

DOE O 433.1A	Maintenance Management Program for DOE Nuclear Facilities
DOE O 435.1, Chg 1	Radioactive Waste Management
DOE O 442.1A	Department of Energy Employee Concerns Program
DOE O 450.1A	Environmental Protection Program
DOE O 451.1B, Chg 1	National Environmental Policy Act Compliance Program
DOE O 460.1B	Packaging and Transportation Safety
DOE O 460.2A	Departmental Materials Transportation and Packaging Management
DOE O 461.1A	Packaging and Transfer or Transportation of Materials of National Security Interest
DOE O 470.2B	Independent Oversight and Performance Assurance Program
DOE O 470.3B	Graded Security Protection Policy
DOE O 470.4A	Safeguards and Security
DOE O 471.1A	Identification and Protection of Unclassified Controlled Nuclear Information
DOE O 471.3	Identifying and Protecting Official Use Only Information
DOE O 482.1	DOE Facilities Technology Partnering Programs
DOE O 483.1	DOE Cooperative Research and Developments Agreements
DOE O 522.1	Pricing of Departmental Materials and Services
DOE O 534.1B	Accounting
DOE O 544.1	Priorities and Allocations Program
DOE O 551.1C	Official Foreign Travel
DOE O 580.1 Chg 1	Department of Energy Personal Property Management Program
DOE O 1220.1A Chg 1	Congressional and Intergovernmental Affairs
DOE O 1230.2	American Indian Tribal Government Policy
DOE O 1340.1B	Management of Public Communications Publications and Scientific, Technical, and Engineering Publications
DOE O 5400.5 Chg 2	Radiation Protection of the Public and the Environment
DOE O 5480.19 Chg 2	Conduct of Operations Requirements for DOE Facilities
DOE O 5480.20A Chg 1	Personnel Selection, Qualification, and Training Requirements for DOE Nuclear Facilities
DOE O 5670.1A	Management and Control of Foreign Intelligence

DOE MANUALS

DOE M 140.1-1B	Interface with the Defense Nuclear Facilities Safety Board
DOE M 205.1-3	Telecommunications Security Manual
DOE M 205.1-4	National Security System Manual
DOE M 205.1-5	Cybersecurity Process Requirements Manual
DOE M 231.1-1A	Environment, Safety, and Health Reporting Manual
Change 2	
DOE M 231.1-2	Occurrence Reporting and Processing of Operations Information
DOE M 413.3-1	Project Management for the Acquisition of Capital Assets
DOE M 435.1-1	Radioactive Waste Management Manual
Change 1	
DOE M 442.1-1	Differing Professional Opinions Manual for Technical Issues Involving Environment, Safety and Health
DOE M 450.4-1	Integrated Safety Management System Manual
DOE M 460.2-1A	Radioactive Material Transportation Practices
DOE M 461.1-1	Packaging and Transfer of Materials of National Security Interest Manual
Change 1	
DOE M 470.4-1	Safeguards and Security Program Planning and Management
Change 1	
DOE M 470.4-2	Physical Protection
Change 1	
DOE M 470.4-3	Protective Force
DOE M 470.4-4	Information Security
Change 1	
DOE M 470.4-5	Personnel Security
DOE M 470.4-6	Nuclear Material Control and Accountability
DOE M 470.4-7	Safeguards and Security Program References
DOE M 471.1-1	Identification and Protection of Unclassified Controlled Nuclear Information Manual
Change 1	
DOE M 471.3-1	Manual for Identifying and Protecting Official Use Only Information

DOE NOTICES

DOE N 144.1	Change to DOE O 1230.2
DOE N 153.2	Connectivity to National Atmospheric Release Advisory Center
DOE N 206.4	Personal Identity Verification
DOE N 206.5	Response and Notification Procedures for Data Breaches Involving Personally Identifiable Information
DOE N 234.1	Reporting on Radioactive Sealed Sources

RATING PLAN

Contract Number: DE-AC29-01AL66444
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Metric 7: The Contractor's performance will be measured quarterly for its success in the safe and compliant removal of cubic meters of waste from inefficient waste streams where WTS provides characterization services and shipping to WIPP for disposal. Inefficient waste streams are defined as TRU waste meeting one or more of the following criteria: (a) originating from waste streams with fewer than 250 containers; (b) waste streams with initial rejection rates exceeding 20% through Real Time Radiography (RTR); (c) containers with shipments where the shipment payload is limited by transportation requirements; and (d) containers which require overpacking

For each cubic meter of waste from inefficient CH waste streams removed from a generator site inventory, WIPP certified by WTS, transported, and disposed of at WIPP under Metric 1, an incremental fee of Exempt 4 will be earned in addition to the base fee earned under PBI #1, Metric 1

The estimated amount of fee to fund this metric during the term of the contract is Exemption 4

Metric 8: The Contractor's performance will be measured quarterly for its success in the safe and compliant removal of cubic meters of waste where WTS provides partial characterization or transportation services for disposal of the waste at WIPP.

For each cubic meter of waste where WTS provides partial characterization or transportation services for disposal of the waste at WIPP, a fee of Exempt 4 will be earned.

The estimated amount of fee required to fund this metric during the term of the contract is Exemption 4

SECTION V. PERFORMANCE REQUIREMENTS

PREVIOUS GATEWAY: Describe previous gateway (if applicable) that must be completed before fee can be paid under this performance measure

None

DEFINE COMPLETION: Specify Performance Elements and describe indicators of success (quality/progress). Include baseline documents/data against which completion documentation should be compared.

Payment Metric 1: For non-SQS elements, each month TRU waste that has been retrieved, characterized and approved for shipment will be transported and disposed of at WIPP. WTS will submit provisional requests for payment of 85% of the fee earned monthly, and the total fee earned will be finalized after the end of the applicable quarter, at which time the balance for the quarter will also be due. The request for payment shall document the total cubic meters of TRU waste removed from generator site inventory for those sites where WTS provides characterization services and disposal at WIPP. CBFO will verify the request submitted by the Contractor from information in the WWIS database or by verification documentation from the generator sites.

For SQS elements, WTS will submit a request for payment to CBFO after cleanup or disposal of all defense TRU waste at an SQS listed below is completed, based on the minimum quantities of waste contained in the waste inventory table on the next page. The table shall be updated by CBFO at the start of each fiscal year beginning with FY06 during the term of the contract for sites where work has not yet begun. CBFO will verify the request submitted by the Contractor from information in the WWIS database and/or verification and documentation from the generator sites. A site must have defense TRU waste for fee to be earned under this provision. TRU waste inventories for SQS as of 9/1/06 are as indicated below:

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Small Quantity Site	CH Volume (m ³)	RH Volume (m ³)
Argonne National Lab - IL	0	25
MFC at INL	0	305.6
Bettis Atomic Power Lab - NY	25	2.7
Framatome (AREVA) - WA	7.3	0
GE-VNC - CA		12.5
Knolls Atomic Power Laboratories - NY	Future D&D - TBD	3.1
Knolls Atomic Power Lab - NFS - TN	0	0
Lawrence Livermore National Lab - CA	162	0
NRD, LLC - NY		14.21
Nevada Test Site - NV	309	.42
Paducah Gaseous Diffusion Plant - OH	TBD	TBD
Sandia National Laboratories - NM	25.3	4.4
Separations Process Research Unit NY	50.1	0

*Additional sites and their volumes of defense TRU waste may be added by mutual agreement.

Payment Metric 2: Each month TRU waste that has been retrieved, characterized and approved for shipment by generator sites will be transported and disposed of at WIPP. WTS will submit provisional requests for payment of 85% of the fee earned monthly, and the total fee earned will be finalized after the end of the applicable quarter, at which time the balance for the quarter will also be due. The request for payment shall document the total cubic meters of TRU waste disposed of in the WIPP underground repository. CBFO will verify the request submitted by the Contractor from information in the WWIS database.

Payment Metric 3: WTS will submit an invoice for payment at the end of the applicable quarter to CBFO that documents its identification of the total cubic meters of waste managed as TRU waste where a more cost effective disposal option exists in accordance with Metric 3.

Payment Metric 4: WTS will request payment after the completion of disposal of at least one shipment of RH TRU waste by submitting a letter report to the CBFO that documents the volume of RH TRU waste disposed in the WIPP underground repository as indicated in the WWIS database.

Payment Metric 5: Each month difficult CH TRU waste has been characterized and approved for shipment by WTS and is transported and disposed of at WIPP; WTS will submit requests for progress payment of 85% of the incremental fee earned monthly under this metric. The total incremental fee earned will be finalized after the end of the applicable quarter, at which time the withheld fee for the quarter will also be due. The request for payment shall document the total cubic meters of difficult CH TRU waste removed from generator site inventories for those sites where WTS provides characterization services and disposal at WIPP in the WIPP Waste Information System (WWIS). Documentation of difficult waste status can be by container number from the WWIS, Non-Conformance Reports (NCRs), characterization data sheets, or CCP Project Tracking System reports. CBFO will verify the request submitted by the Contractor from information in the WWIS database and supplied documentation, or by verification documentation from the generator sites.

Payment Metric 6: Each month waste has been partially characterized or transported by WTS and removed from a generator site to a DOE-approved site other than WIPP, WTS will submit requests for progress payment of 85% of the fee earned monthly under this metric. The withheld fee for the previous two months will be due at the end of the quarter. The request for payment shall document the total cubic meters of partially characterized or transported waste in the WIPP Waste Information System (WWIS).

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non-conformance reports, characterization data sheets, or the WTS Project Tracking System. CBFO will verify the request submitted by the Contractor from information in the WWIS database and supplied documentation, or by verification documentation from the generator sites.

Payment Metric 7: Each month inefficient CH TRU waste has been characterized and approved for shipment by WTS and is transported and disposed of at WIPP; WTS will submit requests for progress payment of 85% of the incremental fee earned monthly under this metric. The total incremental fee earned will be finalized after the end of the applicable quarter, at which time the withheld fee for the quarter will also be due. The request for payment shall document the total cubic meters of inefficient CH TRU waste removed from generator site inventories for those sites where WTS provides characterization services and disposal at WIPP in the WIPP Waste Information System (WWIS). Documentation of inefficient waste status can be by container number from the WWIS, Non-Conformance Reports (NCRs), characterization data sheets, or CCP Project Tracking System reports. CBFO will verify the request submitted by the Contractor from information in the WWIS database and supplied documentation, or by verification documentation from the generator sites.

Payment Metric 8: Each month waste has been partially characterized or transported by WTS and removed from a generator site to WIPP, WTS will submit requests for progress payment of 85% of the fee earned monthly under this metric. The withheld fee for the previous two months will be due at the end of the quarter. The request for payment shall document the total cubic meters of partially characterized or transported waste in the WIPP Waste Information System (WWIS), non-conformance reports, characterization data sheets, or the WTS Project Tracking System. CBFO will verify the request submitted by the Contractor from information in the WWIS database and supplied documentation, or by verification documentation from the generator sites.

DEFINITIONS:

CH – Contact-Handled: Packaged TRU waste with an external surface dose rate that does not exceed 200 mrem per hour.

Clean up or Cleanup: A site is cleaned up when no defense TRU waste remains on the site. Wastes that fit this definition include: CH TRU, RH TRU, CH TRU mixed, RH TRU mixed, and other waste managed as TRU waste.

Cubic Meters: As used herein cubic meters refer to the TRU waste container volume. TRU waste container volume means the volume in cubic meters of the container. For example, the volume of one 55-gallon drum is 0.21 m³, and the volume of one standard waste box is 1.88 m³, etc.

RH – Remote-Handled: Packaged TRU waste with an external surface dose rate that exceeds 200 mrem per hour but is less than 1,000 rem per hour.

Small Quantity Sites (SQS): The generator or storage sites in addition to Idaho National Laboratory, Hanford, Savannah River, Oak Ridge, and Los Alamos National Laboratory.

TRU: Transuranic Waste. Radioactive waste containing isotopes with an atomic number greater than 92, concentrations greater than 100 nanocuries per gram, and a half-life of greater than 20 years.

Waste Managed as TRU: Waste, suspected of being defense TRU waste, being actively managed by the generator as TRU waste.

WIPP: Waste Isolation Pilot Plant

2 AMENDMENT/MODIFICATION NO A145	3 EFFECTIVE DATE See Block 16C	4 REQUISITION/PURCHASE REF 09E\1000222	5 PROJECT NO (If applicable)
6 ISSUED BY U.S. Department of Energy Carlsbad Field Office P. O. Box 3090 Carlsbad, NM 88220-3090		7 ADMINISTERED BY (If other than Item 6) CODE	

8 NAME AND ADDRESS OF CONTRACTOR (No., street, county, state ZIP Code) Washington TRU Solutions LLC P.O. Box 2078 Carlsbad, NM 88220	9A AMENDMENT OF SOLICITATION NO
CODE	9B DATED (SEE ITEM 11) 12/14/2000
FACILITY CODE	10A MODIFICATION OF CONTRACT ORDER NO DE-AC29-01AL66444
	10B DATED (SEE ITEM 11) 12/14/2000

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 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 ACKNOWLEDGMENT 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)

01250	2009	33	490003	25400	1110954	0000442	\$474,542
01250	2009	33	490003	25400	1110956	0003804	\$397,402
00900	2009	33	490003	25400	2221775	0000000	\$ 13,701
01751	2009	33	490003	25400	1111305	0003899	\$ 61,215
Total:							\$946,860+

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

- 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 paving office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
- C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF _____
- X D. OTHER (SPECIFY TYPE OF MODIFICATION AND AUTHORITY) Incremental funding - DEAR 970.5204-15 entitled, "Obligation of Funds"

E. IMPORTANT! Contractor is not, is required to sign this document and return _____ 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 obligate \$946,860.00 in funding to the contract. This change is cited in the above block 12 data being appended to the contract and an increase to the total contract obligations listed below:

Funds Obligated through last Modification	\$1,131,336,649.91
Funds Obligated by this Modification	946,860.00
Funds Obligated since Inception of Contract	\$1,132,283,509.91

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

15A NAME AND TITLE OF SIGNER (Type or print) Arthur L. Welton, Contracting Officer	16A NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Arthur L. Welton, Contracting Officer
15B CONTRACTOR OFFICER BY _____ (Signature of person authorized to sign)	15C DATE SIGNED Signature deleted OMB M-06-15, "Safeguarding Personally Identifiable Information"
	16C DATE SIGNED 1/26/09

2 AMENDMENT/MODIFICATION NO
M146

3 EFFECTIVE DATE
See block 16C

4 REQUISITION/PURCHASE REQ NO. N/A - NOPR

5 PROJECT NO (If applicable)

6 ISSUED BY
**U.S. Department of Energy
Carlsbad Field Office
P.O. Box 3090
Carlsbad, NM 88220-3090**

7 ADMINISTERED BY (If other than Item 6) CODE

8 NAME AND ADDRESS OF CONTRACTOR (No. street, county, state, ZIP Code)
**Washington TRU Solutions LLC
P.O. Box 2078
Carlsbad, NM 88220**

9A AMENDMENT OF SOLICITATION NO

9B DATED (SEE ITEM 11)

10A MODIFICATION OF CONTRACT/ORDER NO
DE-AC29-01AL66444

10B DATED (SEE ITEM 13)
12/14/2000

CODE FACILITY CODE

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers is extended, is not extended

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation 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 ACKNOWLEDGMENT 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)
N/A - Not A Funding Action

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

- 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).
- C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: Agreement of parties to revise the list of Directives applicable to the contract
- X** D. OTHER (SPECIFY TYPE OF MODIFICATION AND AUTHORITY): Further clarification of existing requirement

F. IMPORTANT Contractor is not, is required to sign this document and return _____ copies to the issuing office.

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

See attached page:

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

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Arthur L. Welton Contracting Officer	
15B. CONTRACTOR/OFFEROR BY _____ (Signature of person authorized to sign)	15C. DATE SIGNED	Signature deleted OMB M-06-15. "Safeguarding Personally Identifiable Information"	16C. DATE SIGNED 1/29/09

- a) The purpose of this modification is to clarify a requirement in Part III, Section J, Attachment C of the contract to further define the performance objectives foreseen in the characterization and retrieval process. As required by the terms and conditions of the contract, if additional funding is required to implement increases or decreases in budget to perform this requirement, a change control board request shall be submitted that identifies proposed budgetary and/or scope trade-offs that will be required in order to implement the requirement within the budget authority available. Accordingly, Contract Attachment C is deleted in its entirety and replaced thereto with Attachment 1 of this modification, attached hereto including fifteen (15) pages and made part of the contract by this modification.
- b) As a result of this change, the following changes are made:
- a. Attachment C, entitled, "STATEMENT OF WORK" paragraph C.3 (a) (1) is changed from:

- (1) The Contractor will be responsible for all operations at the WIPP and for integration and disposal of legacy defense TRU waste for the National Transuranic Waste Program. The Contractor will participate in a coordinated approach to retrieval, characterization, transportation, and disposal activities at the associated generator sites throughout the complex. The Contractor may place Retrieval and Characterization Teams (RCTs) within the complex to assist in the efficient retrieval, characterization and transportation of legacy TRU. The contractor will work with generator sites to access generator site retrieval and characterization data, budget, and technical information as necessary to facilitate planning and integration of RCT's. The Contractor recognizes that there are objectives associated with the vision of the Government that will be considered in the management, integration, and operation of the WIPP and in conducting legacy defense TRU waste activities. These objectives are:

and revised with paragraph C.4(b)(1) to read as follows:

- (1) The Contractor will be responsible for all operations at the WIPP and for integration and disposal of legacy defense TRU waste for the National Transuranic Waste Program. The Contractor will participate in a coordinated approach to retrieval, **remediation, re-packaging,** characterization, transportation, and disposal activities at the associated generator sites throughout the complex. The Contractor may place Retrieval and Characterization Teams (RCTs) within the complex to assist **and/or perform** in the efficient retrieval, characterization and transportation of legacy TRU. The contractor will work with generator sites to access generator site retrieval and characterization data, budget, and technical information as necessary to facilitate planning and integration of RCT's. The Contractor recognizes that there are objectives associated with the vision of the Government that will be considered in the management, integration, and operation of the WIPP and in conducting legacy defense TRU waste activities. These objectives are:

- b. Attachment C, entitled, "STATEMENT OF WORK" paragraph C.4 (d) (1) is changed from:

(1) WASTE CHARACTERIZATION/RETRIEVAL

The Contractor will be responsible for integration of waste characterization and retrieval by designated DOE contractors at characterization sites.

- (i) The Contractor may provide and deploy to generator sites Retrieval and Characterization Teams (RCTs) to assist in the management and execution of legacy TRU waste retrieval and characterization activities.

and revised with paragraph C.4(b)(1) to read as follows:

(1) WASTE CHARACTERIZATION/RETRIEVAL

The Contractor will be responsible for integration of waste characterization, **remediation, re-packaging** and retrieval by designated DOE contractors at characterization sites.

- (i) The Contractor may provide and deploy to generator sites Retrieval and Characterization Teams (RCTs) to assist **and/or perform** in the management and execution of legacy TRU waste retrieval, **remediation, re-packaging**, and characterization activities.

- c) If the contractor disagrees that this is a clarify of performance objectives in the contract, the Contractor shall notify the Contracting Officer of the specific change in requirements starting from the effective date of this modification in accordance with the contract clause Section I.144, DEAR 970.5243-1 entitled, "CHANGES."

Part I - The Schedule

SECTION C

DESCRIPTION/SPECIFICATION/WORK STATEMENT
DESCRIPTION OF WORK AND SERVICES

STATEMENT OF WORK (M040, M058, M066, M124 and M146)

C.1 CONTRACT FOCUS

The purpose of the WIPP is to protect human health and the environment by safe management, retrieval, characterization, transportation, and disposal of defense generated transuranic (TRU) waste.

C.2 BACKGROUND

- (a) The WIPP is a sixteen (16) square mile (10,240 acre) site owned by the United States Department of Energy (DOE) and is located in Southeastern New Mexico. The WIPP includes surface facilities and a geological repository located two thousand one hundred fifty (2150) feet below the surface. The Property Protection Area (PPA) at WIPP encloses approximately thirty-five (35) acres, and includes the majority of the buildings and structures at WIPP. The area outside the fenced PPA consists of otherwise undeveloped, high-desert terrain. Several administrative offices are located in the city of Carlsbad, some twenty-five (25) miles west of the WIPP.
- (b) The DOE Carlsbad Field Office (CBFO) is responsible for administration of the Contract. The DOE Assistant Secretary for Environmental Management (EM) provides program direction to the CBFO. SNL performs the scientific studies and computational activities associated with the long-term performance of the WIPP. The Carlsbad Technical Assistance Contractor (CTAC) provides technical support to the CBFO, with the emphasis on audits and assessments. Other national laboratories and DOE facilities are funded by the CBFO to perform specific tasks related to the WIPP mission.
- (c) The WIPP's siting phase began in 1975. The WIPP site was studied extensively, including, geologic, hydrologic, geo-mechanical and rock mechanics properties. Experimental programs not involving tests with radioactive materials were begun at that time. The selection phase ended in 1980 with the completion of the WIPP Final Environmental Impact Statement. The site and preliminary design validation phase followed site selection. Two shafts were constructed, and an underground test area was excavated. Geologic, hydrologic, and other geo-technical investigations

continued, and additional studies were initiated to expand the site characterization database.

- (d) During the ten-year construction phase, site data collection continued in parallel with the construction of surface and additional underground facilities. The DOE developed and refined tools and models to assess the performance of the TRU waste disposal system. The U. S. Environmental Protection Agency (EPA) began to develop guidance and standards for the management and disposal of radioactive waste.
- (e) In the pre-disposal phase, compliance with EPA regulations (40 CFR Sections 191 and 194) was documented in the Compliance Certification Application (CCA). The WIPP established its readiness to conduct disposal operations, and shipping sites began characterizing waste for shipment.
- (f) The disposal phase began on March 26, 1999 when the first shipment of waste was received at WIPP. The disposal of mixed-transuranic waste was authorized with the issuance of a Hazardous Waste Facility Permit (HWFP) by the New Mexico Environment Department. This permit was issued on October 28, 1999 and became effective on November 27, 1999.
- (g) The waste analysis plan, contained in the HWFP, specifies waste characterization activities to be carried out at TRU waste generator sites. TRU waste has been and will continue to be shipped to WIPP from Large Quantity Sites (LQS) and from Small Quantity Sites (SQS). Various sites may be designated as potential sites to receive and characterize TRU waste from SQS.
- (h) All TRU wastes shipped to WIPP are required to use Type B packagings (shipping containers) certified by the U. S. Nuclear Regulatory Commission (NRC) and provided by the CBFO or acquired by the Contractor. The four packagings currently identified for WIPP are the TRUPACT-II and HalfPACT for Contact-handled TRU waste and the RH-72-B cask and the CNS 10-160 B cask for Remote-handled-TRU waste. TRUPACT-III development is progressing and is expected to be ready for WIPP use in FY07. Currently, all TRU waste is shipped by truck, but may also be shipped by rail in the future. The legacy TRU waste disposal phase will require an estimated sixteen thousand (16,000) shipments to WIPP. Newly generated TRU waste will continue to be disposed of at WIPP until 2030. Following the disposal phase, the WIPP will enter its decommissioning phase lasting approximately five (5) years. During this five (5) year period, the repository will be permanently closed. Planned activities at the WIPP will require the site infrastructure to exist for approximately thirty (30) years or more.

- (i) In the post-decommissioning phase, active institutional controls will be employed for at least one hundred (100) years to prevent human intrusion into the repository. Passive controls including permanent markers will warn future societies of the location and hazards of the disposal site.

C.3 OVERALL CONTRACTOR RESPONSIBILITIES

(a) GENERAL MANAGEMENT

- (1) The Contractor will be responsible for all operations at the WIPP and for integration and disposal of legacy defense TRU waste for the National Transuranic Waste Program. The Contractor will participate in a coordinated approach to retrieval, **remediation, re-packaging**, characterization, transportation, and disposal activities at the associated generator sites throughout the complex. The Contractor may place Retrieval and Characterization Teams (RCTs) within the complex to assist **and/or perform** in the efficient retrieval, **remediation, re-packaging**, characterization and transportation of legacy TRU. The contractor will work with generator sites to access generator site retrieval and characterization data, budget, and technical information as necessary to facilitate planning and integration of RCT's. The Contractor recognizes that there are objectives associated with the vision of the Government that will be considered in the management, integration, and operation of the WIPP and in conducting legacy defense TRU waste activities. These objectives are:
 - (i) Safety and Environmental Management Excellence – Protection of the employees, the public and the environment;
 - (ii) Operational Efficiencies – Pursue efficiencies in waste retrieval, characterization, transportation and disposal; and
 - (iii) Support to Small Quantity Sites (SQS) in the removal and disposal of TRU waste;
 - (iv) Standardization Efficiencies – Develop a standardized characterization approach and a national audit approach for application where feasible. This is not a prerequisite for performance under this contract; and
 - (v) The goal to dispose of 70% of the legacy TRU waste in the DOE complex by 2010.

- (2) The Contractor will use its best judgment, skill, and care in the management, integration, operation, and maintenance of the facilities, equipment and programs described in this statement of work. The Contractor will perform the work and services in a manner that will instill public confidence in the WIPP and the National Transuranic Waste Program and meet all applicable federal, state and local laws; regulations; standards; and governing agreements and permits with regulatory and oversight governmental organizations. The Contractor will also comply with the terms and conditions of this contract and in accordance with such Contracting Officer directions and approvals.
- (3) Pursuant to the Contract Clause entitled "Laws, Regulations, and DOE Directives," the Contractor will conform to the requirements of all applicable DOE Orders and Directives, which may establish management, technical, procedural or other standards, and specifications for Contractor work activities. The Orders and Directives applicable to this Contract are contained at Section J, Attachment H.
- (4) The Contractor will be fully responsible and accountable for the safe accomplishment of all work, whether performed by its own personnel or subcontractors. The Contractor will be responsible for planning, integrating, managing and executing the programs, projects, operations and other activities as described in this statement of work such that all functions are fully integrated. The Contractor shall provide program management functions that include: legal services, audit services, business systems management, human resources, property management, information resources management, record management, financial management, safeguards and security, public information and external communication activities, intergovernmental affairs, training, procurement, underground experimental support, and industrial relations.
 - (i) The Contractor will be responsible for operations, environmental compliance, safety, health and quality assurance within its own organization and its subcontractor organizations.
 - (ii) The Contractor will be responsible for integration of, and, as directed by the Contracting Officer, award and administration of designated contracts into the operation of WIPP and the National Transuranic Waste Program.

- (iii) The Contractor shall be also be responsible for developing and implementing a records management program for all records relevant to the operations of WIPP and the transuranic waste permanently disposed at the WIPP.
- (5) The Contractor shall be responsible for maintaining the condition of the Government owned property and equipment during the term of the contract such that the intended functionality, including safety, health, and environmental compliance, for mission needs is met.
- (6) The Contractor will, when directed by DOE and may, but only when authorized by DOE, enter into subcontracts for the performance of any part of the work required to support the WIPP.
 - (i) The Contractor is authorized to incorporate and integrate a small business into mining operations with a mentor/protégé relationship beginning in FY06. The ultimate goal of this mentor/protégé relationship will be for WTS to assign to CBFO a well-qualified small business capable of performing mining operations.
- (7) The Contractor will develop programs, capabilities and technologies consistent with the WIPP and National Transuranic Waste Program mission to support emerging needs of Federal and non-Federal, educational institutions and private sector partners.

(b) EM PROJECT MANAGEMENT

The Contractor will maintain the existing project management system for the EM program including the EM project baselines; Integrated Planning, Accountability and Budgeting System (IPABS); change control process; execution and life-cycle planning process (including standard project management handbook); the project cost-estimating system; continued updating of an integrated site-wide baseline and critical path analyses. These processes include other WIPP participants, functional and crosscutting activities, and will include relevant activities at characterization and generator sites, including any funding sent to CBFO and the Contractor that was previously designated for generator sites.

- (1) The Contractor is authorized to create and maintain a National Legacy TRU Baseline to plan and monitor performance expectations across the complex. This is not a prerequisite for performance under this contract.

(c) ENVIRONMENTAL, SAFETY AND HEALTH (ES&H) and QUALITY ASSURANCE

The Contractor will make ES&H excellence, including the Integrated Safety Management System, a cornerstone of all operations. The Contractor will maintain WIPP certification under the DOE Voluntary Protection Program

(1) WIPP SYSTEMS AND PROGRAMS

The Contractor will maintain the existing Integrated Safety Management System (ISMS), which includes principles of the International Standards Organization (ISO) 14001 Program, the Voluntary Protection Program (VPP), and the Standards and Requirements Identification Document (S/RID).

(2) PROTECTION OF WORKERS, THE PUBLIC, AND THE ENVIRONMENT

(i) Protection of workers, the public, and the environment are responsibilities of the Contractor, using the ISMS.

(ii) The Contractor will:

(A) Take necessary actions to preclude injuries and fatalities, and keep worker exposures and environmental releases as low as reasonably achievable below established limits, minimize the generation of waste, and maintain or increase protection to the environment, public and worker safety and health.

(B) Operate the WIPP as the DOE's co-permittee under the Hazardous Waste Facility Permit issued by the State of New Mexico.

(3) QUALITY ASSURANCE

The Contractor will maintain the existing Quality Assurance Program Description (QAPD).

C.4 PROGRAM DESCRIPTIONS and ACCOMPLISHMENTS

The WIPP conducts site-specific and intra-site integration of TRU waste activities. To achieve the EM programmatic objectives, the Contractor will be

responsible for integrating waste management and environmental activities at the WIPP and at generator sites.

(a) WIPP DISPOSAL OPERATIONS

Facilities at the WIPP are used to receive and dispose of TRU waste in a safe and environmentally sound manner.

(1) INFRASTRUCTURE

(i) Long-term mission support
The Contractor will maintain an integrated infrastructure program that includes long-term infrastructure reinvestment planning. The Contractor will balance short-term pressures to improve operations with long-term infrastructure reinvestment planning. Infrastructure includes: business systems, functional specialties, roads and utilities, emergency management, facility safety, surveillance and maintenance, safeguards and securities, and asset maintenance.

(ii) Disposition of excess facilities, structures, and equipment
The Contractor will disposition excess facilities, systems, structures, and equipment.

(iii) Land management, facility planning and dispositioning requirements
The Contractor will maintain the WIPP Land Management Plan (LMP) and the Integrated Capital Asset Management Process Plan (ICAMP) and all necessary supporting systems including the asset inventory, condition, master planning, geographic information system, space management, and risk assessment.

(2) OPERATIONS

(i) Waste Disposal Facilities
The Contractor will manage, operate, maintain, repair and replace waste handling facilities, systems, and equipment. The Contractor will actively pursue enhancements to waste handling facilities to provide increased efficiency and reliability.

(ii) Mining Operations

- (A) The Contractor will maintain, operate and continually evaluate underground facilities and systems for cost effective and efficient operations. This includes evaluating tradeoffs of new excavation versus remediation of existing spaces.
- (B) The Contractor will plan and schedule the development of underground disposal facilities to provide newly mined disposal panels on a “just-in-time” basis. Waste disposal panels will be mined and outfitted so that they are certified for use when the previous waste disposal panel is filled and ready for closure. Table 1 describes the expected rates of waste panel mining from FY 2005 (partial) through FY 2010.

(iii) Contact-handled TRU Waste (CH-TRU) Disposal

The Contractor will be responsible for disposal of CH-TRU waste. Table 1 describes the expected rates for disposal of CH-TRU waste, including the number of shipments and volume of waste, from FY 2005 (partial) through FY 2010.

(iv) Remote-handled TRU Waste (RH-TRU) Disposal

The Contractor will be responsible for RH-TRU waste disposal, including facility modifications and operational readiness of WIPP RH-TRU facilities. Table 1 describes the expected rates for RH-TRU waste disposal, including the number of shipments and volume of waste, from FY 2005 (partial) through FY 2010.

