

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT		1. CONTRACT ID CODE	PAGE OF PAGES 1 4
2. AMENDMENT/MODIFICATION NO. 0108	3. EFFECTIVE DATE See Block 16C	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)
6. ISSUED BY EMCBC - Carlsbad U.S. Department of Energy Carlsbad Project Office P.O. Box 3090 Carlsbad NM 88221	CODE 03003	7. ADMINISTERED BY (If other than Item 6)	CODE
8. NAME AND ADDRESS OF CONTRACTOR (No. street, county, State and ZIP Code) NUCLEAR WASTE PARTNERSHIP LLC Attn: Marty Gonzales Nuclear Waste Partnership 106 Newberry Street SW Aiken SC 29801		(x) 9A. AMENDMENT OF SOLICITATION NO.	9B. DATED (SEE ITEM 11)
CODE 968993910	FACILITY CODE	X 10A. MODIFICATION OF CONTRACT/ORDER NO. DE-EM0001971	10B. DATED (SEE ITEM 13) 04/20/2012

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 43.103(a) (3) - supplemental agreement for no-cost change to the contract
	D. OTHER (Specify type of modification and authority)

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.)

The purpose of this modification is to revise Section H of the contract by adding a new contract clause titled "H.57 - DOE-H-2073 Risk Management and Insurance Programs." See page 2.

Payment:

OR for EMCBC

U.S. Department of Energy

Oak Ridge Financial Service Center

P.O. Box 5777

Oak Ridge TN 37831

Period of Performance: 10/01/2012 to 09/30/2017

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

15A. NAME AND TITLE OF SIGNER (Type or print) Philip J. Breidenbach, President/Project Manager	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Vicki D. Snow
15B. CONT. Exemption 6	15C. DATE SIGNED 6/19/15
16B. UNITED STATES OF AMERICA Exemption 6	16C. DATE SIGNED 6/22/15

BACKGROUND:

DOE Order 350.1 establishes the responsibilities, requirements, and cost allowability criteria for the management and oversight of contractor human resource programs. In Change 5 to DOE Order 350.1 dated September 30, 2014, the Contractor Requirement Document for Chapter VII, Risk Management and Insurance Programs, is deleted from the Order. The risk management and insurance requirements for cost reimbursement contracts for management and operation of DOE facilities are now prescribed in Clause DOE-H-2073 Risk Management and Insurance in DOE Acquisition Letter AL-2015-02, dated November 24, 2014, for incorporation into the contract.

The contractor reviewed DOE Order 350.1, Chg. 5, and provided DOE an impact assessment on February 5, 2015, with no impacts to cost or schedule noted. The revised DOE Order 350.1, Chg. 5, was incorporated into the contract in Modification 107. In Modification 108, Section H is updated to incorporate the requirements by adding Clause H.57 – DOE-H-2073 Risk Management and Insurance Programs.

Since no cost and schedule impacts were identified for any changes related to incorporation of DOE Order 350.1, Chg. 5, the following release of claims is incorporated and accepted by contractor signature in Block 15.

CONTRACTOR'S RELEASE OF CLAIMS (FAR 43.204): In consideration of Modification 108 agreed to herein as a complete and equitable adjustment for the no-cost change confirmed by this modification, the Contractor hereby releases the Government from any and all liability under this contract for further equitable adjustments attributed to such facts or circumstances giving rise to this modification, with no exceptions.

CHANGES TO CONTRACT:

Section H is revised to add the clause below. Revised Section H is attached to this modification.

H.57 DOE-H-2073 Risk Management and Insurance Programs

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

1. BASIC REQUIREMENTS

- a. Maintain commercial insurance or a self-insured program, (i.e., any insurance policy or coverage that protects the contractor from the risk of legal liability for adverse actions associated with its operation, including malpractice, injury, or negligence) as required by the terms of the contract. Types of insurance include automobile, general liability, and other third party liability insurance. Other forms of coverage must be justified as necessary in the operation of the Department facility and/or the performance of the contract, and approved by the DOE.
- b. Contractors shall not purchase insurance to cover public liability for nuclear incidents without DOE authorization (See DEAR 970.5070, Indemnification, and DEAR 950.70, Nuclear Indemnification of DOE Contractors).
- c. Demonstrate that insurance programs and costs comply with the cost limitations and exclusions at FAR 28.307, Insurance Under Cost Reimbursement Contracts, FAR 31.205-19, Insurance and Indemnification, DEAR 952.231-71 Insurance-Litigation and Claims, and DEAR 970.5228-1, Insurance-Litigation and Claims.

- d. Demonstrate that the insurance program is being conducted in the government's best interest and at reasonable cost.
- e. The contractor shall submit copies of all insurance policies or insurance arrangements to the Contracting Officer no later than 30 days after the purchase date.
- f. When purchasing commercial insurance, the contractor shall use a competitive process to ensure costs are reasonable.
- g. Ensure self-insurance programs include the following elements:
 - (1) Compliance with criteria set forth in FAR 28.308, Self-Insurance. Approval of self-insurance is predicated upon submission of verifiable proof that the self-insurance charge does not exceed the cost of purchased insurance. This includes hybrid plans (i.e., commercially purchased insurance with self-insured retention (SIR) such as large deductible, matching deductible, retrospective rating cash flow plans, and other plans where insurance reserves are under the control of the insured). The SIR components of such plans are self-insurance and are subject to the approval and submission requirements of FAR 28.308, as applicable.
 - (2) Demonstration of full compliance with applicable state and federal regulations and related professional administration necessary for participation in alternative insurance programs.
 - (3) Safeguards to ensure third party claims and claims settlements are processed in accordance with approved procedures.
 - (4) Accounting of self-insurance charges.
 - (5) Accrual of self-insurance reserve. The Contracting Officer's approval is required and predicated upon the following:
 - (a) The claims reserve shall be held in a special fund or interest bearing account.
 - (b) Submission of a formal written statement to the Contracting Officer stating that use of the reserve is exclusively for the payment of insurance claims and losses, and that DOE shall receive its equitable share of any excess funds or reserve.
 - (c) Annual accounting and justification as to the reasonableness of the claims reserve submitted for Contracting Officer's review.
 - (d) Claim reserves, not payable within the year the loss occurred, are discounted to present value based on the prevailing Treasury rate.
- h. Separately identify and account for interest cost on a Letter of Credit used to guarantee self-insured retention, as an unallowable cost and omitted from charges to the DOE contract.
- i. Comply with the Contracting Officer's written direction for ensuring the continuation of insurance coverage and settlement of incurred and/or open claims and payments of premiums owed or owing to the insurer for prior DOE contractors.

2. PLAN EXPERIENCE REPORTING. The Contractor shall:

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

3. TERMINATING OPERATIONS. The Contractor shall:

- a. ensure protection of the government's interest through proper recording of cancellation credits due to policy terminations and/or experience rating.

- b. identify and provide continuing insurance policy administration and management requirements to a successor, other DOE contractor, or as specified by the Contracting Officer.
- c. reach agreement with DOE on the handling and settlement of self insurance claims incurred but not reported at the time of contract termination; otherwise, the contractor shall retain this liability.

4. SUCCESSOR CONTRACTOR OR INSURANCE POLICY CANCELLATION.

The Contractor shall:

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

END OF CLAUSE

PART I –THE SCHEDULE

SECTION H

(Modified in Mods 4,14,20,25,31,32,57,58,62,65,77,108)

SPECIAL CONTRACT REQUIREMENTS

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PART I –THE SCHEDULE

SECTION H

SPECIAL CONTRACT REQUIREMENTS

H.1 REPRESENTATIONS AND CERTIFICATIONS

The Representations, Certifications, and Other Statements of Offeror for this contract as completed by the Contractor are hereby incorporated in this contract by reference.

H.2 MODIFICATION AUTHORITY

Notwithstanding any of the other provisions of this contract, a Contracting Officer shall be the only individual on behalf of the Government to:

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

H.3 NO THIRD PARTY BENEFICIARIES

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

H.4 WORKFORCE TRANSITION

- (a) **Right of First Refusal.** Subject to the availability of funds, the Contractor shall offer employment to all Incumbent Employees as defined in paragraph H.4(c) who, as of the date of contract award, hold regular appointments and are engaged in performance of work within the scope of work under this contract.
- (b) **Incumbent Management Employees Excepted.** It is the Contractor's prerogative to establish its own management structure. Therefore, the right of first refusal set forth in paragraph (a) above is not applicable to Incumbent Management Employees as defined in paragraph (d) below. The Contractor may offer employment to said employees, in either their current positions or other positions, at the Contractor's sole discretion.
 - (1) For those positions listed above, any changes in job positions or classifications shall be accompanied by a commensurate alteration in compensation.
- (c) **Incumbent Employees** are defined as employees who hold regular appointments excluding incumbent management personnel as defined in paragraph (d) below with Washington TRU Solutions (WTS) as of the effective date of the award of this contract. Individuals who hold

regular appointments are individuals who are employed for an indefinite duration, with either a full-time work schedule of at least 40 hours per week, or a part-time work schedule of fewer than 40 hours per week, but more than 20 hours per week.

- (d) Incumbent Management Employees are defined as WTS management personnel that are currently in first and second level managers in the WTS management organization and above. Incumbent Management Employees hired by the Contractor shall be paid salaries commensurate with the position and duties as determined by the Contractor and in accordance with this contract.
- (e) Nothing in this paragraph shall preclude the Contractor from separating employees when in its judgment it is appropriate to do so based on the employee's performance or conduct.

H.5 DOE-H-1002 EMPLOYEE COMPENSATION: PAY AND BENEFITS (MOD 31)

(a) Contractor Employee Compensation Plan

The Contractor shall submit, for Contracting Officer approval, by no later than 30 days before the end of transition a Contractor Employee Compensation Plan demonstrating how the Contractor will comply with the requirements of this Contract. The Contractor Employee Compensation Plan shall describe the Contractor's policies regarding compensation, pensions and other benefits, and how these policies will support at reasonable cost the effective recruitment and retention of a highly skilled, motivated, and experienced workforce.

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

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

(b) Total Compensation System

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

(c) **Reports and Information**

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

- (1) An Annual Contractor Salary-Wage Increase Expenditure Report to include, at a minimum, breakouts for merit, promotion, variable pay, special adjustments, and structure movements for each pay structure showing actual against approved amounts.
- (2) A list of the top five most highly compensated executives as defined in FAR 31.205-6(p)(2)(ii) and their total cash compensation at the time of Contract award, and at the time of any subsequent change to their total cash compensation. This should be the same information provided to the Central Contractor Registration (CCR) per FAR 52.204-10.
- (3) An Annual Report of Contractor Expenditures for Employee Supplemental Compensation no later than March 1 of each year.

(d) **Pay and Benefit Programs**

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

- (1) Incumbent Employees are the employees as defined in Clause H.4(a) and (c).
 - (A) Pay. Subject to the Workforce Transition Clause, the Contractor shall provide equivalent base pay to Incumbent Employees as compared to pay provided by Washington TRU Solutions for at least the first year of the term of the Contract.
 - (B) Pension and Other Benefits. The Contractor shall provide a total package of benefits to Incumbent Employees comparable to that provided by Washington TRU Solutions. Comparability of the total benefit package shall be determined by the CO in his/her sole discretion. Incumbent Employees shall remain in their existing pension plans, Washington TRU Solutions Pension Plan (or comparable successor plans if continuation of the existing plans is not practicable) pursuant to pension plan eligibility requirements and applicable law.
- (2) Non-Incumbent Employees are new hires, i.e., employees other than Incumbent Employees who are hired by the Contractor after date of award. All Non-Incumbent Employees shall receive a total pay and benefits package that provides for market-based retirement and medical benefit plans that are competitive with the industry from which the Contractor recruits its employees and in accordance with Contract requirements.

(3) Cash Compensation

(A) The Contractor shall submit the following to the Contracting Officer for a determination of cost allowability for reimbursement under the Contract:

(i) Any proposed major compensation program design changes prior to implementation.

(ii) An Annual Compensation Increase Plan (CIP). The Compensation Increase Plan (CIP) should include the following components and data:

(1) Comparison of average pay to market average pay.

(2) Information regarding surveys used for comparison.

(3) Aging factors used for escalating survey data and supporting information.

(4) Projection of escalation in the market and supporting information.

(5) Information to support proposed structure adjustments, if any.

(6) Analysis to support special adjustments.

(7) Funding requests for each pay structure to include breakouts of merit, promotions, variable pay, special adjustments, and structure movement.

(a) The proposed plan totals shall be expressed as a percentage of the payroll for the end of the previous plan year.

(b) All pay actions granted under the compensation increase plan are fully charged when they occur regardless of time of year in which the action transpires and whether the employee terminates before year end.

(c) Specific payroll groups (e.g., exempt, nonexempt) for which CIP amounts are intended shall be defined by mutual agreement between the contractor and the Contracting Officer.

(d) The Contracting Officer may adjust the CIP amount after approval based on major changes in factors that significantly affect the plan amount (for example, in the event of a major reduction in force or significant ramp-up).

(8) A discussion of the impact of budget and business constraints on the CIP amount.

(9) Comparison of pay to relevant factors other than market average pay.

