# SOLICITATION, OFFER AND AWARD

1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700) | RATING | PAGE 1 OF PAGES 141

2. CONTRACT NUMBER: DE-EM0003714

3. SOLICITATION NUMBER: DE-SOL-0006499

4. TYPE OF SOLICITATION: ☐ SEALED BID (IFB) ☒ NEGOTIATED (RFP)

5. DATE ISSUED: 03/03/2015

6. REQUISITION/PURCHASE NUMBER: Not Applicable

7. ISSUED BY CODE 03001

EMCBC
U.S. Department of Energy
EM Consolidated Business Center
250 E. 5th Street, Suite 500
Cincinnati OH 45202

8. ADDRESS OFFER TO (If other than Item 7)

United States Department of Energy
ATTN: Bill Hensley, Contracting Officer
110 Boggs Lane
Springdale, OH 45246

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".

## SOLICITATION

9. Sealed offers in original and _____ copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if hand carried, in the depository located in _____ until 1600 ET (Hour) local time 04/07/2015 (Date)

CAUTION: LATE Submissions, Modifications, and Withdrawals: See Section L, Provision No. 52.214-7 or 52.215-1. All offers are subject to all terms and conditions contained in this solicitation.

10. FOR INFORMATION CALL:

| A. NAME | B. TELEPHONE (NO COLLECT CALLS) AREA CODE | NUMBER | EXT. | C. E-MAIL ADDRESS |
|---|---|---|---|---|
| Christopher A. Lockhart | 513 | 744-0996 | | christopher.lockhart@emcbc.doe |

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## OFFER (Must be fully completed by offeror)

NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.

12. In compliance with the above, the undersigned agrees, if this offer is accepted within _____ calendar days (60 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

13. DISCOUNT FOR PROMPT PAYMENT (See Section I, Clause No. 52.232.8)

| 10 CALENDAR DAYS (%) | 20 CALENDAR DAYS (%) | 30 CALENDAR DAYS (%) | CALENDAR DAYS (%) |
|---|---|---|---|
| | | | |

14. ACKNOWLEDGEMENT OF AMENDMENTS (The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated):

| AMENDMENT NO. | DATE | AMENDMENT NO. | DATE |
|---|---|---|---|
| 001 | 3/27/2015 | | |
| 002 | 4/24/2015 | | |

15A. NAME AND ADDRESS OF OFFEROR — CODE 5P4C0 FACILITY FC3435

Perma-Fix Environmental Services, Inc.
2800 Solway Road
Knoxville, TN 37931

16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print)

John Lash
Chief Operating Officer

15B. TELEPHONE NUMBER: AREA CODE 865 NUMBER 690-0501 EXT. 2106

15C. CHECK IF REMITTANCE ADDRESS ☒ IS DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS IN SCHEDULE.

17. SIGNATURE

18. OFFER DATE: April 6, 2015

## AWARD (To be completed by government)

19. ACCEPTED AS TO ITEMS NUMBERED: C.03.1; C.03.3; C.03.5

20. AMOUNT: $0.00

21. ACCOUNTING AND APPROPRIATION: Not Applicable

22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: ☐ 10 U.S.C. 2304 (c) ( ) ☐ 41 U.S.C. 253 (c) ( )

23. SUBMIT INVOICES TO ADDRESS SHOWN IN (4 copies unless otherwise specified) — ITEM: Section G

24. ADMINISTERED BY (If other than Item 7): US Department of Energy EMCBC CODE 03001

25. PAYMENT WILL BE MADE BY: Oak Ridge for EMCBC CODE 00511

26. NAME OF CONTRACTING OFFICER (Type or print): William B. Hensley

27. UNITED STATES OF AMERICA (Signature of Contracting Officer)

28. AWARD DATE: 06/04/2015

IMPORTANT - Award will be made on this Form, or on Standard Form 26, or by other authorized official written notice.

# PART 1 – THE SCHEDULE

## SECTION B

## SUPPLIES OR SERVICES PRICES / COST

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## B.01 SUMMARY OF BASIC ORDERING AGREEMENT

This is NOT a contract as defined by FAR 2.101. This Basic Ordering Agreement (BOA) is a written instrument of understanding negotiated between the Government and the Contractor. Firm-Fixed Price task orders or Indefinite Quantity task orders with Fixed-Unit-Rates may be issued off of this BOA and nothing in this BOA shall imply or guarantee any future orders with the Contractor. There is no guaranteed minimum dollar amount or volume of work that is associated with this agreement. If issued, individual orders will have a range of waste quantities and associated dollar values. If and when an order is placed against this BOA, and accepted by the Contractor through performance, the terms and conditions provided and agreed to herein will become binding on the individual order.

The BOA between DOE and the Contractor is for the purpose of providing all personnel, facilities, equipment, material, supplies, and services necessary for the treatment of Class A, B, and C Low-Level Waste (LLW) and Mixed Low-Level Waste (MLLW), liquid and solid polychlorinated biphenyls (PCBs), Toxic Substances Control Act (TSCA) wastes, and the performance of other ancillary waste services including Bulk Survey for Release (BSFR). This BOA supports the continued cleanup of the large volumes of LLW and MLLW contained throughout the Department of Energy (DOE) Office of Environmental Management (EM) complex. EM predominately generates and manages the vast majority of this waste through the remediation of former nuclear weapons production sites. This BOA supports DOE cleanup goals, the updated DOE Strategic Plan, and the EM mission by developing a thorough strategy to treat various wastes types

## B.02 PRICE

Services, quantities, surcharges, and extended prices for the treatment of waste covered under the scope of this BOA will be established at the competitive task order level. Therefore, in accordance with FAR 16.703 (c) (1), the method of determining prices under this BOA will be determined at the competitive task order level.

## B.03 OBLIGATION OF FUNDS

The amount of funds obligated and made available for payment will be stated in each task order.

## B.04 APPROVED WASTE TYPES

The Contractor has the required licenses, permits or authorizations to provide treatment services for the following waste types in Section C:

- C.03.1 LLW/MLLW Treatment Services
- C.03.3 Alternative Disposition Strategies (Recycle / Reuse)
- C.03.5 Ancillary Services

The Contractor may, at any time during the period of performance of this BOA, submit applicable, current, dated, and signed licenses, permits or authorizations required to treat additional waste types not previously approved for treatment under this BOA to the Contracting Officer for review and approval.

# PART I – THE SCHEDULE

## SECTION C – DESCRIPTIONS/SPECS./ WORK STATEMENT

## PERFORMANCE WORK STATEMENT (PWS)

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# SECTION C - PERFORMANCE WORK STATEMENT (PWS)

## C.00 BACKGROUND

The U.S. Department of Energy (DOE) requires the treatment of Low Level Waste (LLW) and Mixed Low Level Waste (MLLW). These wastes may also include liquid and solid Toxic Substances Control Act (TSCA) regulated waste e.g., polychlorinated biphenyls (PCBs), asbestos, etc. Waste material to be treated originates from Federal activities and includes clean-up, remediation, demolition, and operations waste, and or waste under the DOE's purview. These services support the EM mission of safely completing the cleanup of the environmental legacy brought about from five decades of nuclear weapons development and government-sponsored nuclear energy research. DOE seeks a variety of non-Federal LLW and MLLW Treatment Services, located in the United States, that provide cost-effective compliance with the Resource Conservation and Recovery Act of 1976 (RCRA), the Federal Facility Compliance Act (FFCA), state hazardous waste regulations, the Federal Facility Agreement (FFA), Toxic Substances Control Act (TSCA)/polychlorinated biphenyl (PCB) regulations, and any other applicable laws. DOE also seeks services such as; Bulk Survey for Release (BSFR), Restricted and Unrestricted Recycling/Reuse, Low Activity Waste (LAW) Services, Ancillary Services, and support in establishing authorized release limits.

Low-Level Waste (LLW) can be segmented into waste categories of Class A, Class B, Class C and Greater-Than-Class C (GTCC). These classifications are defined in the Nuclear Regulatory Commission (NRC) regulations (Title 10, Code of Federal Regulations [CFR], Part 61), based on potential LLW hazards, disposal, and waste form requirements. It is important to note that these classifications generally apply to NRC regulated LLW, and not DOE LLW. However, the classifications are relevant when DOE sends its waste to an NRC or Agreement State-regulated facility for treatment. Class A waste contains the least radioactivity, most of which comes from relatively short-lived radionuclides, which decay to background levels within a few decades. Class B waste is also relatively short-lived, but contains higher concentrations of short-lived radionuclides than Class A. Class C waste can contain higher concentrations of both short-lived and long-lived radionuclides, while GTCC is higher still. This Basic Ordering Agreement (BOA) allows for the treatment of recyclable/reusable materials. This BOA also allows access and use of the DOE Low Level / Mixed Low Level Waste Disposal IDIQ Contracts under Ancillary Services.

## C.01 OBJECTIVES

The BOA objectives are to provide:

(a) Treatment services for LLW and MLLW;
(b) BSFR services in accordance with NRC or Agreement State requirements;
(c) Alternative disposition strategies for any potential wastes that may not require licensed treatment and disposal (e.g., recycle/reuse).
(d) Low Activity Waste Services
(e) Ancillary services that may be necessary to establish these services.

Treatment categories include non-PCB, TSCA and RCRA regulated waste, PCB, RCRA metals, combustible, non-combustible, soils, sludges, solids, debris, organic constituents, elemental mercury and compounds, EPA waste codes for Ignitability (D001), Corrosivity (D002), Reactivity (D003), Toxicity due to contamination with RCRA-regulated toxic metals and organic

compounds (D004 through D043), F, K, P, and U, labpacks, compressed gasses, combustible liquids (non-wastewaters), non-combustible liquids (may be wastewaters, metal bearing inorganic wastes), liquid aqueous and organic RCRA non-wastewaters, slurries, and wastewaters. Certain waste streams may be classified and require special provisions. Treatment services for LLW and MLLW may include, but is not limited to, macro-encapsulation, stabilization, vacuum-assisted thermal desorption, thermal treatment, incineration, combustion, thermal destruction, solvated electron, labpacking, etc.

BSFR and directed disposal under LAW Services are licensed and or permitted processes approved by the appropriate regulatory agency (NRC or Agreement State) that allow for the survey and release of materials with extremely low levels of radioactive contamination for disposal in specified landfills.

Alternative disposition strategies for any potential wastes that may not require licensed treatment and disposal (e.g., recycle/reuse) is a licensed and/or permitted process approved by the appropriate regulatory agency (DOE, NRC, EPA, or Agreement State) that allows for the decontamination, if necessary, and the survey and release of materials with no detectable activity or extremely low levels of radioactive and/or chemical contamination for recycle or reuse in general or restricted commerce.

Ancillary Services include, but are not limited to: interim storage, transportation service, regulatory report writing, data analysis, assessments, interpretation, verification and presentation, variance requests, waste profiles, technical oversight of MLLW/LLW activities, and the establishment of Authorized Release Limits in accordance with DOE Order 458.1, Radiation Protection of the Public and the Environment.

## C.02 REGULATORY FRAMEWORKS

Cleanup activities at various sites may be governed by different agreements. The agreements will be specifically identified in the individual Task Orders and may be derived from the FFCA, CERCLA, RCRA, DOE Orders, DOE Manuals, NRC or Agreement State rules, or other site-specific requirements. Waste from DOE operations will need to be handled in accordance with all applicable laws, regulations and DOE Orders.

## C.03 REQUIREMENTS

The requirements are divided into five independent sections, corresponding to the BOA objectives: LLW/MLLW Treatment Services, BSFR Services, Alternative Disposition Strategies (Recycle/Reuse), Low Activity Waste, and Ancillary Services. ***The requirements for each section apply only to those Contractors who obtain an award for that section.***

Note: All days are calendar days unless otherwise specified.

### C.03.1 LLW/MLLW TREATMENT SERVICES

The purpose of this section is to provide comprehensive task-based treatment services for LLW/MLLW including unique, uncertain, multi-process, TSCA, RCRA, and/or other wastes that present unique problems for successful treatment. Some wastes may require special handling due to classification issues. This treatment scope includes, but is not limited to: waste characterization, treatability studies, macro-encapsulation, stabilization, concentration, vacuum-

assisted thermal desorption, thermal treatment, incineration, combustion, thermal destruction, solvated electron, labpacking and management of compressed gasses. Some wastes may present unique requirements when processing is conducted under DOE authority e.g., specific DOE Orders, security, badging, etc. Requirements and other interfaces will be defined in the specific Task Order.

1. A Waste Profile Record shall be developed for waste characterization together with waste samples, as necessary, to formulate a treatment method for the unique waste. The Waste Profile Record will be provided by the Ordering Activity/Waste Generator to the Contractor.

2. Scientifically accepted standards and procedures approved by applicable regulatory authorities shall be used in the formulation of a treatment method adhering to EPA requirements and the requirements of the treatment Contractor's licenses and permits.