(b) NATIONAL TRANSURANIC WASTE PROGRAM

The National Transuranic Waste Program (NTP) develops and manages a comprehensive waste management strategy for all TRU waste under the responsibility of the DOE. Key elements of the NTP include: 1) disposal of TRU waste at the WIPP for which the Contractor is responsible as described in C.4(a); 2) Generator/storage site waste retrieval, characterization and waste certification activities for which the Contractor will be responsible for integration of waste retrieval and characterization activities as provided in C.4(b)(1); and TRU waste transportation activities, as provided in C.4(b)(2) and C.4(b)(3). The Contractor will receive Government-provided TRU waste packages for shipment to WIPP

at generator sites and, in selected cases, may retrieve waste or accelerate retrieval to develop a backlog of waste. The Contractor is fully authorized as the DOE-designated contract integrator to conduct activities necessary to complete applicable characterization for shipping to a characterization site or WIPP, and disposal at WIPP.

(2) WASTE CHARACTERIZATION/RETRIEVAL (M0146)

The Contractor will be responsible for integration of waste characterization, **remediation, re-packaging** and retrieval by designated DOE contractors at characterization sites.

- (ii) The Contractor may provide and deploy to generator sites Retrieval and Characterization Teams (RCTs) to assist **and/or perform** in the management and execution of legacy TRU waste retrieval, **remediation, re-packaging,** and characterization activities.
- (iii) The Contractor will assist generator sites as requested in planning for the management of newly generated TRU waste.
- (iv) The Contractor will ensure that a certified waste characterization program is maintained at each Contractor characterization site in accordance with the WIPP requirements.
- (v) The Contractor will ensure characterization of waste from Contractor characterization sites is in accordance with WIPP requirements
- (vi) The Contractor will ensure transportation of waste from generator sites is in compliance with applicable laws and regulations.
- (vi) The Contractor will identify disposition paths for low-level and low-level mixed wastes currently managed as TRU waste.
- (vii) The Contractor will integrate and administer DOE designated prime contract activities in accordance with designations given to them by DOE.

(3) TRANSPORTATION PACKAGING

- (i) The Contractor will maintain NRC-certified packagings (TRUPACT-II, HalPACT, 10-160B, and 72-B cask) and records for packaging fabrication and maintenance. TRUPCT-IIIs or other packages may be added to this list after NRC certification activities have been completed.

- (ii) The Contractor will provide solutions to technical and regulatory issues related to NRC-certified packagings. The Contractor will prepare draft amendments to the Certificates of Compliance to authorize new waste forms for transport and to justify modifications to the existing conditions of use.
 - (iii) The Contractor will provide technical and quality oversight for the procurement of transportation packagings.
 - (iv) The Contractor will submit NRC certification requests and SARPs for new and existing packagings.
 - (v) The Contractor will develop and obtain NRC certification of the TRUPACT III Transportation package for large containers.
- (4) TRANSPORTATION MANAGEMENT
- (i) The contractor shall be responsible for coordinating and ensuring an integrated approach with other transportation contractors for, the transportation assist transportation of TRU waste from generator sites to WIPP and from generator sites to characterization sites, including scheduling and dispatching shipments, coordinating empty shipments, and providing for fleet maintenance.
 - (ii) The Contractor will assist DOE in certification of the generator/storage sites compliance with transportation requirements and will be responsible for the approval of shipments to WIPP.
 - (iii) The Contractor will assist shipping sites in the initial and continued use of TRUPACT-II and other packaging for shipping TRU waste.
 - (iv) The Contractor will utilize the DOE designated transportation monitoring system to monitor loaded shipments dispatched from the WIPP and inbound waste shipments. The Contractor will prepare the integrated shipping schedule, which includes packaging (TRUPACT-II, HalfPACT, 72-B cask and other packaging), trailers, drivers, and tractor requirements.
 - (v) The Contractor will be responsible for activities related to the opening and maintenance of shipping corridors and the

provision of emergency response training along shipping corridors.

- (vi) The Contractor will be responsible for the identification, analysis and resolution of issues related to waste transportation and emergency management with states, tribes and local government officials.

(c) PERMIT MODIFICATIONS FOR OPERATIONAL EFFICIENCY

(1) HAZARDOUS WASTE FACILITY PERMIT

The Contractor and DOE, as co-permittees, will provide justification for and preparation of modifications to the Hazardous Waste Facility Permit (HWFP) issued by the State of New Mexico. The Contractor and DOE will focus these efforts to remove permit requirements that increase the costs of characterizing, certifying, transporting or disposing TRU waste, but provide minimal benefits to the health and safety of workers, the public or the environment.

The Contractor will partner with DOE to establish an effective working relationship with the New Mexico Environment Department, including frequent communications, to ensure timely identification and resolution of technical and regulatory issues, and to establish permitting schedules.

(2) COMPLIANCE CERTIFICATION

The Contractor will assist DOE with responding to questions from the EPA on the Compliance Recertification Application (CRA). The Contractor will focus these efforts such that the EPA can render a timely completeness determination and receive EPA approval within the six month 40 CFR 194-driven timeframe. The Contractor will assist as requested in other activities related to EPA activities under the Land Withdrawal Act.

(d) RESEARCH AND DEVELOPMENT PROGRAMS

(1) R&D FOR PROGRAM EFFICIENCIES

The Contractor will propose research and development initiatives that have the objective of improving the operational efficiency of the WIPP and the National TRU Program. These initiatives must be submitted to DOE for approval.

(2) OTHER EXPERIMENTAL PROGRAMS

The Contractor will assist the DOE with experiments and demonstrations in support of other programs not associated with transuranic waste disposal, using the unique characteristics and facilities of WIPP.

(3) APPLIED DEVELOPMENT

The Contractor may address issues associated with orphan wastes and prohibited items at a characterization site with a goal of treating up to 100 drums per week.

(e) ADDITIONAL INFORMATION

The Statement of Work is further defined in the WIPP EM project baseline with its associated Work Breakdown Structure and definitions. At the start of each fiscal year, after receipt of new fiscal year funding from EM, the execution year baseline activities will be modified as necessary with the development of activity based cost documents approved by the Contractor and CBFO for the work to be performed in that fiscal year.

(f) PARTNERING RELATIONSHIP

The Contractor and the Government will work within a partnering relationship for work related to execution of this contract with a common vision to mutually support mission goals and objectives. The relationship will promote the principles of teamwork, mutual respect, openness, honesty, trust, professionalism, and building a better understanding of one another's position. The relationship includes a joint commitment to:

- (i) Maintain high safety performance.
- (ii) Complete the work on or before schedule, within or below cost.
- (iii) Eliminate barriers to a faster, more cost effective and efficient program.
- (iv) Create an organizational culture able to accommodate change.
- (v) Resolve conflicts through a coordinated work effort to avoid adversarial relations.
- (vi) Reinforce the partnered relationship with honest feedback and continual improvement.

(g) Facility Operations and Infrastructure

The contractor shall assist DOE through direct participation and other support in achieving DOE's energy efficiency goals and objectives in electricity, water, and thermal consumption, conservation, and savings, including goals and objectives contained in Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management. The Contractor shall maintain and update, as appropriate, its Site Plan (as required elsewhere in the contract) to include detailed plans and milestones for achieving site-specific energy efficiency goals and objectives. With respect to this paragraph, the Plan shall consider all potential sources of funds, in the following order: 1) the maximum use of private sector, third party financing applied on a life-cycle cost effective basis, particularly from Energy Savings Performance Contracts and Utility Energy Services Contracts awarded by DOE; and 2) only after third-party financing options are evaluated, in the event that energy efficiency and water conservation improvements cannot be effectively incorporated into a private sector financing arrangement that is in the best interests of the Government, then DOE funding and funding from overhead accounts can be utilized.

**C.5 TABLE 1 - EXPECTED WIPP PROGRAM ACTIVITIES FY 2005–FY2010
 (M066)**

Activity	FY05	FY06	FY07	FY08	FY09	FY10
Disposal Panels	Complete CH Disposal in Panel 2 Begin CH Disposal in Panel 3 Begin Interim Closure of Panel 2. Complete Mining of South Mains Begin Construction of Panel 4.	Continue CH Disposal in Panel 3. Complete Construction of Panel 4. Begin Construction of Panel 5.	Complete CH Disposal in Panel 3 Begin CH Disposal in Panel 4. Begin RH Disposal in Panel 4. Begin Final Closure Panel of 1. Begin Final Closure of Panel 3. Complete Construction of Panel 5. Begin Construction of Panel 6.	Complete CH Disposal in Panel 4. Begin CH Disposal in Panel 5 Complete RH Disposal in Panel 4. Begin RH Disposal in Panel 5. Begin Final Closure of Panel 4. Complete Construction of Panel 6. Begin Construction of Panel 7.	Continue CH Disposal in Panel 5. Complete RH Disposal in Panel 5. Begin RH Disposal in Panel 6. Begin Final Closure of Panel 2. Continue Construction of Panel 7.	Complete CH Disposal in Panel 5. Begin CH Disposal in Panel 6. Continue RH Disposal in Panel 6. Begin Final Closure of Panel 5. Complete Construction of Panel 7. Begin Construction of Panel 8.
CH-TRU Transportation	1304 Shipments	1253 Shipments	1516 Shipments	1679 Shipments	1287 Shipments	1291 Shipments
CH-TRU Waste Disposal	9800 Cubic Meters	9400 Cubic Meters	11600 Cubic Meters	12200 Cubic Meters	9900 Cubic Meters	9900 Cubic Meters
RH-TU Transportation	0 Shipments	0 Shipments	388 Shipments	459 Shipments	456 Shipments	492 Shipments
RH-TRU Disposal	0 Cubic Meters	0 Cubic Meters	270 Cubic Meters	350 Cubic Meters	340 Cubic Meters	370 Cubic Meters
Transportation Corridors	Open ORNL, SNL, BAPL, KAPL, and KAPL-NFS Corridors	Open Paducah Corridor	Open West Valley Corridor		Open GE-VNC, B&W-NES, Framatome, and SPRU Corridors	

Note: This table is expected to be updated based on the results of the National TRU baselining activities.

C.6 ACRONYMS

CBFO	Carlsbad Field Office
CCA	Compliance Certification Application
CFR	Code of Federal Regulations
CH-TRU	Contact-handled Transuranic Waste
CRA	Compliance Recertification Application
CTAC	Carlsbad Technical Assistance Contractor
DOE	U. S. Department of Energy
DOE-AL	Albuquerque Operations Office
EM	Assistant Secretary for Environmental Management
ES&H	Environment, Safety and Health
EPA	U. S. Environmental Protection Agency
HalfPACT	Half-height Transuranic Waste Package Transporter
HWFP	Hazardous Waste Facility Permit
ICAMP	Integrated Capital Asset Management Process
IPABS	Integrated Planning, Budgeting and Accountability System
ISMS	Integrated Safety Management System
ISO	International Standards Organization
LMP	Land Management Plan
NRC	U. S. Nuclear Regulatory Commission
NTP	National Transuranic Waste Program
PPA	Property Protection Area
QAPD	Quality Assurance Program Description
RCT	Retrieval and Characterization Teams
RH-TRU	Remote-handled Transuranic Waste
SARP	Safety Analysis Report for Packaging
SNL	Sandia National Laboratories
SQS	Small Quantity Site
S/RID	Standards and Requirements Identification Document
TRU	Transuranic Waste
TRUPACT-II	Transuranic Waste Package Transporter Type II
TRUPACT-III	Transuranic Waste Package Transporter Type III
VPP	Voluntary Protection Program
WTS	Washington TRU Solutions
WIPP	Waste Isolation Pilot Plant

2. AMENDMENT/MODIFICATION NO. A147	3. EFFECTIVE DATE See Block 16C	4. REQUISITION/PURCHASE REQ. 09EM000222	5. PROJECT NO. (If applicable)
6. ISSUED BY U.S. Department of Energy Carlsbad Field Office P. O. Box 3090 Carlsbad, NM 88220-3090		7. ADMINISTERED BY (If other than Item 6) CODE	
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, state, ZIP Code) Washington TRU Solutions LLC P.O. Box 2078 Carlsbad, NM 88220		9A. AMENDMENT OF SOLICITATION NO.	
CODE		9B. DATED (SEE ITEM 11)	
FACILITY CODE		10A. MODIFICATION OF CONTRACT/ORDER NO. DE-AC29-01AL66444	
		10B. DATED (SEE ITEM 13) 12/14/2000	

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 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 ACKNOWLEDGMENT 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)

01250	2009	33	490003	25400	1110954	0000442	\$9,821,506
01250	2009	33	490003	25400	1110956	0003804	\$3,853,123
Total:							\$13,474,629+

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

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).	
C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:	
X D. OTHER (SPECIFY TYPE OF MODIFICATION AND AUTHORITY):	Incremental funding - DEAR 970.5204-15 entitled, "Obligation of Funds"

E. IMPORTANT: Contractor is not, is required to sign this document and return _____ 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 obligate \$946,860.00 in funding to the contract. This change is cited in the above block 12 data being appended to the contract and an increase to the total contract obligations listed below:

Funds Obligated through last Modification	\$1,132,283,509.91
Funds Obligated by this Modification	13,474,629.00
Funds Obligated since Inception of Contract	\$1,145,758,138.91

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

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Arthur L. Welton, Contracting Officer	
15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	Signature deleted OMB M-06-15, "Safeguarding Personally Identifiable Information"	16C. DATE SIGNED 2/20/2009
BY _____ (Signature of person authorized to sign)			

2 AMENDMENT/MODIFICATION NO A148	3 EFFECTIVE DATE April 15, 2009	4 REQUISITION/PURCHASE REQ #	5 PROJECT NO (If applicable)
6 ISSUED BY U.S. Department of Energy Carlsbad Field Office P. O. Box 3090 Carlsbad, NM 88220-3090		7 ADMINISTERED BY (If other than Item 6) (CODE)	
8 NAME AND ADDRESS OF CONTRACTOR (No. street, county, state, ZIP Code) Washington TRU Solutions LLC P.O. Box 2078 Carlsbad, NM 88220		9A AMENDMENT OF SOLICITATION NO	
CODE FACILITY CODE		9B DATED (SEE ITEM 11)	
		10A MODIFICATION OF CONTRACT/ORDER NO DE-AC29-01AL66444	
		10B DATED (SEE ITEM 13) 12/14/2000	

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 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 ACKNOWLEDGMENT 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)

TAS: 89 0263 06049 2009 33 490003 25400 1111389 2002190 0000000 0000000 \$121,278,000.00+

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

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

F. IMPORTANT: Contractor is not, is required to sign this document and return 3 copies to the issuing office

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

Funds obligated as an increase to total contract obligations are listed below:

Funds Obligated through last Modification	\$1,201,340,710.91
Funds Obligated by this Modification	121,278,000.00
Funds Obligated since Inception of Contract	\$1,322,618,710.91

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

15A NAME AND TITLE OF SIGNER (Type or print) M. F. Sharif, President and General Manager	16A NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Arthur L. Welton, Contracting Officer
Signature deleted OMB M-06-15, "Safeguarding Personally Identifiable Information"	Signature deleted OMB M-06-15, "Safeguarding Personally Identifiable Information"
15C DATE SIGNED 4/17/09	16C DATE SIGNED 4/17/09

The following changes are hereby made to the contract:

1. Section B, Supplies or Services and Prices/Costs is amended as follows:

A. Paragraph B.4 is modified as follows:

B.4 OBLIGATION OF FUNDS

Pursuant to the Contract Clause entitled "Obligation of Funds," the total amount obligated by the Government with respect to this contract is **\$1,322,618,710.91**. The funds obligated specifically for the American Recovery and Reinvestment Act included therein is \$121,278,000.00. The funds obligated specifically for base requirements included therein are \$1,201,340,710.91.

B. Paragraph B.5 is incorporated into the contract as follows::

B.5 REQUIREMENTS FOR AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)

a. The contractor shall, in accordance with the terms of this contract, provide the personnel, materials, supplies, and services and do all things necessary for, or incident to, providing its best efforts to perform the Recovery Act work. This work will be approved by the Department of Energy and is expected to fulfill the following mission requirements:

Transuranic (TRU) Waste Accelerated Disposition projects that involve the accelerated disposition of legacy defense-generated TRU waste from the following targeted generator and interim storage sites included improvements of site infrastructure:

- Large-sized boxes and drums of legacy Contact Handled (CH) and Remote Handled (RH) TRU waste remaining at Savannah River Site (SRS)
- RH TRU waste from Idaho National Laboratory (INL)
- CH and RH TRU waste from Area G at Los Alamos National Laboratory (LANL)
- CH and RH TRU waste from Oakridge National Laboratory (ORNL)
- CH and RH TRU waste from Argonne National Laboratories (ANL)
- CH and RH TRU waste from other small quantity sites as appropriate.

b. Pursuant to the clause in Section I, DEAR Clause 970.5232-4 , Obligation of Funds"total funds in the amount of \$121,278,000.00 are obligated herein and made available for payment of allowable costs and fee earned related to the Recovery Act work from the effective date of this modification through the period of performance for the Recovery Act work, contained in Section F and in accordance with paragraph c below.

c. The Contractor is to begin work immediately. However, the Contractor is authorized to incur costs **not to exceed 30%** of the initial funding placed on the contract for ARRA obligated under Modification A148 which equals \$36,383,400.00.

d. No fee shall be paid to the contractor for the Recovery Act work, including provisional, prior to the negotiation of any equitable adjustment in the fee and the subsequent modification of the contract to reflect the mutual agreement between the contractor and the Contracting Officer.

e. The work described in this modification shall be performed using funds obligated under this contract, which have been appropriated under the American Recovery and Reinvestment Act of 2009,

Pub. L. 1115 (Recovery Act), and as such, is subject to the special statutory conditions and the additional contractual terms and conditions. The funds obligated hereunder shall only be used to accomplish the work as set forth for Recovery Act effort and may not be used for any other purpose without the prior written consent of the Contracting Officer.

f. The contractor shall complete all work funded by this modification by **September 30, 2011**.

g. In accordance with DOE O 412.1A "Work Authorization System" the Contractor shall attain approval for all work from the DOE prior to performing any work under the Recovery Act. The contractor shall submit to the CO a detailed description of accelerated work, a budget of estimated costs for the accelerated work and a schedule for the performance of this work within **90 days** of this modification.

h. Within **2 months** after effective date of this modification, the contractor shall propose to the Contracting Officer a supplemental Performance Evaluation and Measurement Plan to accommodate the accelerated Contract Performance Baseline in accordance with clause B.2(b)2 of the contract.

2. Section E, Inspection and Acceptance is amended as follows:

Paragraph E.3 is incorporated into the contract, which is applicable only to the American Recovery and Reinvestment Act work:

E. 3 CERTIFICATION FOR RECOVERY ACT

In order for the Contracting Officer to accept any products or services funded by the Recovery Act, the Contractor shall certify that the items were delivered and/or work was performed for a purpose authorized under the Recovery Act.

3. Section F, Deliveries or Performance is incorporated as follows:

F.6 DELIVERY SCHEDULE FOR AMERICAN RECOVERY AND REINVESTMENT ACT

The period of performance for the Recovery Act work specified in Section C and approved under the authority of DOE O 412.1A "Work Authorization System" as Recovery Act work shall be for the period of performance beginning the effective date of Modification A0148 through September 30, 2011.

4. Section G, Contract Administration Data is amended by incorporating the following clause:

G.3 FUNDING FOR AMERICAN RECOVERY AND REINVESTMENT ACT

a. The contractor shall comply with DOE O 412.1A "Work Authorization System" and shall attain approval for all work from the DOE prior to performing any work under the Recovery Act. Supporting data will be maintained to identify costs that pertain to the Recovery Act and costs that do not pertain to the Recovery Act. This supporting data shall track costs incurred and costs that have not been incurred (i.e. incurred costs are checks or payments made against the letter of credit) for both Recovery Act funds and non-Recovery Act funds. The Accounting and Appropriations data for the Recovery Act is as follows: Total Obligation: \$121,278,000.00.

Level	1	2	3	4	5	6	7	8	9
Numerical Characters	06049	2009	33	490003	254000	1111389	2002190	000000	000000
Level Name	Fund	Appropriation Year	Allottee	Reporting Entity	Object Class	Program	Project	WFO	Local Use

b. The following reporting procedure will apply to submission of monthly cost reports for Recovery Act work specified in the accelerated work scope baseline.

- (i) The contractor will separately identify costs that pertain to the Recovery Act work. The contractor will provide a monthly report that identifies the total amount incurred on the letter of credit for the base costs and the Recovery Act costs. This monthly report shall separate and identify Recovery Act costs associated with each appropriation at the Recovery Act program and project levels.
- (ii) The contractor shall certify in each monthly report that the costs included in the report for Recovery Act work were incurred only to accomplish the Recovery Act work in accordance with the accelerated work scope.

c. In accordance with the general principles of the Recovery Act the contractor must take the following steps to minimize the impacts of indirect costs and enhance transparency and accountability of project:

- (i) Clearly identify the estimated full cost of projects to include total direct and indirect costs, indirect costs rates, and adjust existing indirect cost rate to account for the material infusion of funds provided in the Recovery Act;
- (ii) Exempt funds from contract cost base for management fees and distributing Laboratory Directed Research and Development or similar funds taxing programs;
- (iii) Ensure all funds transferred by the Contractor are completed using the Approved Funding Program process described in Chapter 12 of the Accounting Handbook; and
- (iv) The Federal Administrative Charge (FAC) of three percent is waived on reimbursable work funded by the Recovery Act and performed by Departmental Federal offices or the M&O Contractor.

5. Section H, Special Contract Requirements is amended by incorporated the following clauses:

H.999 Special provisions relating to work funded under American Recovery and Reinvestment Act of 2009 (Apr 2009)

Preamble:

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

Contractors should begin planning activities for their first tier subcontractors, including obtaining a

DUNS number (or updating the existing DUNS record), and registering with the Central Contractor Registration (CCR).

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

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

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

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

Definitions:

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

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

A. Flow Down Provision

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

B. Segregation and Payment of Costs

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

original funding source to meet the reporting requirements of the Recovery Act and OMB Guidance.

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

C. Prohibition on Use of Funds

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

D. Wage Rates

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

E. Publication

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

F. Registration requirements

Contractor shall ensure that all first-tier subcontractors have a DUNS number and are registered in the Central Contractor Registration (CCR) no later than the date the first report is due under paragraph H below.

G. Utilization of Small Business

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

H.1000 Baseline and Reporting Requirements for Work Performed under the Recovery Act

This clause defines the unique requirements for the contractor's project management baseline and associated reporting requirements to address the modified contract performance requirements as implemented in Section C and approved under the authority of DOE O 412.1A "Work Authorization System" as Recovery Act work. Statement of Work to be performed and funded under the provisions of the American Recovery and Reinvestment Act of 2009 (Recovery Act).

Baseline Requirements

- a. For purposes of this clause the “pre-definitized period” is defined as that timeframe from the date of execution of modification number A148 directing the contractor to begin the Recovery Act work until the work is definitized in accordance with the clause in Section H entitled “Modification Definitization.” All requirements for plans and deliverables during the pre-definitized period shall be based on the definitization time period estimated in the “Modification Definitization” clause.

(The pre-definitized period is sequenced with specific deliverables and actions each 30 days. These deliverables and actions may occur in less than 30 days based on the project size, scope, and level of confidence in current NTB/OPER, but no more than 30 day periods.)

- b. During the pre-definitized period, the contractor shall develop and deliver to the Contracting Officer the following:
1. Within 30 days after execution of modification no. A148, the contractor shall provide a work plan for performance of that portion of the work specified in Section C and approved under the authority of DOE O 412.1A “Work Authorization System” as Recovery Act work. Statement of Work expected to be performed during the 180-day period after execution of modification no. A148. This plan shall include the following:
 - i. Product-oriented Work Breakdown Structure (WBS) and WBS dictionary in alignment with the statement of work, as modified for the Recovery Act work, to include performance of Recovery Act work totally within distinctly defined, separately tracked and uniquely managed WBS elements;
 - ii. Monthly spend plan consistent with the statement of work, completely segregating the non-Recovery Act work from the Recovery Act funded portions of the statement of work;
 - iii. Crosswalk of statement of work WBS elements and associated planned milestones, metrics, and estimated costs (at the 80% confidence level), at the Activity Building Block (ABB) level, between the current base program/project Near-Term Baseline (NTB) and/or Out-year Planning Estimate Range (OPER) and the Recovery Act work;
 - iv. Milestone list including, but not limited to, major hiring actions that create newly “created” or “retained” jobs by the contractor or first tier subcontractors in accordance with the clause in Section H, entitled “Special provisions relating to work funded under American Recovery and Reinvestment Act of 2009, key starts and completions, enforceable regulatory dates, approval of key regulatory decisions, project critical decisions, delivery of critical Government Furnished Services and Items; and
 - v. Planned quarterly summary of jobs “created” or “retained” by the contractor and first tier subcontractors as defined in the Section H clause entitled “Special provisions relating to work funded under the American Recovery and Reinvestment Act of 2009.”

2. Within 120 days after execution of modification no. A148, the contractor shall propose a Performance Baseline for the complete work specified in Section C and approved under the authority of DOE O 412.1A "Work Authorization System" as Recovery Act work. Statement of Work. This baseline shall use control accounts that will be made up of work packages. The WBS elements at the lowest level should roll up within the WBS structure and clearly identify the entire work to be performed. The WBS shall clearly distinguish all non-Recovery Act work from all Recovery Act work. The proposed Performance Baseline shall include the following:
 - i. The contractor shall propose a performance baseline, at the high confidence level, for the work to be performed, including the pre-definitized period and the post-definitized period. This baseline shall be based upon the work and schedule included in modification no. A148 and the contractor's cost proposal. A month-by-month baseline or budgeted cost of work scheduled (BCWS)/planned value (PV) must be developed for the complete Recovery Act work. This will be the original baseline for Recovery Act work and shall include all of the work by WBS, including both the pre- and post-definitized periods, and the contractor's defined management reserve.. The sum of these three items (estimated cost for the pre-definitized period, estimated cost for the post-definitized period, and the management reserve) shall equal the contractor's proposed estimated cost for the Recovery Act work. This performance baseline is subject to independent project review and certification before approval by the government.
 - ii. A network logic schedule utilizing Primavera will be developed at the activity level for each control account which includes milestones. The schedule must be resource loaded and coded to allow summarization of lower level activities through the control account for the complete Recovery Act work.
 - iii. The proposed Performance Baseline shall also include the planned quarterly summary of jobs "created" or "retained" by the contractor and first tier subcontractors as defined in the Section H clause entitled "Special provisions relating to work funded under American Recovery and Reinvestment Act of 2009."

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

- a. *Work breakdown structure and associated dictionary;*
- b. *List of planning basis and assumptions;*
- c. *Cost baseline description document that includes the basis of cost estimate;*
- d. *Schedule baseline that employs a critical path method and is resources loaded such that earned value can be measured;*
- e. *Organizational breakdown structure;*
- f. *Responsibility assignment matrix that identifies Control Account Managers;*

- g. Earned value management system description and a copy of the letter of certification against ANSI/ELA-748-B, "Earned Value Management Systems;"*
- h. Project controls system description document;*
- i. Risk management plan with results of qualitative and quantitative analysis including S-curves, cost and schedule contingency determinations, risk mitigation/risk response plans, and risk register;*
- j. All work packages;*
- k. Technical design documentation;*
- l. Documented safety analysis;*
- m. Safety evaluation report (if required);*
- n. Safety design strategy;*
- o. Integrated safety management system description document and latest annual certification;*
- p. NEPA documentation (analysis of environmental impacts); and*
- q. Regulatory decision documents.*

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

- 3. The contractor shall support resolution of IPR or External Independent Review (EIR) corrective actions for the performance baseline submitted. .
- c. During the pre-definitized period, the contractor shall determine the budgeted cost of work performed (BCWP)/earned value (EV) for budgeted cost for work performed (BCWS)/planned value (PV) on a monthly basis utilizing measurable units associated with each activity in the schedule (e.g., square foot reduction, number of TRU shipments, foot print reduction, etc.), as appropriate, that will allow the reporting of the contractor's progress in accordance with the reporting requirements specified in the clause in Section H entitled "Special provisions relating to work funded under American Recovery and Reinvestment Act." The associated actual cost of work performed (ACWP)/actual cost (AC), cost and schedule variances and performance indices, and variance analyses shall be reported monthly. Performance against the Recovery Act performance baseline shall be tracked separately from other work under the contract funded by other appropriations.
- d. Upon negotiation of the definitive modification to the contract, the performance baseline documentation submitted in accordance with paragraph b.2 above shall be revised by the contractor to reconcile cost estimates and WBS elements, if necessary, consistent with the definitive modification.

Reporting Requirements

- e. Within 30 days of definitization of the Recovery Act work, the contractor shall begin reporting against the established performance baseline in accordance with the reporting requirements specified under existing contract requirements, those reporting requirements specified in the section H. clause entitled "Special provisions relating to work funded under American Recovery and Reinvestment Act of 2009, and those Recovery Act-unique deliverables listed below. Performance against the

Recovery Act work shall be tracked and reported separately from other work under the contract funded by other appropriations.