(iii) Individual compensation actions for the top contractor official (e.g., laboratory director/plant manager or equivalent) and key personnel not included in the CIP. For those key personnel included in the CIP, DOE will approve salaries upon the initial contract award and when key personnel are replaced during the life of the contract. DOE will have access to all individual salary reimbursements. This access is provided for transparency; DOE will not approve individual salary actions (except as previously indicated).

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

(e) Pension and Other Benefit Programs

- (1) No presumption of allowability will exist when the Contractor implements a new benefit plan or makes changes to existing benefit plans for Employees or until the Contracting Officer makes a determination of cost allowability for reimbursement for new or changed benefit plans.
- (2) Cost reimbursement for Employee pension and other benefit programs sponsored by the Contractor will be based on the Contracting Officer's approval of Contractor actions pursuant to an approved "Employee Benefits Value Study" and an "Employee Benefits Cost Survey Comparison" as described below.
- (3) Unless otherwise stated, or as directed by the Contracting Officer, the Contractor shall submit the studies required in paragraphs (A) and (B) below. The studies shall be used by the Contractor in calculating the cost of benefits under existing benefit plans. An Employee Benefits Value (Ben-Val) Study Method using no less than 15 comparator organizations and an Employee Benefits Cost Survey comparison Method shall be used in this evaluation to establish an appropriate comparison method. In addition, the Contractor shall submit updated studies to the Contracting Officer for approval prior to the adoption of any change to a pension or other benefit plan.
 - (A) The Ben-Val, every two years for each benefit tier (e.g., group of employees receiving a benefit package based on date of hire), which is an actuarial study of the relative value (RV) of the benefits programs offered by the Contractor to Employees measured against the RV of benefit programs offered by comparator companies approved by the Contracting Officer. To the extent that the value studies do not address post retirement benefits other than pensions, the Contractor shall provide a separate cost and plan design data comparison for the post retirement benefits other than pensions using external benchmarks

derived from nationally recognized and Contracting Officer approved survey sources and,

- (B) An Employee Benefits Cost Study Comparison, annually for each benefit tier that analyzes the Contractor's employee benefits cost for Employees on a per capita basis per full time equivalent employee and as a percent of payroll and compares it with the cost reported by the U.S. Department of Labor's Bureau of Labor Statistics or other Contracting Officer approved broad based national survey.
 - (4) When the net benefit value exceeds the comparator group by more than five percent, the Contractor shall submit a corrective action plan to the Contracting Officer for approval, unless waived by the Contracting Officer.
 - (5) When the average total benefit per capita cost or total benefit cost as a percent of payroll exceeds the comparator group by more than five percent, the Contractor shall submit an analysis of the specific plan costs that are above the per capita cost range or total benefit cost as a percent of payroll and a corrective action plan to achieve conformance with a Contracting Officer directed per capita cost range or total benefit cost as a percent of payroll, unless waived by the Contracting Officer.
 - (6) Within two years of Contracting Officer approval of the Contractor's corrective action plan, the Contractor shall align employee benefit programs with the benefit value and per capita cost range or percent of payroll as approved by the Contracting Officer.
 - (7) The Contractor may not terminate any benefit plan during the term of the Contract without the prior approval of the Contracting Officer in writing.
 - (8) Cost reimbursement for post-retirement benefits other than pensions (PRBs) is contingent on DOE approved service eligibility requirements for PRB that shall be based on a minimum period of continuous employment service not less than 5 years under a DOE cost reimbursement contract(s) immediately prior to retirement. Unless required by Federal or State law, advance funding of PRBs is not allowable.
 - (9) Each contractor sponsoring a pension and/or postretirement benefit plan will participate in the annual plan management process which includes written responses to a questionnaire regarding plan management, providing forecasted estimates of future reimbursements in connection with the plan and participating in a conference call to discuss the contractor submission (see (g)(6) below for Pension Management Plan requirements).
 - (10) Each contractor will respond to quarterly data calls issued through Ibenefits, or its successor system.
- (f) Establishment and Maintenance of Pension Plans for which DOE Reimburses Costs
- (1) Employees working for the Contractor shall only accrue credit for service under this Contract after the date of Contract award.
 - (2) Except for Commingled Plans in existence as of the effective date of the contract, any pension plan maintained by the Contractor for which DOE reimburses costs,

shall be maintained as a separate pension plan distinct from any other pension plan that provides credit for service not performed under a DOE cost-reimbursement contract. When deemed appropriate by the Contracting Officer, Commingled Plans shall be converted to separate plans at the time of new contract award or the extension of a contract.

(g) **Basic Requirements**

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

- (1) The Contractor shall become a sponsor of the existing pension and other benefit plans (or comparable successor plans), including other post-retirement benefit (PRB) plans, as applicable, with responsibility for management and administration of the plans. The Contractor shall be responsible for maintaining the qualified status of those plans consistent with the requirements of ERISA and the Internal Revenue Code (IRC). The Contractor shall carry over the length of service credit and leave balances accrued as of the date of the Contractor's assumption of Contract performance.
- (2) DOE approval is required prior to implementing any change to a pension plan covering prime cost reimbursement contracts for management and operation of DOE facilities and other contracts when designated. Changes shall be in accordance with and pursuant to the terms and conditions of the contract.
- (3) Each contractor pension plan shall be subjected to a limited-scope audit annually that satisfies the requirements of ERISA section 103, except that every third year the contractor must conduct a full-scope audit satisfying ERISA section 103. Alternatively, the contractor may conduct a full-scope audit satisfying ERISA section 103 annually. In all cases, the Contractor must submit the audit results to the contracting officer. In years in which a limited scope audit is conducted, the contractor must provide the contracting officer with a copy of the qualified trustee or custodian's certification regarding the investment information that provides the basis for the plan sponsor to satisfy reporting requirements under ERISA section 104.
- (4) For existing Commingled Plans, the Contractor shall maintain and provide annual Separate Accounting of DOE liabilities and assets as for a Separate Plan.
- (5) For existing Commingled Plans, the Contractor shall be liable for any shortfall in the plan assets caused by funding or events unrelated to DOE contracts.
- (6) The Contractor shall comply with the requirements of ERISA if applicable to the pension plan and any other applicable laws.
- (7) The Pension Management Plan shall include the following:

- (A) A Pension Management Plan (PMP) discussing the Contractor's plans for management and administration of all pension plans consistent with the terms of this contract. The PMP shall be updated and submitted to the Contracting Officer in draft annually no later than 45 days after the last day of the Plan year along with its draft actuarial valuation.
- (B) Within thirty (30) days after the date of the submission, appropriate Contractor representatives shall meet with the Contracting Officer to discuss the Contractor's proposed draft annual update of the PMP to specifically discuss any anticipated changes in the projected pension contributions from the prior year's contributions and any discrepancies between the actual contributions made for the most recent year preceding that meeting and the projected contributions for that year which the Contractor had submitted to the Contracting Officer the prior year. The annual revision of the PMP shall include:
- (i) The Contractor's best projection of the contributions which it will be legally obligated to make to the pension plan(s), beginning with the required contributions for the coming fiscal year, based on the latest actuarial valuation, and continuing for the following four years. This estimate will be based upon compliance with all applicable legal requirements relating to the determination of contributions and upon the assumptions set out in the plan document(s)
 - (ii) If the actuarial valuation submitted pursuant to the annual PMP update indicates that the sponsor of the pension plan must impose pension plan benefit restrictions, the Contractor shall provide the following information:
 - (aa) The type of benefit restriction that will take place,
 - (bb) The number of Contractor employees that potentially could be impacted and the nature of the restriction (e.g., financial impact) by imposition of the required benefit restriction, and
 - (cc) The amount of money that would need to be contributed to the pension plan to avoid legally required benefit restrictions.
 - (iii) A detailed discussion of how the Contractor intends to manage the pension plan(s) to maximize the contribution predictability (i.e., forecasting accuracy) and contain current and future costs, to include rationale for selection of all plan assumptions that determine the required contributions and which impact the level and predictability of required contributions. The Contractor is required to annually establish a long term (e.g. five year) plan that outlines the projected retirement plan costs, and any planned action steps to be taken to better manage predictability. The contractor must also share the following information with the Department during the meeting:
 - (aa) Strategy for achieving and maintaining fully- funded status of the plan(s)
 - (bb) Investment policy statement for the plan, with any recent updates

- (cc) Results of recent asset liability studies (required to be performed every 3 years or after a significant event) including rationale for maintaining current asset allocation strategy.
- (dd) Comparison of budget projections submitted to the Department to actual contributions
- (ee) Any recent reports, findings, or recommendations provided by plan's investment consultant.
- (ff) Actuarial experience studies to set the plan's actuarial assumptions (required to be performed every 3-5 years)

(iv) An assessment to evaluate the effectiveness of the Contractor's pension plan(s) investment management/results. The assessment shall include at a minimum: a review and analysis of pension plan investment objectives; the strategies employed to achieve those objectives; the methods used to monitor execution of those strategies and the achievement of the investment objectives; and a comparative analysis of the objectives and performance of other comparable pension plans. The Contractor shall also identify its plans, if any, for revising any aspect of its pension plan management based on the results of the review.

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

- (1) Contractors that sponsor single employer or multiple employer defined benefit pension plans will be reimbursed for the annual required minimum contributions under the Employee Retirement Income Security Act (ERISA), as amended by the Pension Protection Act (PPA) of 2006. Reimbursement above the annual minimum required contribution will require prior approval of the Contracting Officer. Reimbursement amounts will take into consideration all pre-funding balances and funding standard carryover balances.
- (2) Contractors that sponsor multi-employer DB pension plans will be reimbursed for pension contributions in the amounts necessary to ensure that the plans are funded to meet the annual minimum requirement under ERISA, as amended by the PPA. However, reimbursement for pension contributions above the annual minimum contribution required under ERISA, as amended by the PPA, will require prior approval of the Contracting Officer and will be considered on a case by case basis. Reimbursement amounts will take into consideration all pre-funding balances and funding standard carryover balances.

(i) Reporting Requirements for Designated Contracts

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

- (1) Actuarial Valuation Reports. The annual actuarial valuation report for each DOE-reimbursed pension plan and when a pension plan is commingled, the contractor shall submit separate reports for DOE's portion and the plan total by the due date for filing IRS Form 5500.

- (2) Forms 5500. Copies of IRS Forms 5500 with Schedules for each DOE- funded pension plan, no later than that submitted to the IRS.
- (3) Forms 5300. Copies of all forms in the 5300 series submitted to the IRS that document the establishment, amendment, termination, spin- off, or merger of a plan submitted to the IRS.

(j) Changes to Pension Plans

At least sixty (60) days prior to the adoption of any changes to a pension plan, the Contractor shall submit the information required below, as applicable, to the Contracting Officer for approval or disapproval and a determination as to whether the costs are deemed allowable pursuant to FAR 31.205-6, as supplemented by DEAR 970.3102-05-6.

- (1) For proposed changes to pension plans and pension plan funding, the Contractor shall provide the following to the Contracting Officer:
 - (A) a copy of the current plan document (as conformed to show all prior plan amendments), with the proposed new amendment indicated in redline/strikeout;
 - (B) an analysis of the impact of any proposed changes on actuarial accrued liabilities and costs;
 - (C) except in circumstances where the Contracting Officer indicates that it is unnecessary, a legal explanation of the proposed changes from the counsel used by the plan for purposes of compliance with all legal requirements applicable to private sector defined benefit pension plans;
 - (D) the Summary Plan Description; and,
 - (E) any such additional information as requested by the Contracting Officer.
- (2) Contractors shall submit new benefit plans and changes to plan design or funding methodology with justification to the Contracting Officer for approval. The justification must:
 - (A) demonstrate the effect of the plan changes on the contract net benefit value or per capita benefit costs,
 - (B) provide the dollar estimate of savings or costs, and
 - (C) provide the basis of determining the estimated savings or cost.

(k) Terminating Operations

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

- (1) No further benefits for service shall accrue.

- (2) The Contractor shall provide a determination statement in its settlement proposal, defining and identifying all liabilities and assets attributable to the DOE contract.
 - (3) The Contractor shall base its pension liabilities attributable to DOE contract work on the market value of annuities or lump sum payments or dispose of such liabilities through a competitive purchase of annuities or lump sum payouts.
 - (4) Assets shall be determined using the "accrual-basis market value" on the date of termination of operations.
 - (5) DOE and the Contractor(s) shall establish an effective date for spinoff or plan termination. On the same day as the contractor notifies the IRS of the spinoff or plan termination, all plan assets assigned to a spun-off or terminating plan shall be placed in a low-risk liability matching portfolio until the successor trustee, or an insurance company, is able to assume stewardship of those assets.
- (I) Terminating Plans
- (1) DOE contractors shall not terminate any pension plan (Commingled or site specific) without requesting Departmental approval at least 60 days prior to the scheduled date of plan termination.
 - (2) To the extent possible, the contractor shall satisfy plan liabilities to plan participants by the purchase of annuities through competitive bidding on the open annuity market or lump sum payouts. The contractor shall apply the assumptions and procedures of the Pension Benefit Guaranty Corporation.
 - (3) Funds to be paid or transferred to any party as a result of settlements relating to pension plan termination or reassignment shall accrue interest from the effective date of termination or reassignment until the date of payment or transfer.
 - (4) If ERISA or IRC rules prevent a full transfer of excess DOE reimbursed assets from the terminated plan, the contractor shall pay any deficiency directly to DOE according to a schedule of payments to be negotiated by the parties.
 - (5) On or before the same day as the contractor notifies the IRS of the spinoff or plan termination, all plan assets assigned to a spun-off or terminating plan shall be placed in a low-risk liability matching portfolio until the successor trustee, or an insurance company, is able to assume stewardship of those assets.
 - (6) DOE liability to a Commingled pension plan shall not exceed that portion which corresponds to DOE contract service. The DOE shall have no other liability to the plan, to the plan sponsor, or to the plan participants.
 - (7) After all liabilities of the plan are satisfied, the contractor shall return to DOE an amount equaling the asset reversion from the plan termination and any earnings which accrue on that amount because of a delay in the payment to DOE. Such amount and such earnings shall be subject to DOE audit. To effect the purposes of this paragraph, DOE and the contractor may stipulate to a schedule of payments.