3. The final waste form must comply with the waste acceptance criteria (WAC) identified within the specific task order.

4. The Contractor may be requested to review Ordering Activity/Waste Generator Sampling and Analysis Plans (SAPs). The SAPs will govern the sampling and analysis of wastes prior to shipment and will:

    a. Include mutually agreeable procedures for measurement of the physical, chemical, and radiological parameters of the radioactive and/or mixed radioactive waste at the Waste Generator site, as necessary, to ensure that the material complies with the treatment facilities WAC prior to shipment;
    b. Be consistent with the treatment facilities license and permit requirements;
    c. SAP reviews shall be completed within 30 days of request.

<u>Licenses, Permits and Regulatory</u>:

5. The Contractor shall furnish all personnel, labor, facilities, equipment, material, supplies, and services (except as may be expressly set forth in this BOA and/or any order as furnished by the Ordering Activity/Waste Generator) and otherwise do all things necessary for the treatment of LLW and/or MLLW.

6. The Contractor shall possess, maintain and keep current appropriate licenses and permits as required by federal, state and local laws and ordinances that enable receipt, storage and treatment of LLW and/or MLLW. All waste shall be treated in accordance with applicable laws, regulations, and DOE Orders (e.g., Section J, DOE Order 435.1*Chg 1 Radioactive Waste Management*, etc.). Treated waste shall meet the WAC and the Land Disposal Restriction treatment standards (MLLW only) of the designated disposal facility.

7. The Contractor shall, without additional expense to the Government, be responsible for complying with any federal, state, and municipal laws, codes, and regulations applicable for the facilities and equipment required to accomplish the scope of work.

8. Environmental, Safety and Health and Quality Assurance requirements shall apply, consistent with licenses and permits.

Title:

9. Wastes to be treated were generated as a result of operations and activities at Government facilities or under Government contracts. Responsibility for the waste remains with the Ordering Activity/Waste Generator until accepted by the treatment Contractor. DOE retains title through treatment and transportation to the waste disposal site.

Transportation:

10. The Ordering Activity/Waste Generator is responsible for the transportation of the waste unless otherwise specified, in the Task Order as part of Ancillary Services.

11. All waste or material shipped on an individual shipping manifest shall be considered a "shipment" under the terms of this BOA.

12. Upon acceptance and/or approval of waste generator supplied information specific to the waste stream to be accepted by the waste treatment provider under this BOA, the Contractor will issue a Notice to Transport to the waste generator within 5 days.

13. The Contractor shall provide services to survey vehicles used to transport the wastes to and from the contractor's site to verify radioactive contamination has occurred or not occurred upon vehicle arrival and before departure. The Contractor shall perform exposure, release decontamination and transportation surveys in accordance with its Radioactive Material License and 49 CFR – Transportation, and certify vehicles free of contamination exceeding release criteria. The Contractor shall maintain a record of all surveys. A copy shall be forwarded to the DCO and the waste generator shipping the waste upon request. Any vehicle contamination will be reported to the Ordering Activity/Waste Generator and DCO verbally and in writing within 24 hours of detection for determination of corrective action prior to decontamination and delivery vehicle release. Copies of survey reports shall be forwarded to the Ordering Activity/Waste Generator and DCO in cases where readings are above the contractor's Radioactive Material License or Department of Transportation (DOT) release criteria.

14. The Contractor shall prepare the various instruments of conveyance (trucks/trailers) for return to the provider. The Contractor shall provide packaging and shipping instructions for transport of the treated waste to the designated destination, in accordance with appropriate laws, regulations and guidelines.

Receipt of Waste:

15. The Contractor shall provide a Shipment Delivery Scheduler point of contact for scheduling shipments from the Ordering Activity/Waste Generators and for receipt of the DOT advanced shipment notifications. The Shipment Delivery Scheduler is documented in Section G, *Contract Administration Data*. The shipment documentation required under the Task Orders includes:

    a. Notice of Delivery: Not less than 5 working days prior to the shipping date of each waste stream shipment, the Contractor will be provided the following from the Ordering Activity/Waste Generator:

(1) The 5 Working Day Shipment Notification form;
(2) The Special Nuclear Material Exemption Certification form, if applicable (required when U-235, U-233, Pu-236, and Pu-238 through Pu-244 are present in the waste);
(3) A copy of the Waste Profile form for each waste stream to be treated;
(4) A copy of the Waste Shipment Manifest documentation, e.g., (NRC Forms 540 (Uniform Low-Level Radioactive Waste Manifest (Shipping Paper)), 541 (Uniform Low-Level Radioactive Waste Manifest (Container and Waste Description)), 542 (Uniform Low-Level Radioactive Waste Manifest (Manifest Index and Regional Compact Tabulation)), DOE and State forms.

b. Arrival Confirmation: Upon receipt of the above items, the Shipment Delivery Scheduler shall provide to the Ordering Activity/Waste Generator and DCO a date for delivery of the shipment and an Arrival Confirmation Number.

Note: The above listed items (a-b) will be provided to the Contractor by e-mail, mail, or facsimile.

16. The Contractor shall unload the radioactive waste using appropriate safety standards, guidelines, facility procedures and in accordance with its licenses, permits, and Federal, state, and local laws and ordinances.

17. In the event that the Contractor discovers that the transportation vehicle, rail car, containers, packaging, and/or markings of the delivered waste or material has failed to meet the U.S. DOT requirements under Title 49 CFR – Transportation, or any other applicable requirements, the Contractor shall document the infraction and notify the Ordering Activity/Waste Generator and the DCO within 24 hours by telephone upon discovery, and in writing within 48 hours. See requirements under Nonconformance.

<u>Operations</u>:

18. The Contractor shall not co-mingle DOE wastes with waste from non-DOE Waste Generators.

19. The Contractor shall complete all appropriate treatment, packaging, and certification functions within the provisions established in this BOA and the conditions and pricing in the resulting Task Orders while adhering to schedule requirements and all DOE and regulatory requirements.

20. All commercial Treatment, Storage and Disposal Facilities (TSDFs) under this BOA are required to be audited annually in accordance with *DOE Order 435.1, Chg 1 Radioactive Waste Management*, or equivalent (currently most facilities performing services for DOE rely on the DOE Consolidated Audit Program (DOECAP). DOECAP may also be used as the vehicle for other DOE or EM reviews deemed appropriate or required. The Contractor shall allow reasonable site access to personnel for these purposes.

21. The Contractor shall be liable for the repair or replacement of rail cars and trucks damaged by the Contractor in the performance of a Task Order. Notification of existing damage to conveyances received shall be provided to the Ordering Activity/Waste Generator, and the DCO within 24 hours of the incident. Contractor notification as required by this paragraph,

may be issued in writing by e-mail, facsimile or other electronic means provided such means results in verifiable evidence of the receipt of the required notification.

22. The Contractor shall properly treat and dispose of all byproduct, residual and secondary waste in compliance with Federal and state regulations and permits. These costs shall be included in the Task Orders' prices.

23. The Contractor shall treat the LLW and/or MLLW, and any secondary waste generated as a result of treatment in accordance with the time limitations specified in the contractor's permits, licenses, and applicable federal, state and local requirements. The Contractor shall notify the Waste Generator/Ordering Activity in writing at within sixty (60) days prior to exceeding any storage limit. The Contractor shall arrange for a compliant alternate storage location, if required, and shall be responsible for all expenses incurred as a result of transporting and storing DOE's waste until returned to DOE for final disposal. In the case where the treatment Contractor is not at fault, as determined by the DCO, the Ordering Activity/Waste Generator shall be responsible for applicable expenses incurred as a result of the delay.

Reporting Requirements:

24. Upon request, all documentation, records, and modifications, shall be submitted to the DCO within 48 hours.

25. The Contractor shall promptly (within 48 hours) respond, verbally and in writing, to questions regarding documentation and reports. Any associated costs shall be included in the Task Orders' prices.

26. As requested by the DCO, the Contractor shall provide complete documentation of: site permits for storage and treatment of waste, NRC or Agreement State Radioactive Materials License, Waste Acceptance Criteria (WAC), and any other authorizations, exemptions, RCRA permit requirements, applicable exemptions, revisions, and other requirement etc., documenting that the Contractor is permitted to receive, handle, store, and treat the specific type and quantity of radioisotopes present in the waste being treated under this BOA.

27. For laboratories not previously approved by DOE, prior to receiving samples for offsite analysis, the Contractor shall provide copies to the Ordering Activity/Waste Generator, within 10 days of request, of the current radioactive material licenses and most recent Audit Report supporting treatment as well as any required special certifications showing that the laboratory is qualified to perform the analysis. All samples sent to laboratories become the responsibility of the Contractor for disposition and costs should be included as part of the Task Order pricing. Any subsequent revisions to these requirements shall be supplied to the DCO, where applicable, within 10 days of the request.

28. The Contractor shall document treatment as appropriate for the type of waste and treatment required to ensure that Federal, State, and disposal site criteria have been met, and provide this documentation to the Ordering Activity/Waste Generator within 30 working days of completion of treatment.

29. For all Notice of Violations (NOVs) issued by regulatory agencies that may impact treatment of waste, the Contractor shall verbally notify the DCO within 24 hours. If any DOE waste

stream is involved or impacted, the Contractor will provide the NOV documentation. DOE will consider and handle this information as Business Sensitive.

30. The Contractor shall verbally notify the affected Ordering Activity/Waste Generator and the DCO within 48 hours of discovery of any event or condition impacting the scheduled receipt of waste, together with corrective actions planned and information on rescheduling of shipments.

31. On an annual basis, the Contractor shall provide a Waste Treatment Report to the CO and the EM Office of Disposal Operations (EM-31) and The Office of Disposition Planning and Policy (EM-32) documenting the following. A Final Summary Report shall be provided to the CO within 30 days after completion of all task orders issued under this BOA and shall contain:

    a. Monthly waste shipments including weights, volumes, source, radionuclide content/characterization data, treatment methods and Waste Profile Record results.

    b. All vehicle contamination exceeding release criteria shall be identified. A listing of any deviated or rejected shipments during the period including any corrective action (e.g., treatment of nonconforming waste for excess moisture) performed by the contractor; compliance, permitting or regulatory problems and resolution for the previous quarter; and occurrences or events, which adversely affected treatment operations and their associated impact on operations and scheduled receipt or treatment.

<u>Nonconformance</u>:

32. The Contractor shall have no obligation to receive, handle, store, or treat any nonconforming waste material delivered to the Contractor's facility which is defined as: material delivered that does not comply with the Contractor's licenses, permits or regulations, and/or that does not comply with the Waste Generator's Waste Profile (e.g., manifesting errors, contamination resulting from failure to comply with packaging, marking and shipment of material in accordance with DOT Title 49 CFR – Transportation, shipment is delivered to the facility without a "Notice to Transport"). The determination of nonconformance shall be made unilaterally by the DCO.

33. Upon delivery to the Contractor's facility, if the loaded transport vehicle, containers or waste do not conform to the requirements of the treatment facility's licenses or permits, or DOT, Title 49 CFR – Transportation the Waste Generator's Waste profile, or arrive damaged or unusually difficult to unload, the Contractor shall notify the Ordering Activity/Waste Generator within 24 hours by telephone (to be followed by written notification within 48 hours) of the discovery for negotiation of a resolution. Non-conforming items may be identified upon receipt of the transport vehicle, during or after unloading, during sampling and/or treatment. Resolution may be, but is not limited to, the following:

    a. Contractor may provide a proposed corrective action with an estimate of the cost to correct.
    b. The Ordering Activity/Waste Generator may arrange for the waste to be returned to the origin site at the Ordering Activity/Waste Generator's expense.
    c. Ordering Activity/Waste Generator may direct an alternative course of action.
    d. Either party may negotiate a rejection of the shipment.

e. The costs incidental to returning the shipment shall be borne by the Ordering Activity/Waste Generator.
f. The parties shall negotiate an equitable adjustment to the Task Order for the management and/or return to the origin site, consistent with the provisions of this BOA.

34. Any waste or material that fails to meet disposal facility WAC and/or Land Disposal Restrictions after treatment (MLLW only), as determined by the DCO, shall be retreated by the Contractor at no additional cost to DOE until the waste qualifies for disposal. If all reasonable attempts to reprocess the waste fail, the contractor shall prepare the waste for return to DOE for storage. The Contractor shall bear all processing expense for any waste that the Contractor is unable to treat. The Contractor shall refund any partial payment that may have been paid within ten days of shipment of the waste to the Waste Generator.

    In the case where the Ordering Activity/Waste Generator is at fault for inadequate or faulty waste characterization data, as determined by the DCO, the Ordering Activity/Waste Generator is responsible for costs to further characterize and treat the waste. The Ordering Activity/Waste Generator may request that the Contractor return the waste to the originating site, with associated waste data, or to some mutually agreed-to destination, at the Ordering Activity/Waste Generator's expense.

**C.03.2 BULK SURVEY FOR RELEASE SERVICES**

The purpose of this section is to provide comprehensive task-based service for disposal of materials with extremely low levels of radioactive contamination. Bulk Survey for Release (BSFR) Services is developed in order to have a standardized process to analyze materials with extremely low levels of radioactive contamination for disposal in specified landfills. These levels of contamination, while detectable with modern equipment, pose no hazard to human health or the environment, as determined by the licensing authority.

