed.
- c. A funds management report by Budgeting & Reporting (B&R) codes that identifies the amount of funds obligated to the contract and the amount of funds obligated to the contractor, and committed and expended by the contractor.