(m) Special Programs

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

(n) Definitions

- (1) Commingled Plans. Cover employees from the contractor's private operations and its DOE contract work.
- (2) Current Liability. The sum of all plan liabilities to employees and their beneficiaries. Current liability includes only benefits accrued to the date of valuation. This liability is commonly expressed as a present value.
- (3) Defined Benefit Pension Plan. Provides a specific benefit at retirement that is determined pursuant to the formula in the pension plan document.
- (4) Defined Contribution Pension Plan. Provides benefits to each participant based on the amount held in the participant's account. Funds in the account may be comprised of employer contributions, employee contributions, investment returns on behalf of that plan participant and/or other amounts credited to the participant's account.
- (5) Designated Contract. For purposes of this clause, a contract (other than a prime cost reimbursement contract for management and operation of a DOE facility) for which the Head of the Departmental Contracting Activity determines that advance pension understandings are necessary or where there is a continuing Departmental obligation to the pension plan.
- (6) Pension Fund. The portfolio of investments and cash provided by employer and employee contributions and investment returns. A pension fund exists to defray pension plan benefit outlays and (at the option of the plan sponsor) the administrative expenses of the plan.
- (7) Separate Accounting. Account records established and maintained within a commingled plan for assets and liabilities attributable to DOE contract service. NOTE: The assets so represented are not for the exclusive benefit of any one group of plan participants.
- (8) Separate Plan. Must satisfy IRC Sec. 414(l) definition of a single plan, designate assets for the exclusive benefit of employees under DOE contract, exist under a separate plan document (having its own DOL plan number) that is distinct from corporate plan documents and identify the contractor as the plan sponsor.
- (9) Spun-off Plan. A new plan which satisfies IRC Reg. 1.414 (l)-1 requirements for a single plan and which is created by separating assets and liabilities from a larger original plan. The funding level of each individual participant's benefits shall be no less than before the event, when calculated on a "plan termination basis."

H.6 WORKFORCE TRANSITION AND BENEFITS TRANSITION: PLANS AND TIMEFRAMES

- (a) **Workforce Transition Plan.** In addition to the required Transition Plan and other requirements under the Clauses H.4 through H.8 of this contract, the Contractor shall submit a written Workforce Transition Plan (WF Transition Plan) describing in detail the Contractor's plans and procedures as to how the Contractor will comply with the hiring preferences set forth in Clause H.4, Workforce Transition and Employee Hiring Preferences, and this Paragraph (a). Notwithstanding timeframes identified elsewhere in the contract, the Contractor shall perform the following activities in the following specified timeframes:
- (1) **Within ten days after written notice to proceed, the Contractor shall:**
 - (A) **Submit to the Contracting Officer a description of any and all transition agreements that it intends to enter into with the incumbent contractor (WTS) to ensure compliance with Clause H.4 during the first 90 days after written notice to proceed;**
 - (B) **Submit to the Contracting Officer a written communication plan developed by the Contractor that details the communication that the Contractor and its subcontractors will engage in with the incumbent contractor, WTS, regarding implementation of the hiring preference requirements set forth in Clause H.4; and**
 - (C) **Provide estimated costs and detailed breakouts of the costs to accomplish workforce transition activities within the timeframes specified.**
 - (D) **Obtain information from the incumbent contractor, WTS, identifying the incumbent employees as defined in H.4(c). Provide and define a process as part of the transition agreements required in paragraph (1)(A) above for obtaining updated and continuous information throughout the Workforce Transition Period regarding the incumbent employees as defined in H.4(c).**
 - (2) **Within 15 days after written notice to proceed, the Contractor shall:**
 - (A) **Submit to the Contracting Officer copies of the draft WF Transition Plan for the Contractor and its first and second tier subcontractors, including processes and procedures regarding how the Contractor will implement and ensure compliance with the hiring preferences set forth in Clause H.4 and how it has identified the Incumbent Management Personnel as defined in Clause H.4(d); and**
 - (B) **Establish and enter into the written communication plan with the WTS Contractor regarding the implementation of the hiring preferences in Clause H.4 and provide a copy to the Contracting Officer.**
 - (3) **Within 30 days after written notice to proceed, the Contractor shall provide to the Contracting Officer copies of the final Workforce Transition Plan and the draft transition agreements it proposes to enter into consistent with requirements of Clauses H.4.**
 - (4) **Within 60 days after written notice to proceed, the Contractor shall provide to the Contracting Officer copies of the final transition agreements described in above.**

- (5) The Contractor shall submit reports to the Contracting Officer regarding the Contractor's and its subcontractors' implementation of the hiring preferences required by Clause H. 4 in accordance with the timeframes set forth below. These reports shall include at a minimum the following information: employee hire dates or anticipated hire dates, employee salary levels, and the names of the former employers of the employees hired by the Contractor and/or hired by the Contractor's first and second tier subcontractors.
- (A) During the 90 day Contract Transition Period, such reports shall be provided to the Contracting Officer on a weekly basis; or
- (B) Earlier, if requested by the Contracting Officer.

(b) **Benefits Transition.**

The Contractor shall submit a written draft Benefits Transition Plan within 20 days after written notice to proceed describing in detail the Contractor's plans and procedures as to how the Contractor will comply with Clause H.5, Employee Compensation: Pay and Benefits, and this Paragraph (b). The Contractor shall provide a final written Benefits Transition Plan to the Contracting Officer within 30 days after written notice to proceed. All transitions of the existing pension plan(s) and other existing benefit plans, as well as establishment of any new plans, shall be completed within 90 days after written notice to proceed.

- (1) The Contractor shall perform the following activities within the specified timeframes:
- (A) Within ten days after written notice to proceed, the Contractor shall:
- (i) Provide the Contracting Officer with a list of Contractor personnel who will be responsible for transitioning of the existing pension plan and other existing benefit plans and/or development of new benefit plans, including specifically the personnel responsible for ensuring that the Contractor becomes a sponsor of the Washington TRU Solutions Pension Plan within the required timeframe and contact information for the above personnel;
 - (ii) Request the incumbent contractor, WTS, to provide information and documents necessary for the Contractor to adhere to the requirements set forth in this contract pertaining to sponsorship of the Washington TRU Solutions Pension Plan and other existing benefits plans or establishment of any new benefits plans, including but not limited to the transition of the existing pension and other benefit plans or establishment of any new benefits plans on or before the end of the 90-day Transition Period; and
 - (iii) Provide estimated costs and detailed breakouts of the costs to accomplish workforce and benefits transition activities within the timeframes specified, including the costs for enrolled actuaries and counsel.
- (B) Within 15 days after written notice to proceed, the Contractor shall provide to the Contracting Officer a list of the information and documents that the

Contractor has requested from the incumbent contractor, WTS, pertaining to the transition of the WTS Pension Plan, and other existing benefit plans. The Contractor shall notify the Contracting Officer on a timely basis of any issues or problems that it encounters in obtaining information or documents requested from the incumbent Contractor, WTS. Regardless of such notification, the Contractor remains responsible under this Contract for ensuring compliance with the terms of this contract, including the timeframes set forth in this clause and the requirements in Clause H.4, Workforce Transition and Employee Hiring Preferences, and Clause H.5, Employee Compensation: Pay and Benefits.

- (C) Within 20 days of written notice to proceed, the Contractor shall:
- (i) Submit a detailed description of its plans and processes, including timeframes and specific projected dates for accomplishment of each activity necessary to ensure compliance with the requirements set forth in Clauses H.5 including requirements pertaining to the transition of employee benefit plans; and
 - (ii) Meet via televideo, teleconference, and/or in person with relevant personnel who administer the benefit plans for the WTS Pension Plan. The meeting shall include the Contractor's benefit plan administrators and personnel, head of human resources, ERISA counsel, actuaries, and any and all other personnel deemed necessary by the Contractor. During such meeting, the Contractor shall discuss all matters necessary to ensure the Contractor adheres to its sponsorship obligations under Clause H.5 Employee Compensation: Pay and Benefits, including execution of transition agreements with the incumbent contractor, WTS, and other applicable entities. The minutes of the meeting as well as a written description of any substantive issues identified at the meeting shall be submitted to the Contracting Officer within two days after the meeting.
- (D) Within 30 days after written notice to proceed and as part of the written Benefits Transition Plan, the Contractor shall provide a written description of how the existing pension and other benefit plans provided to employees pursuant to Clause H.5, Employee Compensation: Pay and Benefits will be amended or restated on or before the last day of the 90 day Transition Period. If the creation of new benefit plan(s) are necessary in order for the Contractor to adhere to the benefits sponsorship requirements set forth in this contract, the Contractor shall provide a description of the necessary transactions, including but not limited to how the Contractor proposes to comply with the contract and applicable law governing such transactions.
- (E) Within 45 days after written notice to proceed, the Contractor shall:
- (i) Submit to the Contracting Officer a draft Contractor Employee Compensation Plan demonstrating how the Contractor will comply with the requirements of this contract regarding employee compensation. The draft Contractor Employee Compensation Plan shall describe the Contractor's policies regarding compensation, pensions and other

benefits, and how these policies will support at reasonable cost the effective recruitment and retention of a highly skilled, motivated, and experienced workforce.

- (ii) Submit to the Contracting Officer drafts of all amendments to or restatements of the pension and other benefit plans presently sponsored by WTS, including but not limited to amendments effectuating the change in sponsorship/participating employer in the WTS Pension Plan. If applicable, the Contractor shall also submit all draft restated benefit plans and draft Summary Plan Descriptions (SPDs) for pension and other benefit plans sponsored by WTS. Any and all such amendments shall comply with applicable law governing such transactions and changes in sponsorship of the plans.
 - (iii) Submit to the Contracting Officer drafts of any new benefit plan(s) as well as draft SPDs that the Contractor proposes to sponsor.
 - (iv) Provide draft copies of the transition agreements which the Contractor will enter into with WTS to ensure the Contractor's compliance with the pay and benefits requirements set forth in Clauses H.5, Employee Compensation: Pay and Benefits. Copies of these executed transition agreements shall be provided to the Contracting Officer within 45 days.
- (F) No later than 60 days after written notice to proceed and prior to the adoption of the documents identified in Paragraphs (B)(1)(e)(ii) and (iii) above, the Contractor shall submit to the Contracting Officer the proposed final versions of these documents for approval.
- (G) The Contractor shall respond to any comments provided by the Contracting Officer under any of the above paragraphs within two days of receipt of the comments.
- (2) After the Transition Period and throughout the remaining period of performance of the Contract, the Contractor shall provide the following information promptly to the Contracting Officer upon the request of the Contracting Officer:
- (A) Documents relating to benefit plans offered to Contractor Employees, including but not limited to SPDs, all Plan documents, applicable amendments, employee handbooks that summarize benefits provided to employees and other documents that describe benefits provided to employees of the Contractor who perform work on this contract, and
 - (B) Any and all other documents pertaining to implementation of and compliance with implementation of the compensation and benefit programs identified in Clause H.5, Employee Compensation: Pay and Benefits.

H.7 DOE-H-1007 POST CONTRACT RESPONSIBILITIES FOR PENSION AND OTHER BENEFIT PLANS (MOD 31)

- (a) If this Contract expires or terminates and DOE has awarded a contract under which the new contractor becomes a sponsor and assumes responsibility for management and

administration of the pension or other benefit plans covering active or retired contractor employees with respect to service at the Waste Isolation Pilot Project (WIPP) M&O (collectively, the "Plans"), the Contractor shall cooperate and transfer to the new contractor its responsibility for sponsorship, management and administration of the Plans consistent with direction from the Contracting Officer. If a Commingled plan is involved, the contractor shall:

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

H.8 TRANSITION ACTIVITIES

- (a) During the transition period, as specified in the clause in Section F entitled "Period of Performance," the Contractor shall perform those activities that are necessary to transition the work from the incumbent Contractor in a manner that (1) assures that all work for which the Contractor is responsible under the contract is continued without disruption; (2) provides for an orderly transfer of resources responsibilities, and accountability from the incumbent Contractor; and (3) provides for the ability of the Contractor to perform the work in an efficient, effective, and safe manner. The Contractor is responsible for providing all necessary personnel and logistical support (office space, computers, telephone, etc.) during the transition period, unless specifically directed otherwise by the CO.
- (b) The Contractor shall submit a transition plan and budget to the CO for approval within 5 days after written notice to proceed.
- (c) After completion of the transition activities contained in the approved transition plan and such other transition activities as may be authorized or directed by the CO, the Contractor shall notify the CO in writing that it is ready to assume full responsibility for the work. The Contractor shall assume full responsibility for the work upon the date specified in writing by the CO.
- (d) The transition plan shall include a schedule of major activities, and address as a minimum:
- Communication process among the Contractor, incumbent Contractors, site tenants, and DOE;
 - Identification of key transition issues and milestones;
 - Identification of a transition team (inclusive of consultants and teaming members, if any);
 - Integration of work packages (direct and indirect) and budgets from incumbent Contractors;
 - Approach to minimizing impacts on continuity of operations;
 - Dispute Resolution;
 - Assumption of WIPP related programs and projects;
 - Comprehensive human resource management as described in clause Section H.5 entitled "Employee Compensation: Pay and Benefits";
 - Implementation of existing or proposed management systems (e.g., Project Management, Integrated Safety Management, General Electronic Data Processing, Budget and Planning, Purchasing Material, Compensation, Labor/Payroll, Indirect and Direct Costs, Property Management, Billing and Estimating);
 - Assumption of all ES&H responsibilities, functions, and activities;
 - Identification and prioritization of issues after transition; and
 - A detailed cost breakdown by transition activity (include cost breakdown as an appendix to the plan).
- (e) Contractor agrees that costs identified as transition related costs outside of the transition period shall be specifically identified and approved by the CO.