Bulk Survey for Release (BSFR) is a term for a licensed process that has been approved by the Contractor's radioactive material regulators to allow the disposal of materials with extremely low levels of radioactive contamination specified landfills. Materials that are candidates for the BSFR program are of such low levels regulatory entities have exempted them from further regulation as a radioactive material and allow their unrestricted disposal.

BSFR Services consists of the Contractor surveying, sampling, and otherwise evaluating wastes potentially containing extremely low concentrations of residual radioactive material for disposition to an approved landfill that is not necessarily a LLW landfill. Depending on the specific licenses and permits held by the Contractor and the specified landfill used for disposal, RCRA and TSCA regulated wastes are not precluded from the BSFR Services process.

Once the Contractor determines the wastes meets their approved authorized release criteria, the BSFR waste is then be transferred under their license authority for directed disposal to an approved landfill. This disposal alternative for BSFR shall remain under stringent regulatory controls and shall be determined by the Contractor's regulators to be protective of the worker, the public, and the environment. As such, DOE requires both a certificate of release from the contractor's radioactive material license and a certificate of disposal from the receiving landfill.

DOE recognizes Atomic Energy Act (AEA) authority equivalencies for activities regulated by the Nuclear Regulatory Commission (NRC) or regulated by an NRC Agreement State under NRC

AEA delegated authorities including the authorized release process. DOE will perform an initial evaluation of the BSFR program as part of the initial contract award and subsequently afterwards under the DOECAP audits annually. The Contractor shall submit sufficient documentation for DOE to evaluate the adequacy of their BSFR program during these evaluations.

The Contractor conducting these radiological authorized release activities must develop and implement a documented program which addresses compliance with the specific requirements in the BSFR licensed program that are relevant to the particular activities being conducted.

(1) The program, (documented by the Contractor‘s plans, procedures, protocols and other documents developed to implement the relevant requirements) must be tailored to these activities and reflect a graded approach commensurate with the hazard or risk to the public and the environment resulting from the Contractor’s BSFR operations.

(2) Where long-term stewardship and institutional controls for protection of the public and the environment are necessary to meet the specific requirements in the Contractor’s license, the Contractor must ensure that the need for the controls is documented and maintained and to the extent the contractor is responsible, implement the controls. If the contractor is not responsible for implementation of the controls, the contractor must provide reasonable assurance that necessary controls are being implemented by the responsible party prior to conducting activities that can affect the public or the environment.

Regardless of the performer of the work, the Contractor under their licensed authority is responsible for complying with the requirements of this contract and flowing down those requirements to subcontractors at any tier to the extent necessary to ensure contractor compliance with their license requirements.

<u>Licenses, Permits and Regulatory</u>:

1. The Contractor shall furnish all personnel, labor, facilities, equipment, material, supplies, and services (except as may be expressly set forth in this BOA and/or any order as furnished by the Ordering Activity/Waste Generator) and otherwise do all things necessary, with the exception of review and approval of authorized limits which will be done by DOE, for the release of material to qualified landfills.

2. The Contractor shall possess, maintain, and keep current appropriate licenses and permits as required by Federal, state and local laws and ordinances that enable BSFR. All waste shall be released in accordance with applicable laws, regulations, and DOE Orders (e.g., Section J, DOE Order 435.1 *Chg. 1 Radioactive Waste Management*, and DOE Order 458.1, *Radiation Protection of the Public and the Environment, Section 4.k, as applicable*). BSFR waste shall meet the waste acceptance criteria of the designated landfill.

3. The Contractor shall, without additional expense to the Government, be responsible for complying with any Federal, state, and municipal laws, codes, and regulations applicable for the facilities and equipment required to accomplish the applicable scope of work.

4. Environmental, Safety and Health and Quality Assurance requirements shall apply, consistent with licenses and permits.

Title:

5. Title to the material shall pass to the Contractor upon the Contractor's issuance of a "Certification of Release," regardless of when or where the Contractor takes physical possession. Title and all other incidents to the material shall thereupon transfer from the Ordering Activity/Waste Generator and shall be held by the Contractor. The Ordering Activity/Waste Generator shall have no rights to recovery of any material contained in the waste material nor any credit for its potential value, unless specifically specified in the Task Order. Documentation shall be provided to the Ordering Activity/Waste Generator and the DCO within 15 days after approval.

6. All invoices for BSFR services must be submitted with a certificate of disposal from the receiving disposal facility; and a signed statement from the Contractor stating that all BSFR waste received at their facility under the task order has been compliantly transferred to that disposal facility per their approved BSFR program.

Transportation:

7. The Ordering Activity/Waste Generator is responsible for the transportation of the waste unless otherwise specified, in the Task Order as part of Ancillary Services.

8. All LLW and MLLW material shipped from the Ordering Activity/Waste Generator on an individual shipping manifest shall be considered a "shipment" under the terms of a Task Order.

9. Upon acceptance and/or approval of waste generator supplied information specific to the waste stream to be accepted by the waste treatment provider under this BOA, the Contractor will issue a Notice to Transport to the waste generator within 5 days.

10. The Contractor shall provide services to survey vehicles used to transport the wastes to and from the Contractor's site to verify radioactive contamination has occurred or not occurred upon vehicle arrival and before departure. The Contractor shall perform exposure, release decontamination and transportation surveys in accordance with its Radioactive Material License and 49 CFR – Transportation, and vehicles shall be certified free of contamination exceeding release criteria. The Contractor shall maintain a record of all surveys. A copy shall be forwarded to the DCO and the waste generator shipping the waste upon request. Any vehicle contamination will be reported to the Ordering Activity/Waste Generator and DCO within 24 hours of detection for determination of corrective action prior to decontamination and delivery vehicle release. Copies of survey reports shall be forwarded to the Ordering Activity/Waste Generator and DCO in cases where readings are above the Contractor's Radioactive Material License or DOT release criteria.

11. The Contractor shall prepare the various instruments of conveyance (trucks/trailers) for return to the provider.

Receipt of Low Level and Mixed Low Level Waste:

12. The Contractor shall provide a Shipment Delivery Scheduler point of contact for scheduling shipments from the Ordering Activity/Waste Generators and for receipt of the DOT advanced shipment notifications. The Shipment Delivery Scheduler is documented in Section G,

*Contract Administration Data*. The shipment documentation required under the Task Orders includes:

a. Notice of Delivery: Not less than 5 working days prior to the shipping date of each waste stream shipment, the Contractor will be provided the following from the Ordering Activity/Waste Generator:

   (1) The 5 Working Day Shipment Notification form;
   (2) The Special Nuclear Material Exemption Certification form, if applicable (required when U-235, U-233, Pu-236, and Pu-238 through Pu-244 are present in the waste);
   (3) A copy of the Waste Profile form for each waste stream to be released;
   (4) A copy of the Waste Shipment Manifest documentation, e.g., (NRC Forms 540 (Uniform Low-Level Radioactive Waste Manifest (Shipping Paper)), 541 (Uniform Low-Level Radioactive Waste Manifest (Container and Waste Description)), 542 (Uniform Low-Level Radioactive Waste Manifest (Manifest Index and Regional Compact Tabulation)), DOE and State forms.

b. Arrival Confirmation: Upon receipt of the above items, the Shipment Delivery Scheduler shall provide to the Ordering Activity/Waste Generator and DCO a date for delivery of the shipment and an Arrival Confirmation Number.

Note: The above listed items (a-b) will be provided to the Contractor by e-mail, mail, or facsimile.

13. The Contractor shall unload the LLW using appropriate safety standards, guidelines, facility procedures and in accordance with its licenses, permits, and Federal, state, and local laws and ordinances.

14. In the event that the Contractor discovers that the transportation vehicle, rail car, containers, packaging, and/or markings of the delivered waste material has failed to meet the U.S. DOT requirements under Title 49 CFR – Transportation, or any other applicable requirements, the Contractor shall document the infraction and notify the Ordering Activity/Waste Generator and the DCO within 24 hours by telephone upon discovery, and in writing within 48 hours. See requirements under Nonconformance.

<u>Operations</u>:

15. The Contractor shall complete all appropriate BSFR functions within the prices established in the resulting Task Orders while adhering to schedule requirements and all applicable DOE and regulatory requirements.

16. All commercial TSDFs are required to be audited annually in accordance with DOE Order 435.1, *Chg. 1 Radioactive Waste Management*, or equivalent (currently most facilities performing services for DOE rely on the DOECAP). DOECAP may also be used as the vehicle for other DOE or EM reviews deemed appropriate or required. The Contractor shall allow reasonable site access to personnel for these purposes. Any costs shall be included in the resulting Task Order's prices.

17. The Contractor shall be liable for the repair or replacement of rail cars and trucks damaged by the Contractor in the performance of the Task Order. Notification of existing damage to

conveyances received under this BOA shall be provided to the Ordering Activity/Waste Generator and the DCO within 24 hours of the incident. Contractor notification as required by this paragraph, may be issued by e-mail, facsimile or other electronic means provided such means results in verifiable evidence of the receipt of the required notification.

18. The Contractor shall properly treat and dispose of all byproduct, residual and secondary waste (if any) in compliance with Federal and state regulations and permits and DOE authorized limits. These costs shall be included in the resulting Task Order's prices.

Reporting Requirements:

19. Upon requested, all documentation, records, and modifications, shall be submitted to the DCO within 48 hours.

20. The Contractor shall promptly (within 48 hours) respond to questions regarding documentation and reports. Any associated costs shall be included in the resulting Task Order's prices.

21. Upon request, the Contractor shall provide the Ordering Activity/Waste Generator or DCO with a copy of the Certification of Release.

22. As requested by the DCO, the Contractor shall provide complete documentation of: site permits for storage and treatment of waste, NRC or Agreement State Radioactive Materials License, Waste Acceptance Criteria (WAC), and any other authorizations, RCRA permit requirements, applicable exemptions, revisions, and other requirement etc., documenting that the Contractor is permitted to receive, handle, store, and treat the specific type and quantity of radioisotopes present in the waste being treated under this BOA.

23. For laboratories not previously approved by DOE, the Contractor shall provide copies to the Ordering Activity/Waste Generator, within 10 days of request, of the current radioactive material licenses and most recent Audit Report supporting BSFR as well as any required special certifications showing that the laboratory is qualified to perform the analysis. Any subsequent revisions to these requirements shall be supplied to the DCO, where applicable, within 10 days of the revision approval.

24. For all NOVs issued by regulatory agencies that may impact release of waste, the Contractor shall verbally notify the DCO within 24 hours. If any DOE waste stream is involved or impacted, the Contractor will provide the NOV documentation. DOE will consider and handle this information as Business Sensitive.

25. The Contractor shall verbally notify the affected Ordering Activity/Waste Generator and the DCO within 48 hours of discovery of any event or condition impacting the scheduled receipt of waste, together with corrective actions planned and information on rescheduling of shipments.

26. On an annual basis, the Contractor shall provide a Report to the CO and the EM Office of Disposal Operations (EM-31) and the Office of Disposition Planning and Policy (EM-32) documenting the following. A Final Summary Report shall be provided to the CO within 30 days after completion all of task orders issued under of this BOA and shall contain:

a. Monthly waste shipments including weights, volumes, source of material, and disposition of the material.

b. Any material, including weights volume and source, received that did not meet the BSFR requirements, and the disposition of the material.

Nonconformance:

27. The Contractor shall have no obligation to receive, handle, store, or release any nonconforming waste material delivered to the Contractor's facility which is defined as: material delivered that does not comply with the contractor's licenses, permits or regulations, and/or that does not comply with the Waste Generator's Waste Profile (e.g., manifesting errors , contamination in excess of applicable criteria which may include DOE Order 458.1 levels for release to the public, resulting from failure to comply with packaging, marking and shipment of material in accordance with DOT Title 49 CFR – Transportation, shipment is delivered to the facility without a "Notice to Transport"). The determination of nonconformance shall be made unilaterally by the DCO.

28. Upon delivery to the Contractor's facility, if the loaded transport vehicle, containers, or waste do not conform to the requirements of the Contractor's licenses or permits, or DOT, Title 49 CFR – Transportation, the Waste Generator's Waste profile, or arrive damaged or unusually difficult to unload, the Contractor shall notify the Ordering Activity/Waste Generator with 24 hours by telephone (to be followed by written notification within 48 hours) of the discovery for negotiation of a resolution. Non-conforming items may be identified upon receipt of the transport vehicle, during or after unloading, during sampling and/or treatment. Resolution may be, but is not limited to the following:

    a. Contractor may provide a proposed corrective action with an estimate of the cost to correct.
    b. The Ordering Activity/Waste Generator may arrange for the waste to be returned to the origin site at the Ordering Activity/Waste Generator's expense.
    c. Ordering Activity/Waste Generator may direct an alternative course of action.
    d. Either party may negotiate a rejection of the shipment.
    e. The costs incidental to returning the shipment shall be borne by the Ordering Activity/Waste Generator.
    f. The parties shall negotiate an equitable adjustment to the Task Order for the management and/or return to the origin site, consistent with the provisions of this BOA.