- f. These reports shall be provided to the Contracting Officer on a monthly basis.
1. *Contract Performance Report (Refer to OMB No. 0704-0188 or DD FORM 2734/1, MAR 05) :Format 1 - Work Breakdown Structure, Format 3 - Baseline, and Format 5 - Explanations and Problem Analyses.*
 2. *A Milestone report from Primavera reflecting status of all milestones being reported with columns for the scope, original planned date, current planned date, and the actual date the milestone was completed.*
 3. *A funds management report by Budgeting & Reporting (B&R) codes that identifies the amount of funds obligated to the contract and the amount of funds obligated to the contractor, and committed and expended by the contractor.*
6. **Section I, CONTRACT CLAUSES is revised by incorporating the following clauses that apply specifically to the American Recovery and Reinvestment Act effort:**
- 52.243-6 Change Order Accounting (APR 1984)
- 52.203-15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (MAR 2009)
- 52.204-11 American Recovery and Reinvestment Act – Reporting Requirements (MAR 2009)
- 52-215-2 Audit and Records – Negotiation (JUN 1999) Alternate I (MAR 2009)
- 52.225-21 Required Use of American Iron, Steel, and Other Manufacturing Goods – Buy American Act – Construction Materials (MAR 2009)
- 52.225-22 Notice of Required Use of American Iron, Steel, and Other Manufactured Goods – Buy American Act – Construction Materials
- 52.225-23 Required Use of American Iron, Steel, and Other Manufactured Goods – Buy American Act – Construction Materials Under Trade Agreements
- 52.225-24 Notice of Required Use of American Iron, Steel, and Other Manufactured Goods – Buy American Act – Construction Materials under Trade Agreements

2. AMENDMENT/MODIFICATION NO. A149	3. EFFECTIVE DATE See Block 16C	4. REQUISITION/PURCHASE REQ. 09E\1000391	5. PROJECT NO. (If applicable)
6. ISSUED BY U.S. Department of Energy Carlsbad Field Office P. O. Box 3090 Carlsbad, NM 88220-3090		7. ADMINISTERED BY (If other than Item 6) CODE	
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, state, ZIP Code) Washington TRU Solutions LLC P.O. Box 2078 Carlsbad, NM 88220		9A. AMENDMENT OF SOLICITATION NO.	
CODE FACILITY CODE		9B. DATED (SEE ITEM 11)	
		10A. MODIFICATION OF CONTRACT/ORDER NO. DE-AC29-01AL66444	
		10B. DATED (SEE ITEM 13) 12/14/2000	

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 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 ACKNOWLEDGMENT 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)

01250	2009	33	490003	25400	1110954	0000442	(\$409,000)-
01250	2009	33	490003	25400	1110956	0003804	\$200,000
00800	2009	33	490003	25400	1110957	0000443	\$ 30,000
Total:							(\$179,000)-

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

<input type="checkbox"/>	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO (Specify authority): THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
<input type="checkbox"/>	B. THE ABOVE-NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (Such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
<input type="checkbox"/>	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
<input checked="" type="checkbox"/>	D. OTHER (SPECIFY TYPE OF MODIFICATION AND AUTHORITY): Incremental funding - DEAR 970.5204-15 entitled, "Obligation of Funds"

E. IMPORTANT: Contractor is not, is required to sign this document and return _____ 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 de-obligate \$179,000.00 in funding to the contract. This change is cited in the above block 12 data being appended to the contract and a decrease to the total contract obligations listed below:

Funds Obligated through last Modification	\$1,132,283,509.91
Funds Obligated by this Modification	-179,000.00
Funds Obligated since Inception of Contract	\$1,132,104,509.91

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

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Arthur L. Welton, Contracting Officer	
15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	Signature deleted OMB M-06-15, "Safeguarding Personally Identifiable Information"	16C. DATE SIGNED 3/16/09
BY _____ (Signature of person authorized to sign)			

2. AMENDMENT/MODIFICATION NO. A150	3. EFFECTIVE DATE See Block 16C	4. REQUISITION/PURCHASE REQ. 09F.N000420	5. PROJECT NO. (If applicable)
6. ISSUED BY U.S. Department of Energy Carlsbad Field Office P. O. Box 3090 Carlsbad, NM 88220-3090		7. ADMINISTERED BY (If other than Item 6) CODE	

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, state, ZIP Code) Washington TRU Solutions LLC P.O. Box 2078 Carlsbad, NM 88220	9A. AMENDMENT OF SOLICITATION NO.
	9B. DATED (SEE ITEM 11)
	10A. MODIFICATION OF CONTRACT/ORDER NO. DE-AC29-01AL66444
CODE	FACILITY CODE
10B. DATED (SEE ITEM 13) 12/14/2000	

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 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 ACKNOWLEDGMENT 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)

01250	2009	33	490003	25400	1110954	0000442	6,689,047	XID 29119
01250	2009	33	490003	25400	1110956	0003804	1,601,728	XID 29120
00900	2009	33	490003	25400	1110957	0000443	92,207	XID 29121
Total:							8,382,982	

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

<input type="checkbox"/>	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO (Specify authority): THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
<input checked="" type="checkbox"/>	B. THE ABOVE-NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (Such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
<input type="checkbox"/>	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
<input checked="" type="checkbox"/>	D. OTHER (SPECIFY TYPE OF MODIFICATION AND AUTHORITY): Incremental funding - DEAR 970.5204-15 entitled, "Obligation of Funds"

E. IMPORTANT: Contractor is not, is required to sign this document and return _____ 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 obligate \$8,382,982.00 in funding to the contract. This modification also correct and administrative error in Modification A0149 where the funds obligated was incorrect. This change is cited in the above block 12 data being appended to the contract and a decrease to the total contract obligations listed below:

Funds Obligated through last Modification	\$1,145,579,138.91
Funds Obligated by this Modification	8,382,982.00
Funds Obligated since Inception of Contract	\$1,153,962,120.91

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

15A. NAME AND TITLE OF SIGNER (Type or print)	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Arthur L. Welton, Contracting Officer
15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED
BY _____ (Signature of person authorized to sign)	Signature deleted OMB M-06-15, "Safeguarding Personally Identifiable Information"
	16C. DATE SIGNED 3/24/09

2. AMENDMENT/MODIFICATION NO. A151	3. EFFECTIVE DATE See Block 16C	4. REQUISITION/PURCHASE REQ. 09F.M000503	5. PROJECT NO. (If applicable)
6. ISSUED BY U.S. Department of Energy Carlsbad Field Office P. O. Box 3090 Carlsbad, NM 88220-3090		7. ADMINISTERED BY (If other than Item 6) CODE	
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, state, ZIP Code) Washington TRU Solutions LLC P.O. Box 2078 Carlsbad, NM 88220		9A. AMENDMENT OF SOLICITATION NO.	
CODE		9B. DATED (SEE ITEM 11)	
FACILITY CODE		10A. MODIFICATION OF CONTRACT/ORDER NO. DE-AC29-01AL66444	
		10B. DATED (SEE ITEM 11) 12/14/2000	

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 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 ACKNOWLEDGMENT 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)

01250	2009	33	490003	25400	1110954	0000442	33,929,686
01250	2009	33	490003	25400	1110956	0003804	5,964,491
01250	2009	33	490003	25400	1110957	0000443	1,842,193
01250	2009	33	490003	25400	1111094	0000441	1,488,063
01250	2009	33	490003	25400	1110095	0000441	85,549
01250	2009	33	490003	25400	1110097	0000441	98,329
01250	2009	33	490003	25400	1110098	0000441	15,620
01250	2009	33	490003	25400	1111102	0000441	131,341
01250	2009	33	490003	25400	1110800	0002167	528,791
00900	2009	33	490003	25400	2221775		20,826
01258	2009	33	490003	25400	1111308	0003947	3,008,000
01751	2009	33	490003	25400	1111305	0003899	287,701
Total:							47,378,580

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

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).
C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
X D. OTHER (SPECIFY TYPE OF MODIFICATION AND AUTHORITY): Incremental funding - DEAR 970.5204-15 entitled, "Obligation of Funds"

E. IMPORTANT: Contractor is not, is required to sign this document and return _____ 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 obligate \$47,378,590.00 in funding to the contract.

Funds Obligated through last Modification	\$1,153,962,120.91
Funds Obligated by this Modification	47,378,590.00
Funds Obligated since Inception of Contract	\$1,201,340,710.91

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

15A. NAME AND TITLE OF SIGNER (Type or print)	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Arthur L. Welton, Contracting Officer
15B. CONTRACTOR/OFFEROR BY _____ (Signature of person authorized to sign)	15C. DATE SIGNED Signature deleted OMB M-06-15, "Safeguarding Personally Identifiable Information"
	16C. DATE SIGNED 9/14/09

NSN 754-01-152-8070

30-105

STANDARD FORM 30 (REV. 10-83) temp03.dot

PREVIOUS EDITION UNUSABLE

Prescribed by GSA

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FAR (48 CFR) 53.24

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			1 CONTRACT ID CODE	PAGE 1 OF 2 PAGES
2. AMENDMENT/MODIFICATION NO. M152	3. EFFECTIVE DATE see block 16c	4. REQUISITION/PURCHASE REQ. NO N/A	5. PROJECT NO. (If applicable) N/A	
6. ISSUED BY U.S. Department of Energy Carlsbad Field Office P.O. Box 3090 Carlsbad, NM 88220-3090		7. ADMINISTERED BY (If other than Item 6) CODE		
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, state, ZIP Code) Washington TRU Solutions LLC P.O. Box 2078 Carlsbad, NM 88220		9A. AMENDMENT OF SOLICITATION NO.		
CODE		9B. DATED (SEE ITEM 11)		
FACILITY CODE		10A. MODIFICATION OF CONTRACT/ORDER NO. DE-AC29-01AL65444		
		10B. DATED (SEE ITEM 13) December 14, 2000		

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 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 ACKNOWLEDGMENT 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)
NOT A FUNDING ACTION

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

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:	Mutual Agreement of the Parties
D. OTHER (SPECIFY TYPE OF MODIFICATION AND AUTHORITY):	

E. IMPORTANT: Contractor is not, is required to sign this document and return Three (3) copies to the issuing office.

See following page:

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

15A. NAME AND TITLE OF SIGNER (Type or print) M. F. Sharif, President and General Manager	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Arthur L. Welton, Contracting Officer
Signature deleted OMB M-06-15, "Safeguarding Personally Identifiable Information"	Signature deleted OMB M-06-15, "Safeguarding Personally Identifiable Information"
16C. DATE SIGNED 5/26/09	16C. DATE SIGNED 5/28/2009

- a. The purpose of this modification is to incorporate Performance Based Incentive (PBI) 6.
- b. The contract is hereby changed by incorporating PBI 6; entitled, "Alternate Waste Transport Route Preparation," Revision 0, dated March 25, 2009 attached hereto and is hereby incorporated into the contract as a new performance incentive.
- c. **CONTRACTOR'S RELEASE OF CLAIMS (FAR 43.204):** In consideration of the modification agreed to herein as a complete and equitable adjustment for the no cost change incorporated hereto, 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.

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Section J, Attachment D, Enclosure 6
PBI Number 6 - AL-66444
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GENERAL INFORMATION

Performance Incentive Number: CBFO-PBI #6 Performance Period: 10/1/2005 through 9/30/2010
Performance Incentive Short Title: Altamala Waste Transport Route Preparation
Revision Number and Date: Revision 0, March 25, 2009

SECTION II - ACCOUNTING/PROJECT INFORMATION

Initial Budgeted Cost of Work Scheduled (BCWS) under this PM: Exemption 4
Maximum Available Incentive Fee Associated with this Measure: Exemption 4
CBFO Management Control Package:

SECTION III - INCENTIVE INFORMATION

Incentive type:	Base <input checked="" type="checkbox"/>	Stretch <input type="checkbox"/>	Super Stretch <input type="checkbox"/>
Difficulty:	High <input type="checkbox"/>	Medium <input checked="" type="checkbox"/>	Low <input type="checkbox"/>
Duration:	Annual <input checked="" type="checkbox"/>	Multi-year <input type="checkbox"/>	
Fee Payment type:	Completion <input checked="" type="checkbox"/>	Progress <input type="checkbox"/>	Provisional <input type="checkbox"/>

SECTION IV - PERFORMANCE MEASURE

Description:

The WIPP management and operating Contractor will provide for sustained reliability and availability of the WIPP underground transportation route and provide for redundancy so the significant East 140 maintenance can be performed without impacting waste receipt. If the only existing route (E140) was disabled for any reason, waste emplacement would be impacted for an indefinite period of time, costing the DOE and taxpayers millions of dollars.

In addition to waste transport, the haul route is used for normal maintenance activities associated with waste receipt and tours. The one day a week that is available to perform significant ground control activities must be shared with other work groups. Normal ground control maintenance (broken roof bolt replacement and scaling activities) is performed during limited periods of non-waste transport. The majority of the transport route has been in existence since 1982 and requires a constant and ever increasing ground control effort. In the past, when major ground control projects needed to be performed, a shutdown of waste emplacement was utilized.

The only disposal route underground is East 140 and that is in the design (and other regulatory documents and HWFP permit) and the Contractor is only required to maintain East 140 for waste disposal. The Contractor is also required to maintain the rest of the underground openings for purposes other than waste disposal. Most of the E140 drift has been open for over 20 years and the Contractor has kept it safe and operable; however, with the demand for waste handling time increasing in the E140 drift, the time available for maintenance on that drift is less, but still sufficient for them to perform maintenance and upkeep. In addition, the annual outage is also available and needed for maintenance and upkeep. Therefore, this work to develop an alternate disposal route (in West 30) is above and beyond what is required by contract and provides the DOE with major advantages.

For example, once the alternate route is completed and approved, the Contractor can plan work in the E140 without interrupting waste handling. This would provide DOE two options for waste disposal routes and the strategic ability to keep the waste handling pathways open for many years to come.

Long-term maintenance of the E140 waste transport route presents its own unique challenges. The drift was originally excavated in 1982 and has undergone numerous dimensional increases since that time. Past ground control efforts have included

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installation of mechanical and resin anchored roof bolt systems, cable slings, and mesh. Deterioration of the immediate roof beam required that significant sections be removed in 1986. In response to increased roof beam expansion and closure rates, two separate supplemental support systems consisting of twelve-foot resin anchored roof bolts and roof mats were installed in 2003. Roof beam sag is noticeable in a number of areas but is well supported. The current ground control effort focuses on maintaining the existing ground support system and milling of the floor to provide a smooth transport surface. Informal contingency plans have been developed in the event that the existing ground support system no longer performs adequately.

Alternatives to Implementation of this PBI are not feasible at this time. Doing nothing is also not a viable option. WTS operations alone are currently incurring an average of **Exempt 4** in cost each month. That makes the average downtime for any one day over **Exempt 4** if operability were lost for the only waste route available, this is what the government would incur without benefit of waste disposal activities.

This major site capability upgrade will ensure that the facility can continue to safely transport and dispose of TRU waste from generator sites in the WIPP repository for the planned duration of the project. It is imperative to mitigate the risk of downtime when mandatory and major E140 (existing route) maintenance must be performed. The deadlines established in this performance based incentive will ensure timely support to the ongoing Enriched Xenon Observatory (EXO) project. The EXO project is a prototype laboratory established in the WIPP underground designed to capture and measure the subatomic neutrino.

The Contractor's performance will be measured by its timely and successful upgrade to the WIPP underground by providing an alternate waste transportation route. The Contractor shall complete this project with the activities successfully planned and performed, as delineated within this PBI. Completion of the recovery will ensure reliability and sustainability of the WIPP underground transportation route, as well as demonstrate proper safety and fiscal stewardship for the infrastructure of the facility to support current and future missions.

Discreet elements associated with this project are:

1. Complete widening West 30 to 20 ft. and install ground control from South 1950 to South 2180.
2. Complete widening West 30 to 20 ft. and install ground control from South 2180 to South 2520.
3. Complete widening West 30 to 20 ft. and install ground control from South 2520 to South 2750 to 20 ft.
4. Complete widening South 700 to at least 20 ft., floor mining to attain 14 ft. height, install ground control and install a new airlock from East 140 to West 30.
5. Complete mining the floor from South 700 to South 2750 to attain 14 ft. drift height. This work will include cross drift floor mining to ramp or match grade as well as bulkhead rework or relocation as required.
6. Submit the application for permit changes by 9/30/10.
7. Reconfigure bulkheads, install ventilation regulators and begin operations after permit changes are approved within 180 days of permit modification approval.
8. Complete installation of the West 30 South 2180 overcast prior to commencing waste handling in Panel 6.
9. Complete installation of the West 170 South 2750 overcast prior to commencing waste handling in Panel 6.

The following metric shall be used to measure performance and determine fee earned by the Contractor under this Rating Plan element.

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Metric 1: The Contractor shall safely and compliantly complete widening of pathways, installing ground control, and mining floors to attain an optimum ceiling height. This includes matching ramps or grades and the installation of new airlocks and bulkhead rework or location, as required and completing all discreet work elements one through six cited above. *Evidence of this work will be by submission of the application for permit changes. This will be accomplished by 9/30/2010.* The Contractor shall safely and compliantly complete elements 7-9 listed above. Specifically, the Contractor shall: Reconfigure bulkheads, install ventilation regulators and begin operations after permit changes are approved; complete installation of the West 30 South 2180 overcast prior to commencing waste handling in Panel 6; and complete installation of the West 170 South 2750 overcast prior to commencing waste handling in Panel 6. *This will be accomplished within 180 days following permit modification approval.*

The completion of this metric will earn the Contractor **Exemption 4**

The maximum amount of fee available to WTS under this metric during the term of the contract is **Exemption 4**

SECTION V. PERFORMANCE REQUIREMENTS

PREVIOUS GATEWAY: Describe previous gateway (if applicable) that must be completed before fee can be paid under this performance measure.

WTS performed safe and compliant operations while conducting work necessary to provide for an alternate waste transportallon route in the WIPP underground.

DEFINE COMPLETION: Specify Performance Elements and describe indicators of success (quality/progress). Include baseline documents/data against which completion documentation should be compared.

Payment:

WTS will request a payment after transmittal of all documentallon necessary to prove metric completion. Element 6 is contingent upon completion of Elements 1-5; therefore, the permit modification request in the required format to CBFO by the required date will serve as proof for those items. For items 7-9, other forms of project completion will be necessary.

DEFINITIONS:

CH – Contact-Handled: Packaged TRU waste with an external surface dose rate that does not exceed 200 mrem per hour.

Cubic Meters: As used herein cubic meters refer to the TRU waste container volume. TRU waste container volume means the volume in cubic meters of the container. For example, the volume of one 55-gallon drum is 0.21 m³, and the volume of one standard waste box is 1.88 m³, etc.

RH – Remote-Handled: Packaged TRU waste with an external surface dose rate that exceeds 200 mrem per hour but is less than 1,000 rem per hour.

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TRU: Transuranic Waste. Radioactive waste containing isotopes with an atomic number greater than 92, concentrations greater than 100 nanocuries per gram, and a half-life of greater than 20 years.

WIPP: Waste Isolation Pilot Plant

WTS: Washington TRU Solutions, the Contractor

WWIS: WIPP Waste Information System

TECHNICAL BOUNDARY CONDITIONS: (Fundamental technical assumptions that must be maintained in order to accomplish the work scope associated with this Performance Measure.)

N/A

GENERAL REQUIREMENTS:

To earn incentive fee under this Performance Incentive, the Contractor shall meet the specific completion criteria and expectations set forth in this Performance Incentive. The Contractor cannot earn fee for routine operations, the cleanup objectives defined in the metrics above must be accomplished. The Contractor shall support obtaining necessary regulatory approvals to accomplish the metrics by preparing appropriate submittals with good quality, promptly responding to regulator requests for added information and coordinating the preparation of response material, coordinating hearing preparation as needed, and coordinating implementation of approved regulatory changes.

Acceptable environmental, safety, and health performance for the entire Scope of Work for the contract is a pre-condition to earning 100% of the fee available under the contract. Unacceptable performance in these areas is defined as that which results in the Head of Contracting Activity (HCA) for the contract invoking provisions of the Conditional Payment of Fee (CPOF) clause of the contract to reduce the fee paid under the contract.

Acceptable cost and schedule performance for the entire Scope of Work for the contract is a pre-condition to earning 100% of the fee available under the contract. The threshold for unacceptable overall cost and schedule performance is when in any fiscal year the Contractor has a negative variance exceeding 7.5% percent in earned value for the baseline for the fiscal year in cost or schedule. If such a situation occurs, the HCA may invoke provisions of the CPOF of the contract to reduce the fee paid under the contract.

COMPLETION DOCUMENTS LIST: *(In addition to the Completion Report, the document(s) that should be submitted/ data that should be available/ actions to be taken by evaluator, to determine actual performance to the requirements stated above.*

Note: WTS will provide documentation to the Contracting Officer as follows:

Metric 1: (Completion) Fee shall be payable upon submittal of documentation to CBFO that facilitates a permit change request and after completion of discreet elements 7-9 from Section IV above to be finished within 180 days after the regulator approval. For items 7-9 above, specific tasks include: reconfigure bulkheads, install ventilation regulators and begin operations after permit changes are approved; Complete installation of the West 30 South 2180 overcast prior to commencing waste handling in Panel 6; and Complete installation of the West 170 South 2750 overcast prior to commencing waste handling in Panel 6. Documentation for completion of elements 7-9 shall consist of completion reports accepted by the WTS Manager of Operations and Disposal

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Section J, Attachment D, Enclosure 6
PBI Number 6 - AL-66444
Page 5 of 5

SECTION VI - EARNINGS SCHEDULE

List percent of PM fee available for completion of each Element, and the schedule by which the fee may be earned. (Schedule identifies point(s) at which fee may be earned - does not define completion.)

The maximum fee earnings for each metric in this PBI is included in the metric description in the previous Section IV – Performance Measure.

The fee included in the fee pool associated with PBI #6 may be earned at any time during the current contract period to September 30, 2010. However, for each fiscal year during the term of the contract, the Contractor and CBFO will agree on the maximum amount of fee that may be paid during the fiscal year for the option period and PBI #6. If the Contractor and CBFO do not agree on the maximum fee pool fee potential for a fiscal year, CBFO may make a unilateral determination for that fiscal year. If fee is earned under PBI #6 in a given fiscal year but not paid in that fiscal year, then it may be paid in subsequent fiscal years. However, the work shall not extend beyond September 30, 2012.

PBIs will be reviewed and approved by DOE-CBFO annually beginning in FY06 to update the SQS table as necessary and determine applicability for continuation.

2. AMENDMENT/MODIFICATION NO. A153		3. EFFECTIVE DATE See Block 16C		4. REQUISITION/PURCHASE REQ. 09EM000697		5. PROJECT NO. (If applicable)	
6. ISSUED BY U.S. Department of Energy Carlsbad Field Office P. O. Box 3090 Carlsbad, NM 88220-3090				7. ADMINISTERED BY (If other than Item 6) CODE			
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, state, ZIP Code) Washington TRU Solutions LLC P.O. Box 2078 Carlsbad, NM 88220				9A. AMENDMENT OF SOLICITATION NO.			
CODE				9B. DATED (SEE ITEM 11)			
FACILITY CODE				10A. MODIFICATION OF CONTRACT/ORDER NO. DE-AC29-01AL66444			
				10B. DATED (SEE ITEM 13) 12/14/2000			

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 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 ACKNOWLEDGMENT 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)

00900	2009	33	490003	25400	2221775	0000000	3,097
00500	2009	33	490003	25400	2923703	0000000	1,092,707
01250	2009	33	490003	25400	1110800	0002167	1,879,757
Total:							2,975,561

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS;

IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

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).	
C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:	
X	D. OTHER (SPECIFY TYPE OF MODIFICATION AND AUTHORITY): Incremental funding - DEAR 970.5204-15 entitled, "Obligation of Funds"

E IMPORTANT: Contractor is not, is required to sign this document and return _____ 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 obligate \$2,975,561.00 in funding to the contract.

Funds Obligated through last Modification	\$1,201,340,710.91
Funds Obligated by this Modification	2,975,561.00
Funds Obligated since Inception of Contract	\$1,204,316,271.91

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

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Arthur L. Welton, Contracting Officer	
15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	Signature deleted OMB M-06-15, "Safeguarding Personally Identifiable Information"	16C. DATE SIGNED 5/18/09
BY _____ (Signature of person authorized to sign)			

2. AMENDMENT/MODIFICATION NO. A154	3. EFFECTIVE DATE See Block 16C	4. REQUISITION/PURCHASE REQ. 09FM000741	5. PROJECT NO. (If applicable)
6. ISSUED BY U.S. Department of Energy Carlsbad Field Office P. O. Box 3090 Carlsbad, NM 88220-3090		7. ADMINISTERED BY (If other than Item 6) CODE	
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, state, ZIP Code) Washington TRU Solutions LLC P.O. Box 2078 Carlsbad, NM 88220		9A. AMENDMENT OF SOLICITATION NO.	
CODE		9B. DATED (SEE ITEM 11)	
FACILITY CODE		10A. MODIFICATION OF CONTRACT/ORDER NO. DE-AC29-01AL66444	
		10B. DATED (SEE ITEM 13) 12/14/2000	

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 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 ACKNOWLEDGMENT 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)

01250 2008 33 490003 25400 1110954 0000442 (3,500,000.00)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS;

IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

<input type="checkbox"/>	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO (Specify authority): THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
<input type="checkbox"/>	B. THE ABOVE-NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (Such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
<input type="checkbox"/>	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
<input checked="" type="checkbox"/>	D. OTHER (SPECIFY TYPE OF MODIFICATION AND AUTHORITY): Incremental funding - DEAR 970.5204-15 entitled, "Obligation of Funds"

E. IMPORTANT: Contractor is not, is required to sign this document and return _____ 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 de-obligate \$3,500,000 in funding from the contract.

Funds Obligated through last Modification	\$1,204,316,271.91
Funds Obligated by this Modification	-3,500,000.00
Funds Obligated since Inception of Contract	\$1,200,816,271.91

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

15A. NAME AND TITLE OF SIGNER (Type or print)	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Arthur L. Welton, Contracting Officer
15B. CONTRACTOR/OFFEROR BY _____ (Signature of person authorized to sign)	15C. DATE SIGNED Signature deleted OMB M-06-15, "Safeguarding Personally Identifiable Information"
	16C. DATE SIGNED 5/28/2009

NSN 754-01-152-8070

30-105

STANDARD FORM 30 (REV. 10-83) temp03.dot

PREVIOUS EDITION UNUSABLE

Prescribed by GSA

MS ()

FAR (48 CFR) 53.24

2. AMENDMENT/MODIFICATION NO. A155	3. EFFECTIVE DATE See Block 16C	4. REQUISITION/PURCHASE REQ. 09EM000919	5. PROJECT NO. (If applicable)
6. ISSUED BY U.S. Department of Energy Carlsbad Field Office P. O. Box 3090 Carlsbad, NM 88220-3090		7. ADMINISTERED BY (If other than Item 6) CODE	
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, state, ZIP Code) Washington TRU Solutions LLC P.O. Box 2078 Carlsbad, NM 88220		9A. AMENDMENT OF SOLICITATION NO.	
CODE		9B. DATED (SEE ITEM 11)	
FACILITY CODE		10A. MODIFICATION OF CONTRACT/ORDER NO. DE-AC29-01AL66444	
		10B. DATED (SEE ITEM 13) 12/14/2000	

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 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 ACKNOWLEDGMENT 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)

01250 2009 33 490003 25400 1110957 0000443 1,312,833.00

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

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).	
C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:	
X D. OTHER (SPECIFY TYPE OF MODIFICATION AND AUTHORITY):	Incremental funding - DEAR 970.5204-15 entitled, "Obligation of Funds"

E. IMPORTANT: Contractor is not, is required to sign this document and return _____ 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 obligate \$1,312,833 in funding to the contract.

Funds Obligated through last Modification	\$1,200,816,271.91
Funds Obligated by this Modification	<u>1,312,833.00</u>
Funds Obligated since Inception of Contract	\$1,202,129,104.91

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

15A. NAME AND TITLE OF SIGNER (Type or print)	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Arthur L. Welton, Contracting Officer		
15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	Signature deleted see OMB M-06-15, "Safeguarding Personally Identifiable Information"	16C. DATE SIGNED 6/24/2009
BY _____ (Signature of person authorized to sign)		(Signature of Contracting Officer)	

2. AMENDMENT/MODIFICATION NO A156	3. EFFECTIVE DATE See Block 16C	4. REQUISITION/PURCHASE REQ 091 M001135	5. PROJECT NO. (If applicable)
6. ISSUED BY U.S. Department of Energy Carlsbad Field Office P. O. Box 3090 Carlsbad, NM 88220-3090		7. ADMINISTERED BY (If other than Item 6) CODE	
8. NAME AND ADDRESS OF CONTRACTOR (No. street, county, state ZIP Code) Washington TRU Solutions LLC P.O. Box 2078 Carlsbad, NM 88220		9A. AMENDMENT OF SOLICITATION NO	
CODE		9B. DATED (SEE ITEM 11)	
FACILITY CODE		10A. MODIFICATION OF CONTRACT/ORDER NO DE-AC29-01AL66444	
		10B. DATED (SEE ITEM 13) 12/14/2000	

IF 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 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 ACKNOWLEDGMENT 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)

01250	2009	33	490003	25400	1110954	0000442	28,439,500.00
01250	2009	33	490003	25400	1110956	0003804	7,555,000.00
01250	2009	33	490003	25400	1110957	0000443	1,156,507.00
01250	2009	33	490003	25400	1111094	0000441	1,111,000.00
01250	2005	33	490003	25400	1110672	0001763	32,029.00
01250	2009	33	490003	25400	1111308	0003947	787,639.00
							39,081,675.00

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS;

IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

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)
C.	THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
D.	OTHER (SPECIFY TYPE OF MODIFICATION AND AUTHORITY) Incremental funding - DEAR 970.5204-15 entitled, "Obligation of Funds"

F. IMPORTANT: Contractor is not, is required to sign this document and return _____ 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 correct the funds obligated on contract in accordance with the attached two page spreadsheet and to obligate \$39,081,675 in funding to the contract.