H.9 KEY PERSONNEL (Mods 58, 77)

- (a) Unless approved in advance, in writing, by the CO, should any Key Personnel be removed, replaced, or diverted by the Contractor for reasons under the Contractor's control (other than to maintain satisfactory standards of employee competency, conduct, and integrity

under the clause at 48 CFR 970.5203-3, Contractor's Organization) within the first two years of performance from the effective date of the contract (SF 33, Block 2); or for a replacement Key Personnel within two years of being placed in the position, the Contractor shall forfeit \$500,000 in fee if said Key Personnel is the Project Manager, and \$250,000 in fee for each removal, replacement, or diversion of all other key personnel within two years after effective date of the contract or within two years of being placed in the position.

- (b) The personnel listed below are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel, the Contractor must: (1) notify the Contracting Officer reasonably in advance; (2) submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract; and (3) obtain the Contracting Officer's written approval. Notwithstanding the foregoing, if the Contractor deems immediate removal or suspension of any member of its management team is necessary to fulfill its obligation to maintain satisfactory standards of employee competency, conduct, and integrity under the clause at 48 CFR 970.5203-3, Contractor's Organization, the Contractor may remove or suspend such person at once, although the Contractor must notify Contracting Officer prior to or concurrently with such action.
- (c) The list of personnel in paragraph (d) below may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel.
- (d) List of Key Personnel – the individuals listed below are considered Key Personnel for this contract:

<u>Name</u>	<u>Title</u>
Robert McQuinn	President and Project Manager
James Blankenhorn	Deputy Project Manager and Recovery Project Manager
Scott Kennedy	Operations Manager
Farok Sharif	TRU Waste Program Manager
Tammy Reynolds	Deputy Recovery Project Manager

H.10 TECHNICAL DIRECTION - DEAR 952.242-70 (DEC 2000) (Mods 25, 32, 65)

- (a) Performance of the work under this contract shall be subject to the technical direction of the DOE Contracting Officer's Representative (COR). The term "technical direction" is defined to include, without limitation:
 - (1) Providing direction to the Contractor that redirects contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details, or otherwise serve to accomplish the contractual Statement of Work.
 - (2) Providing written information to the Contractor that assists in interpreting drawings, specifications, or technical portions of the work description.
 - (3) Reviewing and, where required by the contract, approving, technical reports, drawings, specifications, and technical information to be delivered by the Contractor to the Government.

- (b) The Contractor will receive a copy of the written COR designation from the Contracting Officer. It will specify the extent of the COR's authority to act on behalf of the Contracting Officer.

COR Designations (Mods 25, 32, 65)

Donald C. Gadbury – Primary COR for the entire contract – Level III Certification
(designated 8/28/13)

J. R. Stroble – Alternate COR with authority to act only in the absence of the Primary COR
Level II Certification (designated May 6, 2014)

Thomas K. Teynor – COR for Recovery Activities only – Level III Certification (designated
May 1, 2014)

Mell J. Roy, Chief Counsel – COR for Litigation Management Plan only – Level II
Certification (designated May 1, 2014)

- (c) Technical direction must be within the scope of work stated in the contract. The COR does not have the authority to, and may not, issue any technical direction that:
- (1) Constitutes an assignment of additional work outside the Statement of Work;
 - (2) Constitutes a change as defined in the contract clause entitled "Changes;"
 - (3) In any manner causes an increase or decrease in the total estimated contract cost, the fee (if any), or the time required for contract performance;
 - (4) Changes any of the expressed terms, conditions or specifications of the contract; or
 - (5) Interferes with the Contractor's right to perform the terms and conditions of the contract.
- (d) All technical direction shall be issued in writing by the COR.
- (e) The Contractor must proceed promptly with the performance of technical direction duly issued by the COR in the manner prescribed by this clause and within its authority under the provisions of this clause. If, in the opinion of the Contractor, any instruction or direction by the COR falls within one of the categories defined in (c)(1) through (c)(5) of this clause, the Contractor must not proceed and must notify the Contracting Officer in writing within five (5) working days after receipt of any such instruction or direction and must request the Contracting Officer to modify the contract accordingly. Upon receiving the notification from the Contractor, the Contracting Officer must:
- (1) Advise the Contractor in writing within thirty (30) days after receipt of the Contractor's letter that the technical direction is within the scope of the contract effort and does not constitute a change under the Changes clause of the contract;
 - (2) Advise the Contractor in writing within a reasonable time that the Government will issue a written change order; or
 - (3) Advise the Contractor in writing within a reasonable time not to proceed with the instruction or direction of the COR.

- (f) A failure of the Contractor and Contracting Officer either to agree that the technical direction is within the scope of the contract or to agree upon the contract action to be taken with respect to the technical direction will be subject to the provisions of the clause entitled "Disputes."

H.11 SMALL, SMALL DISADVANTAGED, AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN

The Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Plan with goals, submitted by the Contractor consistent with the provisions of the Contract Clause entitled, "Small Business Subcontracting Plan" and approved by the Contracting Officer is incorporated as an Attachment to Section J. Prior to the beginning of each Fiscal Year, the Contractor shall also submit an "annual" subcontracting plan which shall establish subcontracting goals, as described in paragraph (d)(1) and (2) of Contract Clause entitled "Small Business Subcontracting Plan" (FAR 52.219-9). The annual plan shall be reviewed for approval by the Contracting Officer and shall be incorporated into this contract. The Contractor's performance in meeting the goals will be assessed as part of the award fee determination under this contract.

H.12 ASSUMPTION OF EXISTING AGREEMENTS AND SUBCONTRACTS

On October 1, 2012, the Contractor shall assume responsibility for existing contracts and other agreements from Contract Number DE-AC29-01AL66444. These include: (a) all subcontracts and purchase orders, (b) cooperative research and development agreements, (c) consent orders, (d) regulatory agreements and permit requirements, (e) collective bargaining agreements, (f) site-wide plans (e.g., safety and security plans), and (g) other agreements in effect prior to execution of this contract.

H.13 AUTHORIZATION AND CONSENT – RESEARCH AND DEVELOPMENT SUBCONTRACTS

The Contractor agrees to include the "Authorization and Consent" clause at FAR 52.227-1 with its Alternate I, suitably modified to identify the parties, in all subcontracts at any tier for research and development activities.

H.14 SEPARATE CORPORATE ENTITY

The work performed under this contract by the Contractor shall be conducted by a separate corporate entity from its parent company(ies). The separate corporate entity must be set up solely to perform this contract and shall be totally responsible for all contract activities.

H.15 RESPONSIBLE CORPORATE OFFICIAL AND CORPORATE BOARD OF DIRECTORS

Responsible Corporate Official

- (A) The Contractor has provided a guarantee of performance from its parent(s) company in the form set forth in Section J Attachment entitled, Performance Guarantee Agreement.
- (B) DOE may contact, as necessary, the single Responsible Corporate Official from the Contractor signing the Performance Guarantee Agreement. The Responsible

Corporate Official identified below shall be at an organizational level above the Contractor and shall have sole corporate authority and accountability for the performance of the contract to resolve any issues with DOE beyond the authority of the Project Manager.

Name: David a. Pethick

Position: Group General Manager

Company/Organization: URS Energy & Construction, Inc.

Address: 106 Newberry Street SW, Aiken, SC 29801

Phone: 803-502-5701

Facsimile: 803-502-5701

Email: david.pethick@urs.com

- (C) Should the Responsible Corporate Official change during the period of the contract, the Contractor shall notify the Contracting Officer in writing within 30 days of any change.

The Contractor has provided by name and affiliation each member of the Corporate Board of Directors that will have corporate oversight. 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.

DOE may contact, as necessary, any member of the Responsible Corporate Board of Directors, who is accountable for corporate oversight of the Contractor organization and key personnel.

Responsible Corporate Board of Directors (information required for each Board Member):

Name: David a. Pethick

Position: Group General Manager

Company/Organization: URS Energy & Construction, Inc.

Address: 106 Newberry Street SW, Aiken, SC 29801

Phone: 803-502-5701

Facsimile: 803-502-5701

Email: david.pethick@urs.com

Name: Robert W. McQuinn

Position: Manager

Company/Organization: URS Energy & Construction, Inc.

Address: 106 Newberry Street SW, Aiken, SC 29801

Phone: 803-502-5754

Facsimile: 803-502-9795

Email: bob.mcquinn@urs.com

Name: Kenneth R. Camplin

Position: Manager
Company/Organization: Babcock & Wilcox Technical Services Group, Inc.
Address: 800 Main Street, Lynchburg, VA 24505
Phone: 434-522-5115
Facsimile: 434-522-5450
Email: krcamplin@babcock.com

Note: The Operating Agreement between URS Energy & Construction, Inc. and Babcock & Wilcox Technical Services Group, Inc. specifies that NWP will be Manager Managed rather than Director Managed. Position titles, therefore, refer to the NWP Board of Manager.

H.16 PERFORMANCE GUARANTEE

The Contractor is required by other provisions of this contract to organize a dedicated corporate entity to carry out the work under the contract. The Contractor's parent organization(s) or all member organizations if the Contractor is a joint venture, limited liability company, or other similar entity, shall guarantee performance as evidenced by the Performance Guarantee Agreement incorporated as an Attachment to Section J. If the Contractor is a joint venture, limited liability company, or other similar entity where more than one organization is involved, the parent or all member organizations shall assume joint and several liability for the performance of the Contractor. In the event any of the signatories to the Performance Guarantee Agreement enters into proceedings related to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer.

H.17 RECOGNITION OF PERFORMING ENTITY

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

Offeror:

Nuclear Waste Partnership LLC

Limited Liability Company Members:

URS Energy & Construction, Inc.
Babcock & Wilcox Technical Services Group, Inc.

Major Subcontractor:

AREVA Federal Services, LLC

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

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

H.18 ACCOUNTING FOR PERFORMING ENTITY

All financial data and planning of the entities comprising the performing entity, as identified in Section H.17 "Recognition of Performing Entity", shall be provided for at the same level of detail required of the prime Contractor. All actual financial data shall be included with the prime Contractor's input to the Financial Information System by the dates established by DOE. Actual manpower data will also be reported in a form and manner acceptable to DOE.

H.19 HOME OFFICE EXPENSES

Home office expenses, whether direct or indirect, relating to activities of the Contractor are unallowable, except as otherwise specifically provided in the contract or specifically agreed to in writing by the CO. "Contractor" is defined as the performing entity identified in Clause H.17.

H.20 SEGREGATION OF COSTS

- (a) Whenever the contract contains a provision for an incentive for a portion of the work effort under the contract, the Contractor shall maintain separate accounts, by work authorization directive or other suitable accounting procedure, of all incurred segregable, direct costs of work, allocable to the work effort directly related to the incentive arrangement.
- (b) If the Contractor has initiated work pursuant to the clause entitled, Cost Reduction, included in this contract, that a proposal has been accepted, the Contractor, for each cost reduction incentive proposal, shall maintain separate accounts, by work authorization directive or other suitable accounting procedure, of all incurred segregable, direct costs, both changed and not changed, allocable to the changed work effort set forth in the applicable Cost Reduction Incentive Proposal.
- (c) The Contractor shall maintain all such accounts, required pursuant to the paragraphs above, in accordance with the clauses Access to and Ownership of Records of this contract, but, in no case, for a period of less than three years following the Government's determination of the applicable incentive fee.

H.21 APPROVAL OF EXPENDITURES

Whenever approval of other action by the Contracting Officer is required with respect to any expenditure or commitment by the Contractor under the terms of this contract, the Government shall not be responsible for such expenditures or commitments unless and until such approval or action is obtained or taken.

H.22 REPORTING REQUIREMENTS (M004)

- (a) Work Breakdown Structure (WBS). Except as provided for elsewhere in the contract, the WBS, as approved by the Contracting Officer (CO), shall provide the basis for reports required under this subsection. The WBS shall be derived from the Performance Work Statement (PWS) of this contract and shall otherwise conform to any implementation guidance which may be provided by the CO.
- (b) A computer based scheduling system that collects and reports periodic costs and related schedule information shall be used by the Contractor. The system shall be compatible with the Department of Energy (DOE) Environmental Management (EM) systems reporting requirements. The system shall be used to collect budget, costs, schedule and other information from all participants funded by the WIPP operation. Budgets, actual and

forecasted costs and schedules shall be input in such a manner that proprietary information between companies (i.e., rates) are not shared, or are shared with the appropriate controls (i.e., executing Proprietary Information Exchange Agreements between the parties). All WIPP funded participants shall be required by DOE to input budget, cost and schedule information into the system. Each participant shall be responsible for accountability of performance to and variance from plans.