29. Any waste that fails to meet landfill WAC or applicable DOE authorized limits due to some error, fault or oversight of the Contractor, as determined by the DCO, shall be processed by the Contractor at no additional cost to DOE until the waste qualifies for release or disposal. If all reasonable attempts to process the waste fail, the facility shall prepare the waste for return to DOE for storage. The BSFR facility shall bear all processing expense for any waste that the Contractor is unable to release due to no fault or error of its own. The Contractor shall refund any partial payment that may have been paid within ten days of shipment of the waste to the Ordering Activity/Waste Generator.

    If the Contractor cannot release the material to the BSFR criteria and DOE authorized limit if applicable through no fault of the Contractor, as determined by the DCO, the LLW shall be disposed of at an appropriate LLW facility, at DOE's expense, as agreed to by the Ordering

Activity/Waste Generator and Contractor. In the case where the Ordering Activity/Waste Generator is at fault for inadequate or faulty waste characterization data, as determined by the DCO, the Ordering Activity/Waste Generator is responsible for costs to further characterize and treat the waste. The Ordering Activity/Waste Generator may request that the BSFR facility return the waste to the originating site, with associated waste data, or to some mutually agreed-to destination, at the Ordering Activity/Waste Generator's expense.

## C.03.3 ALTERNATIVE DISPOSITION STRATEGIES (RECYCLE/REUSE)

The Federal Government, in particular the U.S. Department of Energy, has an indeterminate amount of potentially contaminated radioactive material that could be recycled, reused or disposed as material exempt from the NRC and/or NRC Agreement State's requirements for radioactive waste and which complies with DOE authorized limits if applicable. The material is in the form of small to large pieces of metal, structural steel, equipment and vehicles. The material may be in scrap piles, outside locations and stored in containers, and/or it may be located within underutilized or abandoned facilities.

The Federal Government desires to divest itself of surplus material such as scrap metal, equipment, vehicles, etc., that cannot be made readily available to the general public. The material is believed to have some value to certain commercial enterprises; therefore, the material is not considered waste. The material meets the definition of personal property as stated in the Federal Acquisition Regulation. Some of the material may be radioactively contaminated and regulated under the Atomic Energy Act of 1954, as amended Compliance with the DOE metal moratorium and suspension will be DOE's responsibility, not the Contractor's.

The Contractor shall disposition the material by decontamination, sorting, segregating, or by other means, processing the material at the Contractor's facility (ies). The requirements shall be specified in each task order.

<u>Licenses, Permits and Regulatory</u>:

1. The Contractor shall furnish all personnel, labor, facilities, equipment, material, supplies, and services (except as may be expressly set forth in this contract and/or any order as furnished by the Ordering Activity/material Generator) and otherwise do all things necessary for the release of Material to restricted or unrestricted use per their licenses, permits and DOE requirements in orders 435.1 and 458.1.

2. The Contractor shall possess, maintain and keep current appropriate licenses and permits as required by federal, state and local laws and ordinances that enable recycle or reuse. All materials shall be released in accordance with applicable laws, regulations, and DOE Orders.

3. The Contractor shall, without additional expense to the Government, be responsible for complying with any federal, state, and municipal laws, codes, and regulations and DOE Orders applicable to the facilities and equipment required to accomplish the applicable scope of work.

4. Environmental, Safety and Health and Quality Assurance requirements shall apply, consistent with licenses and permits.

5. When the material subject to transfer is radioactively or potentially contaminated, the Contractor shall comply with Federal requirements for all activities performed at that their facility. It is anticipated that only minimal decontamination processing to expedite handling, loading, and transporting of the material will be permitted at the federal work site. Material located at the Contractor's facilities shall be managed and regulated in accordance with the terms and conditions of its Nuclear Regulatory Commission (NRC) or NRC Agreement State license.

Title:

6. Title to the material shall pass to the recycle/reuse facility upon the Contractor's issuance of a "Certification of Release," regardless of when or where the facility takes physical possession. Title and all other incidents to the material shall thereupon transfer from the Ordering Activity/material generator and shall be held by the recycle/reuse Contractor. The Ordering Activity/waste generator shall have rights to recovery of any material contained in the waste material and its potential value as specified in the task order. Documentation shall be provided to the Ordering Activity/material generator and the DCO within 15 days after approval.

Transportation:

7. The Ordering Activity/Waste Generator is responsible for the transportation of the material unless otherwise specified, in the Task Order as part of Ancillary Services.

8. All materials shipped from the material generator on an individual shipping manifest shall be considered a "shipment".

9. Upon acceptance and/or approval of material generator supplied information specific to the material stream to be accepted by the waste treatment provider, the Contractor will issue a Notice to Transport to the waste generator within 5 days.

10. The Contractor shall provide services to survey vehicles used to transport the material to and from the Contractor's site to verify radioactive contamination has occurred or not occurred upon vehicle arrival and before departure. The Contractor shall perform exposure, release decontamination and transportation surveys in accordance with its Radioactive Material License and 49 CFR – Transportation, and certify meeting release criteria. The Contractor shall maintain a record of all surveys. A copy shall be forwarded to the DCO and the material generator shipping the material upon request. Any vehicle contamination will be reported to the Ordering Activity/Material Generator and DCO within 24 hours of detection for determination of corrective action prior to decontamination and delivery vehicle release. Copies of survey reports shall be forwarded to the Ordering Activity/Material Generator and DCO in cases where readings are above the Contractor's Radioactive Material License or DOT release criteria.

11. The Contractor shall prepare the various instruments of conveyance (trucks/trailers) for return to the provider.

Receipt of Waste and Material:

12. The Contractor shall provide a Shipment Delivery Scheduler point of contact for scheduling shipments from the Ordering Activity/Material Generators and for receipt of the DOT advanced shipment notifications. The Shipment Delivery Scheduler is documented in Section G, *Contract Administration Data*. The shipment documentation required under the Task Orders includes:

    a. Notice of Delivery: Not less than 5 working days prior to the shipping date of each material stream shipment, the Contractor will be provided the following from the Ordering Activity/Material Generator:

        (1) The 5 Working Day Shipment Notification form;
        (2) The Special Nuclear Material Exemption Certification form, if applicable (required when U-235, U-233, Pu-236, and Pu-238 through Pu-244 are present in the material);
        (3) A copy of the Material Profile form for each material stream to be released;
        (4) A copy of the Shipment Manifest documentation, and DOE and State forms.

    b. Arrival Confirmation: Upon receipt of the above items, the Shipment Delivery Scheduler shall provide to the Ordering Activity/Material Generator and DCO a date for delivery of the shipment and an Arrival Confirmation Number.

Note: The above listed items (a-b) will be provided to the Contractor by e-mail, mail, or facsimile.

13. The Contractor shall unload the material using appropriate safety standards, guidelines, facility procedures and in accordance with its licenses, permits, and Federal, state, and local laws and ordinances.

14. In the event that the Contractor discovers that the transportation vehicle, rail car, containers, packaging, and/or markings of the delivered material has failed to meet the U.S. DOT requirements under Title 49 CFR – Transportation, or any other applicable requirements, the Contractor shall document the infraction and notify the Ordering Activity/Material Generator and the DCO within 24 hours by telephone upon discovery, and in writing within 48 hours. See requirements under Nonconformance.

Operations:

15. The Contractor shall complete all appropriate recycle/recuse functions within the prices established in the resulting Task Orders while adhering to schedule requirements and all applicable DOE and regulatory requirements.

16. All commercial TSDFs are required to be audited annually in accordance with DOE Order 435.1 *Chg. 1 Radioactive Waste Management* or equivalent (currently most facilities performing services for DOE rely on the DOECAP). DOECAP may also be used as the vehicle for other DOE or EM reviews deemed appropriate or required. The Contractor shall allow reasonable site access to personnel for these purposes. Any costs shall be included in the resulting Task Order's prices.

17. The Contractor shall be liable for the repair or replacement of rail cars and trucks damaged by the Contractor in the performance of the Task Orders. Notification of existing damage to conveyances received shall be provided to the Ordering Activity/ Material Generator, and the DCO within 24 hours of the incident. Contractor notification as required by this paragraph, may be issued by e-mail, facsimile or other electronic means provided such means results in verifiable evidence of the receipt of the required notification.

18. The recycle/reuse facility shall properly treat and dispose of all byproduct, residual and secondary waste (if any) in compliance with Federal and state regulations, permits, and Orders. These costs shall be included the resulting Task Order' prices.

Reporting Requirements:

19. Upon request, all documentation, records, and modifications, shall be submitted to the DCO within 48 hours.

20. The Contractor shall promptly (within 48 hours) respond to questions regarding documentation and reports. These associated costs shall be included in the Task Orders' prices.

21. Upon request, the Contractor shall provide the Ordering Activity/Material Generator or DCO a copy of the Certification of Release.

22. As requested by the DCO, the Contractor shall provide complete documentation of: site permits for storage and treatment of waste, NRC or Agreement State Radioactive Materials License, Waste Acceptance Criteria (WAC), and any other authorizations, RCRA permit requirements, applicable exemptions, revisions, and other requirement etc., documenting that the contractor is permitted to receive, handle, store, and treat the specific type and quantity of radioisotopes present in the waste being treated under this BOA.

23. For laboratories not previously approved by DOE, the Contractor shall provide copies to the Ordering Activity/Waste Generator, within 10 days of request, of the current radioactive material licenses and most recent Audit Report supporting recycle/reuse as well as any required special certifications showing that the laboratory is qualified to perform the analysis. Any subsequent revisions to these requirements shall be supplied to the DCO, where applicable, within 10 days of the revision approval.

24. For all NOVs issued by regulatory agencies that may impact release of materials, the Contractor shall verbally notify the DCO within 24 hours. If any DOE material stream is involved or impacted, the Contractor will provide the NOV documentation. DOE will consider and handle this information as Business Sensitive.

25. The Contractor shall verbally notify the affected Ordering Activity/Waste Generator and the DCO within 48 hours of discovery of any event or condition impacting the scheduled receipt of material, together with corrective actions planned and information on rescheduling of shipments.

26. On an annual basis, the Contractor shall provide a Report to the CO, the EM Office of Disposal Operations (EM-31), and the Office of Disposition Planning and Policy (EM-32)

documenting the following. A Final Summary Report shall be provided within 30 days after completion of this BOA and shall contain:

a. Monthly waste shipments including weights, volumes, source, radionuclide content/characterization data, any treatment if applicable and the disposition of the material.

b. Any material received which could not be managed with the alternative disposal strategies available and the disposition of the material.

Nonconformance:

27. The Contractor shall have no obligation to receive, handle, store, or release any nonconforming material delivered to the Contractor's facility which is defined as: material delivered that does not comply with the Contractor's licenses, permits or regulations, and/or that does not comply with the Material Generator's Waste Profile (e.g., manifesting errors, contamination results from failure to comply with packaging, marking and shipment of material in accordance with DOT Title 49 CFR – Transportation, shipment is delivered to the facility without a "Notice to Transport"). The determination of nonconformance shall be made unilaterally by the DCO.

28. Upon delivery to the Contractor's facility, if the loaded transport vehicle, containers, or waste do not conform to the requirements of the contractor's licenses or permits, or DOT, Title 49 CFR-Transportation , the Material Generator's Waste profile, or arrive damaged or unusually difficult to unload, the Contractor shall notify the Ordering Activity/ Material Generator with 24 hours by telephone (to be followed by written notification within 48 hours) of the discovery for negotiation of a resolution. Non-conforming items may be identified upon receipt of the transport vehicle, during or after unloading, during sampling and/or treatment. Resolution may be, but is not limited to, the following:

    a. Contractor may provide a proposed corrective action with an estimate of the cost to correct.

    b. Ordering Activity/Material Generator may arrange for the waste to be returned to the origin site at the Ordering Activity/Waste Generator's expense.

    c. Ordering Activity/ Material Generator may direct an alternative course of action.

    d. Either party may negotiate a rejection of the shipment.

    e. The costs incidental to returning the shipment shall be borne by the Ordering Activity/ Material Generator.

    f. The parties shall negotiate an equitable adjustment to the Task Order for the management and/or return to the origin site, consistent with the provisions of this BOA.

29. Any material that fails to meet restricted or unrestricted release criteria due to some error, fault or oversight of the recycle/reuse contractor, as determined by the DCO, shall be processed by the recycle/reuse Contractor at no additional cost to DOE until the material waste qualifies for release or disposal. If all reasonable attempts to process the material fail,

the contractor shall prepare the material for return to DOE for storage. The recycle/reuse contractor shall bear all processing expense for any material that the contractor is unable to release due to fault or error of its own. The Contractor shall refund any partial payment that may have been paid within ten (10) days of shipment of the waste to the Ordering Activity/Waste Generator.

If the Contractor, though no fault of its own, cannot release the material to their permit and licensing criteria and DOE Order 458.1 requirements as determined by the DCO, the material shall be managed at an appropriate M/LLW facility, at DOE's expense, as agreed to by the Ordering Activity/Material Generator and the Contractor. In the case where the Ordering Activity/Material Generator is at fault for inadequate or faulty material characterization data, as determined by the DCO, the Ordering Activity/Material Generator is responsible for costs to further characterize and treat the waste. The Ordering Activity/Material Generator may request that the recycle/reuse Contractor return the waste to the originating site, with associated waste data, or to some mutually agreed-to destination, at the Ordering Activity/Material Generator's expense.