Funds Obligated through last Modification	\$1,323,407,104.91
Funds Obligated by this Modification	39,081,675.00
Funds Obligated since Inception of Contract	\$1,362,488,779.91

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

15A. NAME AND TITLE OF SIGNER (Type or print)	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Arthur L. Welton, Contracting Officer
15B. CONTRACTOR/OFFEROR	16C. DATE SIGNED Signature deleted OMB M-06-15, "Safeguarding Personally Identifiable Information"
BY _____ (Signature of person authorized to sign)	16C. DATE SIGNED 7/13/2009

2. AMENDMENT/MODIFICATION NO. A157	3. EFFECTIVE DATE See Block 16C	4. REQUISITION/PURCHASE REQ. 09F M001999	5. PROJECT NO (If applicable)
6. ISSUED BY U.S. Department of Energy Carlsbad Field Office P. O. Box 3090 Carlsbad, NM 88220-3090		7. ADMINISTERED BY (If other than Item 6) CODE	
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, state, ZIP Code) Washington TRU Solutions LLC P.O. Box 2078 Carlsbad, NM 88220		9A. AMENDMENT OF SOLICITATION NO	
CODE		9B. DATED (SEE ITEM 11)	
FACILITY CODE		10A. MODIFICATION OF CONTRACT/ORDER NO. DE-AC29-01AL66444	
		10B. DATED (SEE ITEM 13) 12/14/2000	

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 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 ACKNOWLEDGMENT 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)

1250	2009	33	490003	25400	1110954	0000442	3,660,281.00
1250	2009	33	490003	25400	1110956	0003804	(3,217,945.00)
1250	2009	33	490003	25400	1110957	0000443	1,868,392.00
1250	2009	33	490003	25400	1111095	0000441	20,000.00
1250	2005	33	490003	25400	1110672	0001763	16,003.03
1258	2009	33	490003	25400	1111308	0003947	10,361.29
1250	2009	33	490003	25400	1110800	0002167	1,509,452.00
1751	2009	33	490003	25400	1111305	0003899	1,084.00
900	2009	33	490003	25400	2221756	0000000	15,608.00
500	2009	33	490003	25400	2923703	0000000	69,440.00
1250	2005	33	490003	25400	1110901	0002175	<u>6,250.00</u>
							\$3,958,926.32

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

<input type="checkbox"/>	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO (Specify authority):
<input type="checkbox"/>	B. THE ABOVE-NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (Such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
<input type="checkbox"/>	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
<input checked="" type="checkbox"/>	D. OTHER (SPECIFY TYPE OF MODIFICATION AND AUTHORITY): Incremental funding - DEAR 970.5204-15 entitled, "Obligation of Funds"

F. IMPORTANT: Contractor is not, is required to sign this document and return _____ 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 obligate \$3,958,926.32 in funding to the contract as follows:

Funds Obligated through last Modification: \$1,396,157,799.91
Funds Obligated by this Modification: 3,958,926.32
Funds Obligated since Inception of Contract: \$1,400,116,726.23

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

15A. NAME AND TITLE OF SIGNER (Type or print)	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Arthur L. Welton, Contracting Officer
15B. CONTRACTOR/OFFEROR	16C. DATE SIGNED 9/13/09
BY _____ (Signature of person authorized to sign)	15C. DATE SIGNED Signature deleted OMB M-06-15, "Safeguarding Personally Identifiable Information"

2. AMENDMENT/MODIFICATION NO A158		3. EFFECTIVE DATE See Block 16C		4. REQUISITION/PURCHASE REQ 091 A001653		5. PROJECT NO (If applicable)	
6. ISSUED BY U.S. Department of Energy Carlsbad Field Office P. O. Box 3090 Carlsbad, NM 88220-3090				7. ADMINISTERED BY (If other than Item 6) CODE			
8. NAME AND ADDRESS OF CONTRACTOR (No street, county, state, ZIP Code) Washington TRU Solutions LLC P.O. Box 2078 Carlsbad, NM 88220				9A. AMENDMENT OF SOLICITATION NO			
				9B. DATED (SEE ITEM 11)			
CODE		FACILITY CODE		10A. MODIFICATION OF CONTRACT/ORDER NO DE-AC29-01A166444			
				10B. DATED (SEE ITEM 13) 12/14/2000			

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 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 ACKNOWLEDGMENT 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)
TAS: :89 0253 : : 006049 2009 33 490003 25400 1110389 2002190 \$96,000.00+

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

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).	
C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:	
X D. OTHER (SPECIFY TYPE OF MODIFICATION AND AUTHORITY): Incremental funding - DEAR 970.5204-15 entitled, "Obligation of Funds"	

E. IMPORTANT: Contractor is not, is required to sign this document and return _____ 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 obligate \$96,000 in American Recovery and Reinvestment Act (ARRA) funding to the contract. The terms and conditions incorporated under Modification A148 apply to the effort performed using these funds. This modification also increases the contract value by \$121,374,000.00 from \$1,400,000,000.00 to \$1,642,652,000.00 to correct an error in Modification A148 that did not increase contract value. The ARRA funds obligated to date and the total funds obligated to date are calculated as follows:

ARRA Funds Obligated obligated to date:	\$121,278,000.00
ARRA Funds Obligated by this Modification:	96,000.00
ARRA Funds Obligated since Inception of Contract:	\$121,374,000.00
Funds Obligated through last Modification:	\$1,362,488,799.91
Funds Obligated by this Modification:	96,000.00
Funds Obligated since Inception of Contract:	\$1,362,584,799.91

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

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Arthur L. Welton, Contracting Officer	
15B. CONTRACTOR/OFFEROR		16C. DATE SIGNED	
BY _____ (Signature of person authorized to sign)		Signature deleted OMB M-06-15, "Safeguarding Personally Identifiable Information"	
		16C. DATE SIGNED 9/2/09	

2. AMENDMENT/MODIFICATION NO A159	3. EFFECTIVE DATE See Block 16C	4. REQUISITION/PURCHASE REQ 09EM000827	5. PROJECT NO (If applicable)
6. ISSUED BY U.S. Department of Energy Carlsbad Field Office P. O. Box 3090 Carlsbad, NM 88220-3090		7. ADMINISTERED BY (If other than Item 6) CODE:	
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, state, ZIP Code) Washington TRU Solutions LLC P.O. Box 2078 Carlsbad, NM 88220		9A. AMENDMENT OF SOLICITATION NO.	
CODE		9B. DATED (SEE ITEM 11)	
FACILITY CODE		10A. MODIFICATION OF CONTRACT/ORDER NO DE-AC29-01A1.66444	
		10B. DATED (SEE ITEM 13) 12/14/2000	

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 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 ACKNOWLEDGMENT 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)

TAS: :89 0253 :: 006049 2009 33 490003 25400 1111389 2002190 \$33,573,000.00+

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

<input type="checkbox"/>	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO (Specify authority): THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
<input type="checkbox"/>	B. THE ABOVE-NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (Such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
<input type="checkbox"/>	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
<input checked="" type="checkbox"/>	D. OTHER (SPECIFY TYPE OF MODIFICATION AND AUTHORITY): Incremental funding - DEAR 970.5204-15 entitled, "Obligation of Funds"

8. IMPORTANT. Contractor is not, is required to sign this document and return _____ 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 obligate \$33,573,000.00 in American Recovery and Reinvestment Act (ARRA) funding to the contract. The terms and conditions incorporated under Modification A148 apply to the effort performed using these funds. The ARRA funds obligated to date and the total funds obligated to date are calculated as follows:

ARRA Funds Obligated obligated to date:	\$121,374,000.00
ARRA Funds Obligated by this Modification:	<u>33,573,000.00</u>
ARRA Funds Obligated since Inception of Contract:	\$154,947,000.00
Funds Obligated through last Modification:	\$1,362,584,799.91
Funds Obligated by this Modification:	<u>33,573,000.00</u>
Funds Obligated since Inception of Contract:	\$1,396,157,799.91

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

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)	
15B. CONTRACTOR/OFFEROR		Derrick J.C. Franklin	
BY _____ (Signature of person authorized to sign)		Signature deleted OMB M-06-15, "Safeguarding Personally Identifiable Information"	
15C. DATE SIGNED		16C. DATE SIGNED	

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT 1. CONTRACT ID CODE PAGE 1 OF 4 PAGES

2. AMENDMENT/MODIFICATION NO. **M160** 3. EFFECTIVE DATE **April 15, 2009** 4. REQUISITION/PURCHASE REQ. NO. **N/A** 5. PROJECT NO. (If applicable) **N/A**

6. ISSUED BY **U.S. Department of Energy
Carlsbad Field Office
P.O. Box 3090
Carlsbad, NM 88220-3090** CODE 7. ADMINISTERED BY (If other than Item 6) CODE

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, state, ZIP Code)
**Washington TRU Solutions LLC
P.O. Box 2078
Carlsbad, NM 88220**

9A. AMENDMENT OF SOLICITATION NO.
9B. DATED (SEE ITEM 11)
10A. MODIFICATION OF CONTRACT/ORDER NO.
DE-AC29-01AL66444
10B. DATED (SEE ITEM 13)
December 14, 2000

CODE FACILITY CODE

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers is extended, is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation 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 ACKNOWLEDGMENT 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)
NOT A FUNDING ACTION

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

- 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: **Mutual Agreement of the Parties**
- D. OTHER (SPECIFY TYPE OF MODIFICATION AND AUTHORITY):
- E. IMPORTANT: Contractor is not, is required to sign this document and return Three (3) copies to the issuing office.

See following pages:

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

15A. NAME AND TITLE OF SIGNER (Type or print) **M. F. Sharif, President and General Manager** 16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) **Arthur L. Welton, Contracting Officer**

Signature deleted OMB M-06-15, "Safeguarding Personally Identifiable Information"

15C. DATE SIGNED **9-29-09**

Signature deleted OMB M-06-15, "Safeguarding Personally Identifiable Information"

16C. DATE SIGNED **9/29/2009**

a. The purposes of this modification are as follows:

- 1) Incorporate additional in-scope work under the American Recovery and Reinvestment Act at a value of \$140,707,957 and a fee payment of \$8,536,000 payable under Performance Based Incentive (PBI) # 7 for work performed from April 15, 2009 through September 30, 2011.
- 2) The effective date of this modification is April 15, 2009.
- 3) Incorporate PBI #7 into the contract.
- 4) The cost data submitted for this performance incentive is hereby certified by the Contractor in accordance with DEAR clause 970.5232-2 entitled, "Payments and Advances" and shall be subject to audit by the DOE-IG scheduled in calendar year 2009. The Government reserves its right to disallow costs that are found not to be allowable because they do not apply to the Work Authorization attached hereto entitled, "Work Authorization for Work Proposal #EMW0001 and Project Execution Plan," and adjust fee accordingly in accordance with paragraph (a) of DEAR clause 970.5232-2 after receiving the results of the DOE-IG audit and consideration of the contractor's rebuttal, if applicable.
- 5) The Contractor agrees that the fee amount of \$8,536,000 under PBI # 7 is an equitable adjustment for the work authorization entitled, "Work Authorization for Work Proposal #EMW0001 and Project Execution Plan," submitted to the Contractor in accordance with DOE O 412.1A entitled "Work Authorization System"

b. As a result of the aforementioned purposes, the contract is changed as follows:

- 1) The estimated cost table under clause B.2(a)(3) entitled, "ESTIMATED COST, MAXIMUM AVAILABLE FEE, AND AVAILABLE FEE" is hereby changed from:

Contract Period	Est. Cost
October 1, 2005 through September 30, 2006	Exemption 4
October 1, 2006 through September 30, 2007	Exemption 4
October 1, 2007 through September 30, 2008	Exemption 4
October 1, 2008 through September 30, 2009	Exemption 4
October 1, 2009 through September 30, 2010	Exemption 4

To:

Contract Period	Est. Cost
October 1, 2005 through September 30, 2006	Exemption 4
October 1, 2006 through September 30, 2007	Exemption 4
October 1, 2007 through September 30, 2008	Exemption 4
October 1, 2008 through September 30, 2009	Exemption 4
October 1, 2009 through September 30, 2010	Exemption 4
October 1, 2010 through September 30, 2011	Exemption 4

Note: The American Recovery and Reinvestment Act estimated costs for fiscal years 2009, 2010 and 2011 are \$19,292,173, \$77,205,434 and \$44,210,350, respectively and costs shall be segregated in accordance with modification A148.

- 2) The estimated fee base table The B.2(b)(6) entitled, "ESTIMATED COST, MAXIMUM AVAILABLE FEE, AND AVAILABLE FEE is hereby changed from:

Contract Period	Est. Fee Base
February 1, 2001 through March 31, 2003 *	Exemption 4
April 1, 2003 through September 30, 2003	Exemption 4
October 1, 2003 through September 30, 2004	Exemption 4
October 1, 2004 through September 30, 2005	Exemption 4
October 1, 2005 through September 30, 2006	Exemption 4
October 1, 2006 through September 30, 2007	Exemption 4
October 1, 2007 through September 30, 2008	Exemption 4
October 1, 2008 through September 30, 2009	Exemption 4
October 1, 2009 through September 30, 2010	Exemption 4

To:

Contract Period	Work Type	Est. Fee Base
February 1, 2001 through March 31, 2003 *	Base Work	Exemption 4
April 1, 2003 through September 30, 2003	Base Work	Exemption 4
October 1, 2003 through September 30, 2004	Base Work	Exemption 4
October 1, 2004 through September 30, 2005	Base Work	Exemption 4
October 1, 2005 through September 30, 2006	Base Work	Exemption 4
October 1, 2006 through September 30, 2007	Base Work	Exemption 4
October 1, 2007 through September 30, 2008	Base Work	Exemption 4
October 1, 2008 through September 30, 2009	Base Work	Exemption 4
April 15, 2009 through September 30, 2009	Recovery Act Work	\$15,700,905
October 1, 2009 through September 30, 2010	Base Work	Exemption 4
October 1, 2009 through September 30, 2010	Recovery Act Work	\$62,522,779
October 1, 2010 through September 30, 2011	Recovery Act Work	\$36,912,700

- 3) The maximum available fee base table The B.2(b)(6) entitled, "ESTIMATED COST, MAXIMUM AVAILABLE FEE, AND AVAILABLE FEE is hereby changed from:

Contract Period	Maximum Available Fee
February 1, 2001 through September 30, 2001	Exemption 4
October 1, 2001 through September 30, 2002	Exemption 4
October 1, 2002 through March 31, 2003	Exemption 4
April 1, 2003 through September 30, 2003	Exemption 4
October 1, 2003 through September 30, 2004	Exemption 4
October 1, 2004 through September 30, 2005	Exemption 4
October 1, 2005 through September 30, 2006	Exemption 4
October 1, 2006 through September 30, 2007	Exemption 4
October 1, 2007 through September 30, 2008	Exemption 4
October 1, 2008 through September 30, 2009	Exemption 4
October 1, 2009 through September 30, 2010	Exemption 4

To:

Contract Period	Work Type	Maximum Available Fee
February 1, 2001 through September 30, 2001	Base Work	EXEMPTION 4
October 1, 2001 through September 30, 2002	Base Work	Exemption 4
October 1, 2002 through March 31, 2003	Base Work	Exemption 4
April 1, 2003 through September 30, 2003	Base Work	Exemption 4
October 1, 2003 through September 30, 2004	Base Work	Exemption 4
October 1, 2004 through September 30, 2005	Base Work	Exemption 4
October 1, 2005 through September 30, 2006	Base Work	Exemption 4
October 1, 2006 through September 30, 2007	Base Work	Exemption 4
October 1, 2007 through September 30, 2008	Base Work	Exemption 4
October 1, 2008 through September 30, 2009	Base Work	Exemption 4
October 1, 2009 through September 30, 2010	Base Work	Exemption 4
April 15, 2009 through September 30, 2011	Recovery Act Work	\$8,536,000

- 4) PBI # 7, Revision 0 dated April 15, 2009 attached hereto is hereby incorporated into the contract as a new performance incentive effective April 15, 2009.
- c. **CONTRACTOR'S RELEASE OF CLAIMS (FAR 43.204):** In consideration of the modification agreed to herein as a complete and equitable adjustment for the change order issued under Modification A148 incorporating a fee amount negotiated totaling \$8,536,000 for the American Recovery and Reinvestment Act work incorporated herein, 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.

RATING PLAN

Contract Number: DE-AC29-01AL66444
Section J, Attachment D, Enclosure 3
PBI Number 4 - AL-66444
Page 1 of 14

SECTION I – GENERAL INFORMATION

Performance Incentive Number: CBFO-PBI #7 Performance Period: 4/15/09 through 9/30/2011
Performance Incentive Short Title: American Recovery and Reinvestment Act.
Revision Number and Effective Date: Revision 0, April 15, 2009

SECTION II – ACCOUNTING/PROJECT INFORMATION

Initial Budgeted Cost of Work Scheduled (BCWS) under this PM:	Maximum Available Incentive Fee Associated with this Measure:
\$140,707,957	\$8,536,000

CBFO Management Control Packages:

SECTION III – INCENTIVE INFORMATION

Incentive type:	Base <input checked="" type="checkbox"/>	Stretch <input type="checkbox"/>	Super Stretch <input type="checkbox"/>
Difficulty:	High <input type="checkbox"/>	Medium <input checked="" type="checkbox"/>	Low <input type="checkbox"/>
Duration:	Annual <input type="checkbox"/>	Multi-year <input checked="" type="checkbox"/>	
Fees Payment type:	Completion <input checked="" type="checkbox"/>	Progress <input type="checkbox"/>	Provisional <input type="checkbox"/>

SECTION IV - PERFORMANCE MEASURE

Description:

The Contractor was awarded work and funding consistent with the American Recovery and Reinvestment Act (ARRA) of 2009 effective 4/15/09. In accordance with the terms of Prime Contract modification A0148, the Contractor is to provide the personnel, material, supplies, and services to do all things necessary for, or incident to, providing its best efforts to perform Recovery Act work. The work the Contractor initiates for the ARRA is subject to approval by the Department of Energy and is expected to fulfill the following mission requirements:

Transuranic (TRU) Waste Accelerated Disposition projects that involve the accelerated disposition of legacy defense-generated TRU waste for the following targeted generator and interim storage sites including improvement of site infrastructure:

Large-size boxes and drums of legacy Contact Handled (CH) and Remote Handled (RH) TRU waste remaining at Savannah River Site (SRS)
RH TRU waste from Idaho National laboratory (INL)
CH and RH TRU waste from Area G at Los Alamos National Laboratory
CH and RH TRU waste from Oak Ridge National Laboratory
CH and RH TRU waste from Argonne National Laboratories
CH and RH TRU waste from Hanford
CH and RH TRU waste from other small quantity sites as appropriate.

This PBI represents a fee model in which earnings are at risk and the Contractor is paid when specific results are achieved during performance of Recovery Act work. All Recovery Act work should conclude by 9/30/2011. The Contractor acknowledges that some of the items in this PBI are not in the total control of the Contractor which imposes an added difficulty component due to the work necessary to be done at generator sites. Fees under this PBI will be earned as follows:

WIPP Site

1. South Access Road Completion
2. Evaporation Pond Project Completion.

Savannah River Site (SRS)

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3. CCP Certification of Box Line at SRS.
 - a. Obtain EPA and NMED approval for Box Line at SRS to allow for more efficient waste packaging and repackaging of waste into shippable containers.
 - i. Characterize and certify SWB line at SRS.
 - ii. First shipment of SWBs from SRS for disposal.
4. Complete first shipment of RH TRU waste produced at SRS.
 - a. First shipment of RH waste produced by SRS. Requirements to complete this metric include initial EPA baseline inspection and RH Certification.
 - i. First shipment of RH TRU waste produced at SRS for disposal.
5. Complete disposition of Pad 1 waste at SRS.
 - a. First shipment of waste currently stored on Pad 1 to WIPP.
 - b. Certification and Disposition of the first 450 of the 900 drums currently stored on Pad 1.
 - c. Disposition of the second 450 drums at Pad 1.
6. Certification of the contents of 300 original boxes (half the box inventory) at SRS.
7. Certification of the 300 remaining original box inventory at SRS.

Hanford

8. Hanford CCP Startup.
 - a. Obtain initial certification for debris waste.
 - b. Certify first 150 SWBs.
 - c. Certify the remaining 150 SWBs.
9. Complete first shipment by CCP of CH waste from Hanford to WIPP for disposal.
10. Provide high energy NDE capabilities for cost-effective characterization.

Los Alamos National Laboratory (LANL)

11. Provide additional VE operations to support LANL accelerated repackaging operations at multiple facilities (other than the Waste Characterization Reduction and Replacement Facility (WCRRF)).
12. CCP Certification of Box Line at LANL.
 - a. Certify SWB line.
 - b. First shipment of SWBs from LANL for disposal.
13. Provide high energy NDE capabilities for cost-effective characterization.

Argonne National Laboratory (ANL)

14. Complete disposal of the first waste from Building 205 hot cell at ANL.

Oak Ridge National Laboratory (ORNL)

15. Obtain certification for S4000 CH waste at ORNL (i.e. NFS soils).
 - a. Certification of the first container of S4000 CH waste from ORNL.
 - b. Completion of the shipments of the first 250 drums of S4000 CH waste from ORNL.
16. Achieve feed rates to characterize at a rate that will produce three (3) RH shipments per week from ORNL to WIPP for five (5) consecutive weeks.

RH at Other Sites

17. Establish a CCP RH certification program at Bettis Atomic Power Laboratory (BAPL) and complete the first shipment of RH TRU waste from BAPL to WIPP.
18. Establish a CCP RH certification program at SNL and complete the first shipment of RH TRU waste from SNL to WIPP.

CCP Other

19. Each new Tier 1 approval by the EPA and NMED for CH & RH waste regardless of site.
Note: Tier 1 submittals and approvals for additional RH waste streams will help to ensure WIPP throughput and a full pipeline to achieve peak capability at five RH shipments per week, which can only be achieved when the waste is coming from more than one site due to the varied deployment and limitation of MLU team resources and host site labor. Tier 1 approval of CH waste streams applies to approval of non-baselined summary category groups, approval of new equipment, and extended NDA calibration ranges to allow for characterization and disposal of CH waste that cannot

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be certified for disposal using current approvals and equipment.

20. Establish CCP repacking operations at generator sites
 - a. Initiate operations of MOVER at LANL
 - b. Complete ORR for operation of MOVER-like unit at any other generator site.

Intersite Shipments

21. Intersite shipment of CH waste from SQS site to INL/AMWTP.
 - a. Completion of the first shipment of available legacy CH waste from ANL to INL/AMWTP and the completion of the last shipment of legacy ANL CH waste from INL to WIPP. Exemption 4
 - b. Completion of the first shipment of available legacy CH waste from LBNL to INL/AMWTP and the completion of the last shipment of legacy LBNL CH waste from INL to WIPP. Exemption 4
 - c. Completion of the first shipment of available legacy CH waste from LLNL to INL/AMWTP and the completion of the last shipment of legacy LLNL CH waste from INL to WIPP. Exemption 4
 - d. Completion of the first shipment of available legacy CH waste from NRD to INL/AMWTP. Exemption 4
 - e. Completion of the first shipment of available legacy CH waste from SNL to INL/AMWTP and the completion of the last shipment of legacy ANL CH waste from SNL to WIPP. Exemption 4
 - f. Completion of the first shipment of available legacy CH waste (spheres) from NTS to WIPP. Exemption 4

The following metrics shall be used to measure performance and determine fees earned by the Contractor under this Rating Plan element:

WIPP Site

Metric 1: The Contractor shall complete construction of the South Access Road.

Completion of the South Access Road to the WIPP Site will earn the Contractor Exemption 4
The maximum amount of fee available to WTS under this metric is Exemption 4

Metric 2: The Contractor shall complete the Evaporation Pond Project at the WIPP Site.

Completion of the Evaporation Pond Project at the WIPP Site will earn the Contractor Exemption 4

The maximum amount of fee available to WTS under this metric is Exemption 4

SRS

Metric 3 (a): The Contractor shall characterize and certify a standard waste box (SWB) line at SRS.

Completion of characterization and certification of an SWB line at SRS will earn the Contractor Exemption 4

The maximum amount of fee available to WTS under this metric is Exemption 4

Metric 3 (b): The Contractor shall complete the first shipment of SWBs from SRS for disposal.

Completion of disposal of the first shipment of SWBs from SRS for disposal will earn the Contractor Exemption 4

The maximum amount of fee available to WTS under this metric is Exemption 4

Metric 4: The Contractor shall complete the first shipment of RH TRU from waste produced at SRS for disposal.

Completion of disposal of the first shipment of RH TRU from waste produced at SRS will earn the Contractor Exemption 4

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The maximum amount of fee available to WTS under this metric is Exemption 4

Metric 5 (a): The Contractor shall complete the first shipment of waste currently stored on Pad 1 to WIPP.

The first shipment of waste currently stored on Pad 1 to WIPP will earn the Contractor Exemption 4

The maximum amount of fee available to WTS under this metric is Exemption 4

Metric 5 (b): The Contractor shall complete the certification and disposition of the first 450 of the 900 drums currently stored on Pad 1 at SRS.

Completion of the certification and disposition of the first 450 of the 900 drums currently stored on Pad 1 at SRS will earn the Contractor Exemption 4

The maximum amount of fee available to WTS under this metric is Exemption 4

Metric 5 (c): The Contractor shall complete disposition of the second 450 drums currently stored on Pad 1 at SRS.

Completion of the disposition of the second 450 drums currently stored on Pad 1 at SRS will earn the Contractor Exemption 4

The maximum amount of fee available to WTS under this metric is Exemption 4

Metric 6: The Contractor shall certify the contents from the 300 original boxes (half the box inventory) at SRS.

Certification of the contents of the 300 original boxes (half the box inventory) at SRS will earn the Contractor Exemption 4

The maximum amount of fee available to WTS under this metric is Exemption 4

Metric 7: The Contractor shall certify or disposition as low level waste the contents of the remaining original box inventory at SRS.

Certification or disposition as low level waste the contents from the remaining original boxes (half the box inventory) at SRS will earn the Contractor Exemption 4

The maximum amount of fee available to WTS under this metric is Exemption 4

Hanford

Metric 8 (a): The Contractor shall obtain initial certification for debris waste at Hanford.

Initial certification of the debris waste at Hanford will earn the Contractor Exemption 4

The maximum amount of fee available to WTS under this metric is Exemption 4

Metric 8 (b): The Contractor shall obtain certification for the first 150 SWBs at Hanford.

Certification for the first 150 SWBs at Hanford will earn the Contractor Exemption 4

The maximum amount of fee available to WTS under this metric is Exemption 4

Metric 8 (c): The Contractor shall obtain certification for the second 150 SWBs at Hanford.

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Certification for the second 150 SWBs at Hanford will earn the Contractor Exemption 4

The maximum amount of fee available to WTS under this metric is Exemption 4

Metric 9: The Contractor shall complete the first shipment by CCP of CH waste from Hanford to WIPP for disposal.

Shipment by CCP of the first CH waste from Hanford to WIPP will earn the Contractor Exemption 4

The maximum amount of fee available to WTS under this metric is Exemption 4

Metric 10: The Contractor shall obtain NMED/EPA approval of the Tier 1 certification for high energy NDE capability for cost-effective characterization.

NMED/EPA approval of the Tier 1 certification for high energy NDE capability will earn the Contractor Exemption 4

The maximum amount of fee available to WTS under this metric is Exemption 4

LANL

Metric 11: The Contractor shall provide mobile visual examination (VE) operations at any facility at LANL (other than the WCRR.)

Provision of mobile VE operations at LANL at any facility other than WCRR will earn the Contractor Exemption 4 *for each facility for a maximum of* Exemption 4

The maximum amount of fee available to WTS under this metric is Exemption 4

Metric 12 (a): The Contractor shall certify a SWB line at LANL.

Certification of a SWB line at LANL will earn the Contractor Exemption 4

The maximum amount of fee available to WTS under this metric is Exemption 4

Metric 12 (b): The Contractor shall complete the first shipment of SWBs from LANL for disposal.

Completion of the first shipment of SWBs from LANL for disposal Exemption 4

The maximum amount of fee available to WTS under this metric is Exemption 4

Metric 13: The Contractor shall obtain NMED/EPA approval of the Tier 1 certification for high energy NDE capability for cost-effective characterization.

NMED/EPA approval of the Tier 1 certification for high energy NDE capability will earn the Contractor Exemption 4

The maximum amount of fee available to WTS under this metric is Exemption 4

ANL

Metric 14: The Contractor shall complete disposal of the first waste from the Building 205 hot cell at ANL.

Completion of the disposal of the first waste from the Building 205 hot cell at ANL will earn the Contractor Exemption 4

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The maximum amount of fee available to WTS under this metric is Exemption 4

ORNL

Metric 15 (a): The Contractor shall certify the first container of S4000 CH waste from ORNL.

Certification of the first container of S4000 CH waste from ORNL will earn the Contractor Exemption 4

The maximum amount of fee available to WTS under this metric is Exemption 4

Metric 15 (b): The Contractor shall complete shipments of the first 250 drums of S4000 CH waste from ORNL.

Completion of shipment for the first 250 drums of S4000 CH waste from ORNL will earn the Contractor Exemption 4

The maximum amount of fee available to WTS under this metric is Exemption 4

Metric 16: The Contractor shall achieve feed rates to characterize at a rate that will produce three RH shipments per week for ORNL to WIPP for five (5) consecutive weeks.

Achievement of feed rates to characterize at a rate that will produce three (3) RH shipments per week for ORNL to WIPP for five (5) consecutive weeks will earn the contractor Exemption 4

The maximum amount of fee available to WTS under this metric is Exemption 4

RH at other Sites

Metric 17: The Contractor shall complete the first RH TRU shipment from BAPL to WIPP.

Completion of the first RH TRU shipment from BAPL to WIPP will earn the Contractor Exemption 4

The maximum amount of fee available to WTS under this metric is Exemption 4

Metric 18: The Contractor shall complete the first RH TRU shipment from SNL to WIPP.

Completion of the first RH TRU shipment from SNL to WIPP will earn the Contractor Exemption 4

The maximum amount of fee available to WTS under this metric is Exemption 4

CCP Other

Metric 19: The Contractor shall obtain Tier 1 approval from the EPA and NMED for CH and RH waste regardless of site. (See Note in section IV)

For each new Tier 1 approval from the EPA and NMED for CH and RH waste regardless of site, the contractor will earn Exemption 4. It is estimated that 18 approvals will be achieved. Completion of 18 Tier 1 approvals for 18 waste streams (CH or RH) Exemption 4

The maximum amount of fee available to WTS under this metric is Exemption 4

Metric 20 (a): The Contractor shall initiate operations of MOVER at LANL.

Operations of MOVER at LANL will earn the Contractor Exemption 4

The maximum amount of fee available to WTS under this metric is Exemption 4

Metric 20 (b): The Contractor shall complete ORR for operation of MOVER-like unit at any other generator site.

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Completion of an ORR for a MOVER-like unit at any other generator site will earn the Contractor Exemption 4

The maximum amount of fee available to WTS under this metric is Exemption 4

Intersite Shipments

Metric 21: The Contractor shall complete intersite shipments of CH waste from identified small quantity sites to the INL/AMWTP and complete the last shipment of legacy waste from INL to WIPP for small quantity sites identified.

Completion of the first shipment of available legacy waste from each identified site to the INL/AMWTP will earn the contract Exemption 4. Completing the last shipment of legacy waste from INL to WIPP for small quantity sites identified will earn the Contractor Exemption 4

The maximum amount of fee available to WTS under this metric is Exemption 4

SECTION V - PERFORMANCE REQUIREMENTS

PREVIOUS GATEWAY: Describe previous gateway (if applicable) that must be completed before fee can be paid under this performance measure.

None

DEFINE COMPLETION: Specify Performance Elements and describe indicators of success (quality/progress). Include baseline documents/data against which completion documentation should be compared.

Payment Metric 1: The Contractor will request payment after completion of South Access Road construction as evidenced by a Construction Acceptance Report signed by the WTS Construction Manager.

Payment Metric 2: The Contractor will request payment after completion of the Evaporation Pond Project as evidenced by a Construction Acceptance Report signed by the WTS Construction Manager.

Payment Metric 3 (a): The Contractor will request payment after characterization and certification of an SWB at SRS as evidenced by documentation from WWIS showing direct loaded SRS SWBs have been certified.

Payment Metric 3 (b): The Contractor will request payment after the first shipment of SWBs from SRS has occurred, as evidenced by a report from WWIS showing the shipment and emplacement of the SWBs.

Payment Metric 4: The Contractor will request payment after the first shipment of SRS RH is made, as evidenced by a report from WWIS showing the shipment and emplacement of the waste.

Payment Metric 5 (a): WTS will request payment after the first shipment of waste stored on SRS pad 1 as evidenced by a report from WWIS showing the shipment and emplacement of the waste, combined with a crosswalk from the AK Tracking Spreadsheet (AKTSS) showing the original Pad 1 containers and the subsequent daughter containers that the waste was packaged into if necessary.

Payment Metric 5 (b): WTS will request payment after the certification and disposition of the first 450 of the 900 drums currently stored on Pad 1 at SRS as evidenced by a combination of reports from WWIS showing the containers have been certified for shipment, and a report from CCP NDA documenting that the containers have been dispositioned as LLW (<100nCi/g). The drums will be documented on the AKTSS to show the original containers from PAD 1 and the follow on daughter containers that they may

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be re-packaged into.

Payment Metric 5 (c): WTS will request payment after the certification and disposition of the second 450 drums currently stored on Pad 1 at SRS as evidenced by a combination of reports from WWIS showing the containers have been certified for shipment, and a report from CCP NDA documenting that the containers have been dispositioned as LLW (<100nCi/g). The drums will be documented on the AKTSS to show the original containers from PAD 1 and the follow on daughter containers that they may be re-packaged into.

Payment Metric 6: WTS will request payment after certifying the contents of the first 300 original boxes, which is considered to be about half of the original box inventory at SRS. This will be documented by showing through the AKTSS that the contents have been repackaged into other containers and have then been certified in WWIS as displayed on a WWIS report.

Payment Metric 7: WTS will request payment after certifying the contents of the remaining 300 original boxes, which is considered to be about half of the original box inventory at SRS. This will be documented by showing through the AKTSS that the contents have been repackaged into other containers and have then been certified in WWIS as displayed on a WWIS report.

Payment Metric 8 (a): WTS will request payment after obtaining initial certification for debris waste. This will be documented by showing the CBFO Certification letter to CCP documenting the approval and certification for S5000 CH waste at Hanford

Payment Metric 8 (b): WTS will request payment after certifying first 150 SWBs. This will be documented showing 150 SWBs from Hanford as certified in WWIS.

Payment Metric 8 (c): WTS will request payment after certifying the second 150 SWBs. This will be documented showing 300 SWBs from Hanford as certified in WWIS.

Payment Metric 9: WTS will request payment after the first shipment of CH waste from Hanford. This will be documented by a WWIS report showing Hanford CH waste shipped from Hanford to WIPP.

Payment Metric 10: WTS will request payment after NMED/EPA granted approval of the Tier 1 certification. This will be documented using the CBFO certification letter showing the high energy RTR unit as certified for CH characterization.

Payment Metric 11: WTS will request payment after providing for VE operations at any LANL facility other than WCRR. The location will be documented in the CCP VE BDR.

Payment Metric 12 (a): WTS will request payment after certification of the SWB Line. This will be documented by showing a WWIS report that has LANL direct loaded SWBs certified in WWIS.

Payment Metric 12 (b): WTS will request payment after the first shipment of SWBs from LANL for disposal. This will be documented by a WWIS report showing direct loaded LANL SWBs having been shipped and disposed at the WIPP.

Payment Metric 13: WTS will request payment after NMED/EPA granted approval of the Tier 1 certification. This will be documented using the CBFO certification letter showing the high energy RTR unit as certified for CH characterization.