- (c) **Periodic Plans and Reports.** The Contractor shall submit periodic cost, schedule, and technical performance plans and reports in such form and substance as required by the CO. Such reports are presented by WBS, Project Baseline Summary (PBS) and participant in formats to be determined jointly by the Contractor and the Contracting Officer or representative.
- (d) These periodic plans and reports shall be submitted at the interval, to the addresses and in the quantities specified by the CO or representative. Both hard copy and web-based posting are required. Where specific forms are required for individual plans and reports, the CO shall provide such forms to the Contractor. These reports shall primarily derive from the system described in paragraph (b) or be consistent with the information contained therein.
- (e) DOE may conduct Earned Value Management System (EVMS) compliance reviews and external independent reviews (EIR) of the Contractor's proposed project control system per DOE Order 413.1B to determine if the description and procedures meet Order requirements as required for capital projects. The Contractor shall be prepared to successfully complete the EIR and to successfully gain Earned Value Management System certification six months after the Contractor receives notice from DOE of a pending capital project that will require EVMS implementation.
- (f) Plans and reports shall be prepared by the Contractor in such a manner as to provide for consistency with the contract PWS, the approved WBS, and PBS, the existing accounting structure and in correlation with data among the various plans and reports. The plans and reports expected to be submitted by the Contractor are described generally as follows and are subject to revision at any time by the CO:
 - (1) A General Management Status Report summarizes scope, schedule, cost status and plans including but not limited to:
 - (i) Trend reports to include cost (labor, material, overhead) and fees. Typically, performance management baseline reports segregate fee from other costs. Explanations of status cost and schedule variances from plans that are greater than thresholds defined by the CO or COR are required. Analysis of historical data and trends shall also be provided.
 - (ii) Earned Value Management Reports (if required for capital projects) with information regarding budgeted cost of work scheduled and work performed and actual cost, as well as cost and schedule performance indices, schedule performance against milestones and estimated costs and budgets at completion. "Stoplight" charts showing red, yellow and green indicators for performance shown by WBS, PBS and participants within well defined ranges assist management in assessing the performance against key indicators.

- (iii) **Periodic Performance Measures including targets and actuals for performance measures, e.g., cubic meters of CH and RH TRU waste certified at generator sites, cubic meters of CH and RH waste disposed, periodic milestones to include WIPP site operations, Central Characterization Project (CCP), Transportation, regulatory and permitting actions.**
 - (iv) **Safety metrics such as Days Away Rate (DART) charts, Total Recordable Case Rates, Recordable Incident Rates, and Rolling Averages of such.**
 - (v) **Assessment of and continued monitoring of risks against a risk management plan.**
 - (vi) **Program Change Request (PCR) summary logs showing the submission and status of all PCR processed during the previous period.**
 - (vii) **Other information as recommended by the Contractor, government personnel or other interested parties as determined prudent.**
- (2) **Technical Reports by which scientific, technical, and engineering information acquired in the performance of the work is disseminated.**
- (3) **Other types of financial, project or operational reports as deemed necessary.**
- (g) **The Contractor shall schedule a periodic meeting to review the material prepared for the previous period. Meeting notices shall be distributed to provide adequate lead time from publishing the report for the government to review the material. An agenda shall be used, minutes and attendance be taken at each meeting. Records of these meetings and reports shall be kept during the period of performance of the contract and are subject to review at all times.**
- (h) **Changes in Work Effort. The reporting system established and maintained by the Contractor pursuant to this subsection shall recognize changes in work effort directed by the Contracting Officer, as provided for in the Work Control System. During performance of this contract, the Contractor shall update and/or change, as appropriate, the WBS (including any diagrams, supporting work descriptions, and WBS dictionary) to reflect changes in the PWS or Work Authorization Directives (WADs). The Contractor's reporting system shall be able to provide for the following at the WAD level, or such lower level, as specified by the Contracting Officer.**
- (1) **Incorporate contractual changes affecting estimated cost, schedule, and other relevant terms and conditions of the contract, in a timely manner;**
 - (2) **Reconcile estimated costs for those elements of the WBS identified in the contract as either priced line items or discrete WADs, and for those elements at the lowest level of the project summary WBS with current performance measurement budgets in terms of:**
 - (i) **Changes to the authorized work; and,**
 - (ii) **Internal re-planning in the detail needed by management for effective control.**

- (3) Prohibit retroactive changes to records pertaining to work performed that will change previously-reported costs except for correction of errors and routine accounting adjustments. The Contractor shall maintain a record of error corrections and routine accounting adjustments and make available for review by the Government;
 - (4) Prevent revisions to the contract estimated costs except for Government-directed or approved changes to the contractual effort; and
 - (5) Document, changes to the performance measurement baseline and, on a timely basis, notify the Contracting Officer of such changes.
- (i) The Contractor agrees to provide the Contracting Officer, or designated authorized representatives, access to information and documents comprising the Contractor's cost collection, reporting and other systems including but not limited to invoices, payroll and other financial and planning documents.
 - (j) The Contractor shall include the requirements of this clause in all subcontracts that are cost-reimbursement type of contracts when--
 - (1) The value of the subcontract is greater than \$2 million, unless specifically waived by the Contracting Officer, or
 - (2) The Contracting Officer determines that the contract/subcontract effort is, or involves, a critical task related to the contract.
 - (k) The Contractor shall be familiar with, and be capable of complying with the latest revisions of DOE Policies, Orders, Guides and Manuals series 413, Program and Project Management for Capital Assets.

H.23 WORK AUTHORIZATION

- (a) Prior to the start of each Fiscal Year, DOE shall provide the Contractor program execution guidance in sufficient detail to develop an estimated cost, scope, and schedule. The Contractor shall submit to the CO or other designated official, a detailed description of work, a budget of estimated costs, and a schedule of performance for the work to be performed during the next Fiscal Year.
- (b) The Contractor and DOE shall mutually establish a budget of estimated costs, detailed description of work, and schedule of performance for each task at the lowest level of the WBS. Ideally, this budget reflects congressional direction, when available. When not available at the beginning of the fiscal year, this budget shall be set to be equal or less than dollar value of the nearest expected congressional budget. The established description of work, estimated costs, and schedule of performance shall be incorporated into work authorization directives. Work authorization directives, signed by the Contractor and issued by the CO are incorporated by reference into this contract.
- (c) If agreement cannot be reached on the scope, schedule, and estimated cost for the work authorization directives, the CO shall issue unilateral work authorization directives pursuant to this clause.

- (d) No activities shall be authorized and no costs incurred until either the CO has issued work authorization directives or the CO has issued direction concerning continuation of activities.
- (e) The work authorization directives authorizing the Contractor to proceed with performance shall be provided to the Contractor by the CO. Each work authorization directive so issued will include, as a minimum, the following:
- Authorization number and effective date;
 - Description of work;
 - Cost, schedule, and other reporting requirements including appropriate performance objectives, metrics, schedules, and milestone dates
 - Date of issue;
 - Contractor's signature; and
 - CO's signature.
- (f) **Modification of Work Authorization Directives.** The CO may at any time and without notice issue changes to the work authorization directives within the PWS of the contract requiring additional work, or directing the omission of, or changes to, the work. A proposal for adjustment in the budget of estimated costs and schedule of performance of work established in accordance with paragraph (b) of this clause shall be submitted by the Contractor in accordance with paragraphs (a) and (b) of this clause. This is required upon receipt of annual appropriation in the event of operations under a continuing resolution for any length of time in the current fiscal year.
- (g) The Contractor shall notify the CO immediately whenever the cost incurred to date plus the projected cost to complete the work on any work authorization directive is expected to exceed or under-run the estimated cost by a percentage of the work authorization directive to be determined by the CO (typically 10%). In this case, the Contractor shall submit a proposal for a change in the work authorization directive in accordance with paragraphs (a) and (b) of this clause.
- (h) **Expenditure of Funds and Incurrence of Cost.** The performance of work and the incurrence of cost in the execution of the PWS of this contract shall be initiated only when authorized in accordance with the provisions of this subsection. The expenditure of monies by the Contractor in the performance of all authorized work shall be governed by the provisions of the Contract Clause entitled "Obligation of Funds."
- (i) **Responsibility to achieve Environment, Safety, Health, and Security Compliance.** Notwithstanding the other provisions of this subsection, the Contractor has, in the event of an emergency, authority to take corrective actions as may be necessary to sustain operations in a manner consistent with applicable environmental, safety, health, and security statutes, regulations, and procedures. In the event that the Contractor takes such an action, the Contractor shall notify the CO within 24 hours after such action was initiated and, within 30 days after such action has been initiated, submit a proposal for adjustment in the estimated costs and schedule of performance of work established in accordance with paragraph (a) and (b) of this subsection.

H.24 WITHDRAWAL OF WORK

- (a) The CO reserves the right to have any of the work contemplated by Section C, Statement of Work, of this contract performed by either another Government Contractor or to have the work performed by Government employees.
- (b) DOE reserves the right to direct the Contractor to assign to the DOE, or another Contractor, any subcontract awarded under this contract.
- (c) The DOE reserves the right to identify specific work activities in Section C "Performance Work Statement" to be removed (de-scoped) from the contract in order to contract directly for the specific work activities.
- (d) If withdrawn work has been authorized under an annual work authorization directive, the work shall be terminated in accordance with the procedures in the Contract Clause entitled, Termination (Cost Reimbursement). If work has not been authorized under a work authorization directive and there is no impact on the Contractor's staffing, the fee amount set forth in the Schedule shall be equitably adjusted, under the Clause entitled, Changes – Cost-Reimbursement. If the Contractor's staffing is impacted, the work shall be terminated in accordance with the procedures in the Contract Clause entitled, Termination (Cost Reimbursement).
- (e) If any work is withdrawn by the CO, the Contractor agrees to fully co-operate with the new entity performing the work and to provide whatever support is required pursuant to the Contract Clause in Section H entitled, Technical Direction – DEAR 952.242-70 (DEC 2000).

H.25 PERFORMANCE EVALUATION AND MEASUREMENT PLAN (PEMP)

A PEMP, Attachment C in Section J, developed by the Carlsbad Field Office Manager or the COR, with Contractor input, shall document the process by which the Contractor's performance will be evaluated in determining the amount of fee earned by the Contractor. The Parties will strive to reach mutual agreement on expected business, operational and technical performance and will work together to develop performance objectives, performance-based incentives and associated measures and targets tied to key end products and DOE strategic goals and objectives. In the event the parties fail to agree on the requirements, the DOE reserves the unilateral right to make the final decision on all performance objectives and performance incentives (including the associated measures and targets) used to evaluate Contractor performance.

The PEMP shall be finalized, whether bilaterally or unilaterally, prior to the start of an appraisal period. The CO shall transmit the final PEMP to the Contractor. Only the CO may revise the PEMP, consistent with the PWS, during the appraisal period of performance. No changes will be made to the PEMP or associated documents with less than 60 days remaining in the appraisal period. Where the Contractor becomes aware that they will not meet a completion task metric, the Contractor shall notify DOE of its impending failure in order to allow the Government to mitigate the consequences of the impending failure to meet the completion task metric. The Contractor shall not receive fee for any completion task metrics that are not completed in accordance with contract requirements.

H.26 EMPLOYEE CONCERNS PROGRAM (ECP)

The Contractor shall submit an implementation plan to the CO for approval within 90 days of written notice to proceed that describes an Employee Concerns Program (ECP) that implements all

programmatic requirements in DOE Order 442.1A, and DOE Guide 442.1-1, Employee Concerns Program, and all superseding versions.

H.27 ENVIRONMENT, SAFETY, AND HEALTH (ES&H) (MOD 57)

- (a) The Contractor shall comply with the existing system description document in accordance with the I Clause DEAR 970.5223-1 entitled "Integration ES&H into Work Planning and Execution." The Contractor shall submit an update to the existing Integrated Safety Management System (ISMS) Description Document within 60 days of written notice to proceed and thereafter each year on September 1, for the following fiscal year. Any changes to the ISMS Description Document after the CO's or designee's initial approval, shall be approved by the CO or designee.
- (b) The initial update of the ISMS Description Document shall include any revisions to ES&H Plans/Programs (i.e., Radiation Protection Plan, Worker Safety and Health Program, etc.) and include interfaces with other equivalent plans/programs (i.e., Quality Assurance Plan) approved by DOE as required by the clause entitled Laws, Regulations, and DOE Directives.
- (c) This contract establishes the agreed-upon safety requirements and other operating parameters for the site-wide operations covered by the contract, except with respect to facilities/activities for which separate Authorization Agreement(s) are necessary. Authorization Agreements are to be used to establish, document, and control the safety requirements and other parameters for Category 2 nuclear facilities and other facilities as directed by the CO to ensure adequate protection of the workers, the public, and the environment. Updates and changes to any approved Authorization Agreements(s) shall be subject to CO approval.
- (d) The contractor shall provide the necessary personal protective equipment (PPE), safety briefings, and escorts when needed for all non-NWP personnel (both Government and non-Government) to enter contractor-controlled work areas. The contractor shall be responsible for the subsequent decontamination and disposal of such PPE. The contractor shall provide medical screening of the DOE personnel if required to enter the work areas and meet the requirements of the Worker Safety and Health Program, or Radiological Protection Program.