## C.03.4 LOW ACTIVITY WASTE SERVICES

Low Activity Waste (LAW) Services consists of the Contractor surveying, sampling, and otherwise evaluating wastes potentially containing low concentrations of residual radioactive material for alternative disposition to an approved landfill that is not necessarily a LLW landfill. Depending on the specific licenses and permits held by the Contractor, RCRA and TSCA regulated wastes are not precluded from the LAW Services process.

Once the Contractor determines the wastes meets their approved authorized release criteria, the LAW is then be transferred under their license authority for directed disposal to an approved landfill. This disposal alternative for LAW shall remain under stringent regulatory controls and shall be determined by the Contractor's regulators to be protective of the worker, the public, and the environment.

DOE recognizes Atomic Energy Act (AEA) authority equivalencies for activities regulated by the Nuclear Regulatory Commission (NRC) or regulated by an NRC Agreement State under NRC AEA delegated authorities including the authorized release process. DOE will perform an initial evaluation of the LAW program as part of the initial contract award and subsequently afterwards under the DOECAP audits annually. The Contractor shall submit sufficient documentation for DOE to evaluate the adequacy of their LAW program during these evaluations.

The Contractor conducting these radiological authorized release activities must develop and implement a documented program which addresses compliance with the specific requirements in the LAW licensed program that are relevant to the particular activities being conducted.

(1) The program, (documented by the Contractor's plans, procedures, protocols and other documents developed to implement the relevant requirements) must be tailored to these activities and reflect a graded approach commensurate with the hazard or risk to the public and the environment resulting from the Contractor's LAW operations.

(2) Where long-term stewardship and institutional controls for protection of the public and the environment are necessary to meet the specific requirements in the Contractor's license, the Contractor must ensure that the need for the controls is documented and maintained and to the

extent the contractor is responsible, implement the controls. If the contractor is not responsible for implementation of the controls, the contractor must provide reasonable assurance that necessary controls are being implemented by the responsible party prior to conducting activities that can affect the public or the environment.

Regardless of the performer of the work, the Contractor under their licensed authority is responsible for complying with the requirements of this contract and flowing down those requirements to subcontractors at any tier to the extent necessary to ensure contractor compliance with their license requirements.

Licenses, Permits and Regulatory:

1. The Contractor shall furnish all personnel, labor, facilities, equipment, material, supplies, and services (except as may be expressly set forth in this BOA and/or any order as furnished by the Ordering Activity/Waste Generator) and otherwise do all things necessary, with the exception of review and approval of authorized limits which will be done by DOE, for the release of material to qualified landfills.

2. The Contractor shall possess, maintain, and keep current appropriate licenses and permits as required by Federal, state and local laws and ordinances that enable LAW Services. All waste shall be released in accordance with applicable laws, regulations, and DOE Orders (e.g., Section J, DOE Order 435.1 *Chg. 1 Radioactive Waste Management*, and DOE Order 458.1, *Radiation Protection of the Public and the Environment, Section 4.k, as applicable*). LAW shall meet the waste acceptance criteria of the designated landfill.

3. The Contractor shall, without additional expense to the Government, be responsible for complying with any Federal, state, and municipal laws, codes, and regulations applicable for the facilities and equipment required to accomplish the applicable scope of work.

4. Environmental, Safety and Health and Quality Assurance requirements shall apply, consistent with licenses and permits.

Title:

5. Title to the material shall pass to the Contractor upon the Contractor's issuance of a "Certification of Release," regardless of when or where the Contractor takes physical possession. Title and all other incidents to the material shall thereupon transfer from the Ordering Activity/Waste Generator and shall be held by the Contractor. The Ordering Activity/Waste Generator shall have no rights to recovery of any material contained in the waste material nor any credit for its potential value, unless specifically specified in the Task Order. Documentation shall be provided to the Ordering Activity/Waste Generator and the DCO within 15 days after approval.

6. All invoices for LAW Services must be submitted with a certificate of disposal from the receiving disposal facility; and a signed statement from the Contractor stating that all LAW received at their facility under the task order has been compliantly transferred to that disposal facility per their approved LAW program.

Transportation:

7. The Ordering Activity/Waste Generator is responsible for the transportation of the waste unless otherwise specified, in the Task Order as part of Ancillary Services.

8. All LAW material shipped from the Ordering Activity/Waste Generator on an individual shipping manifest shall be considered a "shipment" under the terms of a Task Order.

9. Upon acceptance and/or approval of waste generator supplied information specific to the waste stream to be accepted by the waste treatment provider under this BOA, the Contractor will issue a Notice to Transport to the waste generator within 5 days.

10. The Contractor shall provide services to survey vehicles used to transport the wastes to and from the Contractor's site to verify radioactive contamination has occurred or not occurred upon vehicle arrival and before departure. The Contractor shall perform exposure, release decontamination and transportation surveys in accordance with its Radioactive Material License and 49 CFR – Transportation, and vehicles shall be certified free of contamination exceeding release criteria. The Contractor shall maintain a record of all surveys. A copy shall be forwarded to the DCO and the waste generator shipping the waste upon request. Any vehicle contamination will be reported to the Ordering Activity/Waste Generator and DCO within 24 hours of detection for determination of corrective action prior to decontamination and delivery vehicle release. Copies of survey reports shall be forwarded to the Ordering Activity/Waste Generator and DCO in cases where readings are above the Contractor's Radioactive Material License or DOT release criteria.

11. The Contractor shall prepare the various instruments of conveyance (trucks/trailers) for return to the provider.

Receipt of Low Level and Mixed Low Level Waste:

12. The Contractor shall provide a Shipment Delivery Scheduler point of contact for scheduling shipments from the Ordering Activity/Waste Generators and for receipt of the DOT advanced shipment notifications. The Shipment Delivery Scheduler is documented in Section G, *Contract Administration Data*. The shipment documentation required under the Task Orders includes:

    a. Notice of Delivery: Not less than 5 working days prior to the shipping date of each waste stream shipment, the Contractor will be provided the following from the Ordering Activity/Waste Generator:

        (1) The 5 Working Day Shipment Notification form;
        (2) The Special Nuclear Material Exemption Certification form, if applicable (required when U-235, U-233, Pu-236, and Pu-238 through Pu-244 are present in the waste);
        (3) A copy of the Waste Profile form for each waste stream to be released;
        (4) A copy of the Waste Shipment Manifest documentation, e.g., (NRC Forms 540 (Uniform Low-Level Radioactive Waste Manifest (Shipping Paper)), 541 (Uniform Low-Level Radioactive Waste Manifest (Container and Waste Description)), 542 (Uniform Low-Level Radioactive Waste Manifest (Manifest Index and Regional Compact Tabulation)), DOE and State forms.

b. Arrival Confirmation: Upon receipt of the above items, the Shipment Delivery Scheduler shall provide to the Ordering Activity/Waste Generator and DCO a date for delivery of the shipment and an Arrival Confirmation Number.

Note: The above listed items (a-b) will be provided to the Contractor by e-mail, mail, or facsimile.

13. The Contractor shall unload the LAW using appropriate safety standards, guidelines, facility procedures and in accordance with its licenses, permits, and Federal, state, and local laws and ordinances.

14. In the event that the Contractor discovers that the transportation vehicle, rail car, containers, packaging, and/or markings of the delivered waste material has failed to meet the U.S. DOT requirements under Title 49 CFR – Transportation, or any other applicable requirements, the Contractor shall document the infraction and notify the Ordering Activity/Waste Generator and the DCO within 24 hours by telephone upon discovery, and in writing within 48 hours. See requirements under Nonconformance.

Operations:

15. The Contractor shall complete all appropriate LAW services functions within the prices established in the resulting Task Orders while adhering to schedule requirements and all applicable DOE and regulatory requirements.

16. All commercial TSDFs are required to be audited annually in accordance with DOE Order 435.1, *Chg. 1 Radioactive Waste Management*, or equivalent (currently most facilities performing services for DOE rely on the DOECAP). DOECAP may also be used as the vehicle for other DOE or EM reviews deemed appropriate or required. The Contractor shall allow reasonable site access to personnel for these purposes. Any costs shall be included in the resulting Task Order's prices.

17. The Contractor shall be liable for the repair or replacement of rail cars and trucks damaged by the Contractor in the performance of the Task Order. Notification of existing damage to conveyances received under this BOA shall be provided to the Ordering Activity/Waste Generator and the DCO within 24 hours of the incident. Contractor notification as required by this paragraph, may be issued by e-mail, facsimile or other electronic means provided such means results in verifiable evidence of the receipt of the required notification.

18. The LAW Services Contractor shall properly treat and dispose of all byproduct, residual and secondary waste (if any) in compliance with Federal and state regulations and permits and DOE authorized limits. These costs shall be included in the resulting Task Order's prices.

Reporting Requirements:

19. Upon requested, all documentation, records, and modifications, shall be submitted to the DCO within 48 hours.

20. The Contractor shall promptly (within 48 hours) respond to questions regarding documentation and reports. Any associated costs shall be included in the resulting Task Order's prices.

21. Upon request, the Contractor shall provide the Ordering Activity/Waste Generator or DCO with a copy of the Certification of Release and Certificate of Disposal, as applicable.

22. As requested by the DCO, the Contractor shall provide complete documentation of: site permits for storage and treatment of waste, NRC or Agreement State Radioactive Materials License, Waste Acceptance Criteria (WAC), and any other authorizations, RCRA permit requirements, applicable exemptions, revisions, and other requirement etc., documenting that the Contractor is permitted to receive, handle, store, and treat the specific type and quantity of radioisotopes present in the waste being treated under this BOA.

23. For laboratories not previously approved by DOE, the Contractor shall provide copies to the Ordering Activity/Waste Generator, within 10 days of request, of the current radioactive material licenses and most recent Audit Report supporting LAW Services as well as any required special certifications showing that the laboratory is qualified to perform the analysis. Any subsequent revisions to these requirements shall be supplied to the DCO, where applicable, within 10 days of the revision approval.

24. For all NOVs issued by regulatory agencies that may impact release of waste, the Contractor shall verbally notify the DCO within 24 hours. If any DOE waste stream is involved or impacted, the Contractor will provide the NOV documentation. DOE will consider and handle this information as Business Sensitive.

25. The Contractor shall verbally notify the affected Ordering Activity/Waste Generator and the DCO within 48 hours of discovery of any event or condition impacting the scheduled receipt of waste, together with corrective actions planned and information on rescheduling of shipments.

26. On an annual basis, the Contractor shall provide a Report to the CO and the EM Office of Disposal Operations (EM-31) and the Office of Disposition Planning and Policy (EM-32) documenting the following. A Final Summary Report shall be provided to the CO within 30 days after completion all of task orders issued under of this BOA and shall contain:

    a. Monthly waste shipments including weights, volumes, source of material, and disposition of the material.

    b. Any material, including weights volume and source, received that did not meet the LAW Services requirements, and the disposition of the material.

<u>Nonconformance</u>:

27. The Contractor shall have no obligation to receive, handle, store, or release any nonconforming waste material delivered to the Contractor's facility which is defined as: material delivered that does not comply with the contractor’s licenses, permits or regulations, and/or that does not comply with the Waste Generator’s Waste Profile (e.g., manifesting errors , contamination in excess of applicable criteria which may include DOE Order 458.1 levels for release to the public, resulting from failure to comply with packaging, marking and shipment of material in accordance with DOT Title 49 CFR – Transportation, shipment is delivered to the facility without a “Notice to Transport”). The determination of nonconformance shall be made unilaterally by the DCO.

28. Upon delivery to the Contractor's facility, if the loaded transport vehicle, containers, or waste do not conform to the requirements of the Contractor's licenses or permits, or DOT, Title 49 CFR – Transportation, the Waste Generator's Waste profile, or arrive damaged or unusually difficult to unload, the Contractor shall notify the Ordering Activity/Waste Generator with 24 hours by telephone (to be followed by written notification within 48 hours) of the discovery for negotiation of a resolution. Non-conforming items may be identified upon receipt of the transport vehicle, during or after unloading, during sampling and/or treatment. Resolution may be, but is not limited to the following:

    a. Contractor may provide a proposed corrective action with an estimate of the cost to correct.
    b. The Ordering Activity/Waste Generator may arrange for the waste to be returned to the origin site at the Ordering Activity/Waste Generator's expense.
    c. Ordering Activity/Waste Generator may direct an alternative course of action.
    d. Either party may negotiate a rejection of the shipment.
    e. The costs incidental to returning the shipment shall be borne by the Ordering Activity/Waste Generator.
    f. The parties shall negotiate an equitable adjustment to the Task Order for the management and/or return to the origin site, consistent with the provisions of this BOA.

29. Any waste that fails to meet landfill WAC or applicable DOE authorized limits due to some error, fault or oversight of the LAW Services Contractor, as determined by the DCO, shall be processed by the LAW Contractor at no additional cost to DOE until the waste qualifies for release or disposal. If all reasonable attempts to process the waste fail, the facility shall prepare the waste for return to DOE for storage. The LAW Services Contractor shall bear all processing expense for any waste that the Contractor is unable to release due to no fault or error of its own. The Contractor shall refund any partial payment that may have been paid within ten days of shipment of the waste to the Ordering Activity/Waste Generator.