Payment Metric 14: WTS will request payment after disposal of the first waste from Building 205 hot cell at ANL. This will be documented by a WWIS report showing waste from this waste stream has been disposed of at the WIPP.

Payment Metric 15 (a): WTS will request payment after certification of the first container of S4000 CH waste from ORNL. This will be documented by a WWIS report showing waste from an ORNL S4000

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waste stream being certified in WWIS.

Payment Metric 15 (b): WTS will request payment after completion of the shipments of the first 250 drums of S4000 CH waste from ORNL. This will be documented by a WWIS report showing 250 S4000 ORNL containers being disposed of at the WIPP.

Payment Metric 16: WTS will request payment after the achievement of feed rates to characterize at a rate that will produce 3 RH shipments per week from ORNL to WIPP for five (5) consecutive weeks. This will be documented by the CCP weekly feedrate reports.

Payment Metric 17: WTS will request payment after the first RH TRU shipment from BAPL to WIPP. This will be documented by a WWIS report showing BAPL RH waste having been disposed of at the WIPP.

Payment Metric 18: WTS will request payment after the first RH TRU shipment from SNL to WIPP. This will be documented by a WWIS report showing SNL RH waste having been disposed of at the WIPP.

Payment Metric 19: WTS will request payment after each new Tier I approval from to the EPA and NMED for CH & RH waste regardless of site. This will be documented by the CBFO certification letter issued following EPA Tier 1 approval and NMED approvals. (See Note in section IV)

Payment Metric 20 (a): WTS will request payment after initiation of operations of MOVER at LANL.

Payment Metric 20 (b): WTS will request payment after completion of ORR for operation of MOVER-like unit at any other generator site.

Payment Metric 21 (a): WTS will request payment after completion of the first shipment of available legacy CH waste from ANL to INL/AMWTP and the completion of the last shipment of legacy ANL CH waste from INL to WIPP. This will be documented by reports from ISM and WWIS showing the shipment of ANL CH waste to INL and the emplacement of ANL CH waste at the WIPP.

Payment Metric 21 (b): WTS will request payment after completion of first shipment of available legacy CH waste from LBNL to INL/AMWTP and the completion of the last shipment of legacy LBNL CH waste from INL to WIPP. This will be documented by reports from ISM and WWIS showing the shipment of LBNL CH waste to INL and the emplacement of LBNL CH waste at the WIPP.

Payment Metric 21 (c): WTS will request payment after completion of first shipment of available legacy CH waste from LLNL to INL/AMWTP and the completion of the last shipment of legacy LLNL CH waste from INL to WIPP. This will be documented by reports from ISM and WWIS showing the shipment of LLNL CH waste to INL and the emplacement of LLNL CH waste at the WIPP.

Payment Metric 21 (d): WTS will request payment after completion of first shipment of available legacy CH waste from NRD to INL/AMWTP. This will be documented by reports from ISM showing the shipment of NRD CH waste to INL.

Payment Metric 21 (e): WTS will request payment after completion of first shipment of available legacy CH waste from SNL to INL/AMWTP and the completion of the last shipment of legacy SNL CH waste from INL to WIPP. This will be documented by reports from ISM and WWIS showing the shipment of SNL CH waste to INL and the emplacement of SNL CH waste at the WIPP.

Payment Metric 21 (f): WTS will request payment after completion of the first shipment of CH waste (spheres) from NTS to the WIPP. This will be documented by a WWIS report showing the completion of the shipment of the spheres to the WIPP.

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DEFINITIONS:

AKTSS: Acceptable Knowledge Tracking System Spreadsheet

CBFO: Carlsbad Field Office

CH – Contact-Handled: Packaged TRU waste with an external surface dose rate that does not exceed 200 mrem per hour.

Clean up or Cleanup: A site is cleaned up when no defense TRU waste remains on the site. Wastes that fit this definition include: CH TRU, RH TRU, CH TRU mixed, RH TRU mixed, and other waste managed as TRU waste.

ISM: Intersite Shipment Module.

Cubic Meters: As used herein cubic meters refer to the TRU waste container volume. TRU waste container volume means the volume in cubic meters of the container. For example, the volume of one 55-gallon drum is 0.21 m³, and the volume of one standard waste box is 1.88 m³, etc.

RH – Remote-Handled: Packaged TRU waste with an external surface dose rate that exceeds 200 mrem per hour but is less than 1,000 rem per hour.

Small Quantity Sites (SQS): The generator or storage sites in addition to Idaho National Laboratory, Hanford, Savannah River, Oak Ridge, and Los Alamos National Laboratory.

TRU: Transuranic Waste. Radioactive waste containing isotopes with an atomic number greater than 92, concentrations greater than 100 nanocuries per gram, and a half-life of greater than 20 years.

Waste Managed as TRU: Waste, suspected of being defense TRU waste, being actively managed by the generator as TRU waste.

WIPP: Waste Isolation Pilot Plant

WTS: Washington TRU Solutions, the Contractor

WWIS: WIPP Waste Information System

TECHNICAL BOUNDARY CONDITIONS: (Fundamental technical assumptions that must be maintained in order to accomplish the work scope associated with this Performance Measure.)

GENERAL REQUIREMENTS:

COMPLETION DOCUMENTS LIST: *(In addition to the Completion Report, the document(s) that should be submitted/ data that should be available/ actions to be taken by evaluator, to determine actual performance to the requirements stated above.*

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Note: WTS will provide documentation to the Contracting Officer as follows:

Metric 1: (Completion) Fee shall be payable upon submittal of a Construction Acceptance Report for the South Access Road to WIPP signed by the WTS Construction Manager. CBFO will verify the invoice by review of the Construction Acceptance Report.

Metric 2: (Completion) Fee shall be payable upon submittal of a Construction Acceptance Report for the Evaporation Pond Project signed by the WTS Construction Manager. CBFO will verify the invoice by review of the Construction Acceptance Report.

Metric 3 (a): (Completion) Fee shall be payable upon submittal documentation from WWIS showing direct loaded SRS SWBS have been certified. CBFO will verify the request submitted by the Contractor from information in the WWIS database.

Metric 3 (b): (Completion) Fee shall be payable upon submittal of a report from WWIS showing the shipment and emplacement of the SWBs. CBFO will verify the request submitted by the Contractor from information in the WWIS database.

Metric 4: (Completion) Fee shall be payable upon submittal of a report from WWIS showing the shipment and emplacement of the first shipment of SRS RH waste. CBFO will verify the request submitted by the Contractor from information in the WWIS database.

Metric 5 (a): (Completion) Fee shall be payable upon submittal of a report from WWIS showing the shipment and emplacement of the waste, combined with a crosswalk from the AK Tracking Spreadsheet (AKTSS) showing the original Pad 1 containers and the subsequent daughter containers that the waste was packaged into if necessary. CBFO will verify the request submitted by the Contractor from information in the WWIS database.

Metric 5 (b): (Completion) Fee shall be payable upon submittal of a combination of reports from WWIS showing the containers have been certified for shipment, and a report from CCP NDA documenting that the containers have been dispositioned as LLW (<100nCi/g). The drums will be documented on the Acceptable Knowledge Tracking System Spreadsheet (AKTSS) to show the original containers from PAD 1 and the follow on daughter containers that they may be re-packaged into a report after the certification and disposition of the first 450 of the 900 drums currently stored on Pad 1 at SRS. CBFO will verify the request submitted by the Contractor from the WWIS and AKTSS.

Metric 5 (c): (Completion) Fee shall be payable upon submittal of a combination of reports from WWIS showing the containers have been certified for shipment, and a report from CCP NDA documenting that the containers have been dispositioned as LLW (<100nCi/g). The drums will be documented on the AKTSS to show the original containers from PAD 1 and the follow on daughter containers that they may be re-packaged into. WTS will request payment after the certification and disposition of the second 450 drums currently stored on Pad 1 at SRS. CBFO will verify the request submitted by the Contractor from the information provided. CBFO will verify the request submitted by the Contractor from the WWIS and AKTSS.

Metric 6: (Completion) Fee shall be payable upon submittal of documentation showing through the AKTSS that the contents (first 300 original boxes) have been repackaged into other containers and have then been certified in WWIS as displayed on a WWIS report. CBFO will verify the request submitted by the Contractor from the WWIS and AKTSS.

Metric 7: (Completion) Fee shall be payable upon submittal of documentation showing through the AKTSS that the contents (remaining 300 original boxes) have been repackaged into other containers and have then been certified in WWIS as displayed on a WWIS report. CBFO will verify the request submitted by the Contractor from the WWIS and AKTSS.

Metric 8 (a): (Completion) Fee shall be payable upon submittal of documentation that demonstrates

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CBFO approval and certification to CCP for S5000 CH waste at Hanford. CBFO will verify the request submitted by the Contractor by review of their letter.

Metric 8 (b) (Completion) Fee shall be payable upon submittal of documentation from WWIS that the first 150 SWBs from Hanford have been certified. CBFO will verify the request submitted by the Contractor from the information provided from the WWIS database.

Metric 8 (c) (Completion) Fee shall be payable upon submittal of documentation from WWIS that 300 SWBs from Hanford have been certified. CBFO will verify the request submitted by the Contractor from the information provided from the WWIS database.

Metric 9: (Completion) Fee shall be payable upon submittal of documentation from WWIS that the first shipment of CH waste was shipped from Hanford to WIPP. CBFO will verify the request submitted by the Contractor from the information provided from the WWIS database.

Metric 10: (Completion) Fee shall be payable upon submittal of a CBFO certification letter showing the high energy RTR unit as certified for CH characterization. CBFO will verify the request submitted by review of their letter.

Metric 11: (Completion) Fee shall be payable upon submittal of documentation from the CCP VE Batch Data Report (BDR) for each facility. CBFO will verify the request submitted by the Contractor from the information provided in the VE BDR.

Metric 12 (a): (Completion) Fee shall be payable upon submittal of a WWIS report that LANL has direct loaded SWBs certified in WWIS. CBFO will verify the request submitted by the Contractor from the information provided from the WWIS database.

Metric 12 (b): (Completion) Fee shall be payable upon submittal of a WWIS report showing direct loaded LANL SWBs have been shipped and disposed of at the WIPP. CBFO will verify the request submitted by the Contractor from the information provided from the WWIS database.

Metric 13: (Completion) Fee shall be payable upon submittal of a CBFO certification letter showing the high energy RTR unit as certified for CH characterization. CBFO will verify the request submitted by the Contractor by review of their letter.

Metric 14: (Completion) Fee shall be payable upon submittal of a WWIS report showing waste from this waste stream has been disposed of at the WIPP. CBFO will verify the request submitted by the Contractor from the information provided from the WWIS database.

Metric 15 (a): (Completion) Fee shall be payable upon submittal of a WWIS report showing a waste stream from ORNL S4000 CH waste as being certified. CBFO will verify the request submitted by the Contractor from the information provided from the WWIS database.

Metric 15 (b): (Completion) Fee shall be payable upon submittal of a WWIS report showing 250 S4000 ORNL containers being disposed of at the WIPP. CBFO will verify the request submitted by the Contractor from the information provided from the WWIS database.

Metric 16: (Completion) Fee shall be payable upon submittal of documentation in CCP weekly feedrate reports that feed rates to characterize have been achieved that will produce three (3) RH shipments per week from ORNL to WIPP for five (5) consecutive weeks. CBFO will verify the request submitted by the Contractor from the information provided in the CCP weekly feedrate reports.

Metric 17: (Completion) Fee shall be payable upon submittal of documentation in a WWIS report showing BAPL RH waste has been disposed of at the WIPP. CBFO will verify the request submitted by the Contractor from the information provided from the WWIS database.

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Metric 18: (Completion) Fee shall be payable upon submittal of documentation in a WWIS report showing SNL RH waste has been disposed of at the WIPP. CBFO will verify the request submitted by the Contractor from the information provided from the WWIS database.

Metric 19: (Completion) Fee shall be payable upon submittal of a CBFO certification letter issued following EPA Tier 1 approval and NMED approval for each waste stream. CBFO will verify the request submitted by the Contractor from the information provided by review of their letter. (See Note in section IV)

Metric 20 (a): (Completion) Fee shall be payable upon provision of a VE batch data report (BDR) that's been validated through the Project Office. CBFO will verify the request submitted by the Contractor from the information provided in the VE BDR.

Metric 20 (b): (Completion) Fee shall be payable upon completion of a generator site ORR evaluation for operation of MOVER-like unit at any other generator site. CBFO will verify the request submitted by the Contractor by reviewing a statement from the Site Technical Representative (STR) that the ORR was completed.

Metric 21 (a): (Completion) Fee shall be payable upon submittal of reports from the Intersite Shipment Module (ISM) and WWIS showing the shipment of ANL CH waste to INL and the emplacement of ANL CH waste at the WIPP. CBFO will verify the request submitted by the Contractor from the information provided from the ISM and WWIS.

Metric 21 (b): (Completion) Fee shall be payable upon submittal of reports from ISM and WWIS showing the shipment of LBNL CH waste to INL and the emplacement of LBNL CH waste at the WIPP. CBFO will verify the request submitted by the Contractor from the information provided from the ISM and WWIS.

Metric 21 (c): (Completion) Fee shall be payable upon submittal of reports from ISM and WWIS showing the shipment of LLNL CH waste to INL and the emplacement of LLNL CH waste at the WIPP. CBFO will verify the request submitted by the Contractor from the information provided from the ISM and WWIS.

Metric 21 (d): (Completion) Fee shall be payable upon submittal of reports from ISM showing the shipment of NRD CH waste to INL. CBFO will verify the request submitted by the Contractor from the information provided from the ISM and WWIS.

Metric 21 (e): (Completion) Fee shall be payable upon submittal of reports from ISM and WWIS showing the shipment of SNL CH waste to INL and the emplacement of SNL CH waste at the WIPP. CBFO will verify the request submitted by the Contractor from the information provided from the ISM and WWIS.

Metric 21 (f): (Completion) Fee shall be payable upon submittal of reports showing the completion of the shipment of the spheres NTS waste to the WIPP. CBFO will verify the request submitted by the Contractor from the information provided from the WWIS.

SECTION VI - EARNINGS SCHEDULE

List percent of PM fee available for completion of each Element, and the schedule by which the fee may be earned. (Schedule identifies point(s) at which fee may be earned - does not define completion.)

The maximum fee earnings for each metric in this PBI is included in the metric description in the previous Section IV – Performance Measure.

The fee included in the fee pool associated with this PBI will be earned by 9/30/2011.

RATING PLAN

Contract Number: DE-AC29-01AL66444

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This PBI will be reviewed by DOE-CBFO as appropriate to determine the metrics still represent the highest level of priority for CBFO and the metrics applicability for continuation.

2 AMENDMENT/MODIFICATION NO. A161	3. EFFECTIVE DATE See Block 16C	4. REQUISITION/PURCHASE REQ. 09EM002050	5. PROJECT NO. (If applicable)
6 ISSUED BY U.S. Department of Energy Carlsbad Field Office P. O. Box 3090 Carlsbad, NM 88220-3090		7. ADMINISTERED BY (If other than Item 6) CODE	
8 NAME AND ADDRESS OF CONTRACTOR (No. , street, county, state, ZIP Code) Washington TRU Solutions LLC P.O. Box 2078 Carlsbad, NM 88220		9A. AMENDMENT OF SOLICITATION NO.	
CODE		9B. DATED (SEE ITEM 11)	
FACILITY CODE		10A. MODIFICATION OF CONTRACT/ORDER NO. DE-AC29-01AL66444	
		10B. DATED (SEE ITEM 13) 12/14/2000	

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 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 ACKNOWLEDGMENT 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)

1250 2009 33 490003 25400 1110957 0000443 \$3,500,000.00+

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

	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO (Specify authority).
	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).
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
X	D. OTHER (SPECIFY TYPE OF MODIFICATION AND AUTHORITY): Incremental funding - DEAR 970.5204-15 entitled, "Obligation of Funds"

E. IMPORTANT: Contractor is not, is required to sign this document and return _____ 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 obligate \$3,500,000.00 in funding to the contract as follows:

Funds Obligated through last Modification:	\$1,400,116,726.23
Funds Obligated by this Modification:	<u>3,500,000.00</u>
Funds Obligated since Inception of Contract:	\$1,403,616,726.23

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

15A. NAME AND TITLE OF SIGNER (Type or print)	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Arthur L. Welton, Contracting Officer	
15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	16C. DATE SIGNED
BY _____ (Signature of person authorized to sign)	Signature deleted OMB M-06-15, "Safeguarding Personally Identifiable Information"	9/22/09

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			1. CONTRACT ID CODE	PAGE 1 OF 1 PAGES
2. AMENDMENT/MODIFICATION NO. A162	3. EFFECTIVE DATE See Block 16C	4. REQUISITION/PURCHASE REQ. 09EM002203	5. PROJECT NO. (If applicable)	
6. ISSUED BY U.S. Department of Energy Carlsbad Field Office P. O. Box 3090 Carlsbad, NM 88220-3090		7. ADMINISTERED BY (If other than Item 6) CODE		
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, state, ZIP Code) Washington TRU Solutions LLC P.O. Box 2078 Carlsbad, NM 88220		9A. AMENDMENT OF SOLICITATION NO.		
CODE		9B. DATED (SEE ITEM 11)		
FACILITY CODE		10A. MODIFICATION OF CONTRACT/ORDER NO. DE-AC29-01AL66444		
		10B. DATED (SEE ITEM 13) 12/14/2000		

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 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 ACKNOWLEDGMENT 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)

1250	2005	33	490003	61000000	25400	1110953	0000445	2,278.00
1250	2006	33	490003	61000000	25400	1110954	0000442	3,214.00
1250	2007	33	490003	61000000	25400	1110954	0000442	3,393.84
1250	2008	33	490003	61000000	25400	1110954	0000442	41,451.00
1250	2007	33	490003	61000000	25400	1110957	0000443	.20
1250	2009	33	490003	61000000	25400	1110957	0000443	.12
1751	2008	33	490003	61000000	25400	1110305	0003899	5,843.00
1751	2009	33	490003	61000000	25400	1110305	0003899	162,157.00
								218,337.16

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

	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO (Specify authority).
	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).
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
X	D. OTHER (SPECIFY TYPE OF MODIFICATION AND AUTHORITY): Incremental funding - DEAR 970.5204-15 entitled, "Obligation of Funds"

E. IMPORTANT: Contractor is not, is required to sign this document and return _____ 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 obligate \$218,337.16 in funding to the contract as follows:

Funds Obligated through last Modification:	\$1,403,616,726.23
Funds Obligated by this Modification:	218,337.16
Funds Obligated since Inception of Contract:	\$1,403,835,063.39

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

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Arthur L. Welton, Contracting Officer	
15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	Signature deleted OMB M. 06-15, "Safeguarding Personally Identifiable Information"	16C. DATE SIGNED 9/30/09
BY _____ (Signature of person authorized to sign)			

2 AMENDMENT/MODIFICATION NO. A163	3. EFFECTIVE DATE See Block 16C	4 REQUISITION/PURCHASE REQ 10FM0000029	5 PROJECT NO. (If applicable)
6 ISSUED BY U.S. Department of Energy Carlsbad Field Office P. O. Box 3090 Carlsbad, NM 88220-3090		7 ADMINISTERED BY (If other than Item 6) CODE	
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, state, ZIP Code) Washington TRU Solutions LLC P.O. Box 2078 Carlsbad, NM 88220		9A. AMENDMENT OF SOLICITATION NO.	
CODE FACILITY CODE		9B. DATED (SEE ITEM 11)	
		10A. MODIFICATION OF CONTRACT/ORDER NO DE-AC29-01AL66444	
		10B. DATED (SEE ITEM 13) 12/14/2000	

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 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 ACKNOWLEDGMENT 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)

1250	2010	33	490003	25400	11110954	0000443	11,933,000.00
1250	2010	33	490003	25400	1111094	0000441	341,931.44
1250	2010	33	490003	25400	1111095	0000441	19,644.03
1250	2010	33	490003	25400	1111097	0000441	22,611.53
1250	2010	33	490003	25400	1111098	0000441	3,594.44
1250	2010	33	490003	25400	1111102	0000441	30,176.56
							12,350,958.00

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

<input type="checkbox"/>	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO (Specify authority):
<input type="checkbox"/>	B. THE ABOVE-NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (Such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
<input type="checkbox"/>	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
<input checked="" type="checkbox"/>	D. OTHER (SPECIFY TYPE OF MODIFICATION AND AUTHORITY): Incremental funding - DEAR 970.5204-15 entitled, "Obligation of Funds"

E IMPORTANT: Contractor is not, is required to sign this document and return _____ 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 obligate \$12,350,958.00 in funding to the contract as follows:

Funds Obligated through last Modification:	\$1,403,835,063.39
Funds Obligated by this Modification:	12,350,958.00
Funds Obligated since Inception of Contract:	\$1,416,186,021.39

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

15A. NAME AND TITLE OF SIGNER (Type or print)	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Arthur L. Welton, Contracting Officer
15B. CONTRACTOR/OFFEROR	16C. DATE SIGNED 10/13/09
BY _____ (Signature of person authorized to sign)	15C. DATE SIGNED Signature deleted OMB M-06-15, "Safeguarding Personally Identifiable Information"

2. AMENDMENT/MODIFICATION NO. A164	3. EFFECTIVE DATE See Block 16C	4. REQUISITION/PURCHASE REQ. 10EM0000094	5. PROJECT NO. (If applicable)
6. ISSUED BY U.S. Department of Energy Carlsbad Field Office P. O. Box 3090 Carlsbad, NM 88220-3090		7. ADMINISTERED BY (If other than Item 6) CODE	
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, state, ZIP Code) Washington TRU Solutions LLC P.O. Box 2078 Carlsbad, NM 88220		9A. AMENDMENT OF SOLICITATION NO.	
CODE		9B. DATED (SEE ITEM 11)	
FACILITY CODE		10A. MODIFICATION OF CONTRACT/ORDER NO. DE-AC29-01AL66444	
		10B. DATED (SEE ITEM 13) 12/14/2000	

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 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 ACKNOWLEDGMENT 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)

TAS::89 0253 008049 2009 33 490003 25400 1111389 2002190 0000000 0000000 (\$1,822,000)---

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

	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO (Specify authority):
	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).
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
X	D. OTHER (SPECIFY TYPE OF MODIFICATION AND AUTHORITY): Incremental funding - DEAR 970.5204-15 entitled, "Obligation of Funds"

E. IMPORTANT. Contractor is not, is required to sign this document and return _____ 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 de-obligate \$1,822,000.00 in American Recovery and Reinvestment Act (ARRA) funding from the contract. The terms and conditions incorporated under Modification A148 apply to the effort performed using these funds to track and report funds. The ARRA funds obligated to date and the total funds obligated to date are calculated as follows:

ARRA Funds Obligated obligated to date:	\$154,947,000.00
ARRA Funds Deobligated by this Modification:	<u>(1,822,000.00)</u> ---
ARRA Funds Obligated since Inception of Contract:	\$153,125,000.00
Funds Obligated through last Modification:	\$1,416,186,021.39
Funds Deobligated by this Modification:	<u>(1,822,000.00)</u> ---
Funds Obligated since Inception of Contract:	\$1,414,364,021.39

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

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Arthur L. Welton, Contracting Officer	
15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	Signature deleted OMB M-06-15, "Safeguarding Personally Identifiable Information"	16C. DATE SIGNED 11/9/09
BY _____ (Signature of person authorized to sign)			

2. AMENDMENT/MODIFICATION NO. A165 3. EFFECTIVE DATE See Block 16C 4. REQUISITION/PURCHASE REQ. 10EM10000092/10EM000285 5. PROJECT NO. (If applicable)

6. ISSUED BY U.S. Department of Energy Carlsbad Field Office P. O. Box 3090 Carlsbad, NM 88220-3090 CODE 7. ADMINISTERED BY (If other than Item 6) CODE

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, state, ZIP Code) Washington TRU Solutions LLC P.O. Box 2078 Carlsbad, NM 88220 CODE FACILITY CODE 9A. AMENDMENT OF SOLICITATION NO. 9B. DATED (SEE ITEM 11) 10A. MODIFICATION OF CONTRACT/ORDER NO. DE-AC29-01AL6644 10B. DATED (SEE ITEM 13) 12/14/2000

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 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 ACKNOWLEDGMENT 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)

1250	2010	33	490003	25400	1110954	0000442	10,716,000.00	10EM10000092
1250	2010	33	490003	25400	1110956	0003804	564,000.00	10EM10000092
1250	2010	33	490003	25400	1111094	0000441	296,417.26	10EM10000092
1250	2010	33	490003	25400	1111095	0000441	17,029.23	10EM10000092
1250	2010	33	490003	25400	1111097	0000441	19,601.73	10EM10000092
1250	2010	33	490003	25400	1111098	0000441	3,115.99	10EM10000092
1250	2010	33	490003	25400	1111102	0000441	26,159.79	10EM10000092
1250	2009	33	490003	25400	1110957	0000443	-5300,000.00	10EM10000285
							\$11,342,324.00	

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

- A. THIS CHANGE ORDER IS ISSUED PURSUANT TO (Specify authority):
- 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).
- C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
- X D. OTHER (SPECIFY TYPE OF MODIFICATION AND AUTHORITY): Incremental funding - DEAR 970.5204-15 entitled, "Obligation of Funds"

E. IMPORTANT: Contractor is not, is required to sign this document and return ___ 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 obligate \$11,342,324.00 in funding to the contract. The total funds obligated to date are calculated as follows:
Funds Obligated through last Modification: \$1,414,364,021.39
Funds Obligated by this Modification: 11,342,324.00
Funds Obligated since Inception of Contract: 1,425,706,345.39

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

15A. NAME AND TITLE OF SIGNER (Type or print) 16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Arthur L. Welton, Contracting Officer
 15B. CONTRACTOR/OFFEROR 15C. DATE SIGNED Signature deleted OMB M-06-15, "Safeguarding Personally Identifiable Information" 16C. DATE SIGNED 11/10/09
 BY _____ (Signature of person authorized to sign)

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			1. CONTRACT ID CODE	PAGE OF PAGES 1 3
2. AMENDMENT/MODIFICATION NO. M166	3. EFFECTIVE DATE December 4, 2008	4. REQUISITION/PURCHASE REQ. NO. N/A-NO PR		5. PROJECT NO. (if applicable)
6. ISSUED BY CODE		7. ADMINISTERED BY (if other than item 6) CODE		
U.S. Department of Energy Carlsbad Field Office P.O. Box 3090 Carlsbad, NM 86221-3090		Arthur L. Welton (505) 234-7461		
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)		(X)	9A. AMENDMENT OF SOLICITATION NO.	
Washington TRU Solutions LLC P.O. Box 2078 Carlsbad, NM 88220			9B. DATED (SEE ITEM 11)	
		X	10A. MODIFICATION OF CONTRACT/ORDER NO. DE-AC29-01AL66444	
			10B. DATED (SEE ITEM 13) December 14, 2000	
CODE	FACILITY CODE			
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS				
The above numbered solicitation is amended as set forth in item 14. The hour and date specified for receipt of Offers _____ is extended, _____ is not extended.				
Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended by one of the following methods:				
(a) By completing items 8 and 18, 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 ACKNOWLEDGMENT 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)				
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.				
(X)	THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority)			
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation data, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).			
X	THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: Mutual Agreement of the Parties			
	D. OTHER (Specify type of modification and authority) Incremental Funding			
E. IMPORTANT: Contractor _____ is not, <u>XX</u> is required to sign this document and return <u>3</u> copies to the issuing office.				
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)				
See following pages:				
Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.				
15A. NAME AND TITLE OF SIGNER (Type or print) M. F. Sharif, President and General Manager		15A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Arthur L. Welton, Contracting Officer		
Signature deleted OMB M-06-15, "Safeguarding Personally Identifiable Information"		15C. DATE SIGNED 11/24/09	Signature deleted OMB M 06-15, "Safeguarding Personally Identifiable Information"	
			15C. DATE SIGNED 11/24/2009	

a. The purposes of this modification are to:

1. Effective December 4, 2008, update FAR clauses in Section I of the contract by incorporating FAR 52.203-13 entitled, "Contractor Code of Business Ethics and Conduct;" FAR 52.203-14 entitled, "Display of Hotline Posters;" and FAR 52.222-51 entitled, "Employment Eligibility Verification" into Section I of the contract.
2. Effective October 12, 2009, the following DOE orders are incorporated into Section J, Attachment H of the contract:

DOE M 470.4-2A	Physical Protection
DOE O 251.1C	Department Directives Program
DOE M 470.4-4A	Information Security

b. As a result of this change, the following are incorporated into the contract:

1. FAR 52.203-13 entitled, "Contractor Code of Business Ethics and Conduct. (Dec 2008);" FAR 52.203-14 entitled, "Display of Hotline Posters (Dec 2007);" and FAR 52.222-51 entitled, "Employment Eligibility Verification (Jan 2009)" are hereby incorporated at the specified revision dates.
2. Part III, Section J, Attachment H to the contract is updated to include all relevant DOE Orders and Manuals through August 12, 2009. Many changes are merely administrative changes or changes in title; however, the following may have impacts, which shall be documented and requested by Programmatic Change Request (PCR) when impact information becomes available to fully assess the following changes

DOE M 470.4-2A	Physical Protection
DOE O 251.1C	Department Directives Program
DOE M 470.4-4A	Information Security

c. All other terms and conditions of the contract, remain unchanged and in full force and effect.

d. As a result of the aforementioned changes, remove the page(s) listed under Column I below and substitute therewith the page(s) set forth under Column II, all of which are attached hereto and made part of the contract by this modification:

Column I

SECTION I – PART II
CONTRACT CLAUSES

Deleted in its entirety

Column II

SECTION I – PART II
CONTRACT CLAUSES

Pages I-i through I-184

Column I

SECTION J, ATTACHMENT H
LIST OF ATTACHMENTS

Deleted in its entirety

Column II

SECTION J, ATTACHMENT H
LIST OF ATTACHMENTS

Pages 1-4

- e. CONTRACTOR'S RELEASE OF CLAIMS (FAR 43.204): In consideration of the modification 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.

1 *

Section I – CONTRACT CLAUSES
Modification No. M166
Contract No. DE-AC29-01AL66444

SECTION I

PART II – CONTRACT CLAUSES

Part II - Contract Clauses

Section I

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Note 1: The references cited herein are from the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1), the U.S. Department of Energy Acquisition Regulation (DEAR) (48 CFR Chapter 9), and the U.S. Department of Energy Procurement Regulations (DOE-PR) (41 CFR Chapter 9).

Note 2: Consistent with DEAR 970.5202, DEAR clauses indicated as “(Modified)” means that a minor change(s) in wording of the clause has been made for the purpose of clarification

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only and not with the intent of altering the meaning, intent, substance, or the principles expressed in the clause.

Part II

Section I

CONTRACT CLAUSES

I.1 FAR 52.202-1 DEFINITIONS (JUL 2004) (A000)

(a) When a solicitation provision or contract clause uses a word or term that is defined in the Federal Acquisition Regulation (FAR), the word or term has the same meaning as the definition in FAR 2.101 in effect at the time the solicitation was issued, unless-

- (1) The solicitation, or amended solicitation, provides a different definition;
- (2) The contracting parties agree to a different definition;
- (3) The part, subpart, or section of the FAR where the provision or clause is prescribed provides a different meaning; or
- (4) The word or term is defined in FAR Part 31, for use in the cost principles and procedures.

(b) The FAR Index is a guide to words and terms the FAR defines and shows where each definition is located. The FAR Index is available via the Internet at <http://www.acqnet.gov> at the end of the FAR, after the FAR Appendix.