H.28 ENVIRONMENTAL PERMITS AND APPLICATIONS

- (a) In recognition of the Contractor's responsibility to operate in compliance with all applicable environmental requirements, the Contractor shall sign Resource Conservation and Recovery Act (RCRA) permits and applications as co-operator. DOE shall sign RCRA permits and applications as co-operator and owner if such signature is required by law or Regulatory Agency. The Contractor and other Site Contractors shall sign all other permits and applications as required by law or Regulatory Agency.
- (b) To clarify the resulting obligations under the contract, the parties agree to the following:
 - (1) DOE agrees that the Contractor shall not incur any liability above and beyond that contemplated by the contract by reason of the Contractor's execution of environmental permits.

- (2) DOE agrees that if bonds, insurance, or administrative fees are required as a condition for such permits, such costs shall be allowable. In the event that such costs are determined by DOE to be excessive or unreasonable, DOE shall provide the regulatory agency with an acceptable form of financial responsibility. In no event shall the Contractor or its parent be required to provide any corporate resources or corporate guarantees to satisfy such regulatory requirements.
 - (3) In the event of termination or expiration of this contract, DOE will require the new Contractor to accept transfer of all environmental permits executed by the Contractor.
- (c) The Contractor will be responsible for interfacing with other Site Contractors, as appropriate, when it pertains to permit applications, environmental monitoring, and environmental reporting. DOE will be fully integrated into these processes. Environmental monitoring, reporting, inspection, and control requirements will be defined in either the facility-specific permits issued by the state or in site-wide DOE-approved plans.
 - (d) The Contractor will be responsible for reviewing and approving deliverables related to site-wide permits, permit-related plans, and exemption packages developed pursuant to State and Federal environmental regulations, and for forwarding the applications to the state for final approval, as appropriate. For each permit associated with this work-scope, the Contractor will perform the necessary calculations, prepare required reports, design drawings and application forms, and submit the documentation to DOE for review and, when applicable, approval.
 - (e) The Contractor shall sample all release and emission points, as defined in the applicable permits or as directed by DOE, to support environmental monitoring programs. The Contractor shall monitor impacts on site-wide environmental media. The Contractor shall ensure that environmental monitoring data is collected pursuant to standards and procedures stipulated in the permit and/or applicable regulations. The Contractor shall ensure that all analytical data is collected and analyzed according to applicable methods and standards, and that field and laboratory quality controls and measures are implemented according to applicable standards stipulated in the facility permit. The Contractor shall provide to DOE environmental monitoring data to support operating permits, for which the Contractor has responsibility.

H.29 PRICE-ANDERSON AMENDMENTS ACT (PAAA) NONCOMPLIANCE

The Contractor shall establish an internal Price-Anderson Amendments Act (PAAA) noncompliance identification, tracking, and corrective action system and shall provide access to and fully support DOE reviews of the system. The Contractor shall also implement a Price- Anderson Amendments Act reporting process which meets applicable DOE standards. The Contractor shall be accountable for ensuring that subcontractors adhere to these requirements.

H.30 CONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATION(S) AND FINES AND PENALTIES

- (a) The Contractor shall accept, in its own name, notices of violation(s) (NOV) and fines and penalties if issued directly to the Contractor by Federal or State regulators 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 governed by the provisions of the Section I Contract Clause DEAR 970.5232-2 entitled, Payments and Advances. The Contractor shall notify the CO promptly when it receives service from the

regulators of NOVs and fines and penalties. If an NOV or a fine/penalty is provided to the Contractor and the Contractor is not responsible for the cited function under this contract, the Contractor shall immediately notify the Government and the regulator. Any NOVs, fines or penalties associated with any act or failure to act before the Contractor assumed responsibility for the site shall be processed in accordance with the Contract Clause entitled, Pre-existing Conditions.

- (b) The Contractor shall be free to conduct negotiations with regulators regarding NOVs, fines and penalties issued directly to the Contractor; however, the Contractor shall not make any commitments or offers to regulators which would bind the Government in any form or fashion, including monetary obligations, without receiving written concurrence from the CO or his authorized representative prior to making any such offers/commitments. Failure to obtain such advance written approval may result in otherwise allowable costs being declared unallowable and/or the Contractor being liable for any excess costs to the Government associated with or resulting from such offers/commitments.

H.31 PROHIBITION OF CONTRACTS WITH PERSONS FALSELY LABELING PRODUCTS AS MADE IN AMERICA

Pursuant to FAR 9.405(b), awards shall not be made to entities that are included on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

Any possible violation of the prohibition against falsely labeling products as made in America, and the entity is not on the List of parties Excluded from Federal Procurement and Nonprocurement Programs, the matter should be promptly reported through the Contracting Officer. The DOE Contracting Officer is responsible for reporting of an entity in violation of the prohibition against falsely labeling products as American-Made to the Office of Management Systems, Office of Procurement and Assistance Management, for potential debarment of the entity pursuant to FAR 9.406-2(a)(4) and 9.406-2(b)(1)(iii).

H.32 DISPOSITION OF INTELLECTUAL PROPERTY – FAILURE TO COMPLETE CONTRACT PERFORMANCE

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

property for the design, construction, and operation activities associated with the PWS to DOE or such other third party as DOE may designate. The obligations under this clause are not dependent upon any payments by the Government. The obligations arise immediately upon the request of the CO.

H.33 GOVERNMENT-OWNED PROPERTY AND EQUIPMENT

On October 1, 2012, the Contractor shall accept the transfer of and accountability for Government-owned property and equipment from Contract No. DE-AC29-01AL66444.

H.34 UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION (UCNI)

Documents originated by the Contractor or furnished by the Government to the Contractor in connection with this contract may contain Unclassified Controlled Nuclear Information as determined pursuant to Section 148 of the Atomic Energy Act of 1954, as amended. The Contractor shall be responsible for protecting such information from unauthorized dissemination in accordance with DOE regulations and directives.

H.35 PERFORMANCE OF WORK AT DOE FACILITIES AND SITES OTHER THAN WIPP

When performing work under this contract at DOE facilities and sites other than the Waste Isolation Pilot Plant (WIPP), the Contractor shall comply with and follow the List of Applicable Directives in Section J Attachment of the contract. In addition, the Contractor shall comply with any additional directives which have been established for the DOE Prime Contractor at the DOE facility/site and that are applicable to the work being performed and to associated hazards at the particular facility or site.

H.36 DEFENSE NUCLEAR FACILITIES SAFETY BOARD

The Contractor shall conduct activities in accordance with those DOE commitments to the Defense Nuclear Facilities Safety Board (DNFSB) which are contained in implementation plans and other DOE correspondence to the DNFSB. The Contractor shall support preparation of DOE responses to DNFSB issues and recommendations which affect or can affect contract work. Based on the Contracting Officer's direction, the Contractor shall fully cooperate with the DNFSB and provide access to such work areas, personnel, and information as necessary. The Contractor shall maintain a document process consistent with the DOE manual on interface with the DNFSB. The Contractor shall be accountable for ensuring that subcontractors adhere to these requirements.

H.37 CONFIDENTIALITY OF INFORMATION

- (a) To the extent that the work under this contract requires that the Contractor be given access to confidential or proprietary business or financial information belonging to the Government or other companies, the Contractor shall, after receipt thereof, treat such information as confidential and agrees not to appropriate such information to its own use or to disclose such information to third parties, unless specifically authorized by the Contracting Officer in writing. The foregoing obligations, however, shall not apply to:
- (1) Information which, at the time of receipt by the Contractor, is in public domain;
 - (2) Information which is published after receipt thereof by the Contractor or otherwise becomes part of the public domain through no fault of the Contractor;

- (3) Information which the Contractor can demonstrate was in its possession at the time of receipt thereof and was not acquired directly or indirectly from the Government or other companies;
 - (4) Information which the Contractor can demonstrate was received by it from a third party who did not require the Contractor to hold it in confidence.
- (b) The Contractor shall obtain the written agreement, in a form satisfactory to the Contracting Officer, of each employee permitted access, whereby the employee agrees that he will not discuss, divulge or disclose any such information to any person or entity except those persons within the Contractor's organization directly concerned with the performance of the contract.
 - (c) The Contractor agrees, if requested by the Government, to sign an agreement identical, in all material respects, to the provisions of this clause, with each company supplying information to the Contractor under this contract, and to supply a copy of such agreement to the Contracting Officer.
 - (d) The Contractor agrees that upon request by DOE it will execute a DOE-approved agreement with any party whose facilities or information data it is given access to or is furnished, restricting use and disclosure of the information obtained from the facilities. Upon request by DOE, such an agreement shall also be signed by Contractor personnel.
 - (e) This clause shall flow down to all appropriate subcontracts.
 - (f) Technical data is addressed in DEAR 970.5227-1.

H.38 TRAVEL RESTRICTIONS

- (a) Costs incurred for lodging, meals, and incidental expenses are considered reasonable and allowable to the extent that they do not exceed the maximum per diem rates in effect at the time of travel as set forth in:
 - (1) Federal Travel Regulations (FTR) for travel within the 48 states;
 - (2) Joint Travel Regulations (JTR) for travel in Alaska, Hawaii, the Commonwealth of Puerto Rico, and territories and possessions of the United States; or
 - (3) Standardized Regulations (SR) for travel allowances in foreign areas.

The definitions of lodging, meals, and incidental expenses, and special or unusual situations of the above regulations are applicable to Contractor travel.

- (b) Airfare costs in excess of the lowest customary standard, coach, or equivalent airfare offered during normal business hours are unallowable except when such accommodations require circuitous routing, require travel during unreasonable hours, excessively prolong travel, result in increased cost that would offset transportation savings, are not reasonably adequate for the physical or medical needs of the traveler, or are not reasonably available to meet mission requirements. However, in order for airfare costs in excess of the above

standard airfare to be allowable, the applicable condition(s) set forth above must be documented and justified.

H.39 LOBBYING RESTRICTIONS

- (a) The Contractor shall not commit any funds obligated on this award to be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in applicable statute and regulation.
- (b) Any travel associated with legislative monitoring must be approved in advance by the CO.

H.40 LITIGATION MANAGEMENT PROCEDURE

- (a) As required in the clause entitled "Recognition of Performing Entity" in Section H.17, the Contractor shall prepare a Management of Litigation Procedure(s) which shall be submitted to the CO or designee for approval within 60 days after the award of the contract, and shall be updated thereafter as required.
- (b) The CBFO Counsel is the authorized designee of the CO for approval of this Plan.
- (c) Reasonable litigation and other legal expenses are allowable when incurred in accordance with the DOE approved Contractor legal management procedure(s) (including cost guidelines) as such procedure(s) may be revised from time to time, and if not otherwise made unallowable by law or the provisions of this contract.

H.41 INFORMATION TECHNOLOGY (IT)

All information produced in support of this contract is deemed the property of the government and must be processed and protected, commensurate with risk, in compliance with government laws, Office of Management and Budget (OMB) mandates, and departmental policy.

Cyber Security

The Contractor shall develop a Cyber Security Program to meet the requirements DOE Order 205.1B – Department of Energy Cyber Security Management Program and the Environmental Management Program Security Plan.

The Contractor shall evaluate the Information System or Systems it will operate or develop in accordance with FEDERAL INFORMATION PROCESSING STANDARDS PUBLICATION FIPS 199, Standards for Security Categorization of Federal Information and Information Systems. The determination of the system categorization shall be approved by the Contracting Officer. This categorization will determine the level of controls required in the development of the Contractor's cyber security program. Along with submittal of the System Categorization, the Contractor shall develop and submit a Computer Security Threat and Vulnerabilities Statement and Computer Security Risk Assessment and Mitigation Document within 90 days of written notice to proceed. Additional deliverable requirements will be based on these documents.

Based on the System Categorization the Contractor shall develop a System Security Plan in accordance with the Under Secretary of Energy's Program Cyber Security Plan and the Environmental Management Program Security Plan. The Contractor shall implement the Management, Operational, and Technical Controls specified in these documents.

Authorization to Operate:

The DOE will notify the Contractor of the appointment of a Designated Approval Authority (DAA). The DAA will authorize the full implementation of the Contractor's IT systems. The Contractor will be subject to the reviews and system testing described in the requirements and the results of these will be presented to the DAA for review. If the results of the review are satisfactory, the DAA may issue declaration of an "Authority to Operate" (ATO) which will allow the Contractor to fully operate their IT systems within a specified time. The ATO will also specify the provisions for the continuous monitoring of the Contractor's IT Systems. If the Contractor's systems are not fully compliant but do meet the minimum standard for operations, the DAA may issue conditions, terms, or limitations on the operations of the Contractor's IT systems until they are fully compliant. These will be specified in the ATO.

If the results of the reviews and system test are not satisfactory, the DAA may deny or rescind a previous ATO with a Denial of Authorization to Operate (DATO). If the DAA issues a DATO, all costs associated with any mission delay will be the responsibility of the Contractor.