    If the Contractor cannot release the material to the LAW criteria and DOE authorized limit if applicable through no fault of the Contractor, as determined by the DCO, the LLW shall be disposed of at an appropriate LLW facility, at DOE's expense, as agreed to by the Ordering Activity/Waste Generator and the LAW Services facility. In the case where the Ordering Activity/Waste Generator is at fault for inadequate or faulty waste characterization data, as determined by the DCO, the Ordering Activity/Waste Generator is responsible for costs to further characterize and treat the waste. The Ordering Activity/Waste Generator may request that the LAW Services facility return the waste to the originating site, with associated waste data, or to some mutually agreed-to destination, at the Ordering Activity/Waste Generator's expense.

**C.03.5 ANCILLARY SERVICES:**

The Contractor shall provide task-based treatment support services, including, but not limited to: minor activities to address package non-compliances, interim storage, transportation services, regulatory report writing, data analysis, waste profiles, variance requests, assessments, verification, technical oversight of MLLW/LLW activities, and technical support and material/waste processing for Authorized Release in accordance with *DOE Order 458.1 Admin Chg. 3, Radiation Protection of the Public and the Environment* (this may include developing necessary documentation for waste characterization and disposal planning, receiving required

DOE concurrences and approvals, sampling the waste, performing analyses to justify release, etc.). The Ordering Activity/Waste Generator will specify requirements at the Task Order level, which may include disposal services (as discussed in C.03.5.1 below).

### C.03.5.1 DISPOSAL SERVICES

This BOA allows the Contractor access and use of the DOE Environmental Management Consolidated Business Center (EMCBC) Low Level / Mixed Low Level Waste Disposal Indefinite Delivery/Indefinite Quantity (IDIQ) Contracts under Ancillary Services. These are ID/IQ contracts for DOE waste disposal services at approved commercial facilities consisting of Contract Line Item Numbers (CLIN(s)) that are fixed unit prices. If disposal is included in the scope of the Request for Task Proposal, it will be a separate line item or section. The Contractor is responsible for coordinating and receiving all required approvals from the IDIQ Contractors for disposal at their sites. The Contractor is also responsible meeting the IDIQ Contractors' Waste Acceptance Criteria and shipment of the DOE waste for disposal.

Contractors may propose multiple disposal option scenarios with associated costs and schedules. All scenarios shall include the pertinent Disposal IDIQ Contract information including Contract and Line Item numbers. If a scenario includes disposal at a federally owned disposal site, the Contractor shall include cost for delivery at the disposal site, but no cost for disposal. The DCO will determine the overall best value to government for award.

## C.04 ACRONYMS

| | |
|---|---|
| ASME | American Society of Mechanical Engineers |
| BOA | Basic Ordering Agreement |
| BSFR | Bulk Survey For Release |
| CERCLA | Comprehensive Environmental Response, Compensation, and Liability Act |
| CFR | Code of Federal Regulations |
| CLIN | Contract Line Item Number |
| CO | Contracting Officer for the Basic Ordering Agreement |
| COR | Contracting Officer's Representative for the Basic Ordering Agreement |
| DCO | Designated Contracting Officer for the Task Order(s) issued under the Basic Ordering Agreement |
| DCOR | Designated Contracting Officer's Representative for the Task Order(s) issued under the Basic Ordering Agreement |
| DOE | U.S. Department of Energy |
| DOT | Department of Transportation |
| EMCBC | Environmental Management Consolidated Business Center |
| EPA | U.S. Environmental Protection Agency |
| ES&H | Environmental Safety and Health |
| FFA | Federal Facility Agreement |
| FFCA | Federal Facility Compliance Act |
| GTCC | Greater-Than-Class C |
| LLW | Low-Level Waste |
| MLLW | Mixed Low-Level Waste |
| NQA-1 | Nuclear Quality Assurance-1 |
| NRC | Nuclear Regulatory Commission |
| NOVs | Notice of Violations |
| OSHA | Occupational Safety and Health Administration |

| | |
|---|---|
| PCB | Polychlorinated Biphenyl |
| PWS | Performance Work Statement |
| QA | Quality Assurance |
| RA | Remedial Action |
| RCRA | Resource Conservation and Recovery Act |
| SAP | Sampling and Analysis Plans |
| TSCA | Toxic Substances Control Act |
| TSDFs | Treatment, Storage and Disposal Facilities |
| WAC | Waste Acceptance Criteria |

**PART I – THE SCHEDULE**

**SECTION D**

**PACKAGING AND MARKING**

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## SECTION D - PACKAGING AND MARKING:

### D.01 PACKAGING

Preservation and packaging for shipment or mailing of all work delivered hereunder shall be in accordance with good commercial practice to ensure acceptance by common carrier and safe transportation at the most economical rate(s).

### D.02 MARKING

(a) Each package, report or other deliverable shall be accompanied by a letter or other document which:

1. Identifies the BOA and task order by number under which the item is being delivered.
2. Identifies the deliverable Item Number or Report Requirement which requires the delivered item(s).
3. Indicates whether the Contractor considers the delivered item to be a partial or full satisfaction of the requirement.

(b) For any package, report, or other deliverable being delivered to a party other than the Designated Contracting Officer (DCO), a copy of the document required in (a) above shall be simultaneously provided to the CO administering the BOA, as identified in Section G.

# PART I – THE SCHEDULE

## SECTION E

## INSPECTION AND ACCEPTANCE

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# SECTION E - INSPECTION AND ACCEPTANCE

## E.01 FAR 52.246-4 INSPECTION OF SERVICES – FIXED PRICE (AUG 1996)

## E.02 INSPECTION AND ACCEPTACE

Inspection of all items under Task Orders performed under this BOA shall be accomplished by the Designated Contracting Officer (DCO) or the Designated Contracting Officer's Representative (DCOR) or their duly authorized representatives.

Acceptance of all work and effort under Task Orders performed under this BOA (including "Reporting Requirements," if any) shall be accomplished by the DCO or his/her duly authorized representative and in accordance with this BOA and/or the individual Task Order acceptance criteria.

## E.03 FINAL INSPECTION/ACCEPTANCE

Final inspection and acceptance of deliverables and completion of Task Orders shall take place at completion of delivery at the Task Order location specified in Section F.04 of the Task Order.

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**SECTION F:**

**DELIVERIES OR PERFORMANCE**

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# SECTION F - DELIVERIES OR PERFORMANCE

## F.01 FAR 52.242-15 STOP WORK ORDER (AUG 1989)

## F.02 FAR 52.242-17 GOVERNMENT DELAY OF WORK (APR 1984)

## F.03 PERIOD OF PERFORMANCE

The base period of performance for this BOA is sixty (60) months or five (5) years from the date of award. All task orders must be awarded within the five (5) year period of performance and must be completed within six (6) years from the award date of this BOA.

## F.04 PLACE OF PERFORMANCE – SERVICES

The place of performance for treatment services shall be specified in each individual task order.

## F.05 DELIVERY SCHEDULE

The delivery schedule shall be specified in each individual task order.

# PART I – THE SCHEDULE

## SECTION G

## CONTRACT ADMINISTRATION DATA

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# SECTION G - CONTRACT ADMINISTRATION DATA

## G.01 SUBMISSION OF VOUCHERS/INVOICES

(a) For task orders issued by DOE, the Contractor shall submit invoices using the Standard Form 1034 (Public voucher for Purchases and Services Other Than Personal) electronically through the Oak Ridge Financial Service Center's (ORFSC) Vendor Inquiry Payment Electronic Reporting System (VIPERS). The VIPERS system allows vendors to submit invoices, attach supporting documentation and check the payment status of any voucher submitted to the DOE.

(b) To obtain access to and to use VIPERS, please visit the web page at https://vipers.oro.doe.gov. Detailed instructions on how to enroll and use the system are provided on the web page.

(c) The Contractor shall submit invoices (Standard Form 1034) in accordance with FAR 52.232-1 “Payments” (APR 1984).

(d) In accordance with FAR 52.232-25, Prompt Payment, The Government will make payments to the Contractor by electronic funds transfer not later than thirty (30) calendar days after receipt of an acceptable invoice from the Contractor. The Contractor shall invoice the Government monthly (or more frequently if approved by the DCO)

(e) Any basis for invoice withholding, adjustment or reduction which is discovered after payment will be corrected on subsequent invoices. If the Government discovers such defects, the DCO will notify the Contractor in writing. The DCO’s written notification will explain the nature of the basis for withholding, adjustment, or reduction, and will specify the dollar amount of the withholding, adjustment or reduction.

(f) Additional invoicing instructions may be provided at the task order level.

## G.02 DESIGNATED CONTRACTING OFFICERS REPRESENTATIVE (DCOR)

The DCOR will be designated in each individual task order. Specific duties and responsibilities of the DCOR are described in the DCOR's Delegation under each individual task order.

## G.03 CORRESPONDENCE PROCEDURES

(a) For task orders issued by offices of the U.S. Department of Energy: To promote timely and effective administration, correspondence submitted under this BOA, and subsequent task orders, shall include the BOA and task order number and shall be subject to the following procedures:

(1) Technical Correspondence: Technical correspondence (as used herein, this term excludes technical correspondence where patent or technical data issues are involved and correspondence which proposes or otherwise involves waivers, deviations, or modifications to the requirements, terms, or conditions of any task order issued under this BOA) shall be addressed to the DCOR, with an information copy of the correspondence to the DCO established under each task order (see below paragraph (d). All technical correspondence for the BOA shall be addressed to the CO (see below paragraph (c)).

(2) Other Correspondence: All correspondence, other than technical correspondence, for task orders awarded under the BOA shall be addressed to the DCO, with information copies of the correspondence to the DCOR. All other correspondence related to the BOA shall be addressed to the CO (see below paragraph (c)).

(3) CO Address. The CO address is as follows:

ATTN: Bill Hensley
U.S. Department of Energy
Environmental Management Consolidated Business Center
250 East 5th Street, Suite 500
Cincinnati, OH 45208

(4) Contracting Officer Representative (COR) Address. The COR address is as follows:

ATTN: M. Lee Bishop
U.S. Department of Energy
Los Alamos National Laboratory
3474 West Jemez Rd.
Los Alamos, NM 87544

(5) DCO Address: Shall be identified in each individual task order.

(6) Technical Reports: Procedures for technical reports will be specified and described in each individual task order.

(b) For orders issued by authorized U.S. Department of Energy Contractors: For orders issued by U. S. DOE authorized Contractors, correspondence procedures shall be as specified in individual subcontracts. For orders issued by U. S. DOE authorized contractors, the following terms and phrases which appear in this BOA shall be interpreted relative to the individual order to read as follows:

(1) U.S Department of Energy, Department of Energy, DOE, the Government, or any other term or phrase intended to refer to the U.S. Department of Energy or the United

States of America, shall be construed to mean the contractor or other entity placing the order.

(2) Designated Contracting Officer, Designated Contracting Officer's Representative, DOE-DCOR, and any other term or phrase intended to refer to an authorized representative of the United States Department of Energy or the United States of America shall be construed to mean "authorized representative" of the contractor or other entity placing the order.

## G.04 DEFECTIVE OR IMPROPER INVOICES

Name, title, phone number, office name, and complete mailing address of officials of the business concern who are to be notified when the Government receives a defective or improper invoice.

_____

_____

## G.05 SHIPMENT DELIVERY SCHEDULER

The Contractor's Shipment Delivery Scheduler for this BOA is listed below.

_____

_____

## G.06 DEFINITIONS

The following special definitions are applicable to this contract:

*Contracting Officer (CO)* –The person with the authority to enter into contracts as defined in FAR 2.101 and who is responsible for this BOA as a whole.

*Contracting Officer Representative (COR)* - The DOE technical representative whose responsibilities apply to the technical factors of this contract as a whole. The extent of the COR's authority is defined in Section H Clause "Technical Direction".

For orders placed by the Government, use the following definitions:

*Designated Contracting Officer (DCO)* - The person with the authority to enter into contracts as defined in FAR 2.101 and who is responsible for a specific task order issued under this BOA. The DCO shall be identified in each individual task order.

*Designated Contracting Officer's Representative (DCOR)* – The DCO's designated representative whose responsibilities apply to a specific task order issued under this BOA and who is specified in the task order. The extent of the DCOR's authority is defined in

the Section I Clause "Technical Direction".

For orders placed by DOE Prime Contractors or Subcontractors to the DOE Prime Contractor as defined in Section H substitute the following definitions:

*Contractual Representative* - For task orders (subcontracts) issued by authorized DOE Prime Contractors or Subcontractors to a DOE Prime Contractor in accordance with Section Hof this BOA, the person with the necessary corporate authority to enter into a subcontract binding the corporation, who is responsible for the specific task order (subcontract) issued pursuant to the terms of this BOA and who is identified in the task order (subcontract). This person is not a warranted Government contracting officer exercising the rights and authorities as defined in FAR 2.101on behalf of the Government or DOE.

*Technical Representative* - For task orders (subcontracts) issued by authorized DOE prime contractors or Subcontractors to a DOE Prime Contractor in accordance with Section H of this BOA, the contractual representative's technical representative whose responsibilities apply to the specific task order (subcontract) issued pursuant to the terms of this BOA and who is identified in the task order (subcontract). This person is not acting on or behalf of the government or the contracting officer.