I.2 FAR 52.203-3 GRATUITIES (APR 1984) (A000)

- (a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative--
 - (1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and
 - (2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.
- (b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.
- (c) If this Contract is terminated under paragraph (a) above, the Government is entitled--
 - (1) To pursue the same remedies as in a breach of the contract; and
 - (2) In addition to any other damages provided by law, to exemplary damages of not less than three nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph

(c)(2) is applicable only if this Contract uses money appropriated to the Department of Defense.)

- (d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

I.3 FAR 52-203-5 COVENANT AGAINST CONTINGENT FEES (APR 1984) (A000)

- (a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this Contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this Contract without liability or, in its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of the contingent fee.

- (b) "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

I.4 FAR 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995) (A000)

- (a) Except as provided in (b) of this clause, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this Contract or under any follow-on production contract.
- (b) The prohibition in (a) above does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.

- (c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this Contract which exceed \$100,000.

I.5 FAR 52.203-7 ANTI-KICKBACK PROCEDURES (JUL 1995) (A000)

- (a) Definitions.

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any Prime Contractor, Prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime Contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor" as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a Prime Contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a Prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the Prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the Prime Contractor or a higher tier subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

- (b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from--
 - (1) Providing or attempting to provide or offering to provide any kickback;
 - (2) Soliciting, accepting, or attempting to accept any kickback; or

- (3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a Prime Contractor to the United States or in the contract price charged by a subcontractor to a Prime Contractor or higher tier subcontractor.
- (c)
- (1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.
 - (2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.
 - (3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.
 - (4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.
 - (5) The Contractor agrees to incorporate the substance of this clause, including this subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this Contract which exceed \$100,000.

1.6 FAR 52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997) (A000)

- (a) If the Government receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the Act), as amended by section 4304 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106), the Government may --
- (1) Cancel the solicitation, if the contract has not yet been awarded or issued; or
 - (2) Rescind the contract with respect to which --
 - (i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27(a) or (b) of the Act for the purpose of either --

- (A) Exchanging the information covered by such subsections for anything of value; or
- (B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or
- (ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct constituting an offense punishable under subsection 27(e)(1) of the Act.
- (b) If the Government rescinds the Contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.
- (c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

I.7 FAR 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997) (A000)

- (a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of sub-section 27(a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in section 3.104 of the Federal Acquisition Regulation.
- (b) The price or fee reduction referred to in paragraph (a) of this clause shall be --
 - (1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;
 - (2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract.
 - (3) For cost-plus-award-fee contracts --
 - (i) The base fee established in the contract at the time of contract award;
 - (ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.

- (4) For fixed-price-incentive contracts, the Government may --
- (i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or
 - (ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.
- (5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.
- (c) The Government may, at its election, reduce a prime Contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.
- (d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this Contract for default. The rights and remedies of the government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

I.8 FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEP 2007) (M109)(M130)

(a) Definitions. As used in this clause—

“Agency” means “executive agency” as defined in Federal Acquisition Regulation (FAR) 2.101.

“Covered Federal action” means any of the following actions:

- (1) Awarding any Federal contract.
- (2) Making any Federal grant.
- (3) Making any Federal loan.
- (4) Entering into any cooperative agreement.
- (5) Extending, continuing, renewing, amending, or modifying any Federal contract, grant, loan, or cooperative agreement.

“Indian tribe” and “tribal organization” have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) and include Alaskan Natives.

“Influencing or attempting to influence” means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

“Local government” means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

“Officer or employee of an agency” includes the following individuals who are employed by an agency:

(1) An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.

(2) A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.

(3) A special Government employee, as defined in section 202, Title 18, United States Code.

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, appendix 2.

“Person” means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and are permitted by other Federal law.

“Reasonable compensation” means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

“Reasonable payment” means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

“Recipient” includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and are permitted by other Federal law.

“Regularly employed” means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency

consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

“State” means a State of the United States, the District of Columbia, or an outlying area of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibition. 31 U.S.C. 1352 prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal actions. In accordance with 31 U.S.C. 1352 the Contractor shall not use appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the award of this contractor the extension, continuation, renewal, amendment, or modification of this contract.

(1) The term appropriated funds does not include profit or fee from a covered Federal action.

(2) To the extent the Contractor can demonstrate that the Contractor has sufficient monies, other than Federal appropriated funds, the Government will assume that these other monies were spent for any influencing activities that would be unallowable if paid for with Federal appropriated funds.

(c) Exceptions. The prohibition in paragraph (b) of this clause does not apply under the following conditions:

(1) Agency and legislative liaison by Contractor employees.

(i) Payment of reasonable compensation made to an officer or employee of the Contractor if the payment is for agency and legislative liaison activities not directly related to this contract. For purposes of this paragraph, providing any information specifically requested by an agency or Congress is permitted at any time.

(ii) Participating with an agency in discussions that are not related to a specific solicitation for any covered Federal action, but that concern—

(A) The qualities and characteristics (including individual demonstrations) of the person’s products or services, conditions or terms of sale, and service capabilities; or

(B) The application or adaptation of the person’s products or services for an agency’s use.

(iii) Providing prior to formal solicitation of any covered Federal action any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(iv) Participating in technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(v) Making capability presentations prior to formal solicitation of any covered Federal action by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(2) Professional and technical services.

(i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(ii) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(iii) As used in paragraph (c)(2) of this clause, “professional and technical services” are limited to advice and analysis directly applying any professional or technical discipline (for examples, see FAR 3.803(a)(2)(iii)).

(iv) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(3) Only those communications and services expressly authorized by paragraphs (c)(1) and (2) of this clause are permitted.

(d) Disclosure.

(1) If the Contractor did not submit OMB Standard Form LLL, Disclosure of Lobbying Activities, with its offer, but registrants under the Lobbying Disclosure Act of 1995 have subsequently made a lobbying contact on behalf of the Contractor with respect to this contract, the Contractor shall complete and submit OMB Standard Form LLL to provide the name of the lobbying registrants, including the individuals performing the services.

(2) If the Contractor did submit OMB Standard Form LLL disclosure pursuant to paragraph (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, and a change occurs that affects Block 10 of the OMB Standard Form LLL (name and address of lobbying registrant or individuals performing services), the Contractor shall, at the end of the calendar quarter in which the change occurs, submit to the Contracting Officer within 30 days an updated disclosure using OMB Standard Form LLL.

(e) Penalties.

(1) Any person who makes an expenditure prohibited under paragraph (b) of this clause or who fails to file or amend the disclosure to be filed or amended by paragraph (d) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(f) Cost allowability. Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

(g) Subcontracts.

(1) The Contractor shall obtain a declaration, including the certification and disclosure in paragraphs (c) and (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, from each person requesting or receiving a subcontract exceeding \$100,000 under this contract. The Contractor or subcontractor that awards the subcontract shall retain the declaration.

(2) A copy of each subcontractor disclosure form (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall, at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor, submit to the Contracting Officer within 30 days a copy of all disclosures. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(3) The Contractor shall include the substance of this clause, including this paragraph (g), in any subcontract exceeding \$100,000.

(End of clause)

I.10. CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT. (DEC 2008) (M166)

(a) Definitions. As used in this clause—

"Agent" means any individual, including a director, an officer, an employee, or an independent Contractor, authorized to act on behalf of the organization.

"Full cooperation"—

(1) Means disclosure to the Government of the information sufficient for law enforcement to identify the nature and extent of the offense and the individuals responsible for the conduct. It includes providing timely and complete response to Government auditors' and investigators' request for documents and access to employees with information;

(2) Does not foreclose any Contractor rights arising in law, the FAR, or the terms of the contract. It does not require—

(i) A Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine; or

(ii) Any officer, director, owner, or employee of the Contractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; and

(3) Does not restrict a Contractor from—

(i) Conducting an internal investigation; or

(ii) *Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.*

"Principal" means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment; and similar positions).

"Subcontract" means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

"Subcontractor" means any supplier, distributor, vendor, or firm that furnished supplies or services to or for a prime contractor or another subcontractor.

"United States," means the 50 States, the District of Columbia, and outlying areas.

(b) *Code of business ethics and conduct.*

(1) *Within 30 days after contract award, unless the Contracting Officer establishes a longer time period, the Contractor shall—*

(i) *Have a written code of business ethics and conduct; and*

(ii) *Make a copy of the code available to each employee engaged in performance of the contract.*

(2) *The Contractor shall—*

(i) *Exercise due diligence to prevent and detect criminal conduct; and*

(ii) *Otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.*

(3)(i) *The Contractor shall timely disclose, in writing, to the agency Office of the Inspector General (OIG), with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of this contract or any subcontract thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed—*

(A) *A violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or*

(B) *A violation of the civil False Claims Act (31 U.S.C. 3729-3733).*

(ii) *The Government, to the extent permitted by law and regulation, will safeguard and treat information obtained pursuant to the Contractor's disclosure as confidential where the information has been marked "confidential" or "proprietary" by the company. To the extent permitted by law and regulation, such information will not be released by the Government to the public pursuant to a Freedom of Information Act request, 5 U.S.C. Section 552, without prior notification to the Contractor. The Government may transfer documents provided by the Contractor to any department or agency within the Executive Branch if the information relates to matters within the organization's jurisdiction.*

(iii) *If the violation relates to an order against a Governmentwide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the Contractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract.*

(c) *Business ethics awareness and compliance program and internal control system. This paragraph (c) does not apply if the Contractor has represented itself as a small business concern pursuant to the award of this contract or if this contract is for the acquisition of a commercial item as defined at FAR 2.101. The Contractor shall establish the following within 90 days after contract award, unless the Contracting Officer establishes a longer time period:*

(1) *An ongoing business ethics awareness and compliance program.*

(i) *This program shall include reasonable steps to communicate periodically and in a practical manner the Contractor's standards and procedures and other aspects of the Contractor's business ethics awareness and compliance program and internal control system, by conducting effective training programs and otherwise disseminating information appropriate to an individual's respective roles and responsibilities.*

(ii) *The training conducted under this program shall be provided to the Contractor's principals and employees, and as appropriate, the Contractor's agents and subcontractors.*

(2) An internal control system.

(i) The Contractor's internal control system shall—

(A) Establish standards and procedures to facilitate timely discovery of improper conduct in connection with Government contracts; and

(B) Ensure corrective measures are promptly instituted and carried out.

(ii) At a minimum, the Contractor's internal control system shall provide for the following:

(A) Assignment of responsibility at a sufficiently high level and adequate resources to ensure effectiveness of the business ethics awareness and compliance program and internal control system.

(B) Reasonable efforts not to include an individual as a principal, whom due diligence would have exposed as having engaged in conduct that is in conflict with the Contractor's code of business ethics and conduct.

(C) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with the Contractor's code of business ethics and conduct and the special requirements of Government contracting, including—

(1) Monitoring and auditing to detect criminal conduct;

(2) Periodic evaluation of the effectiveness of the business ethics awareness and compliance program and internal control system, especially if criminal conduct has been detected; and

(3) Periodic assessment of the risk of criminal conduct, with appropriate steps to design, implement, or modify the business ethics awareness and compliance program and the internal control system as necessary to reduce the risk of criminal conduct identified through this process.

(D) An internal reporting mechanism, such as a hotline, which allows for anonymity or confidentiality, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

(E) Disciplinary action for improper conduct or for failing to take reasonable steps to prevent or detect improper conduct.

(F) Timely disclosure, in writing, to the agency OIG, with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of any Government contract performed by the Contractor or a subcontract thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 U.S.C. or a violation of the civil False Claims Act (31 U.S.C. 3729-3733).

(1) If a violation relates to more than one Government contract, the Contractor may make the disclosure to the agency OIG and Contracting Officer responsible for the largest dollar value contract impacted by the violation.

(2) If the violation relates to an order against a Governmentwide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the contractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract, and the respective agencies' contracting officers.

(3) The disclosure requirement for an individual contract continues until at least 3 years after final payment on the contract.

(4) The Government will safeguard such disclosures in accordance with paragraph (b)(3)(ii) of this clause.

(G) Full cooperation with any Government agencies responsible for audits, investigations, or corrective actions.

(d) Subcontracts.

(1) The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts that have a value in excess of \$5,000,000 and a performance period of more than 120 days.

(2) In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

(End of clause)

I.11. Display of Hotline Poster(s). (Dec 2007) (M166)

(a) *Definition.*

"United States," as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) *Display of fraud hotline poster(s). Except as provided in paragraph (c)—*

(1) *During contract performance in the United States, the Contractor shall prominently display in common work areas within business segments performing work under this contract and at contract work sites—*

(i) *Any agency fraud hotline poster or Department of Homeland Security (DHS) fraud hotline poster identified in paragraph (b)(3) of this clause; and*

(ii) *Any DHS fraud hotline poster subsequently identified by the Contracting Officer.*

(2) *Additionally, if the Contractor maintains a company website as a method of providing information to employees, the Contractor shall display an electronic version of the poster(s) at the website.*

(3) *Any required posters may be obtained as follows:*

Poster(s)

Obtain from

DHS Fraud Hotline DHSOIGHOTLINE@dhs.gov and http://www.dhs.gov/xoic/about/oc_1163703329805.shtml

(c) *If the Contractor has implemented a business ethics and conduct awareness program, including a reporting mechanism, such as a hotline poster, then the Contractor need not display any agency fraud hotline posters as required in paragraph (b) of this clause, other than any required DHS posters.*

(d) *Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts that exceed \$5,000,000, except when the subcontract—*

(1) *is for the acquisition of a commercial item; or*

(2) *is performed entirely outside the United States.*

(End of clause)

I.11 FAR 52.204-1 APPROVAL OF CONTRACT (DEC 1989) (A000)

This Contract is subject to the written approval of the DOE Procurement Executive or designee and shall not be binding until so approved.

**I.12 FAR 52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (AUG 2000)
(A000) (M016)**

(a) **Definitions. As used in this clause-**

"Postconsumer material" means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of "recovered material." For paper and paper products, postconsumer material means "postconsumer fiber" defined by the U.S. Environmental Protection Agency (EPA) as-

- (1) Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; or
- (2) All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste; but not
- (3) Fiber derived from printers' over-runs, converters' scrap, and over-issue publications.

"Printed or copied double-sided" means printing or reproducing a document so that information is on both sides of a sheet of paper.

"Recovered material," for paper and paper products, is defined by EPA in its Comprehensive Procurement Guideline as "recovered fiber" and means the following materials:

- (1) Postconsumer fiber; and
- (2) Manufacturing wastes such as-
 - (i) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste resulting from printing, cutting forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and
 - (ii) Repulped finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others.

- (b) In accordance with Section 101 of Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, the Contractor is

encouraged to submit paper documents, such as offers, letters, or reports, that are printed or copied double-sided on recycled paper that meet minimum content standards specified in Section 505 of Executive Order 13101, when not using electronic commerce methods to submit information or data to the Government.

- (c) If the Contractor cannot purchase high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white woven envelopes, writing and office paper, book paper, cotton fiber paper, and cover stock meeting the 30 percent postconsumer material standard for use in submitting paper documents to the Government, it should use paper containing no less than 20 percent postconsumer material. This lesser standard should be used only when paper meeting the 30 percent postconsumer material standard is not obtainable at a reasonable price or does not meet reasonable performance standards.

I.13 FAR 52.204-7 CENTRAL CONTRACTOR REGISTRATION (OCT 2003) (M066)

(a) Definitions. As used in this clause-

"Central Contractor Registration (CCR) database" means the primary Government repository for Contractor information required for the conduct of business with the Government.

"Data Universal Numbering System (DUNS) number" means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities.

"Data Universal Numbering System +4 (DUNS+4) number" means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see the FAR at Subpart 32.11) for the same parent concern.

"Registered in the CCR database" means that-

(1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database; and

(2) The Government has validated all mandatory data fields and has marked the record "Active".

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database prior to award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

(2) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" or "DUNS +4" followed by the DUNS or DUNS +4 number that

identifies the offeror's name and address exactly as stated in the offer. The DUNS number will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.

(c) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

(1) An offeror may obtain a DUNS number-

(i) If located within the United States, by calling Dun and Bradstreet at 1-866-705-5711 or via the Internet at <http://www.dnb.com>; or

(ii) If located outside the United States, by contacting the local Dun and Bradstreet office.

(2) The offeror should be prepared to provide the following information:

(i) Company legal business.

(ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.

(iii) Company Physical Street Address, City, State, and Zip Code.

(iv) Company Mailing Address, City, State and Zip Code (if separate from physical).

(v) Company Telephone Number.

(vi) Date the company was started.

(vii) Number of employees at your location.

(viii) Chief executive officer/key manager.

(ix) Line of business (industry).

(x) Company Headquarters name and address (reporting relationship within your entity).

(d) If the Offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror.

(e) Processing time, which normally takes 48 hours, should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of this solicitation.

(f) The Contractor is responsible for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(g)(1)(i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in Subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to (A) change the name in the CCR database; (B) comply with the requirements of Subpart 42.12 of the FAR; and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (g)(1)(i) of this clause, or fails to perform the agreement at paragraph (g)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see FAR Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

(h) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the internet at <http://www.ccr.gov> or by calling 1-888-227-2423, or 269-961-5757.

I.14 FAR 52.204-76 CONDITIONAL PAYMENT OF FEE OR PROFIT – SAFEGUARDING RESTRICTED DATA AND OTHER CLASSIFIED INFORMATION (JAN 2004) (M066)

(a) General. (1) The payment of fee or profit (i.e., award fee, fixed fee, and incentive fee or profit) under this contract is dependent upon the contractor's compliance with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information (i.e., Formerly Restricted Data and National Security Information) including compliance with applicable law, regulation, and DOE directives. The term "contractor" as used in this clause to address failure to comply shall mean "contractor or contractor employee."

(2) In addition to other remedies available to the Government, if the contractor fails to comply with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information, the contracting officer may unilaterally reduce the amount of fee or profit that is otherwise payable to the contractor in accordance with the terms and conditions of this clause.

(3) Any reduction in the amount of fee or profit earned by the contractor will be determined by the severity of the contractor's failure to comply with contract terms and conditions relating to the safeguarding of Restricted data or other classified information pursuant to the degrees specified in paragraph (c) of this clause.

(b) Reduction Amount. (1) If in any period (see 48 CFR 952.204-76 (b)(2)) it is found that the contractor has failed to comply with contract terms and conditions relating to the safeguarding of Restricted Data or other classified information, the contractor's fee or profit of the period may be reduced. Such reduction shall not be less than 26% nor greater than 100% of the total fee or profit earned for a first degree performance failure, not less than 11% nor greater than 25% for a second degree performance failure, and up to 10% for a third degree performance failure. The contracting officer must consider mitigating factors that may warrant a reduction below the specified range (see 48 CFR 904.402(c)). The mitigating factors include, but are not limited to, the following:

- (i) Degree of control the contractor had over the event or incident.
- (ii) Efforts the contractor had made to anticipate and mitigate the possibility of the event in advance.
- (iii) Contractor self-identification and response to the event to mitigate impacts and recurrence.
- (iv) General status (trend and absolute performance) of safeguarding Restricted Data and other classified information and compliance in related security areas.

(2)(i) For purposes of this clause, (2)(i) Except in the case of performance-based firm-fixed-price contracts (see paragraph (b)(3) of this clause), the contracting officer, for purposes of this clause, will at the time of contract award, or as soon as practicable thereafter, allocate the total amount of fee or profit that is available under this contract to equal periods of [insert 6 or 12] months to run sequentially for the entire term of the contract (i.e., from the effective date of the contract to the expiration date of the contract, including all options). The amount of fee or profit to be allocated to each period shall be equal to the average monthly fee or profit that is available or otherwise payable during the entire term of the contract, multiplied by the number of months established above for each period.

(ii) Under this clause, the total amount of fee or profit that is subject to reduction in a period in which a performance failure occurs, in combination with any reduction made under any other clause in the contract that provides for a reduction to the fee or profit,

shall not exceed the amount of fee or profit that is earned by the contractor in the period established pursuant to paragraph (b)(2)(i) of this clause.

(3) For performance-based firm-fixed-price contracts, the contracting officer will at the time of contract award include negative monetary incentives in the contract for contractor violations relating to the safeguarding of Restricted Data and other classified information.

(c) **Safeguarding Restricted Data and Other Classified Information.** Performance failures occur if the contractor does not comply with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information. The degrees of performance failures relating to the contractor's obligations under this contract for safeguarding of Restricted Data and other classified information are as follows:

(1) **First Degree:** Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have resulted in, or that can reasonably be expected to result in, exceptionally grave damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered first degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating a risk of, loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a Special Access Program (SAP), information identified as sensitive compartmented information (SCI), or high risk nuclear weapons-related data.

(ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(2) **Second Degree:** Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, serious damage to the national security. The following are examples of

performance failures or performance failures of similar import that will be considered second degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.

(ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Secret Restricted Data, or other information classified as Secret.

(iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Restricted Data or other information regardless of classification (except for information covered by paragraph (c)(1)(iii) of this clause).

(iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.

(3) Third Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, undue risk to the common defense and security. In addition, this category includes performance failures that result from a lack of contractor management and/or employee attention to the proper safeguarding of Restricted Data and other classified information. These performance failures may be indicators of future, more severe performance failures and/or conditions, and if identified and corrected early would prevent serious incidents. The following are examples of performance failures or performance failures of similar import that will be considered third degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Restricted Data or other information classified as Confidential.

(ii) Failure to promptly report alleged or suspected violations of laws, regulations, or directives pertaining to the safeguarding of Restricted Data or other classified information.

(iii) Failure to identify or timely execute corrective actions to mitigate or eliminate identified vulnerabilities and reduce residual risk relating to the protection of Restricted Data or other classified information in accordance with the contractor's Safeguards and Security Plan or other security plan, as applicable.

(iv) Contractor actions that result in performance failures which unto themselves pose minor risk, but when viewed in the aggregate indicate degradation in the integrity of

the contractor's safeguards and security management system relating to the protection of Restricted Data and other classified information.

I.15 FAR 52.208-8 REQUIRED SOURCES FOR HELIUM AND HELIUM USAGE DATA (APR 2002) (M066)

(a) Definitions.

"Bureau of Land Management," as used in this clause, means the Department of the Interior, Bureau of Land Management, Amarillo Field Office, Helium Operations, located at 801 South Fillmore Street, Suite 500, Amarillo, TX 79101-3545.

"Federal helium supplier" means a private helium vendor that has an in-kind crude helium sales contract with the Bureau of Land Management (BLM) and that is on the BLM Amarillo Field Office's Authorized List of Federal Helium Suppliers available via the Internet at http://www.nm.blm.gov/www/amfo/amfo_home.html.

"Major helium requirement" means an estimated refined helium requirement greater than 200,000 standard cubic feet (scf) (measured at 14.7 pounds per square inch absolute pressure and 70 degrees Fahrenheit temperature) of gaseous helium or 7510 liters of liquid helium delivered to a helium use location per year.

(b) Requirements-

(1) Contractors must purchase major helium requirements from Federal helium suppliers, to the extent that supplies are available.

(2) The Contractor shall provide to the Contracting Officer the following data within 10 days after the Contractor or subcontractor receives a delivery of helium from a Federal helium supplier-

- (i) The name of the supplier;
- (ii) The amount of helium purchased;
- (iii) The delivery date(s); and
- (iv) The location where the helium was used.

(c) *Subcontracts.* The Contractor shall insert this clause, including this paragraph (c), in any subcontract or order that involves a major helium requirement.

I.16 FAR 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (SEP 2006) (M109)

- (a) The Government suspends or debar Contractors to protect the Government's interests.

The Contractor shall not enter into any subcontract in excess of \$30,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$30,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the Excluded Parties List System). The notice must include the following:

(1) The name of the subcontractor.

(2) The Contractor's knowledge of the reasons for the subcontractor being in the Excluded Parties List System.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion in the Excluded Parties List System.

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

I.17 FAR 52.211-5 MATERIAL REQUIREMENTS (AUG 2000) (A000) (M016)

(a) Definitions.

As used in this clause-

"New" means composed of previously unused components, whether manufactured from virgin material, recovered material in the form of raw material, or materials and by-products generated from, and reused within, an original manufacturing process; provided that the supplies meet contract requirements, including but not limited to, performance, reliability, and life expectancy.

"Reconditioned" means restored to the original normal operating condition by readjustments and material replacement.

"Recovered material" means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

"Remanufactured" means factory rebuilt to original specifications.

"Virgin material" means-

- (1) Previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore; or

- (2) Any undeveloped resource that is, or with new technology will become, a source of raw materials.
- (b) Unless this contract otherwise requires virgin material or supplies composed of or manufactured from virgin material, the Contractor shall provide supplies that are new, reconditioned, or remanufactured, as defined in this clause.
- (c) A proposal to provide unused former Government surplus property shall include a complete description of the material, the quantity, the name of the Government agency from which acquired, and the date of acquisition.
- (d) A proposal to provide used, reconditioned, or remanufactured supplies shall include a detailed description of such supplies and shall be submitted to the Contracting Officer for approval.
- (e) Used, reconditioned, or remanufactured supplies, or unused former Government surplus property, may be used in contract performance if the Contractor has proposed the use of such supplies, and the Contracting Officer has authorized their use.

I.18 FAR 52.215-8 ORDER OF PRECEDENCE - UNIFORM CONTRACT FORMAT (OCT 1997) (A000)

Any inconsistency in this solicitation or Contract shall be resolved by giving precedence in the following order: (a) the Schedule (excluding the specifications); (b) Representations and other instructions; (c) Contract Clauses; (d) other documents, exhibits, and attachments; and (e) the specifications.

I.19 FAR 52.215-12 SUBCONTRACTOR COST OR PRICING DATA (OCT 1997) (M066)

(a) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.

(b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4, when entered into, the Contractor shall insert either-

- (1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of cost or pricing data for the subcontract; or

(2) The substance of the clause at FAR 52.215-13, Subcontractor Cost or Pricing Data-Modifications.

I.20 FAR 52.215-13 SUBCONTRACTOR COST OR PRICING DATA – MODIFICATIONS (OCT 1997) (M066)

(a) The requirements of paragraphs (b) and (c) of this clause shall-

(1) Become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4; and

(2) Be limited to such modifications.

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4; on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.

(c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4 on the date of agreement on price or the date of award, whichever is later.

I.21 FAR 52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS (OCT 2004) (A000) (M066)

(a) The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate a defined-benefit pension plan or otherwise recapture such pension fund assets.

(b) For segment closings, pension plan terminations, or curtailment of benefits, the amount of the adjustment shall be-

(1) For contracts and subcontracts that are subject to full coverage under the Cost Accounting Standards (CAS) Board rules and regulations (48 CFR Chapter 99), the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12); and

(2) For contracts and subcontracts that are not subject to full coverage under the CAS, the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12), except the numerator of the fraction at 48 CFR 9904.413-50(c)(12)(vi) shall be the sum of the

pension plan costs allocated to all non-CAS covered contracts and subcontracts that are subject to Federal Acquisition Regulation (FAR) Subpart 31.2 or for which cost or pricing data were submitted.

(c) For all other situations where assets revert to the Contractor, or such assets are constructively received by it for any reason, the Contractor shall, at the Government's option, make a refund or give a credit to the Government for its equitable share of the gross amount withdrawn. The Government's equitable share shall reflect the Government's participation in pension costs through those contracts for which cost or pricing data were submitted or that are subject to FAR Subpart 31.2.

(d) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(g).

I.22 FAR 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (MAY 2004) (A000) (M016) (M066)

(a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(c) *Definitions.* As used in this contract-

"HUBZone small business concern" means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

"Service-disabled veteran-owned small business concern"-

(1) Means a small business concern-

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with

permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

"Small business concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

"Small disadvantaged business concern" means a small business concern that represents, as part of its offer that-

(1) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, Subpart B;

(2) No material change in disadvantaged ownership and control has occurred since its certification;

(3) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(4) It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net).

"Veteran-owned small business concern" means a small business concern-

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

"Women-owned small business concern" means a small business concern-

(1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled

veteran-owned small business concern, a HUBZone small business concern, a small disadvantaged business concern, or a women-owned small business concern.

I.23 FAR 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (NOV 2007) (A000) (M016) (M035) (M109)(M130)

(a) This clause does not apply to small business concerns.

(b) *Definitions.* As used in this clause—

“Alaska Native Corporation (ANC)” means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.) and which is considered a minority and economically disadvantaged concern under the criteria at 43 U.S.C. 1626(e)(1). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of 43 U.S.C. 1626(e)(2).

“Commercial item” means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

“Commercial plan” means a subcontracting plan (including goals) that covers the offeror’s fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

“Indian tribe” means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act (43 U.S.C.A. 1601 et seq.), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with 25 U.S.C. 1452(c). This definition also includes Indian-owned economic enterprises that meet the requirements of 25 U.S.C. 1452(e).

“Individual contract plan” means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror’s planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

“Master plan” means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

“Subcontract” means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.

(d) The offeror’s subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all sub-contracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with 43 U.S.C. 1626:

(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business (SDB) concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe.

(ii) Where one or more subcontractors are in the subcontract tier between the prime contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.

(2) A statement of—

(i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;

(iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

(v) Total dollars planned to be subcontracted to HUBZone small business concerns;

(vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and

(vii) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to—

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns; and

(vi) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration (SBA), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in PRO-Net as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of PRO-Net as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—

- (i) Small business concerns (including ANC and Indian tribes);
- (ii) Veteran-owned small business concerns;
- (iii) Service-disabled veteran-owned small business concerns;
- (iv) HUBZone small business concerns;
- (v) Small disadvantaged business concerns (including ANC and Indian tribes); and
- (vi) Women-owned small business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$550,000 (\$1,000,000 for construction of any public facility) to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the offeror will—

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;

(iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with paragraph (j) of this clause. The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with the instructions on the forms or as provided in agency regulations.

(iv) Ensure that its subcontractors agree to submit SF 294 and SF 295.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (e.g., PRO-Net), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating—

(A) Whether small business concerns were solicited and, if not, why not;

(B) Whether veteran-owned small business concerns were solicited and, if not, why not;

(C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;

(D) Whether HUBZone small business concerns were solicited and, if not, why not;

(E) Whether small disadvantaged business concerns were solicited and, if not, why not;

(F) Whether women-owned small business concerns were solicited and, if not, why not; and

(G) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact—

(A) Trade associations;

- (B) Business development organizations;
- (C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and
- (D) Veterans service organizations.
- (v) Records of internal guidance and encouragement provided to buyers through—
 - (A) Workshops, seminars, training, etc.; and
 - (B) Monitoring performance to evaluate compliance with the program's requirements.
- (vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.
- (e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:
 - (1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.
 - (2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.
 - (3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.
 - (4) Confirm that a subcontractor representing itself as a HUBZone small business concern is identified as a certified HUBZone small business concern by accessing the Central Contractor Registration (CCR) database or by contacting SBA.
 - (5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.
- (f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided—
 - (1) The master plan has been approved;
 - (2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and
 - (3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.
- (g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Commercial plans are also preferred for subcontractors that provide commercial items under a prime contract, whether or not the prime contractor is supplying a commercial item.
- (h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.
- (i) The failure of the Contractor or subcontractor to comply in good faith with—
 - (1) The clause of this contract entitled "Utilization Of Small Business Concerns;" or

(2) An approved plan required by this clause, shall be a material breach of the contract.

(j) The Contractor shall submit the following reports:

(1) Standard Form 294, Subcontracting Report for Individual Contracts. This report shall be submitted to the Contracting Officer semiannually and at contract completion. The report covers subcontract award data related to this contract. This report is not required for commercial plans.

(2) Standard Form 295, Summary Subcontract Report. This report encompasses all of the contracts with the awarding agency. It must be submitted semi-annually for contracts with the Department of Defense and annually for contracts with civilian agencies. If the reporting activity is covered by a commercial plan, the reporting activity must report annually all subcontract awards under that plan. All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a breakout, in the Contractor's format, of subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.