Risk Portfolio Manager:

EM's Risk Portfolio Manager (RPM) is an application developed by Environmental Management to standardize the development of IT system accreditation packages that support the DAA's decision in issuing an ATO. RPM is a central repository for cyber security documentation and Plans of Actions and Milestones (POA&M). RPM is pre-populated with DOE cyber security control requirements and will assist the Contractor in the development of required cyber security documentation. It will be the enterprise central repository for all required Certification and Accreditation (C & A) documents and artifacts. OMB requires that agencies upload information electronically to OMB. RPM is used to meet this requirement. The Contractor will be given access to the system and is required to provide updates in a timely manner.

Monitoring of IT Networks/Systems:

The Federal Government, the Department of Energy, and the Office of Environmental Management may monitor Contractor networks/systems used to conduct the EM mission for malicious activity and performance measures at any time. Hardware and software may be deployed on Contractor networks for this purpose. The installation, support and response to issues developed from these systems are within the scope of this contract.

Enterprise Architecture:

Federal law requires that agencies develop and document an Enterprise Architecture (EA). The architecture encompasses the missions and business processes that support each mission. The Contractor shall develop an Enterprise Architecture that describes the Contractor's IT systems in accordance with DOE Order 200.1A. All Federal IT investments are documented within the budget process by a form Exhibit 53 or form Exhibit 300, in

accordance with OMB criteria. As part of the Enterprise Architecture, the Contractor shall develop an application inventory which is mapped to the appropriate Exhibit 53 and 300. The Contractor shall be required to provide data and information in support of developing the Exhibit 53 and or Exhibit 300 documentation.

EM utilizes an online system that the Contractor may be required to log on to and provide specific budget and cost data. Costs accumulated in association with IT and Cyber Security must be identified as such and be identifiable from a contract management perspective. See the specific sections of OMB Circular No. A-11 for further information or clarification of Exhibits 53 and 300.

Other Requirements:

The DOE orders and Program Cyber Security Plan provide for development of Policies, Procedures or Instructions to documents supporting the Cyber Security Program. These documents may be required to be provided to the DAA to support development of an ATO for the Contractor's IT systems. The extent of the request of documents from the Contractor will rest on Risk Determination and other factors. At such time as the risk determination has been completed a list of required deliverables will be developed.

Data calls: As an integral part of compliance with DOE Order 205.1B, EM periodically issues data calls requesting specific information about the Contractor's system. Responding to these data calls in a timely manner is within the scope of this contract.

H.42 LABOR RELATIONS

- (a) The Contractor shall respect the right of employees to organize and to form, join, or assist labor organizations, to bargain collectively through their chosen labor representatives, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of these activities.
- (b) The Contractor shall meet with the Contracting Officer or designee(s) for the purpose of reviewing the Contractor's bargaining objectives prior to negotiations of any collective bargaining agreement or revision thereto and shall consult with and obtain the approval of the Contracting Officer regarding appropriate economic bargaining parameters, including those for pension and medical benefit costs, prior to the Contractor entering into the collective bargaining process. During the collective bargaining process, the Contractor shall notify the Contracting Officer before submitting or agreeing to any collective bargaining proposal which can be calculated to affect allowable costs under this contract or which could involve other items of special interest to the Government. During the collective bargaining process, the Contractor shall obtain the approval of the Contracting Officer before proposing or agreeing to changes in any pension or other benefit plans.
- (c) The Contractor will seek to maintain harmonious bargaining relationships that reflect a judicious expenditure of public funds, equitable resolution of disputes and effective and efficient bargaining relationships consistent with the requirements of FAR, Subpart 22.1 and DEAR, Subpart 970.2201 and all applicable Federal and State Labor Relations laws.
- (d) The Contractor will notify the Contracting Officer or designee in a timely fashion of all labor relations issues and matters of local interest including organizing initiatives, unfair labor

practice, work stoppages, picketing, labor arbitrations, and settlement agreements and will furnish such additional information as may be required from time to time by the Contracting Officer.

H.43 DEPARTMENT OF LABOR WAGE DETERMINATIONS

When the Service Contract Act is applicable to the performance of this contract, the Contractor shall comply with the requirements of U.S. Department of Labor Wage Determination Number 2005-2511 Rev. 13, dated 6/21/10. Copies of the wage determinations and the existing Collective Bargaining Agreement (CBA) are attached to this contract (Section J, U.S. Department of Labor Wage Determination and Collective Bargaining Agreement). Revised wage determinations from the Department of Labor shall be incorporated into this contract. The Contractor and/or subcontractor shall comply with the revised wage determination for Service Contract Act covered employees.

H.44 RECORDS MANAGEMENT

The Contractor shall conduct records management in accordance with Title 44 USC, Chapters 21, 29, 31, 33, and 35; 36 CFR, Chapter 12, Subchapter B (Records Management); ASME NQA-1-1989 edition, ASME NQA-2a-1990 addenda, part 2.7, to ASME NQA-2-1989 edition, and ASME NQA-3-1989 edition (excluding Section 2.1 (b) and (c); DOE O 243.1 (Records Management Program) and DOE O 243.2 (Vital Records), and any other DOE requirements as directed by the CO. These functions include, but are not limited to: tasks associated with creation/receipt, maintenance, storage/preservation, protecting, scheduling, indexing and dispositioning active and inactive records; retrieving records from on- and off-site storage facilities, and supporting ongoing Freedom of Information Act (FOIA), Privacy Act, Energy Employee Occupational Illness Compensation Program (EEOICPA), Former Worker Medical Screening Program (FWP), Chronic Beryllium Disease Prevention Program (CBDPP), congressional inquiries, and legal discovery requests.

The Contractor shall ensure records classified as Quality Assurance (QA) records under ANSI/ASME NQA-1-1989, ASME NQA-2a-1990, and ASME NQA-3-1983, if applicable, are categorized appropriately and managed in accordance with 36 CFR Chapter 12, Subchapter B and are traceable to the applicable item, activity or facility.

The Contractor shall implement records management controls to ensure that records in electronic information systems can provide adequate and proper documentation for as long as the information is needed. The Contractor must incorporate controls into the electronic information system or integrate them into a recordkeeping system that is external to the information system itself (see 36 CFR 1236 for specific electronic records management requirements).

All records (see 44 USC 3301 for statutory definition of a record) acquired or generated by the Contractor in performance of this contract, except for those defined as Contractor-owned (Section I clause entitled "DEAR 970.5204-3 Access to and Ownership of Records"), and including, but not limited to, records from a predecessor Contractor and records described by the contract as being maintained in Privacy Act systems of records, shall be the property of the Government.

The Contractor shall preserve and disposition records in accordance with NARA-approved records disposition schedules (DOE Record Disposition Schedules), as posted on the DOE Office of the Chief Information Officer (OCIO) Records Management web page. *Note: Records Retention standards are applicable for the classes of records described therein, whether or not the records are owned by the Government or the Contractor (DEAR 970.5204-3).*

The Contractor shall prepare and submit for DOE approval, and execute the approved Records Management Plan consistent with records management regulations, including Section I Clause entitled, "DEAR 970.5204-3, Access to and Ownership of Records, and Privacy Act Systems of Records" and WIPP specific requirements. The Records Management Plan is a high-level program document that shall describe, at a minimum: a clear delineation between Government-owned and Contractor-owned records; how the Contractor will manage all life-cycle phases of Government-owned records, including specialty records like electronic and e-mail, and audiovisual; the Contractor organization in charge of the records management program; provision of records management training to all Contractor personnel; the safeguarding, protection and maintenance of records (including audiovisual, electronic, records containing sensitive information, and/or classified, if applicable); the WIPP Hazardous Waste Facility Permit; the use of DOE Records Disposition Schedules; management of quality assurance records under NQA-1; the Contractor's procedures for final disposition of records (e.g., via transfer to a Federal Records Center (FRC), destruction, or transfer to another DOE Contractor); creation and maintenance of administrative records; and the Contractor's procedures for implementation of the records management program as a whole, including relationships with other programs that cannot function properly without sound records search and retrieval capabilities (e.g., processing claims received by the Department of Labor pursuant to the EEOICPA, FOIA, etc.). The Records Management Plan shall be submitted to the CO for review/approval by DOE within 60 days of written notice to proceed.

The Contractor shall prepare and submit for DOE approval, and execute the approved file plan consistent with records management regulations. A file plan is a comprehensive outline that includes the records series title and description, active file locations, file arrangement, file cutoff, retention period, file transfer instructions, disposition instructions, and other specific instructions that provide guidance for effective management of records, including vital records. The file plan shall be submitted within six months of written notice to proceed, for review/approval by DOE, to ensure records are being managed and scheduled properly; any revisions to the file plan shall be submitted on an annual basis.

The Contractor shall prepare and submit for DOE approval, and execute the approved Records Disposition Plan consistent with records management regulations. The Records Disposition Plan shall document the Contractor's disposition process which shall include processing records to storage (e.g., on-site, commercial and/or the FRC) and the destruction process (e.g., review process, etc.). This plan shall be developed and submitted for DOE approval prior to any records disposition activities or within six months of written notice to proceed (whichever comes first) for review/approval by DOE, to ensure records are being properly dispositioned; any revisions to the disposition plan shall be submitted to DOE prior to implementation.

The Contractor shall ensure records generated in the performance of the contract containing personal information that is routinely retrieved by name or other personal identifier are classified and maintained in Privacy Act systems of records (SOR) in accordance with Federal Acquisition Regulation clause 52.224-2, Privacy Act (APR 1984) and DOE O 206.1 DOE Privacy Program.

The Contractor shall create and maintain a NEPA Administrative Record for any NEPA documents it may generate. A NEPA Administrative Record is a compilation of all documents which are considered or relied on in the decision making process. Materials that are typically part of the Project record which have been identified for inclusion in the AR shall be duplicated in their entirety for both the Project records and the AR. The only exceptions to this would be very large sets of materials (e.g., the complete set of EIS references) which should be placed in the AR with a color

page "flag" placed in both the Project record and the AR identifying that the sole hard copy is in the AR.

Upon contract completion or termination, the Contractor shall ensure final disposition of all Government-owned records to a Federal Record Center, the National Archives and Records Administration, to a successor Contractor, its designee, or other destinations, as directed by the Contracting Officer.

PRIVACY ACT SYSTEMS OF RECORDS

The Contractor shall design, develop, or operate the following systems of records on individuals to accomplish an agency function pursuant to the Contract's "Privacy Act" clause.

<u>DOE</u>	<u>System No.</u>
DOE-5	Personnel Records of Former Contractor Employees (includes all former workers)
DOE-10	Energy Employees Occupational Illness Compensation Program Act Files
DOE-33	Personnel Medical Records (present and former DOE employees and Contractor employees)
DOE-35	Personnel Radiation Exposure Records
DOE-38	Occupational and Industrial Accident Records
DOE-51	Employee and Visitor Access Control Records*
DOE-52	Access Control Records of International Visits, Assignments, and Employment at DOE Facilities and Contractor Sites*
DOE-88	Epidemiologic and Other Health Studies, Surveys, and Surveillances

*only if Contractor is responsible for Access Control / Security functions

If the Contractor has Security responsibilities where security clearances and/or weapons are required the following shall be maintained on individuals:

DOE-15	Intelligence-Related Access Authorization
DOE-3 1	Firearms Qualifications Records
DOE-43	Personnel Security Clearance Files
DOE-45	Weapons Data Access Control System (WDACS)
DOE-48	Security Education and/or Infraction Reports
DOE-77	Physical Fitness Test Records (armed uniformed guards)
DOE-81	Counterintelligence Administrative and Analytical Records and Reports
DOE-84	Counterintelligence Investigative Records

The Contractor shall monitor systems as identified and notify the CO immediately if there is a change to existing systems or if there is a need for a new system. Lack of notification does not exempt the Contractor from complying with the Privacy Act. To ensure systems are monitored consistently, Contractors are required to review and provide a written notification to the CO annually that the list is accurate and up-to-date.

H.45 ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM ACT (EEOICPA)

The Contractor shall provide support of the EEOICPA established under Title XXXVI of the National Defense Authorization Act of 2001 (Public Law 106-398). The Contractor shall provide records in accordance with the Section I Clause entitled, DEAR 970.5204-3, Access to and Ownership of Records, in support of EEOICPA claims and the claim process under the EEOICPA.

The Contractor shall:

- (A) Verify employment and provide other records which contain pertinent information for compensation under the EEOICPA. The Contractor shall provide this support for itself and any named subcontractors' employees.
- (B) Provide reports as directed by the U.S. Department of Energy (DOE), such as costs associated with EEOICPA.
- (C) Provide an EEOICPA point-of-contact; this employee shall attend meetings, as requested by the U.S. Department of Energy Carlsbad Field Office (DOE- CBFO).
- (D) Locate, retrieve and provide a minimum of two (2) copies of any personnel and other program records as requested.
- (E) Perform records research needed to complete the Department of Labor (DOL) claims or to locate records needed to complete the claims.
- (F) Perform/coordinate records declassification activities required for the processing of claims forms.
- (G) Keep Federal Compensation Program Act (FCPA) information current on EEOICPA claims activities.
- (H) Ensure costs information is input to the FCPA electronic reporting system by the 10th of each month.
- (I) Ensure all EEOICPA claims received are completed and returned to DOE within 45 calendar days of the date entered in the FCPA electronic reporting system. (The EEOICPA costs shall not be funded with EM funds, and the Contractor shall separately track EEOICPA costs and provide a monthly claims activity report of funds spent on EEOICPA claims processing).