*DOE Prime Contractor* – DOE Prime Contractor as used in the Section H of this BOA, is a contractor that has a contract with the Department of Energy separate from this BOA. The term "DOE Prime Contractor" for purposes of Clause H.8 does not mean the entity to which this BOA was issued by the Department of Energy.

*Subcontractor to a DOE Prime Contractor* – Subcontractor to a DOE Prime Contractor as used in Clause H.8 is a subcontractor that has a subcontract with a DOE Prime Contractor separate from this BOA. The term "Subcontractor to a DOE Prime Contractor" for purposes of Clause H.8 does not mean the entity to which this BOA was issued by the Department of Energy.

*Context of clauses and provisions* – Whenever it is necessary to make the clauses fit the context of a task order (subcontract) issued by a DOE Prime Contractor or Subcontractor to a DOE Prime Contractor in accordance with Section H of this BOA and to derive proper meaning in a task order (subcontract) situation, the terms "DOE", "Government" and "Contracting Officer" shall mean the Prime Contractor or Subcontractor to a DOE Prime Contractor, except the terms "DOE", "Government" and "Contracting Officer" do not change: (1) in the phrases "Government Property", "Government-Furnished Property", "Government Equipment" and "Government-Owned Equipment", or where otherwise intended that title ownership or rights are to remain with the Government; or (2) where statute or regulation vests authority exclusively in specific agencies or officials; or (3) unless otherwise specifically modified in the task order (subcontract) and consented to by the CO.

**PART I – THE SCHEDULE**

**SECTION H**

**SPECIAL CONTRACT REQUIREMENTS**

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# SECTION H - SPECIAL CONTRACT REQUIREMENTS

## H.01 SYNONYMOUS TERMS

Throughout this Basic Ordering Agreement (BOA), the term “Contract,” “BOA,” or “Agreement” may appear. In this sense, these terms are all synonymous with one another. This BOA is not a contract as defined by FAR 2.101, rather it is an agreement. However, when firm-fixed price task orders are awarded off of this BOA, such terms and conditions contained herein will become contractually binding to the executed task order.

## H.02 NO THIRD PARTY BENEFICIARIES

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

## H.03 ALTERNATIVE DISPUTE RESOLUTION (ADR)

(a) The DOE and the Contractor both recognize that methods for fair and efficient resolution of significant disputes are essential to the successful and timely achievement of critical milestones and completion of all requirements. Accordingly, the parties agree that in the event of a dispute to jointly select a 'standing neutral.' The standing neutral will be available to help resolve disputes as they arise. Such standing neutral can be an individual, a board comprised of three independent experts, or a company with specific expertise in the Contract area. If a standing neutral cannot be agreed upon, the DOE Office of Dispute Resolution will make a selection. Specific joint ADR processes shall be developed.

(b) The parties agree the following provision may be invoked for significant disputes upon mutual agreement of the DOE and the Contractor:

1. DOE and the Contractor shall use their best efforts to informally resolve any dispute, claim, question, or disagreement by consulting and negotiating with each other in good faith, recognizing their mutual interests, and attempting to reach a just and equitable solution satisfactory to both parties. If any agreement cannot be reached through informal negotiations within 30 days after the start of negotiations, then such disagreement shall be referred to the standing neutral, pursuant to the jointly-developed ADR procedures.

2. The standing neutral will not render a decision, but will assist the parties in reaching a mutually satisfactory agreement. In the event the parties are unable after 30 days to reach such an agreement, either party may request, and the standing neutral will render, a non-binding advisory opinion. Such opinion shall not be admissible in evidence in any subsequent proceedings.

(c) If one party to this agreement requests the use of the process set forth in Paragraphs b(1) and b(2) of this clause and the other party disagrees, the party disagreeing must express its position in writing to the other party. On any such occasion, if the party requesting the above process wishes to file a claim they may proceed in accordance with Section I, FAR 52.233-1 Disputes Alternate I.

## H.04 RELEASE OF INFORMATION

Any proposed public release of information including news releases, publications, exhibits, or audiovisual productions pertaining to the effort/items called for in this BOA shall be submitted at least ten (10) days prior to the planned issue date for approval in draft form. Proposed releases are to be submitted to DCO. The DCO will then obtain necessary reviews and clearances and provide the Contractor with the results of such reviews prior to the planned issue date.

## H.05 CONFIDENTIALITY OF INFORMATION

(a) To the extent that the work under this BOA requires that the Contractor be given access to confidential or proprietary business, technical, or financial information belonging to the Government or other companies, the Contractor shall, after receipt thereof, treat such information as confidential and agree not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by the Contracting Officer in writing. The foregoing obligations, however, shall not apply to:

1. Information which, at the time of receipt by the Contractor, is in the public domain;

2. Information which is published after receipt thereof by the Contractor or otherwise becomes part of the public domain through no fault of the Contractor;

3. Information which the Contractor can demonstrate was in his possession at the time of receipt thereof and was not acquired directly or indirectly from the Government or other companies;

4. Information which the Contractor can demonstrate was received by it from a third party who did not require the Contractor to hold it in confidence.

(b) The Contractor shall obtain the written agreement, in a form satisfactory to the Contracting Officer, of each employee permitted access, whereby the employee agrees that he will not discuss, divulge or disclose any such information or data to any person or entity except those persons within the Contractor's organization directly concerned with the performance of the BOA or subsequent task orders.

(c) The Contractor agrees, if requested by the Government, to sign an agreement identical, in all material respects, to the provisions of this clause, with each company supplying information to the Contractor under this BOA, and to supply a copy of such agreement to the Contracting Officer.

(d) The Contractor agrees that upon request by DOE it will execute a DOE-approved agreement with any party whose facilities or proprietary data it is given access to or is furnished, restricting use and disclosure of the data or the information obtained from the

facilities. Upon request by DOE, such an agreement shall also be signed by Contractor personnel.

(e) This clause shall flow down to all subcontracts.

## H.06 AUTHORIZED USERS

a. All DOE Offices (including the National Nuclear Security Administration, Laboratories, and Project Offices), DOE Prime Contractors and Subcontractors to DOE Prime Contractors, performing environmental cleanup services for DOE, are authorized to place task orders under this BOA.

b. Other users may be authorized, in writing, by the DOE CO on a case-by-case basis. Inquiries shall be directed to the DOE CO, as documented in Section G, *Contract Administration Data*.

## H.07 ORDERING PROCEDURES

(a) For the work specified in the Performance Work Statement of this BOA, the DCO may issue competitive Firm-Fixed Price task orders or Indefinite Quantity task orders with Fixed-Unit-Rates to one or more of these Contractors, pursuant to the procedures set forth in this clause. Orders issued against this agreement shall not be done in a manner that in any way restricts competition. The Contractor shall commence performance upon the receipt of a task order signed by DCO. The Contractor shall not be reimbursed for the costs of preparing task proposals as a direct cost under any Task Order.

(b) Procedures for Issuance of Request for Task Proposals (RTP)

1. Prior to issuance of a Request for Task Proposal (RTP), the DCO is required to verify that the RTP is within the scope of this BOA. The DCO must notify the CO identified in Section G, *Contract Administration Data*, of the DCO's intention to issue an RTP or award a Task Order. This notification should be made in writing and will include the estimated dollar value of the Task Order and a copy of the draft Performance Work Statement. The CO will provide a response to the DCO within five days of their request.

2. Upon response from the CO, the DCO will furnish the Contractor(s) with a RTP which will include, at a minimum:

   a) A description of the specified work and deliverables required, including the site location;
   b) The performance period;
   c) A Performance Based Work description of the Task Order;
   d) Proposal preparation instructions;
   e) If applicable, any property, material or services to be made available for performance of the order;
   f) Any other pertinent information, such as Service Contract Act Wage rates, site visit date, Certificate of Current Cost or Pricing Data, if applicable;
   g) A reasonable response time;

h) Basis for award of the Task Order; lowest price technically acceptable
i) The Contractor shall, within the time specified in the RTP, provide the required number of copies of the proposal as set forth in the RTP. The Contractor's proposal shall address the requirements as specified in the RTP which may also include providing cost and technical information.

3. In issuing tasks under this procedure, the DCO will base issuance on the lowest price technically acceptable. The DCO shall ensure that the lowest price technically acceptable Contractor has the required licenses and permits for the treatment required by the PWS.

4. Seven (7) calendar days will be considered a reasonable time for the Contractor to respond. DCO's may provide for a longer period and will identify such period in the RTP.

5. If applicable, at the conclusion of discussions/negotiations, if requested by the DCO, the Contractor shall provide a Certificate of Current Cost or Pricing Data pursuant to FAR 15.403-4 using the format as set forth in FAR 15.406-2, if applicable.

(c) The Contractor agrees that issuance of a task order in accordance with any of the procedures as described below is deemed to have provided the Contractor a "fair opportunity to be considered" as that phrase is used in Section 303J (b) of the Federal Property and Administrative Services Act of 1949, as amended.

(d) The DCO shall give every awardee a fair opportunity to be considered for a task order exceeding $3,000 unless one of the following statutory exceptions applies:

(1) The agency need for the supplies or services is so urgent that providing a fair opportunity would result in unacceptable delays;

(2) Only one awardee is capable of providing the supplies or services required at the level of quality required because the supplies or services ordered are unique or highly specialized;

(3) The order must be issued on a sole-source basis in the interest of economy and efficiency as a logical follow-on to an order already issued under the BOA, provided that all awardees were given a fair opportunity to be considered for the original order.

(e) Task orders issued against this BOA will include, at a minimum, the following information:

1. Official Form (OF) 347 Form
2. Date of the order;
3. BOA and Task Order numbers;
4. Task Order Performance Period
5. Task Order deliverables;
6. If applicable, any property, material, or site support to be made available for performance of the Task Order (GFS/I);
7. The total quantity and dollar value of the Task Order, and appropriate breakout for the specific Task Order type, if applicable;
8. Accounting and appropriation data;
9. The names, addresses, and phone numbers of the applicable DCO and DCOR as well as any other necessary points of contact; and

10. Any other pertinent information deemed necessary to the performance of the order.

(f) To ensure that all Contractors are afforded a fair opportunity to be considered for task orders under this BOA, DOE has established a Task Order Ombudsman. The purpose of the Ombudsman is not to diminish the authority of the Contracting Officer, but to receive on behalf of and to communicate to the appropriate Government personnel concerns and disagreements of Contractor(s) not receiving a specific task and to work to resolve the matter. When requested, the Ombudsman will maintain in strict confidentiality as to the source of the concern. The Ombudsman does not participate in the original selection of Contractor(s) or in the evaluation or determination of the issuance of task orders under this BOA. The Ombudsman also does not act in the capacity of a Contracting Officer, and does not participate in the adjudication of disputes.

Interested parties may contact the Ombudsman with concerns or disagreements. However, before consulting with an ombudsman, interested parties must first address their concerns, issues, disagreements, and/or recommendations to the CO or the DCO for resolution.

If resolution cannot be made by the CO and DCO level, interested parties may contact the Contracting Activity ombudsman at the following address:

Office of Environmental Management (EM) Task Order Ombudsman
US Department of Energy
1000 Independence Ave., S.W.
Washington, DC 20585

Concerns, issues, disagreements, and recommendations which cannot be resolved by the Contracting Activity ombudsman may be referred to the DOE ombudsman at the following address:

DOE Ombudsman
US Department of Energy
1000 Independence Ave., S.W.
Washington, DC 20585

Please do not contact the ombudsman to request copies of the RTP, verify offer due dates, or clarify technical requirements. Such inquiries shall be directed to the DCO as specified in the RTP.

## H.08 TASK ORDERS ISSUED BY DOE PRIME CONTRACTORS AND SUBCONTRACTORS

Any DOE Prime Contractor, or Subcontractor to DOE Prime Contractor, performing environmental cleanup services for DOE is authorized to use the terms and conditions of this BOA and may place orders as subcontracts in accordance with FAR Part 44, Subcontracting Policies and Procedures, and the terms of this agreement. DOE Prime Contractors, or Subcontractors to DOE Prime Contractors, may use this BOA to establish orders for services described in Section C directly with the Contractor as provided herein:

1. Is within scope of this agreement,

2. Is consistent with all of the terms and conditions of the BOA except for those clauses/provisions that have been identified as peculiar to the Government procurement (disputes resolution, prompt payment, and payment by electronic funds transfer), as well as, specific provisions that may be applicable to work performed on a particular DOE site. These provisions will be identified and addressed in the specific order (subcontract) issued by the DOE Prime or Subcontractor.

3. Provided that the Contracting Officer for the DOE prime contract has specifically authorized, in writing, the placement of such subcontracts using the same terms and conditions of this agreement. Before providing such approval, the Contracting Officer for the DOE prime contract, shall have coordinated with the Contracting Officer identified in G.4 and obtained approval to use this BOA's identical terms and conditions except as specifically set forth in this clause.