(End of clause)

I.24 FAR 52.219-16 LIQUIDATED DAMAGES—SUBCONTRACTING PLAN (JAN 1999) (A000)

- (a) "Failure to make a good faith effort to comply with the subcontracting plan," as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled "Small Business Subcontracting Plan," or willful or intentional action to frustrate the plan.
- (b) Performance shall be measured by applying the percentage goals to the total actual subcontracting dollars or, if a commercial plan is involved, to the pro rata share of actual subcontracting dollars attributable to Government contracts covered by the commercial plan. If, at contract completion or, in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled "Small Business Subcontracting Plan," the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor's failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.
- (c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made and to discuss the matter. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.

- (d) With respect to commercial plans, the Contracting Officer who approved the plan will perform the functions of the Contracting Officer under this clause on behalf of all agencies with contracts covered by the commercial plan.
- (e) The Contractor shall have the right of appeal, under the clause in this contract entitled Disputes, from any final decision of the Contracting Officer.
- (f) Liquidated damages shall be in addition to any other remedies that the Government may have.

**I.25 FAR 52.219-25 SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM-
DISADVANTAGED STATUS AND REPORTING (OCT 1999) (A000)**

- (a) *Disadvantaged status for joint venture partners, team members, and subcontractors.* This clause addresses disadvantaged status for joint venture partners, teaming arrangement members, and subcontractors and is applicable if this contract contains small disadvantaged business (SDB) participation targets. The Contractor shall obtain representations of small disadvantaged status from joint venture partners, teaming arrangement members, and subcontractors through use of a provision substantially the same as paragraph (b)(1)(i) of the provision at FAR 52.219-22, Small Disadvantaged Business Status. The Contractor shall confirm that a joint venture partner, team member, or subcontractor representing itself as a small disadvantaged business concern, is identified as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net) or by contacting the SBA's Office of Small Disadvantaged Business Certification and Eligibility.
- (b) *Reporting requirement.* If this contract contains SDB participation targets, the Contractor shall report on the participation of SDB concerns at contract completion, or as otherwise provided in this contract. Reporting may be on Optional Form 312, Small Disadvantaged Business Participation Report, or in the Contractor's own format providing the same information. This report is required for each contract containing SDB participation targets. If this contract contains an individual Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, reports may be submitted with the final Subcontracting Report for Individual Contracts (Standard Form 294) at the completion of the contract.

I.26 FAR 52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997) (A000)

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

I.27 FAR 52.222-3 CONVICT LABOR (JUN 2003) (A000) (M066)

- (a) Except as provided in paragraph (b) of this clause, the Contractor shall not employ in the performance of this contract any person undergoing a sentence of imprisonment imposed by any court of a State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.

(b) The Contractor is not prohibited from employing persons-

(1) On parole or probation to work at paid employment during the term of their sentence;

(2) Who have been pardoned or who have served their terms; or

(3) Confined for violation of the laws of any of the States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if-

(i) The worker is paid or is in an approved work training program on a voluntary basis;

(ii) Representatives of local union central bodies or similar labor union organizations have been consulted;

(iii) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services;

(iv) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and

(v) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

I.28 FAR 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION (SEPT 2000) (A000) (M016)

(a) Overtime requirements. No Contractor or subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.300) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.

(b) Violation; liability for unpaid wages; liquidated damages. The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate of \$10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the Contract Work Hours and Safety Standards Act.

- (c) **Withholding for unpaid wages and liquidated damages.** The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or Federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards Act.
- (d) **Payrolls and basic records.**
 - (1) The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.
 - (2) The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.
- (e) **Subcontracts.** The Contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts exceeding \$100,000 and require subcontractors to include these provisions in any lower-tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

I.29 FAR 52.222-20 WALSH-HEALEY PUBLIC CONTRACTS ACT (DEC 1996) (A000)

If this Contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount that exceeds or may exceed \$10,000, and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35-45), the following terms and conditions apply:

- (a) All stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may hereafter, be in effect.
- (b) All employees whose work relates to this Contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and handicapped workers may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C. 40).

I.30 FAR 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999) (A000)

- (a) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.
- (b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.
- (c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

I.31 FAR 52.222-26 EQUAL OPPORTUNITY (MAR 2007) (A000) (M130)

(a) Definition. "United States," as used in this clause, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b)(1) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(2) If the Contractor is a religious corporation, association, educational institution, or society, the requirements of this clause do not apply with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of the Contractor's activities (41 CFR 60-1.5).

(c)(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to—

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion;

- (iv) Transfer;
- (v) Recruitment or recruitment advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR Part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontract or purchase order as the Contracting Officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(d) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

(End of clause)

I.32 FAR 52.222-29 NOTIFICATION OF VISA DENIAL (JUN 2003) (M016) (M066)

It is a violation of Executive Order 11246 for a Contractor to refuse to employ any applicant or not to assign any person hired in the United States, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, or Wake Island, on the basis that the individual's race, color, religion, sex, or national origin is not compatible with the policies of the country where or for whom the work will be performed (41 CFR 60-1.10). The Contractor shall notify the U.S. Department of State, Assistant Secretary, Bureau of Political-Military Affairs (PM), 2201 C Street NW, Room 6212, Washington, DC 20520, and the U.S. Department of Labor, Deputy Assistant Secretary for Federal Contract Compliance, when it has knowledge of any employee or potential employee being denied an entry visa to a country where this contract will be performed, and it believes the denial is attributable to the race, color, religion, sex, or national origin of the employee or potential employee.

I.33 FAR 52.222-35 AFFIRMATIVE ACTION FOR SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEPT 2006) (A000)(M109)

(a) *Definitions.* As used in this clause—

“All employment openings” means all positions except executive and top management, those positions that will be filled from within the Contractor’s organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days duration, and part-time employment.

“Executive and top management” means any employee—

- (1) Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;
- (2) Who customarily and regularly directs the work of two or more other employees;
- (3) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight;
- (4) Who customarily and regularly exercises discretionary powers; and

(5) Who does not devote more than 20 percent or, in the case of an employee of a retail or service establishment, who does not devote more than 40 percent of total hours of work in the work week to activities that are not directly and closely related to the performance of the work described in paragraphs (1) through (4) of this definition. This paragraph (5) does not apply in the case of an employee who is in sole charge of an establishment or a physically separated branch establishment, or who owns at least a 20 percent interest in the enterprise in which the individual is employed.

“Other eligible veteran” means any other veteran who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.

“Positions that will be filled from within the Contractor’s organization” means employment openings for which the Contractor will give no consideration to persons outside the Contractor’s organization (including any affiliates, subsidiaries, and parent companies) and includes any openings the Contractor proposes to fill from regularly established “recall” lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

“Qualified special disabled veteran” means a special disabled veteran who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such veteran holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.

“Special disabled veteran” means—

(1) A veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability—

(i) Rated at 30 percent or more; or

(ii) Rated at 10 or 20 percent in the case of a veteran who has been determined under 38 U.S.C. 3106 to have a serious employment handicap (*i.e.*, a significant impairment of the veteran’s ability to prepare for, obtain, or retain employment consistent with the veteran’s abilities, aptitudes, and interests); or

(2) A person who was discharged or released from active duty because of a service-connected disability.

“Veteran of the Vietnam era” means a person who—

(1) Served on active duty for a period of more than 180 days and was discharged or released from active duty with other than a dishonorable discharge, if any part of such active duty occurred—

(i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(ii) Between August 5, 1964, and May 7, 1975, in all other cases; or

(2) Was discharged or released from active duty for a service-connected disability if any part

of the active duty was performed—

- (i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or
- (ii) Between August 5, 1964, and May 7, 1975, in all other cases.

(b) General.

(1) The Contractor shall not discriminate against the individual because the individual is a special disabled veteran, a veteran of the Vietnam era, or other eligible veteran, regarding any position for which the employee or applicant for employment is qualified. The Contractor shall take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans without discrimination based upon their disability or veterans' status in all employment practices such as—

- (i) Recruitment, advertising, and job application procedures;
- (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
- (iii) Rate of pay or any other form of compensation and changes in compensation;
- (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- (v) Leaves of absence, sick leave, or any other leave;
- (vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
- (vii) Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
- (viii) Activities sponsored by the Contractor including social or recreational programs; and
- (ix) Any other term, condition, or privilege of employment.

(2) The Contractor shall comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended (38 U.S.C. 4211 and 4212).

(c) Listing openings.

(1) The Contractor shall immediately list all employment openings that exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract, and including those occurring at an establishment of the Contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local public employment service office of the State wherein the opening occurs. Listing employment openings with the U.S. Department of Labor's America's Job Bank shall satisfy the requirement to list jobs with the local employment service office.

(2) The Contractor shall make the listing of employment openings with the local employment service office at least concurrently with using any other recruitment source or effort and shall involve the normal obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing of employment openings does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(3) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State public employment agency in each State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State agency, it need not advise the State agency of subsequent contracts. The Contractor may advise the State agency when it is no longer bound by this contract clause.

(d) *Applicability.* This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands of the United States, and Wake Island.

(e) *Postings.*

(1) The Contractor shall post employment notices in conspicuous places that are available to employees and applicants for employment.

(2) The employment notices shall—

(i) State the rights of applicants and employees as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are special disabled veterans, veterans of the Vietnam era, and other eligible veterans; and

(ii) Be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary of Labor), and provided by or through the Contracting Officer.

(3) The Contractor shall ensure that applicants or employees who are special disabled veterans are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled veteran, or may lower the posted notice so that it can be read by a person in a wheelchair).

(4) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement, or other contract understanding, that the Contractor is bound by the terms of the Act and is committed to take affirmative action to employ, and advance in employment, qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans.

(f) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, the Government may take appropriate actions under the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(g) *Subcontracts.* The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Deputy Assistant Secretary of Labor to enforce the terms, including action for noncompliance.

**I.34 FAR 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)
(A000)**

(a) *General.*

- (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as--
 - (i) Recruitment, advertising, and job application procedures;
 - (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
 - (iii) Rates of pay or any other form of compensation and changes in compensation;
 - (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
 - (v) Leaves of absence, sick leave, or any other leave;
 - (vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
 - (vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
 - (viii) Activities sponsored by the Contractor, including social or recreational programs; and
 - (ix) Any other term, condition, or privilege of employment.

- (2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.
- (b) *Postings.*
- (1) The Contractor agrees to post employment notices stating-
- (i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and
- (ii) The rights of applicants and employees.
- (2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U. S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.
- (3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.
- (c) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.
- (d) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

1.35 FAR 52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEPT 2006) (A000) (M016) (M035) (M109)

(a) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on—

- (1) The number of special disabled veterans, the number of veterans of the Vietnam era, and

other eligible veterans in the workforce of the Contractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of the total, the number of special disabled veterans, the number of veterans of the Vietnam era, and the number of other eligible veterans; and

(3) The maximum number and the minimum number of employees of the Contractor during the period covered by the report.

(b) The Contractor shall report the above items by completing the Form VETS-100, entitled "Federal Contractor Veterans' Employment Report (VETS-100 Report)."

(c) The Contractor shall submit VETS-100 Reports no later than September 30 of each year beginning September 30, 1988.

(d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date—

(1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or

(2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(e) The Contractor shall base the count of veterans reported according to paragraph (a) of this clause on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all special disabled veterans, veterans of the Vietnam era, and other eligible veterans who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that—

(1) The information is voluntarily provided;

(2) The information will be kept confidential;

(3) Disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and

(4) The information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.

(f) The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

I.36 EMPLOYMENT ELIGIBILITY VERIFICATION (JAN 2009) (M166)

(a) Definitions. As used in this clause—

"Commercially available off-the-shelf (COTS) item"—

(1) Means any item of supply that is—

(i) A commercial item (as defined in paragraph (1) of the definition at 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products. Per 46 CFR 525.1 (c)(2), "bulk cargo" means cargo that is loaded and carried in bulk onboard ship without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and, therefore, ceases to be bulk cargo.

"Employee assigned to the contract" means an employee who was hired after November 6, 1986, who is directly performing work, in the United States, under a contract that is required to include the clause prescribed at 22.1803. An employee is not considered to be directly performing work under a contract if the employee—

(1) Normally performs support work, such as indirect or overhead functions; and

(2) Does not perform any substantial duties applicable to the contract.

"Subcontract" means any contract, as defined in 2.101, entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

"Subcontractor" means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor or another subcontractor.

"United States", as defined in 8 U.S.C. 1101(a)(38), means the 50 States, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands.

(b) Enrollment and verification requirements.

(1) If the Contractor is not enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall—

(i) Enroll. Enroll as a Federal Contractor in the E-Verify program within 30 calendar days of contract award;

(ii) Verify all new employees. Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); and

(iii) Verify employees assigned to the contract. For each employee assigned to the contract, initiate verification within 90 calendar days after date of enrollment or within 30 calendar days of the employee's assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(2) If the Contractor is enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall use E-Verify to initiate verification of employment eligibility of—

(i) All new employees.

(A) Enrolled 90 calendar days or more. The Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(B) Enrolled less than 90 calendar days. Within 90 calendar days after enrollment as a Federal Contractor in E-Verify, the Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(ii) Employees assigned to the contract. For each employee assigned to the contract, the Contractor shall initiate verification within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(3) If the Contractor is an institution of higher education (as defined at 20 U.S.C. 1001(a)); a State or local government or the government of a Federally recognized Indian tribe; or a surety performing under a takeover agreement

entered into with a Federal agency pursuant to a performance bond, the Contractor may choose to verify only employees assigned to the contract, whether existing employees or new hires. The Contractor shall follow the applicable verification requirements at (b)(1) or (b)(2) respectively, except that any requirement for verification of new employees applies only to new employees assigned to the contract.

(4) Option to verify employment eligibility of all employees. The Contractor may elect to verify all existing employees hired after November 6, 1986, rather than just those employees assigned to the contract. The Contractor shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986, within 180 calendar days of—

(i) Enrollment in the E-Verify program; or

(ii) Notification to E-Verify Operations of the Contractor's decision to exercise this option, using the contact information provided in the E-Verify program Memorandum of Understanding (MOU).

(5) The Contractor shall comply, for the period of performance of this contract, with the requirements of the E-Verify program MOU.

(i) The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Contractor's MOU and deny access to the E-Verify system in accordance with the terms of the MOU. In such case, the Contractor will be referred to a suspension or debarment official.

(ii) During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the Contractor is excused from its obligations under paragraph (b) of this clause. If the suspension or debarment official determines not to suspend or debar the Contractor, then the Contractor must reenroll in E-Verify.

(c) Web site. Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verify>.

(d) Individuals previously verified. The Contractor is not required by this clause to perform additional employment verification using E-Verify for any employee—

(1) Whose employment eligibility was previously verified by the Contractor through the E-Verify program;

(2) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual; or

(3) Who has undergone a completed background investigation and been issued credentials pursuant to Homeland Security Presidential Directive (HSPD)-12, Policy for a Common Identification Standard for Federal Employees and Contractors.

(e) Subcontracts. The Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for identification of the parties), in each subcontract that—

(1) Is for—

(i) Commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item); or

(ii) Construction;

(2) Has a value of more than \$3,000; and

(3) Includes work performed in the United States.

(End of clause)

I.37 FAR 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997) (A000)

- (a) "Hazardous material," as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).
- (a) The Offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

Material
(If none, insert "None") Identification No.

- (c) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.
- (d) The apparently successful Offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful Offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful Offeror being considered non-responsible and ineligible for award.
- (e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.
- (f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.
- (g) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.
- (h) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:

- (1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to-
 - (i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;
 - (ii) Obtain medical treatment for those affected by the material; and
 - (iii) Have others use, duplicate, and disclose the data for the Government for these purposes.
 - (2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.
 - (3) The Government is not precluded from using similar or identical data acquired from other sources.
- (i) Except as provided in paragraph (i)(2), the Contractor shall prepare and submit a sufficient number of Material Safety Data Sheets (MSDS's), meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous materials identified in paragraph (b) of this clause.
- (1) For items shipped to consignees, the Contractor shall include a copy of the MSDS's with the packing list or other suitable shipping document which accompanies each shipment. Alternatively, the Contractor is permitted to transmit MSDS's to consignees in advance of receipt of shipments by consignees, if authorized in writing by the Contracting Officer.
 - (2) For items shipped to consignees identified by mailing address as agency depots, distribution centers or customer supply centers, the Contractor shall provide one copy of the MSDS's in or on each shipping container. If affixed to the outside of each container, the MSDS's must be placed in a weather resistant envelope.

**I.38 FAR 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION
(AUG 2003) (A000) (M066)**

(a) *Definitions.* As used in this clause-

"Priority chemical" means a chemical identified by the Interagency Environmental Leadership Workgroup or, alternatively, by an agency pursuant to Section 503 of Executive Order 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management.

"Toxic chemical" means a chemical or chemical category listed in 40 CFR 372.65.

(b) Executive Order 13148 requires Federal facilities to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001-11050) and the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101-13109).

(c) The Contractor shall provide all information needed by the Federal facility to comply with the following:

- (1) The emergency planning reporting requirements of Section 302 of EPCRA.
- (2) The emergency notice requirements of Section 304 of EPCRA.
- (3) The list of Material Safety Data Sheets, required by Section 311 of EPCRA.
- (4) The emergency and hazardous chemical inventory forms of Section 312 of EPCRA.
- (5) The toxic chemical release inventory of Section 313 of EPCRA, which includes the reduction and recycling information required by Section 6607 of PPA.
- (6) The toxic chemical, priority chemical, and hazardous substance release and use reduction goals of Sections 502 and 503 of Executive Order 13148.

I.39 FAR 52.223-6 DRUG FREE WORKPLACE (MAY 2001) (M016)

(a) Definitions. As used in this clause-

"Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

"Drug-free workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific contract where employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a Contractor directly engaged in the performance of work under a Government contract.

"Directly engaged" is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

"Individual" means an offeror/contractor that has no more than one employee including the offeror/contractor.

- (b) The Contractor, if other than an individual, shall- within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration-
- (1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
 - (2) Establish an ongoing drug-free awareness program to inform such employees about-
 - (i) The dangers of drug abuse in the workplace;
 - (ii) The Contractor's policy of maintaining a drug-free workplace;
 - (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
 - (3) Provide all employees engaged in performance of the contract with a copy of the statement required by paragraph (b)(1) of this clause;
 - (4) Notify such employees in writing in the statement required by paragraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will-
 - (i) Abide by the terms of the statement; and
 - (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;
 - (5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

- (6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:
 - (i) Taking appropriate personnel action against such employee, up to and including termination; or
 - (ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and
- (7) Make a good faith effort to maintain a drug-free workplace through implementation of paragraphs (b)(1) through (b)(6) of this clause.
- (c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.
- (d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Contractor subject to suspension of contract payments, termination of the contract or default, and suspension or debarment.

I.40 FAR 52.223-10 WASTE REDUCTION PROGRAM (AUG 2000) (M016)

- (a) Definitions. As used in this clause-

"Recycling" means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of products other than fuel for producing heat or power by combustion.

"Waste prevention" means any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they are discarded. Waste prevention also refers to the reuse of products or materials.

"Waste reduction" means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

- (b) Consistent with the requirements of Section 701 of Executive Order 13101, the Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract. The Contractor's programs shall comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6962, et seq.) and implementing regulations (40 CFR part 247).

I.41 FAR 52.223-11 OZONE-DEPLETING SUBSTANCES (MAY 2001) (M016)

- (a) Definition. "Ozone-depleting substance," as used in this clause, means any substance the Environmental Protection Agency designates in 40 CFR part 82 as-
- (1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or
 - (2) Class II, including, but not limited to, hydrochlorofluorocarbons.
- (b) The Contractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), and (d) and 40 CFR part 82, Subpart E, as follows:

Warning

Contains (or manufactured with, if applicable) * _____, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.

* The Contractor shall insert the name of the substance(s).

I.42 FAR 52-223-12 REFRIGERATION EQUIPMENT AND AIR CONDITIONERS (MAY 1995) (A000)

The contractor shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to this contract.

I.43 FAR 52.223-14 TOXIC CHEMICAL RELEASE REPORTING (AUG 2003) (A000) (M016) (M066)

(a) Unless otherwise exempt, the Contractor, as owner or operator of a facility used in the performance of this contract, shall file by July 1 for the prior calendar year an annual Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023(a) and (g)), and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106). The Contractor shall file, for each facility subject to the Form R filing and reporting requirements, the annual Form R throughout the life of the contract.

(b) A Contractor-owned or -operated facility used in the performance of this contract is exempt from the requirement to file an annual Form R if-

(1) The facility does not manufacture, process, or otherwise use any toxic chemicals listed in 40 CFR 372.65;

(2) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

(3) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

(4) The facility does not fall within the following Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System sectors:

(i) Major group code 10 (except 1011, 1081, and 1094.

(ii) Major group code 12 (except 1241).

(iii) Major group codes 20 through 39.

(iv) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).

(v) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, *et seq.*)), or 5169, or 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or

(5) The facility is not located in the United States or its outlying areas.

(c) If the Contractor has certified to an exemption in accordance with one or more of the criteria in paragraph (b) of this clause, and after award of the contract circumstances change so that any of its owned or operated facilities used in the performance of this contract is no longer exempt-

(1) The Contractor shall notify the Contracting Officer; and

(2) The Contractor, as owner or operator of a facility used in the performance of this contract that is no longer exempt, shall-

(i) Submit a Toxic Chemical Release Inventory Form (Form R) on or before July 1 for the prior calendar year during which the facility becomes eligible; and

(ii) Continue to file the annual Form R for the life of the contract for such facility.

(d) The Contracting Officer may terminate this contract or take other action as appropriate, if the Contractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical release filing and reporting requirements.

(e) Except for acquisitions of commercial items as defined in FAR Part 2, the Contractor shall-

(1) For competitive subcontracts expected to exceed \$100,000 (including all options), include a solicitation provision substantially the same as the provision at FAR 52.223-13, Certification of Toxic Chemical Release Reporting; and

(2) Include in any resultant subcontract exceeding \$100,000 (including all options), the substance of this clause, except this paragraph (e).

I.44 FAR 52.224-1 PRIVACY ACT NOTIFICATION (APR 1984) (A000)

The Contractor will be required to design, develop, or operate a system of records on individuals, to accomplish an agency function subject to the Privacy Act of 1974, Public Law 93-579, December 31, 1974 (5 U.S.C. 552a) and applicable agency regulations. Violation of the Act may involve the imposition of criminal penalties.

I.45 FAR 52.224-2 PRIVACY ACT (APR 1984) (A000)

(a) The Contractor agrees to--

(1) Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the Contract specifically identifies--

(i) The system of records; and

(ii) The design, development, or operation work that the Contractor is to perform.

(2) Include the Privacy Act notification contained in this Contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the design, development, or operation of a system of records on individuals that is subject to the Act; and

(3) Include this clause, including this subparagraph (3), in all subcontracts awarded under this Contract which requires the design, development, or operation of such a system of records.

(b) In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the Contractor and any employee of the Contractor is considered to be an employee of the agency.

(c) (1) "Operation of a system of records," as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

- (2) "Record," as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.
- (3) "System of records on individuals," as used in this clause means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

I.46 FAR 52.225-1 BUY AMERICAN ACT-SUPPLIES (MAY 2002) (M016) (M035)

(a) *Definitions.* As used in this clause-

"Component" means an article, material, or supply incorporated directly into an end product.

"Cost of components" means-

- (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

"Domestic end product" means-

- (1) An unmanufactured end product mined or produced in the United States; or
- (2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

"End product" means those articles, materials, and supplies to be acquired under the contract for public use.

"Foreign end product" means an end product other than a domestic end product.

"United States" means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

- (b) The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.
- (c) Offerors may obtain from the Contracting Officer a list of foreign articles that the Contracting Officer will treat as domestic for this contract.
- (d) The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the solicitation entitled "Buy American Act Certificate."

I.47 FAR 52.225-8 DUTY-FREE ENTRY (FEB 2000) (A000) (M016)

- (a) Definition. "Customs territory of the United States" means the States, the District of Columbia, and Puerto Rico.
- (b) Except as otherwise approved by the Contracting Officer, the Contractor shall not include in the contract price any amount for duties on supplies specifically identified in the Schedule to be accorded duty-free entry.
- (c) Except as provided in paragraph (d) of this clause or elsewhere in this contract, the following procedures apply to supplies not identified in the Schedule to be accorded duty-free entry:
 - (1) The Contractor shall notify the Contracting Officer in writing of any purchase of foreign supplies (including, without limitation, raw materials, components, and intermediate assemblies) in excess of \$10,000 that are to be imported into the customs territory of the United States for delivery to the Government under this contract, either as end products or for incorporation into end products. The Contractor shall furnish the notice to the Contracting Officer at least 20 calendar days before the importation. The notice shall identify the-
 - (i) Foreign supplies;
 - (ii) Estimated amount of duty; and
 - (iii) Country of origin.
 - (2) The Contracting Officer will determine whether any of these supplies should be accorded duty-free entry and will notify the Contractor within 10 calendar days after receipt of the Contractor's notification.

- (3) Except as otherwise approved by the Contracting Officer, the contract price shall be reduced by (or the allowable cost shall not include) the amount of duty that would be payable if the supplies were not entered duty-free.
- (d) The Contractor is not required to provide the notification under paragraph (c) of this clause for purchases of foreign supplies if-
- (1) The supplies are identical in nature to items purchased by the Contractor or any subcontractor in connection with its commercial business; and
 - (2) Segregation of these supplies to ensure use only on Government contracts containing duty-free entry provisions is not economical or feasible.
- (e) The Contractor shall claim duty-free entry only for supplies to be delivered to the Government under this contract, either as end products or incorporated into end products, and shall pay duty on supplies, or any portion of them, other than scrap, salvage, or competitive sale authorized by the Contracting Officer, diverted to nongovernmental use.
- (f) The Government will execute any required duty-free entry certificates for supplies to be accorded duty-free entry and will assist the Contractor in obtaining duty-free entry for these supplies.
- (g) Shipping documents for supplies to be accorded duty-free entry shall consign the shipments to the contracting agency in care of the Contractor and shall include the-
- (1) Delivery address of the Contractor (or contracting agency, if appropriate);
 - (2) Government prime contract number;
 - (3) Identification of carrier;
 - (4) Notation "UNITED STATES GOVERNMENT, _____ [agency] _____, Duty-free entry to be claimed pursuant to Item No(s) _____ [from Tariff Schedules] _____, Harmonized Tariff Schedules of the United States. Upon arrival of shipment at port of entry, District Director of Customs, please release shipment under 19 CFR part 142 and notify [cognizant contract administration office] for execution of Customs Forms 7501 and 7501-A and any required duty-free entry certificates.";
 - (5) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight); and
 - (6) Estimated value in United States dollars.
- (h) The Contractor shall instruct the foreign supplier to-

- (1) Consign the shipment as specified in paragraph (g) of this clause;
 - (2) Mark all packages with the words "UNITED STATES GOVERNMENT" and the title of the contracting agency; and
 - (3) Include with the shipment at least two copies of the bill of lading (or other shipping document) for use by the District Director of Customs at the port of entry.
- (i) The Contractor shall provide written notice to the cognizant contract administration office immediately after notification by the Contracting Officer that duty-free entry will be accorded foreign supplies or, for duty-free supplies identified in the Schedule, upon award by the Contractor to the overseas supplier. The notice shall identify the-
- (1) Foreign supplies;
 - (2) Country of origin;
 - (3) Contract number; and
 - (4) Scheduled delivery date(s).
- (j) The Contractor shall include the substance of this clause in any subcontract if-
- (1) Supplies identified in the Schedule to be accorded duty-free entry will be imported into the customs territory of the United States; or
 - (2) Other foreign supplies in excess of \$10,000 may be imported into the customs territory of the United States.

I.48 FAR 52.225-9 BUY AMERICAN ACT - CONSTRUCTION MATERIALS (JAN 2005) (M016) (M035) (M066)

(a) *Definitions.* As used in this clause-

"Component" means an article, material, or supply incorporated directly into a construction material.

"Construction material" means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

"Cost of components" means-

- (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

"Domestic construction material" means-

- (1) An unmanufactured construction material mined or produced in the United States; or
- (2) A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic.

"Foreign construction material" means a construction material other than a domestic construction material.

"United States" means the 50 States, the District of Columbia, and outlying areas.

(b) *Domestic preference.*

(1) This clause implements the Buy American Act (41 U.S.C. 10a - 10d) by providing a preference for domestic construction material. The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.

(2) This requirement does not apply to the construction material or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate "none"]

(3) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(2) of this clause if the Government determines that-

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the requirements of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination of inapplicability of the Buy American Act.

(1) (i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(3) of this clause shall include adequate information for Government evaluation of the request, including-

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor

does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(3)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.

(d) *Data.* To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison			
<u>Construction Material Description</u>	<u>Unit of Measure</u>	<u>Quantity</u>	<u>Price (Dollars)*</u>
<i>Item 1:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
<i>Item 2:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]*

I.49 FAR 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (FEB 2006) (A000) (M016) (M066) (M109)

(a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR Chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <http://www.treas.gov/offices/enforcement/ofac/sdn>. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR Chapter V and/or on OFAC's website at <http://www.treas.gov/offices/enforcement/ofac>.

(c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

1.50 FAR 52.227-3 PATENT INDEMNITY (APR 1984) (A000)

- (a) The Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work.
- (b) This indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to--
- (1) An infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor;
 - (2) An infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance; or
 - (3) A claimed infringement that is unreasonably settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

I.51 FAR 52.227-10 FILING OF PATENT APPLICATIONS-CLASSIFIED SUBJECT MATTER (DEC 2007) (M016)(M130)

(a) Before filing or causing to be filed a patent application in the United States disclosing any subject matter of this contract classified "Secret" or higher, the Contractor shall, citing the 30-day provision below, transmit the proposed application to the Contracting Officer. The Government shall determine whether, for reasons of national security, the application should be placed under an order of secrecy, sealed in accordance with the provision of 35 U.S.C. 181-188, or the issuance of a patent otherwise delayed under pertinent United States statutes or regulations. The Contractor shall observe any instructions of the Contracting Officer regarding the manner of delivery of the patent application to the United States Patent Office, but the Contractor shall not be denied the right to file the application. If the Contracting Officer shall not have given any such instructions within 30 days from the date of mailing or other transmittal of the proposed application, the Contractor may file the application.

(b) Before filing a patent application in the United States disclosing any subject matter of this contract classified "Confidential," the Contractor shall furnish to the Contracting Officer a copy of the application for Government determination whether, for reasons of national security, the application should be placed under an order of secrecy or the issuance of a patent should be otherwise delayed under pertinent United States statutes or regulations.

(c) Where the subject matter of this contract is classified for reasons of security, the Contractor shall not file, or cause to be filed, in any country other than in the United States as provided in paragraphs (a) and (b) of this clause, an application or registration for a patent containing any of the subject matter of this contract without first obtaining written approval of the Contracting Officer.

(d) When filing any patent application coming within the scope of this clause, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter and shall promptly furnish to the Contracting Officer the serial number, filing date, and name of the country of any such application. When transmitting the application to the United States Patent Office, the Contractor shall by separate letter identify by agency and number the contract or contracts that require security classification markings to be placed on the application.

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in all subcontracts that cover or are likely to cover classified subject matter.

I.52 FAR 52.227-23 RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUNE 1987) (A000)

Except for data contained on pages NONE, it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the "Rights in Data--General" clause contained in this contract) in and to the technical data contained in the proposal dated N/A, upon which this contract is based.