The FCPA electronic reporting system will be provided to the Contractor.

H.46 SALE OF PERSONAL PROPERTY

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

H.47 CONTRACTOR COMMUNITY COMMITMENT

DOE and the Contractor are charged with carrying out the critical mission of the National Transuranic Waste Program (NTP) and the Waste Isolation Pilot Plant (WIPP). The WIPP has benefited from its location in southeastern New Mexico and from the workforce and other resources provided by the region. In recognition of these benefits, the Contractor shall take meaningful actions to implement its community commitment as described in DEAR 970.5226-3 which is included in Section I of the contract.

DOE will not prescribe which community commitment activities the Contractor may engage in but identifies the activities listed in (A), (B), and (C) below as worthwhile endeavors for its consideration. The list is not intended to preclude other constructive community activities.

The Contractor shall submit to DOE its Contractor Community Commitment Plan within 30 days of written notice to proceed, after award of the contract. The Contractor shall submit to DOE an annual Community Commitment Plan and report on program success semi-annually. The Contractor is encouraged to identify and pursue community commitment activities in the Community Commitment Plan.

(A) Regional Educational Outreach Programs

The objectives of these programs include teacher enhancement, student support, curriculum enhancement, educational technology, public understanding, and providing the services of WIPP employees to schools, colleges, and universities. The Regional Educational Outreach Programs may involve providing Contractor employees an opportunity to improve their employment skills and opportunities by an educational assistance allowance, provision for outside training programs either during or outside regular work hours, or executive training programs for nonexecutive employees. This could also involve participating in activities that foster relationships with regional educational institutions and other institutions of higher learning or encouraging students to pursue science, engineering, and technology careers.

(B) Regional Purchasing Programs

The Contractor may conduct business alliances with regional vendors. These alliances may include training and mentoring programs to enable regional vendors to compete effectively for WIPP subcontracts and purchase orders and/or assistance with the development of business systems (accounting, budget, payroll, property, etc.) to enable regional vendors to meet the audit and reporting requirements of the WIPP and DOE. These alliances may also serve to encourage the formation of regional trade associations which will better enable regional businesses to satisfy WIPP's needs.

The Contractor may coordinate and cooperate with the Chambers of Commerce, Small Business Development Centers, and like organizations, and make prospective regional vendors aware of any assistance that may be available from these entities.

DOE encourages the use of regional vendors in fulfilling WIPP requirements.

The Contractor should encourage its subcontractors, at all tiers, to participate in these activities.

(C) Community Support

The Contractor may directly sponsor specific local community activities or sponsor individual employees available to work with a specific local community activity. The Contractor may provide support and assistance to community service organizations. The Contractor may support strategic partnerships with professional and scientific organizations to enhance recruitment into all levels of its Carlsbad, New Mexico based organization. The Contractor may support other community involvement activities as it deems appropriate.

The Contractor may use earned fee for any community commitment activities as it deems appropriate. All costs incurred by the Contractor for community commitment activities, as described above, are unallowable and non-reimbursable under the contract, unless otherwise allowable pursuant to the FAR and DEAR.

This clause, H.47, does not make costs unallowable that are otherwise allowable and incurred pursuant to other provisions or requirements as set forth in this contract, including DEAR 970.5232-2 Payments and Advances (DEC 2000).

The Contractor may make individual employees available to participate in community service activities (e.g., blood bank drives, charity drives, savings bond drives, disaster assistance, site tours, etc.), as defined by FAR 31.205-1(e)(3) and (4). The salaries, wages and fringe benefits of employees while engaged in such approved activities, under FAR 31.205-1(e)(3) and (4), may be allowable costs. Any commitment of labor will have the prior approval of the Contractor's Project Manager. If the Contractor authorizes its employees to participate in community service activities that are allowable in accordance with other provisions of this Contract and FAR 31.205-1(e)(3) or (4), the Contractor shall obtain prior approval of the Contracting Officer of any activity that involves more than 40 hours for company employees in a fiscal year. Failure to obtain prior Contracting Officer approval may result in the costs being determined unallowable in accordance with Section H.21. FAR 31.205-8 makes unallowable any contributions or donations, including cash, property, and services.

H.48 COMPLIANCE WITH INTERNET PROTOCOL, VERSION 6 (IPv6), IN ACQUIRING INFORMATION TECHNOLOGY (IT) (M004)

- (a) This contract may involve the acquisition of IT that uses Internet Protocol (IP) technology. The Contractor agrees that (1) all deliverables that involve IT that use IP (products, services, software, etc.) will comply with IPv6 standards and interoperate with both IPv6 and IPv4 systems and products; and (2) it has IPv6 technical support for development and implementation and fielded product management available. If the Contractor plans to offer a deliverable that involves IT that is not initially compliant, the Contractor agrees to (1) obtain the CO's approval before starting work on the deliverable; (2) provide a migration path and firm commitment to upgrade to IPv6 on their Web, e-mail, ISP, and DNS servers and services by the end of calendar year 2012, and their internal client applications by fiscal year 2014, and (3) have IPv6 technical support for development and implementation and fielded product management available.
- (b) Should the Contractor find that any future statements of work or specifications provided to the Contractor do not conform to the IPv6 standard, it must notify the CO of such nonconformance and act in accordance with instructions of the CO.
- (c) The Contractor shall identify an employee to act as a liaison with the DOE HQ Chief Information Officer where needed. The Contractor shall provide a request for waiver to the

CO at least 45 days prior to the required date of waiver execution to allow sufficient time for DOE review and approval.

H.49 TRANSITION TO FOLLOW-ON CONTRACT

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

That at the expiration of the contract term or any earlier termination thereof, the Contractor shall cooperate with a successor Contractor or the Government by allowing either to interview its employees for possible employment, and if such employees accept employment with the replacement Contractor, shall release such employees at the time established by the new employer or by DOE. The Contractor shall cooperate with the replacement Contractor and Government with regard to the termination or transfer arrangements for such employees to assure maximum protection of employee service credits and fringe benefits. After selection by the Government of any successor Contractor, the Contractor and such successor Contractor shall jointly prepare mutual detailed plans for phase-out and phase-in operations. Such plans shall specify a training and orientation program for the successor Contractor to cover each phase of the scope of work covered by the contract. A proposed date by which the successor Contractor will assume responsibility for such work shall be established. The Contractor shall assume full responsibility for such work until assumption thereof by the successor Contractor. Execution of the proposed plan or any part thereof shall be accomplished in accordance with the CO's direction and approval. This clause shall apply to subcontracts as approved by the CO. The Contractor shall be reimbursed for all reasonable phase-in and phase-out costs, i.e., costs incurred within the agreed period after contract expiration that result from phase-in and phase-out operations.

H.50 PARTNERING

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

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

H.51 INSURANCE – WORK ON A GOVERNMENT INSTALLATION

The following kinds and minimum amounts of insurance are required during the performance of this contract:

- (a) **Worker's Compensation and Employer's Liability Insurance:**
 - (1) The amount required by the State of New Mexico under applicable Worker's Compensation and occupational disease statutes
 - (2) Employer's liability insurance in the amount of \$500,000.
- (b) **General Liability Insurance.** Bodily liability coverage written on the comprehensive form of policy of at least \$1,000,000 per occurrence.
- (c) **Automobile Liability Insurance.** Coverage shall be listed on the comprehensive form of the policy. It shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performing the contract. Policies covering automobiles operated in the United States shall provide coverage of at least \$500,000 per person and \$1,000,000 per occurrence for bodily injury and \$100,000 per occurrence for property damage.
- (d) The amount of liability coverage on other policies shall be commensurate with any legal requirements of the locality and sufficient to meet normal and customary claims.

H.52 DOE-H-1005 WORKERS' COMPENSATION INSURANCE (MOD 31)

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

H.53 NNSA/EM STRATEGIC SOURCING PARTNERSHIP (M004)

The contractor shall participate in the National Nuclear Security Administration (NNSA)/Environmental Management (EM) Strategic Sourcing Partnership. Under this partnership, EM contractors shall work with the NNSA/EM Supply Chain Management Center (SCMC) to yield an enterprise-wide, synergistic strategic sourcing solution that leverages NNSA and EM purchasing power to gain pricing, processing, and reporting efficiencies to reduce costs overall for the Government.

H.54 REPORT AND APPROVAL REQUIREMENT FOR CONFERENCE RELATED ACTIVITIES (M014)

The contractor is required to report and obtain approval from the contracting officer before incurring any costs associated with conference related activities. Conference expenses are defined as follows:

Conference expenses are defined as all direct and indirect conference costs paid by the Government, whether paid directly by agencies or reimbursed by agencies to contractors, travelers or others associated with the conference, but do not include funds paid under Federal grants to grantees. Conference expenses include any associated authorized travel and per diem expenses, rental of rooms for official business, audiovisual use, light refreshments, registration fees, ground transportation, and other expenses as defined by the Federal Travel Regulations (FTR). All outlays for conference preparation and planning should be included, but employee time for conference preparation should not be included. The FTR provides some examples of direct and indirect conference costs included within conference expenses. See 41 CFR 301-74.2. Conference expenses should be net of any fees or revenue received by the agency or contractor through the conference.

H.55 WORK PERFORMED UNDER SECTION C, PERFORMANCE WORK STATEMENT, THAT IS NOT FUNDED BY THE CARLSBAD FIELD OFFICE (MOD 020, 62)

The contractor is authorized to negotiate fee arrangements directly with the requesting entity for work performed by the Contractor that is funded from non-Carlsbad Field Office (CBFO) funding. Such work will be in furtherance of the Performance Work Statement provided in Section C of this contract. All work performed will be on a full-cost recovery basis and reporting of all such work will be provided to CBFO on a monthly basis. This clause is effective for the period October 1, 2012 through September 30, 2017, and will be reviewed at the end of the period to determine whether there is a requirement to extend the clause.

H.56 REPORTING OF WORKFORCE RESTRUCTURING DATA (MOD 062)

Contractor shall provide actual and projected workforce reductions on an annual basis no later than March 15th of each year. The collection of Contractor workforce reduction will be administered through the iBenefits system (<https://ibenefits.energy.gov>) for the collection of the following:

- Actual number of voluntary/involuntary separations for the prior Fiscal Year (FY) (that is FY20XX), and
- Actual and projected number of voluntary/involuntary separations for the current year (that is, FY 20XX). Please include any actual separations that have already occurred in the current fiscal year.

H.57 DOE-H-2073 RISK MANAGEMENT AND INSURANCE PROGRAMS (MOD 108)

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

1. **BASIC REQUIREMENTS**

- a. **Maintain commercial insurance or a self-insured program, (i.e., any insurance policy or coverage that protects the contractor from the risk of legal liability for adverse actions associated with its operation, including malpractice, injury, or negligence) as required by the terms of the contract. Types of insurance include automobile, general liability, and other third party liability insurance. Other forms of coverage must be justified as necessary in the operation of the Department facility and/or the performance of the contract, and approved by the DOE.**
- b. **Contractors shall not purchase insurance to cover public liability for nuclear incidents without DOE authorization (See DEAR 970.5070, Indemnification, and DEAR 950.70, Nuclear Indemnification of DOE Contractors).**
- c. **Demonstrate that insurance programs and costs comply with the cost limitations and exclusions at FAR 28.307, Insurance Under Cost Reimbursement Contracts, FAR 31.205-19, Insurance and Indemnification, DEAR 952.231-71 Insurance-Litigation and Claims, and DEAR 970.5228-1, Insurance-Litigation and Claims.**
- d. **Demonstrate that the insurance program is being conducted in the government's best interest and at reasonable cost.**
- e. **The contractor shall submit copies of all insurance policies or insurance arrangements to the Contracting Officer no later than 30 days after the purchase date.**
- f. **When purchasing commercial insurance, the contractor shall use a competitive process to ensure costs are reasonable.**
- g. **Ensure self-insurance programs include the following elements:**
 - (1) **Compliance with criteria set forth in FAR 28.308, Self-Insurance. Approval of self-insurance is predicated upon submission of verifiable proof that the self-insurance charge does not exceed the cost of purchased insurance. This includes hybrid plans (i.e., commercially purchased insurance with self-insured retention (SIR) such as large deductible, matching deductible, retrospective rating cash flow plans, and other plans where insurance reserves are under the control of the insured). The SIR components of such plans are self-insurance and are subject to the approval and submission requirements of FAR 28.308, as applicable.**
 - (2) **Demonstration of full compliance with applicable state and federal regulations and related professional administration necessary for participation in alternative insurance programs.**
 - (3) **Safeguards to ensure third party claims and claims settlements are processed in accordance with approved procedures.**
 - (4) **Accounting of self-insurance charges.**
 - (5) **Accrual of self-insurance reserve. The Contracting Officer's approval is required and predicated upon the following:**
 - (a) **The claims reserve shall be held in a special fund or interest bearing account.**
 - (b) **Submission of a formal written statement to the Contracting Officer stating that use of the reserve is exclusively for the payment of insurance claims and losses, and that DOE shall receive its equitable share of any excess funds or reserve.**
 - (c) **Annual accounting and justification as to the reasonableness of the claims reserve submitted for Contracting Officer's review.**
 - (d) **Claim reserves, not payable within the year the loss occurred, are discounted to present value based on the prevailing Treasury rate.**

