

**Part I - The Schedule**

**Section B**

**Supplies or Services and Prices/Costs**

**TABLE OF CONTENTS**

**B.1 TYPE OF CONTRACT—ITEMS BEING ACQUIRED ..... 1**

**B.2 AVAILABILITY OF FUNDS ..... 1**

**B.3 OBLIGATION OF FUNDS..... 1**

**B.4 ESTIMATED COST AND FEE..... 1**

**B.5 DEAR 970.5215-3 - CONDITIONAL PAYMENT OF FEE, PROFIT, OR INCENTIVE, ALT I AND ALT II (JAN 2003)..... 1**

**B.7 ALLOWABILITY OF SUBCONTRACTOR FEE..... 1**

## **B.1 TYPE OF CONTRACT—ITEMS BEING ACQUIRED**

This is a cost-plus-performance-based incentive fee type contract set-aside for small business for analytical services and testing at the 222-S Laboratory on the Hanford site.

## **B.2 AVAILABILITY OF FUNDS**

Except as may be specifically provided to the contrary in the Section I Clause DEAR 952.250-70 entitled, *Nuclear Hazards Indemnity Agreement (JUN 1996)*, the duties and obligations of the U.S. Department of Energy (DOE) hereunder calling for the expenditure of appropriated funds shall be subject to the availability of funds appropriated by the U.S. Congress that DOE may legally spend for such purposes.

## **B.3 OBLIGATION OF FUNDS**

Subject to the Section I Clause FAR 52.232-22 entitled, *Limitation of Funds (APR 1984)*, the contract value is estimated to be no more than \$X (including Performance Based Incentives). Funds will be obligated incrementally.

## **B.4 ESTIMATED COST AND FEE**

- (a) The maximum estimated cost of the Contract is \$X.
- (b) Maximum fee is the combined amount that can be earned if all performance incentives are reached by 100%. Performance based incentives are individually evaluated and applicable fee paid per the evaluated result. The maximum fee that may be earned by the Contractor under this Contract is \$TBD (less any adjustment made in accordance with Clause B.5 *Conditional Payment of Fee*).

## **B.5 DEAR 970.5215-3 - CONDITIONAL PAYMENT OF FEE, PROFIT, OR INCENTIVE, ALT I AND ALT II (JAN 2003)**

- (a) General. (1) The payment of earned fee, fixed fee, profit, or share of cost savings under this contract is dependent upon the contractor's or contractor employees' compliance with the terms and conditions of this contract relating to environment, safety and health (ES&H), which includes worker safety and health (WS&H), including performance under an approved Integrated Safety Management System (ISMS).
- (2) The ES&H performance requirements of this contract are set forth in its ES&H terms and conditions, including the DOE approved contractor ISMS or similar document. Financial incentives for timely mission accomplishment or cost effectiveness shall never compromise or impede full and effective implementation of the ISMS and full ES&H compliance.

(3) If the contractor does not meet the performance requirements of this contract relating to ES&H during any performance evaluation period established under the contract pursuant to the clause of this contract entitled, "Total Available Fee: Base Fee Amount and Performance Fee Amount," otherwise earned fee, fixed fee, profit or share of cost savings may be unilaterally reduced by the contracting officer.

(b) Reduction Amount. (1) The amount of earned fee, fixed fee, profit, or share of cost savings that may be unilaterally reduced will be determined by the severity of the performance failure pursuant to the degrees specified in paragraph (c) of this clause.

(2) If a reduction of earned fee, fixed fee, profit, or share of cost savings is warranted, unless mitigating factors apply, such reduction shall not be less than 26% nor greater than 100% of the amount of earned fee, fixed fee, profit, or the contractor's share of cost savings for a first degree performance failure, not less than 11% nor greater than 25% for a second degree performance failure, and up to 10% for a third degree performance failure.

(3) In determining the amount of the reduction and the applicability of mitigating factors, the contracting officer must consider the contractor's overall performance in meeting the ES&H requirements of the contract. Such consideration must include performance against any site specific performance criteria/requirements that provide additional definition, guidance for the amount of reduction, or guidance for the applicability of mitigating factors. In all cases, the contracting officer must consider mitigating factors that may warrant a reduction below the applicable range (see 48 CFR 970.1504-1-2). The mitigating factors include 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 ES&H and compliance in related areas.