I.53 FAR 52.229-10 NEW MEXICO GROSS RECEIPTS AND COMPENSATING TAX (APR 2003) (A000) (M066)

(a) Within thirty (30) days after award of this contract, the Contractor shall advise the State of New Mexico of this contract by registering with the State of New Mexico, Taxation and Revenue Department, Revenue Division, pursuant to the Tax Administration Act of the State of New Mexico and shall identify the contract number.

(b) The Contractor shall pay the New Mexico gross receipts taxes, pursuant to the Gross Receipts and Compensating Tax Act of New Mexico, assessed against the contract fee and costs paid for performance of this contract, or of any part or portion thereof, within the State of New Mexico. The allowability of any gross receipts taxes or local option taxes lawfully paid to the State of New Mexico by the Contractor or its subcontractors will be determined in accordance with the Allowable Cost and Payment clause of this contract except as provided in paragraph (d) of this clause.

(c) The Contractor shall submit applications for Nontaxable Transaction Certificates, Form CSR-3C, to the:

State of New Mexico Taxation and Revenue Dept.
Revenue Division
PO Box 630
Santa Fe, New Mexico 87509

When the Type 15 Nontaxable Transaction Certificate is issued by the Revenue Division, the Contractor shall use these certificates strictly in accordance with this contract, and the agreement between the U.S. Department of Energy and the New Mexico Taxation and Revenue Department.

(d) The Contractor shall provide Type 15 Nontaxable Transaction Certificates to each vendor in New Mexico selling tangible personal property to the Contractor for use in the performance of this contract. Failure to provide a Type 15 Nontaxable Transaction Certificate to vendors will result in the vendor's liability for the gross receipt taxes and those taxes, which are then passed on to the Contractor, shall not be reimbursable as an allowable cost by the Government.

(e) The Contractor shall pay the New Mexico compensating user tax for any tangible personal property which is purchased pursuant to a Nontaxable Transaction Certificate if such property is not used for Federal purposes.

(f) Out-of-state purchase of tangible personal property by the Contractor which would be otherwise subject to compensation tax shall be governed by the principles of this clause. Accordingly, compensating tax shall be due from the contractor only if such property is not used for Federal purposes.

(g) The U.S. Department of Energy may receive information regarding the Contractor from the Revenue Division of the New Mexico Taxation and Revenue Department and, at the discretion of the U.S. Department of Energy, may participate in any matters or proceedings pertaining to this clause or the above-mentioned Agreement. This shall not preclude the Contractor from having its own representative nor does it obligate the U.S. Department of Energy to represent its Contractor.

(h) The Contractor agrees to insert the substance of this clause, including this paragraph

(h), in each subcontract which meets the criteria in 29.401-4(b)(1) through (3) of the Federal Acquisition Regulation, 48 CFR part 29.

(i) Paragraphs (a) through (h) of this clause shall be null and void should the Agreement referred to in paragraph (c) of this clause be terminated; provided, however, that such termination shall not nullify obligations already incurred prior to the date of termination.

I.54 FAR 52.230-2 COST ACCOUNTING STANDARDS (APR 1998) (A000)

(a) Unless the contract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR part 9903 are incorporated herein by reference and the Contractor, in connection with this contract, shall-

(1) *(CAS-covered Contracts Only)* By submission of a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with paragraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR part 9904, in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4)(i) (Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to paragraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made

under other provisions of paragraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS in 48 CFR 9904 or a CAS rule or regulation in 48 CFR 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of \$500,000, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

**I.55 FAR 52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS (NOV 1999)
(A000)**

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Contractor shall take the steps outlined in paragraphs (a) through (f) of this clause:

- (a) Submit to the Contracting Officer a description of any cost accounting practice change, the total potential impact of the change on contracts containing a CAS clause, and a general dollar magnitude of the change which identifies the potential shift of costs between CAS-covered contracts by contract type (i.e., firm fixed-price, incentive, cost-plus-fixed fee, etc.) and other Contractor business activity. As related to CAS-covered contracts, the analysis should identify the potential impact on funds of the various Agencies/Departments (i.e., Department of Energy, National Aeronautics and Space Administration, Army, Navy, Air Force, other Department of Defense, other Government) as follows:
- (1) For any change in cost accounting practices required to comply with a new or modified CAS in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230-2, Cost Accounting Standards, within 60 days (or such other date as may be mutually agreed to) after award of a contract requiring this change.
 - (2) For any change in cost accounting practices proposed in accordance with subdivision (a)(4)(ii) or (iii) of the clause at FAR 52.230-2, Cost Accounting Standards, or with subparagraph (a)(3) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, not less than 60 days (or such other date as may be mutually agreed to) before the effective date of the proposed change.
 - (3) For any failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by subparagraph (a)(5) at FAR 52.230-2, Cost Accounting Standards, or by subparagraph (a)(4) at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices):
 - (i) Within 60 days (or such other date as may be mutually agreed to) after the date of agreement with the initial finding of noncompliance, or
 - (ii) In the event of Contractor disagreement with the initial finding of noncompliance, within 60 days of the date the Contractor is notified by the Contracting Officer of the determination of noncompliance.
- (b) After an ACO determination of materiality, submit a cost impact proposal in the form and manner specified by the Contracting Officer within 60 days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to paragraph (a) of this clause. The cost impact proposal shall be in sufficient detail to permit evaluation, determination, and negotiation of the cost impact upon each separate CAS-covered contract and subcontract.
- (1) Cost impact proposals submitted for changes in cost accounting practices required in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230-2, Cost Accounting Standards, or subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230-5, Cost Accounting Standards - Educational Institutions shall identify the applicable standard or cost principle and all contracts and subcontracts containing the clause in this Contract entitled "Cost Accounting Standards or Cost

Accounting Standards - Educational Institutions," which have an award date before the effective date of that standard or cost principle.

- (2) Cost impact proposals submitted for any change in cost accounting practices proposed in accordance with subdivisions (a)(4)(ii) or (iii) of the clause at FAR 52.230-2, Cost Accounting Standards and Cost Accounting Standards - Educational Institutions, or with subparagraph (a)(3) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices; shall identify all contracts and subcontracts containing the clause at FAR 52.230-2, Cost Accounting Standards, FAR 52.230-5, Cost Accounting Standards - Educational Institutions and FAR 52-230-3, Disclosure and Consistency of Cost Accounting Practices.
 - (3) Cost impact proposals submitted for failure to comply with an applicable CAS or to follow a disclosed practice as contemplated by subparagraph (a)(5) of the clause at FAR 52.230-2, Cost Accounting Standards, or by subparagraph (a)(4) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, shall identify the cost impact on each separate CAS covered contract from the date of failure to comply until the noncompliance is corrected.
- (c) If the submissions required by paragraphs (a) and (b) of this clause are not submitted within the specified time, or any extension granted by the Contracting Officer, an amount not to exceed 10 percent of each subsequent amount determined payable related to the Contractor's CAS-covered prime contracts, up to the estimated general dollar magnitude of the cost impact, may be withheld until such time as the required submission has been provided in the form and manner specified by the Contracting Officer.
 - (d) Agree to appropriate contract and subcontract amendments to reflect adjustments established in accordance with subparagraphs (a)(4) and (a)(5) of the CAS clause at FAR 52.230-2 or with subparagraphs (a)(3) or (a)(4) of the Disclosure and Consistency of Cost Accounting Practices clause at FAR 52.230-3.
 - (e) For all subcontracts subject to the clauses at FAR 52.230-2, 52.230-3 or 52.230-5-
 - (1) So state in the body of the subcontract, in the letter of award, or in both (self-deleting clauses shall not be used);
 - (2) Include the substance of this clause in all negotiated subcontracts; and
 - (1) Within 30 days after award of the subcontract, submit the following information to the Contractor's cognizant contract administration office for transmittal to the contract administration office cognizant of the subcontractor's facility:
 - (i) Subcontractor's name and subcontract number.
 - (ii) Dollar amount and date of award.

- (iii) Name of Contractor making the award.
- (f) Notify the Contracting Officer in writing of any adjustments required to subcontracts under this contract and agree to an adjustment, based on them, to this contract price or estimated cost and fee. This notice is due within 30 days after proposed subcontract adjustments are received and shall include a proposal for adjusting the higher tier subcontract or prime contract appropriately.
- (g) For subcontracts containing the clauses at FAR 52.230-2 or 52.230-5, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontract signed Certificate of Current Cost or Pricing Data, whichever is earlier.

I.56 FAR 52.232-17 INTEREST (JUN 1996) (A000)

- (a) Except as otherwise provided in this Contract under a Price Reduction for Defective Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this Contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.
- (b) Amounts shall be due at the earliest of the following dates:
 - (1) The date fixed under this contract.
 - (2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.
 - (3) The date the Government transmits to the Contractor proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.
 - (4) If this Contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by Contract modification.
- (c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

I.57 FAR 52.232-24 PROHIBITION OF ASSIGNMENT OF CLAIMS (JAN 1986) (A000)

The assignment of claims under the Assignment of Claims Act of 1940, as amended, 31 U.S.C. 3727, 41 U.S.C. 15, is prohibited for this contract.

1.58 FAR 52.233-1 DISPUTES (JUL 2002) ALTERNATE I (DEC 1991) (A000)

- (a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).
- (b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.
- (c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.
- (d) (1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.
- (2) (i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.
- (ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.
- (iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."
- (3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.
- (e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.
- (f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

L59 FAR 52.233-3 PROTEST AFTER AWARD (AUG 1996) (ALTERNATE 1) (JUN 1985) (A000)

(a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either—

- (1) Cancel the stop-work order; or
- (2) Terminate the work covered by the order as provided in the "Termination" clause of this contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected, and the contract shall be modified, in writing, accordingly, if—

- (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

- (2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage, provided, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this Contract.
- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.
- (e) The Government's rights to terminate this Contract at any time are not affected by action taken under this clause.
- (f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertifications, a protest related to this Contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

I.60 FAR 57.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984) (A000)

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on the Government installation. If the Contractor's failure to use reasonable care causes damage to any of this property, the Contractor shall replace or repair the damage at no expense to the Government as the Contracting Officer directs. If the Contractor fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost, which may be deducted from the contract price.

I.61 FAR 52.237-3 CONTINUITY OF SERVICES (JAN 1991) (A000)

- (a) The Contractor recognizes that the services under this Contract are vital to the Government and must be continued without interruption and that, upon Contract expiration or termination, a successor, either the Government or another Contractor, may continue them. The Contractor agrees to (1) furnish phase-in training and (2) exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.
- (b) The Contractor shall, upon the Contracting Officer's written notice, (1) furnish phase-in, phase-out services for up to 90 days after this Contract expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division

of work described in the plan, and shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this Contract are maintained at the required level of proficiency.

- (c) The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.
- (d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after Contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

I.62 FAR 52.239-1 PRIVACY OR SECURITY SAFEGUARDS (AUD 1996) (M066)

(a) The Contractor shall not publish or disclose in any manner, without the Contracting Officer's written consent, the details of any safeguards either designed or developed by the Contractor under this contract or otherwise provided by the Government.

(b) To the extent required to carry out a program of inspection to safeguard against threats and hazards to the security, integrity, and confidentiality of Government data, the Contractor shall afford the Government access to the Contractor's facilities, installations, technical capabilities, operations, documentation, records, and databases.

(c) If new or unanticipated threats or hazards are discovered by either the Government or the Contractor, or if existing safeguards have ceased to function, the discoverer shall immediately bring the situation to the attention of the other party.

I.63 FAR 52.242-1 NOTICE OF INTENT TO DISALLOW COSTS (APR 1984) (A000)

- (a) Notwithstanding any other clause of this contract--
 - (1) The Contracting Officer may at any time issue to the Contractor a written notice of intent to disallow specified costs incurred or planned for incurrence under this Contract that have been determined not to be allowable under the Contract terms; and
 - (2) The Contractor may, after receiving a notice under subparagraph (1) above, submit a written response to the Contracting Officer with justification for allowance of the costs. If the Contractor does respond within 60 days, the Contracting Officer shall, within 60 days of receiving the response, either make a written withdrawal of the notice or issue a written decision.

- (b) Failure to issue a notice under this Notice of Intent to Disallow Costs clause shall not affect the Government's rights to take exception to incurred costs.

1.64 FAR 52.242-13 BANKRUPTCY (JUL 1995) (A000)

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

1.65 FAR 52.244-5 COMPETITION IN SUBCONTRACTING (DEC 1996) (A000)

- (a) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.
- (b) If the Contractor is an approved mentor under the Department of Defense Pilot Mentor-Protégé Program (Pub. L. 101-510, section 831 as amended), the Contractor may award subcontracts under this Contract on a noncompetitive basis to its protégés.

1.66 FAR 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (SEPT 2006) (A000) (M016) (M035) (M066) (M109)

(a) *Definitions.* As used in this clause—

“Commercial item” has the meaning contained in Federal Acquisition Regulation 2.101, Definitions.

“Subcontract” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c)(1) The Contractor shall insert the following clauses in subcontracts for commercial items:

(i) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$550,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(ii) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).

(iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) (38 U.S.C. 4212(a));

(iv) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).

(v) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201). Flow down as required in accordance with paragraph (g) of FAR clause 52.222-39).

(vi) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. App. 1241 and 10 U.S.C. 2631) (flow down required in accordance with paragraph (d) of FAR clause 52.247-64).

(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

(a) *Definitions.* As used in this clause-

"Commercial item" has the meaning contained in Federal Acquisition Regulation 2.101, Definitions.

"Subcontract" includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c) (1) The Contractor shall insert the following clauses in subcontracts for commercial items:

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(ii) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).

(iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212(a));

(iv) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).

(v) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201). Flow down as required in accordance with paragraph (g) of FAR clause 52.222-39).

(vi) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Apr 2003) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631) (flow down required in accordance with paragraph (d) of FAR clause 52.247-64).

(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

I.67 FAR 52.247-1 COMMERCIAL BILL OF LADING NOTATIONS (FEB 2006) (A000) (M109)

When the Contracting Officer authorizes supplies to be shipped on a commercial bill of lading and the Contractor will be reimbursed these transportation costs as direct allowable costs, the Contractor shall ensure before shipment is made that the commercial shipping documents are annotated with either of the following notations, as appropriate:

(a) If the Government is shown as the consignor or the consignee, the annotation shall be: Transportation is for the U.S. Department of Energy and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are assignable to, and shall be reimbursed by, the Government.

(b) If the Government is not shown as the consignor or the consignee, the annotation shall be: Transportation is for the U.S. Department of Energy and the actual total transportation charges paid to the carrier(s) by the consignor or consignee shall be reimbursed by the Government, pursuant to cost-reimbursement contract No. DE-AC29-01AL66444. This may be confirmed by contacting Contracting Officer, Carlsbad Field Office, P.O. Box 2502 Carlsbad, NM 88221.

I.68 FAR 52.247-63 PREFERENCE FOR U.S. - FLAG AIR CARRIERS (JUN 2003) (A000) (M066)

(a) *Definitions.* As used in this clause-

"International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

"United States" means the 50 States, the District of Columbia, and outlying areas.

"U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

(b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires that all Federal agencies and Government contractors and

subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

(c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

(d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see section 47.403 of the Federal Acquisition Regulation): [*State reasons*]:

(End of statement)

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

1.69 FAR 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (FEB 2006) (A000) (M016) (M066) (M107)

(a) Except as provided in paragraph (e) of this clause, the Cargo Preference Act of 1954 (46 U.S.C. App. 1241(b)) requires that Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are—

(1) Acquired for a U.S. Government agency account;

(2) Furnished to, or for the account of, any foreign nation without provision for reimbursement;

(3) Furnished for the account of a foreign nation in connection with which the United States

advances funds or credits, or guarantees the convertibility of foreign currencies; or

(4) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.

(b) The Contractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this contract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in paragraph (a) of this clause, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

(c)(1) The Contractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both—

- (i) The Contracting Officer, and
- (ii) The:

Office of Cargo Preference
Maritime Administration (MAR-590)
400 Seventh Street, SW
Washington DC 20590.

Subcontractor bills of lading shall be submitted through the Prime Contractor.

(2) The Contractor shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States, or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:

- (A) Sponsoring U.S. Government agency.
- (B) Name of vessel.
- (C) Vessel flag of registry.
- (D) Date of loading.
- (E) Port of loading.
- (F) Port of final discharge.
- (G) Description of commodity.
- (H) Gross weight in pounds and cubic feet if available.
- (I) Total ocean freight revenue in U.S. dollars.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract, except those described in paragraph (e)(4).

(e) The requirement in paragraph (a) does not apply to—

- (1) Cargoes carried in vessels as required or authorized by law or treaty;
- (2) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign

Assistance Act of 1961 (22 U.S.C. 2353);

(3) Shipments of classified supplies when the classification prohibits the use of non-Government vessels; and

(4) Subcontracts or purchase orders for the acquisition of commercial items unless—

(i) This contract is—

(A) A contract or agreement for ocean transportation services; or

(B) A construction contract; or

(ii) The supplies being transported are—

(A) Items the Contractor is reselling or distributing to the Government without adding value. (Generally, the Contractor does not add value to the items when it subcontracts items for f.o.b. destination shipment); or

(B) Shipped in direct support of U.S. military—

(1) Contingency operations;

(2) Exercises; or

(3) Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.

(f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the:

Office of Costs and Rates
Maritime Administration
400 Seventh Street, SW
Washington DC 20590
Phone: (202) 366-4610.

I.70 FAR 52.248-1 VALUE ENGINEERING (FEB 2000) (M107)

(a) *General.* The Contractor is encouraged to develop, prepare, and submit value engineering change proposals (VECP's) voluntarily. The Contractor shall share in any net acquisition savings realized from accepted VECP's, in accordance with the incentive sharing rates in paragraph (f) of this clause.

(b) *Definitions.*

"Acquisition savings," as used in this clause, means savings resulting from the application of a VECP to contracts awarded by the same contracting office or its successor for essentially the same unit. Acquisition savings include—

(1) Instant contract savings, which are the net cost reductions on this, the instant contract, and which are equal to the instant unit cost reduction multiplied by the number of instant contract units affected by the VECP, less the Contractor's allowable development and implementation

costs;

(2) Concurrent contract savings, which are net reductions in the prices of other contracts that are definitized and ongoing at the time the VECP is accepted; and

(3) Future contract savings, which are the product of the future unit cost reduction multiplied by the number of future contract units in the sharing base. On an instant contract, future contract savings include savings on increases in quantities after VECP acceptance that are due to contract modifications, exercise of options, additional orders, and funding of subsequent year requirements on a multiyear contract.

“Collateral savings,” as used in this clause, means those measurable net reductions resulting from a VECP in the agency’s overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.

“Contracting office” includes any contracting office that the acquisition is transferred to, such as another branch of the agency or another agency’s office that is performing a joint acquisition action.

“Contractor’s development and implementation costs,” as used in this clause, means those costs the Contractor incurs on a VECP specifically in developing, testing, preparing, and submitting the VECP, as well as those costs the Contractor incurs to make the contractual changes required by Government acceptance of a VECP.

“Future unit cost reduction,” as used in this clause, means the instant unit cost reduction adjusted as the Contracting Officer considers necessary for projected learning or changes in quantity during the sharing period. It is calculated at the time the VECP is accepted and applies either—

(1) Throughout the sharing period, unless the Contracting Officer decides that recalculation is necessary because conditions are significantly different from those previously anticipated; or

(2) To the calculation of a lump-sum payment, which cannot later be revised.

“Government costs,” as used in this clause, means those agency costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistics support. The term does not include the normal administrative costs of processing the VECP or any increase in this contract’s cost or price resulting from negative instant contract savings.

“Instant contract,” as used in this clause, means this contract, under which the VECP is submitted. It does not include increases in quantities after acceptance of the VECP that are due to contract modifications, exercise of options, or additional orders. If this is a multiyear contract, the term does not include quantities funded after VECP acceptance. If this contract is a fixed-price contract with prospective price redetermination, the term refers to the period for which firm prices have been established.

“Instant unit cost reduction” means the amount of the decrease in unit cost of performance

(without deducting any Contractor's development or implementation costs) resulting from using the VECP on this, the instant contract. If this is a service contract, the instant unit cost reduction is normally equal to the number of hours per line-item task saved by using the VECP on this contract, multiplied by the appropriate contract labor rate.

"Negative instant contract savings" means the increase in the cost or price of this contract when the acceptance of a VECP results in an excess of the Contractor's allowable development and implementation costs over the product of the instant unit cost reduction multiplied by the number of instant contract units affected.

"Net acquisition savings" means total acquisition savings, including instant, concurrent, and future contract savings, less Government costs.

"Sharing base," as used in this clause, means the number of affected end items on contracts of the contracting office accepting the VECP.

"Sharing period," as used in this clause, means the period beginning with acceptance of the first unit incorporating the VECP and ending at a calendar date or event determined by the contracting officer for each VECP.

"Unit," as used in this clause, means the item or task to which the Contracting Officer and the Contractor agree the VECP applies.

"Value engineering change proposal (VECP)" means a proposal that—

(1) Requires a change to this, the instant contract, to implement; and

(2) Results in reducing the overall projected cost to the agency without impairing essential functions or characteristics; *provided*, that it does not involve a change—

(i) In deliverable end item quantities only;

(ii) In research and development (R&D) end items or R&D test quantities that is due solely to results of previous testing under this contract; or

(iii) To the contract type only.

(c) *VECP preparation.* As a minimum, the Contractor shall include in each VECP the information described in paragraphs (c)(1) through (8) of this clause. If the proposed change is affected by contractually required configuration management or similar procedures, the instructions in those procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:

(1) A description of the difference between the existing contract requirement and the proposed requirement, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, the effect of the change on the end item's performance, and any pertinent objective test data.

(2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.

(3) Identification of the unit to which the VECP applies.

(4) A separate, detailed cost estimate for (i) the affected portions of the existing contract requirement and (ii) the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under the Subcontracts paragraph of this clause.

(5) A description and estimate of costs the Government may incur in implementing the VECP, such as test and evaluation and operating and support costs.

(6) A prediction of any effects the proposed change would have on collateral costs to the agency.

(7) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.

(8) Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous Government actions, if known.

(d) *Submission.* The Contractor shall submit VECP's to the Contracting Officer, unless this contract states otherwise. If this contract is administered by other than the contracting office, the Contractor shall submit a copy of the VECP simultaneously to the Contracting Officer and to the Administrative Contracting Officer.

(e) Government action.

(1) The Contracting Officer will notify the Contractor of the status of the VECP within 45 calendar days after the contracting office receives it. If additional time is required, the Contracting Officer will notify the Contractor within the 45-day period and provide the reason for the delay and the expected date of the decision. The Government will process VECP's expeditiously; however, it will not be liable for any delay in acting upon a VECP.

(2) If the VECP is not accepted, the Contracting Officer will notify the Contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any VECP, in whole or in part, at any time before it is accepted by the Government. The Contracting Officer may require that the Contractor provide written notification before undertaking significant expenditures for VECP effort.

(3) Any VECP may be accepted, in whole or in part, by the Contracting Officer's award of a modification to this contract citing this clause and made either before or within a reasonable time after contract performance is completed. Until such a contract modification applies a VECP to this contract, the Contractor shall perform in accordance with the existing contract. The decision to accept or reject all or part of any VECP is a unilateral decision made solely at the discretion of the Contracting Officer.

(f) *Sharing rates.* If a VECP is accepted, the Contractor shall share in net acquisition savings according to the percentages shown in the table below. The percentage paid the Contractor depends upon—

- (1) This contract's type (fixed-price, incentive, or cost-reimbursement);
(2) The sharing arrangement specified in paragraph (a) of this clause (incentive, program requirement, or a combination as delineated in the Schedule); and
(3) The source of the savings (the instant contract, or concurrent and future contracts), as follows:

CONTRACTOR'S SHARE OF NET ACQUISITION SAVINGS (FIGURE IN PERCENT)				
CONTRACT TYPE	INCENTIVE (VOLUNTARY)		PROGRAM REQUIREMENT (MANDATORY)	
	Instant Contract Rate	Concurrent and Future Contract Rate	Instant Contract Rate	Concurrent and Future Contract Rate
Fixed-price (includes fixed-price-award-fee; excludes other fixed-price incentive contracts)	*50	*50	25	25
Incentive (fixed-price or cost) (other than award fee)	(**)	*50	(**)	25
Cost-reimbursement (includes cost-plus-award-fee; excludes other cost-type incentive contracts)	***25	***25	15	15

* The Contracting Office may increase the Contractor's sharing rate to as high as 75 percent for each VECP.
** Same sharing arrangement as the contract's profit or fee adjustment formula.
*** The Contracting Office may increase the Contractor's sharing rate to as high as 50 percent for each VECP.

(g) Calculating net acquisition savings.

(1) Acquisition savings are realized when (i) the cost or price is reduced on the instant contract, (ii) reductions are negotiated in concurrent contracts, (iii) future contracts are awarded, or (iv) agreement is reached on a lump-sum payment for future contract savings (see paragraph (i)(4) of this clause). Net acquisition savings are first realized, and the Contractor shall be paid a share, when Government costs and any negative instant contract savings have been fully offset against acquisition savings.

(2) Except in incentive contracts, Government costs and any price or cost increases resulting from negative instant contract savings shall be offset against acquisition savings each time such savings are realized until they are fully offset. Then, the Contractor's share is calculated by

multiplying net acquisition savings by the appropriate Contractor's percentage sharing rate (see paragraph (f) of this clause). Additional Contractor shares of net acquisition savings shall be paid to the Contractor at the time realized.

(3) If this is an incentive contract, recovery of Government costs on the instant contract shall be deferred and offset against concurrent and future contract savings. The Contractor shall share through the contract incentive structure in savings on the instant contract items affected. Any negative instant contract savings shall be added to the target cost or to the target price and ceiling price, and the amount shall be offset against concurrent and future contract savings.

(4) If the Government does not receive and accept all items on which it paid the Contractor's share, the Contractor shall reimburse the Government for the proportionate share of these payments.

(h) *Contract adjustment.* The modification accepting the VECP (or a subsequent modification issued as soon as possible after any negotiations are completed) shall—

(1) Reduce the contract price or estimated cost by the amount of instant contract savings, unless this is an incentive contract;

(2) When the amount of instant contract savings is negative, increase the contract price, target price and ceiling price, target cost, or estimated cost by that amount;

(3) Specify the Contractor's dollar share per unit on future contracts, or provide the lump-sum payment;

(4) Specify the amount of any Government costs or negative instant contract savings to be offset in determining net acquisition savings realized from concurrent or future contract savings; and

(5) Provide the Contractor's share of any net acquisition savings under the instant contract in accordance with the following:

(i) Fixed-price contracts—add to contract price.

(ii) Cost-reimbursement contracts—add to contract fee.

(i) Concurrent and future contract savings.

(1) Payments of the Contractor's share of concurrent and future contract savings shall be made by a modification to the instant contract in accordance with paragraph (h)(5) of this clause. For incentive contracts, shares shall be added as a separate firm-fixed-price line item on the instant contract. The Contractor shall maintain records adequate to identify the first delivered unit for 3 years after final payment under this contract.

(2) The Contracting Officer shall calculate the Contractor's share of concurrent contract savings by—

(i) Subtracting from the reduction in price negotiated on the concurrent contract any Government costs or negative instant contract savings not yet offset; and

(ii) Multiplying the result by the Contractor's sharing rate.

(3) The Contracting Officer shall calculate the Contractor's share of future contract savings by—

(i) Multiplying the future unit cost reduction by the number of future contract units scheduled for delivery during the sharing period;

(ii) Subtracting any Government costs or negative instant contract savings not yet offset; and

(iii) Multiplying the result by the Contractor's sharing rate.

(4) When the Government wishes and the Contractor agrees, the Contractor's share of future contract savings may be paid in a single lump sum rather than in a series of payments over time as future contracts are awarded. Under this alternate procedure, the future contract savings may be calculated when the VECP is accepted, on the basis of the Contracting Officer's forecast of the number of units that will be delivered during the sharing period. The Contractor's share shall be included in a modification to this contract (see paragraph (h)(3) of this clause) and shall not be subject to subsequent adjustment.

(5) *Alternate no-cost settlement method.* When, in accordance with subsection 48.104-4 of the Federal Acquisition Regulation, the Government and the Contractor mutually agree to use the no-cost settlement method, the following applies:

(i) The Contractor will keep all the savings on the instant contract and on its concurrent contracts only.

(ii) The Government will keep all the savings resulting from concurrent contracts placed on other sources, savings from all future contracts, and all collateral savings.

(j) *Collateral savings.* If a VECP is accepted, the Contracting Officer will increase the instant contract amount, as specified in paragraph (h)(5) of this clause, by a rate from 20 to 100 percent, as determined by the Contracting Officer, of any projected collateral savings determined to be realized in a typical year of use after subtracting any Government costs not previously offset. However, the Contractor's share of collateral savings will not exceed the contract's firm-fixed-price, target price, target cost, or estimated cost, at the time the VECP is accepted, or \$100,000, whichever is greater. The Contracting Officer will be the sole determiner of the amount of collateral savings.

(k) *Relationship to other incentives.* Only those benefits of an accepted VECP not rewardable under performance, design-to-cost (production unit cost, operating and support costs, reliability and maintainability), or similar incentives shall be rewarded under this clause. However, the targets of such incentives affected by the VECP shall not be adjusted because of VECP acceptance. If this contract specifies targets but provides no incentive to surpass them, the value engineering sharing shall apply only to the amount of achievement better than target.

(l) *Subcontracts.* The Contractor shall include an appropriate value engineering clause in any subcontract of \$100,000 or more and may include one in subcontracts of lesser value. In

calculating any adjustment in this contract's price for instant contract savings (or negative instant contract savings), the Contractor's allowable development and implementation costs shall include any subcontractor's allowable development and implementation costs, and any value engineering incentive payments to a subcontractor, clearly resulting from a VECP accepted by the Government under this contract. The Contractor may choose any arrangement for subcontractor value engineering incentive payments, *provided*, that the payments shall not reduce the Government's share of concurrent or future contract savings or collateral savings.

(m) *Data*. The Contractor may restrict the Government's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:

These data, furnished under the Value Engineering clause of contract DE-AC29-01AL66444, shall not be disclosed outside the Government or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under the clause. This restriction does not limit the Government's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations.

If a VECP is accepted, the Contractor hereby grants the Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Government shall have the rights specified in the contract modification implementing the VECP and shall appropriately mark the data. (The terms "unlimited rights" and "limited rights" are defined in Part 27 of the Federal Acquisition Regulation.)

I.71 FAR 52.249-6 TERMINATION (COST REIMBURSEMENT) (MAY 2004) (A000) (M066)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part, if-

(1) The Contracting Officer determines that a termination is in the Government's interest; or

(2) The Contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the Contracting Officer) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.

(b) The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying whether termination is for default of the Contractor or for convenience of the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Contractor was not in default or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Government.

(c) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

- (1) Stop work as specified in the notice.
- (2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.
- (3) Terminate all subcontracts to the extent they relate to the work terminated.
- (4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
- (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this contract; approval or ratification will be final for purposes of this clause.
- (6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government-
 - (i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated;
 - (ii) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government; and
 - (iii) The jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this contract, the cost of which the Contractor has been or will be reimbursed under this contract.
- (7) Complete performance of the work not terminated.
- (8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.
- (9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in paragraph (c)(6) of this clause; *provided, however*, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any

transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(d) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(e) After expiration of the plant clearance period as defined in Subpart 49.001 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept the items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(f) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(g) Subject to paragraph (f) of this clause, the Contractor and the Contracting Officer may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The contract shall be amended, and the Contractor paid the agreed amount.

(h) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor, and shall pay that amount, which shall include the following:

(1) All costs reimbursable under this contract, not previously paid, for the performance of this contract before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue those costs as rapidly as practicable.

(2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in paragraph (h)(1) of this clause.

(3) The reasonable costs of settlement of the work terminated, including-