(v) Contractor demonstration to the Contracting Officer's satisfaction that the principles of industrial ES&H standards are routinely practiced (e.g., Voluntary Protection Program Star Status, or ISO 14000 Certification).

(vi) Event caused by "Good Samaritan" act by the contractor (e.g., offsite emergency response).

(vii) Contractor demonstration that a performance measurement system is routinely used to improve and maintain ES&H performance (including effective

resource allocation) and to support DOE corporate decision-making (e.g., policy, ES&H programs).

(viii) Contractor demonstration that an Operating Experience and Feedback Program is functioning that demonstrably affects continuous improvement in ES&H by use of lessons-learned and best practices inter- and intra-DOE sites.

(d) Minimum requirements for specified level of performance. (1) At a minimum the contractor must perform the following:

(i) The requirements with specific incentives which do not require the achievement of cost efficiencies in order to be performed at the level of performance set forth in the Statement of Work, Work Authorization Directive, or similar document unless an otherwise minimum level of performance has been established in the specific incentive;

(ii) All of the performance requirements directly related to requirements specifically incentivized which do not require the achievement of cost efficiencies in order to be performed at a level of performance such that the overall performance of these related requirements is at an acceptable level; and

(iii) All other requirements at a level of performance such that the total performance of the contract is not jeopardized.

(2) The evaluation of the Contractor's achievement of the level of performance shall be unilaterally determined by the Government. To the extent that the Contractor fails to achieve the minimum performance levels specified in the Statement of Work, Work Authorization Directive, or similar document, during the performance evaluation period, the DOE Operations/Field Office Manager, or designee, may reduce any otherwise earned fee, fixed fee, profit, or shared net savings for the performance evaluation period. Such reduction shall not result in the total of earned fee, fixed fee, profit, or shared net savings being less than 25% of the total available fee amount. Such 25% shall include base fee, if any.

(e) Minimum requirements for cost performance. (1) Requirements incentivized by other than cost incentives must be performed within their specified cost constraint and must not adversely impact the costs of performing unrelated activities.

(2) The performance of requirements with a specific cost incentive must not adversely impact the costs of performing unrelated requirements.

(3) The contractor's performance within the stipulated cost performance levels for the performance evaluation period shall be determined by the Government. To the extent the contractor fails to achieve the stipulated cost performance levels, the DOE Operations/Field Office Manager, or designee, may reduce in whole or in part any otherwise earned fee, fixed fee, profit, or shared net savings for the performance evaluation period. Such reduction shall not result in the total of

earned fee, fixed fee, profit or shared net savings being less than 25% of the total available fee amount. Such 25% shall include base fee, if any.

## **B.6 FINAL FEE DETERMINATION**

(a) Upon successful completion of work as specified in Section C, the Contracting Officer shall determine the total fee earned by the Contractor consistent with the performance-based incentives, and any reductions made under any other clause of the contract. If the amount of the total fee earned is less than the total amount of all fee payments previously made to the Contractor, the Contractor shall reimburse DOE the difference. The difference is subject to FAR Clause 52.232-17, Interest (JUN 1996). If the amount of total fee earned is more than the total amount of all prior fee payments previously made to the Contractor, DOE shall pay the Contractor the difference.

(b) Termination. If this contract is terminated in its entirety, fee shall be payable to the Contractor consistent with paragraph (a) above. Nothing in this paragraph shall limit or restrict the application of FAR Clause 52.249-6, Termination (Cost-Reimbursement).

## **B.7 ALLOWABILITY OF SUBCONTRACTOR FEE**

All fee to be paid to members of a Contractor team, including affiliates, identified in the offer must be included in the incentive fee payable under Clause B.6. The term affiliate is defined as, associated business concerns or individuals if, directly or indirectly (1) either one controls or can control the other; or (2) a third party controls or can control both. A "Contractor team arrangement", as used in the FAR, means an arrangement in which, 1) Two or more companies form a partnership or joint venture to act as a potential prime contractor; or 2) A potential prime contractor agrees with one or more other companies to have them act as its subcontractors under a specified Government contract or acquisition program.

Firm-fixed price work performed by members of the contractor team arrangement following a price-competitive contract award are excluded from the above fee restrictions. The term 'competitive contract award' refers to awards made subsequent to DOE award of the prime contract.