The Government shall not be liable under this BOA for any subcontracts entered into by such DOE Prime Contractors or its Subcontractors. Additionally, the DOE Prime Contractor/Subcontractor may use substantially similar forms that meet the intent of the OF 347. The DOE Prime Contractor/Subcontractor and the BOA Contractor shall execute a separately signed subcontract document that incorporates the terms and conditions of this BOA. Any other site-specific terms and conditions when entering into a separately signed task order/subcontract must be mutually agreeable between the Contractor and the DOE Prime Contractor or Subcontractor to a DOE Prime Contractor. The use of the BOA terms and condition by a DOE Prime Contractor or Subcontractor does not create privity of contract between DOE and the Prime Contractor/Subcontractor.

## H.09 TASK ORDER ADMINISTRATIVE INFORMATION

(a) All DOE Offices, including the National Nuclear Security Administration (NNSA), Laboratories, and Project Offices, including DOE Prime Contractors and Subcontractors to a DOE Prime Contractors are authorized to place task orders under this BOA.

(b) The DCO identified on each task order is responsible for all task order activities including requesting Task Proposals/Task Plans, evaluating for award, awarding, funding, all administrative activities and evaluating Contractor performance for all task orders issued. For tracking purposes, the CO will issue four-digit tracking number to each individual task order awarded under this BOA. This tracking number will be specified in Section G of the task order and will include two alpha characters for the ordering office and two numeric characters for the task sequence (e.g. LN01 – Los Alamos National Laboratory Task Order 01).

(c) The DCO will provide copies of task orders and task order modifications to the CO. Copies of performance evaluations on completed task orders, or task orders that are in process, will also be provided to the CO. The CO will provide copies of the BOA or BOA modifications to the DCO, upon request. The DCO will also provide past performance information for work performed under this BOA to the CO.

## H.10 SITE-SPECIFIC/TASK ORDER TERMS AND CONDITIONS

The Contractor acknowledges that the organization issuing a task order under this BOA may have requirements unique to its mission and/or geographic location, including additional detailed statements of work. The Contractor agrees that the organization placing an order reserves the right to incorporate, subject to mutual agreement of the organization and the Contractor, its own local site-specific terms and conditions relative to the Federal Acquisition Regulations, Agency-specific regulations, orders or guidelines, environment, safety and health considerations, or other applicable local, state and Federal laws and regulations. These site-specific and task order-specific Terms and Conditions shall only apply to the task order(s) into which they are incorporated.

All task orders are subject to the terms and conditions of this BOA. In the event of conflict between a task order and this BOA, this BOA shall control.

## H.11 MODIFICATION AUTHORITY

Notwithstanding any of the other clauses of this BOA, the CO shall be the only individuals authorized to:

(a) Accept nonconforming work,

(b) Waive any requirement, or

(c) Modify any term or condition of this agreement.

## H.12 LOBBYING RESTRICTIONS (ENERGY AND WATER DEVELOPMENT AND RELATED AGENCIES APPROPRIATIONS ACT, 2014)

The Contractor agrees that none of the funds obligated on future task orders shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statue and regulations.

## H.13 DISPUTES

In addition to any other clauses contained herein related to the Section I clause entitled “FAR 52.233-1 Disputes,” any dispute between the Contractor and the DCO shall be handled between the CO identified in this BOA and the Contractor.

In accordance with FAR 16.703 (c) (1) (v), a failure to reach agreement on price for any task order issued against this BOA will be handled under the disputes clause of this BOA.

## H.14 DEPARTMENT OF LABOR WAGE DETERMINATIONS

In the performance of this BOA, and any subsequent task orders, the Contractor shall comply with the requirements of the U.S. Department of Labor Wage Determination(s) as may be issued and revised under the Service Contract Act (SCA). See Section J, Attachment J.3.

## H.15 INCORPORATION OF REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFEROR

The representations, certifications, and other statements of Offeror, completed by the Contractor, Dated **June 4, 2015**, are hereby incorporated by reference and made a part of this BOA and any subsequent task order.

## H.16 REPORTING REQUIREMENTS

The Contractor shall prepare and submit the Deliverables as set forth in Section J, Deliverables, to the addressees, and in the required number of copies, as designated in this BOA or as specified in the Task Orders.

## H.17 WASTE GENERATOR RESPONSIBILITIES/GOVERNMENT FURNISHED RESOURCES

The Ordering Activity/Waste Generator shall provide the following, as applicable, unless otherwise specified in the individual task order. Additional Waste Generator or Government furnished resources may be identified in the individual Task Order.

1. Select all containerized material and deliver in accordance with an agreed-to schedule, to a designated staging area at a DOE site.

2. Develop staging areas on the DOE sites where containerized waste will be loaded before the material is transported to the Contractor facility.

3. Obtain necessary approvals or exemptions to DOE Order 435.1, Chg. 1 *Radioactive Waste Management*, to allow radioactive waste to be stored, treated, or disposed of, at a non- Federal facility.

4. Provide National Environmental Protection Act (NEPA) documentation, as required.

5. Provide required characterization data to meet RCRA, TSCA, DOT, and vendor waste profile requirements to ship the wastes off-site.

6. All wastes to be treated under this BOA were generated at Government facilities or under Government contracts and responsibility for the waste remains with the Government origin site until accepted by the contractor. DOE title and responsibility over the waste will cease once accepted by the BSFR or disposal Contractor.

7. If the Government is the shipper of record, the Ordering Activity/Waste Generator is responsible for all markings, labeling, packaging, containers, carriers, and shipment of LLW and MLLW, and costs incidental to and associated with, the delivery of the radioactive waste to the Contractor's facility. Provide all equipment and labor, and load all containerized waste on transport vehicles at the staging areas. Review all marking, labeling, and placarding as required by DOT Hazardous materials regulations 49 CFR 172 Subparts D, E, and F after loading the waste. Perform health physics surveys and release the waste for off-site transport. Complete shipping

papers and manifests for each load of waste being transported to the vendor's treatment facility. Packaging, markings, containers and carrier requirements shall be in compliance with current applicable regulations, laws, ordinances, Contractor licenses, and the following DOT CFR:

(a) 49 CFR Part 172 – *Hazardous Materials Table, Special Provisions, Hazardous Material Communications, Emergency Response Information, and Training Requirements*.

(b) 49 CFR Part 173 – *Shippers – General Requirements for Shipments and Packaging*.

(c) 49 CFR Part 178 – *Specification for Packaging*. Claims arising from non-compliance with DOT Title 49 CFR – Transportation and discrepancies occurring in transit through the completion of off-loading are a matter for settlement between the Ordering Activity and the carrier.

## H.18 SUBCONTRACTS

(a) Prior to the placement of subcontracts and in accordance with the clause entitled FAR 52.244-6, "Subcontracts for Commercial Items (DEC 2010) ," the Contractor shall ensure that:

1. They contain all of the clauses of this BOA (altered when necessary for proper identification of the contracting parties) which contain a requirement for such inclusion in applicable subcontracts. Particular attention should be directed to the potential flow-down applicability of the clauses entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns" contained in Part II, Section I of the BOA;
2. Any applicable subcontractor Certificate of Current Cost or Pricing Data (see FAR 15.404-3b) and subcontractor Representations and Certifications (see Part IV, Section K and the document referenced in the Representations, Certifications and Other Statements of the Bidder clause are received); and
3. Any required prior notice and description of the subcontract is given to the Contracting Officer and any required consent is received. Except as may be expressly set forth therein, any consent by the Contracting Officer to the placement of subcontracts shall not be construed to constitute approval of the subcontractor or any subcontract terms or conditions, determination of the allowability of any cost revision of this BOA or any of the respective obligations of the parties there under, or creation of any subcontractor privity of contract with the Government.

(d) Prior to the award of any subcontracts for advisory and assistance services, the Contractor shall obtain from the proposed subcontractor or consultant the disclosure required by, and shall determine in writing whether the interests disclosed present an actual or significant potential for an organizational conflict of interest, in accordance with the contained in Section I of this BOA. The subcontractor shall perform no work until the Contractor has cleared the subcontractor for Organizational Conflicts of Interest (OCI).

## H.19 LAWS, REGULATIONS AND DOE DIRECTIVES

(a) In performing work under this BOA, and any subsequent task order, the Contractor shall comply with the requirements of applicable Federal, State, and local laws and regulations

(including DOE regulations), unless relief has been granted in writing by the appropriate regulatory agency.

(b) In performing work under this contract, the Contractor shall comply with the requirements of those Department of Energy directives, or parts thereof, identified in the List of Applicable DOE Directives (Section J, Attachment J.1) appended to this contract. Except as otherwise provided for in paragraph (d) of this clause, the Contracting Officer may, from time to time and at any time, revise the List B pursuant to the clause of this contract in Section I entitled, " CHANGES – FIXED-PRICE (AUG 1987) – ALTERNATE I (APR 1984)".

(c) Except as otherwise directed by the Contracting Officer, the Contractor shall procure all necessary permits or licenses required for the performance of work.

(d) Regardless of the performer of the work, the Contractor is responsible for compliance with the requirements of this clause. The Contractor is responsible for flowing down the requirements of this clause to subcontracts at any tier to the extent necessary to ensure the Contractor's compliance with the requirements.

## H.20 DISPOSITION OF INTELLECTUAL PROPERTY - FAILURE TO COMPLETE BOA

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

(a) The Government may take possession of and use all the technical data, including limited rights data, restricted computer software, and data and software obtained from subcontractors, licensors, and licensees, necessary to complete the work in conformance with this BOA, including the right to use the data in any Government solicitations for the completion of the work contemplated under this BOA. Technical data includes, but is not limited to, specifications, designs, drawings, operational manuals, flowcharts, software, databases and any other information necessary for the completion of the work under this BOA. Limited rights data and restricted computer software will be protected in accordance with the provisions of the Section I clause entitled "DEAR 970.5227-1 Rights in Data- Facilities." The Contractor shall ensure that its subcontractors and licensors make similar rights available to the Government and its Contractors.

(b) The Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice by the Contractor, and any other intellectual property, including technical data, which are owned or controlled by the Contractor, at any time through completion of this BOA and which are incorporated or embodied in the construction of the facilities or which are utilized in the operation or remediation of the facilities or which cover articles, materials or products manufactured at a facility: (1) to practice or to have practiced by or for the Government at the facility; and (2) to transfer such license with the transfer of that facility. The acceptance or exercise by the Government of the aforesaid rights and license shall not prevent the Government at any time from contesting the enforceability, validity or scope of, or title to, any rights or patents or other intellectual property herein licensed.

(c) In addition, the Contractor will take all necessary steps to assign permits, authorizations, leases, and licenses in any third party intellectual property to the Government, or such other third party as

the Government may designate, that are necessary for the completion of the work contemplated under this BOA.

## H.21 SECURITY

(a) Responsibility: It is the Contractor's duty to safeguard all classified information, special nuclear material, any information designated as sensitive and not subject to disclosure that may be provided either for task order proposal preparation or performance, and other DOE property. The Contractor shall, in accordance with DOE security regulations and requirements, be responsible for safeguarding and protecting against sabotage, espionage, loss and theft, classified information, sensitive information, and special nuclear material in the Contractor's possession in connection with the performance of work under this BOA and subsequent task orders. Excluding disposal of wastes, special nuclear material will not be retained after the completion or termination of the BOA or task order.

(b) Definition of Special Nuclear Material (SNM). SNM means: (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

(c) Subcontracts and purchase orders. Except as otherwise authorized in writing by the Contracting Officer or the DCO for a task order, the Contractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders issued by the Contractor under an individual task order.

## H.22 ACCESS TO DOE-OWNED OR LEASED FACILITIES

(a) The performance of this BOA requires that employees of the Contractor have physical access to DOE-owned or leased facilities; however, this clause does not control requirements for an employee’s obtaining a security clearance. The Contractor understands and agrees that DOE has a prescribed process with which the Contractor and its employees must comply in order to receive security badges that allow such physical access. The Contractor further understands that it must propose employees whose backgrounds offer the best prospect of obtaining approval for access, considering the following potentially disqualifying criteria, which are not all inclusive and may vary depending on access requirements:

1. Is or is suspected of being, a terrorist;
2. Is the subject of an outstanding warrant;
3. Has deliberately omitted, concealed, or falsified relevant and material facts from any Questionnaire for National Security Positions (SF-86), Questionnaire for Non-Sensitive Positions (SF-85), or similar form;
4. Has presented false or forged identity source documents;
5. Has been barred from Federal employment;
6. Is currently awaiting a hearing or trial or has been convicted of a crime punishable by imprisonment of six (6) months or longer; or

7. Is awaiting or serving a form of pre-prosecution probation, suspended or deferred sentencing, probation or parole in conjunction with an arrest or criminal charges against the individual for a crime that is punishable by imprisonment of six (6) months or longer.

(b) The Contractor shall assure:

1. In initiating the process for gaining physical access, (i) compliance with procedures established by DOE, including use of any forms directed by DOE; (ii) that employees properly complete said forms; and (iii) that the employees submit the forms to the person designated by the Contracting Officer.

2. In completing the process for gaining physical access, that its employees (i) cooperate with DOE officials responsible for granting access to DOE–owned or leased facilities; and (ii) provide any additional information as DOE may request.

(c) The Contractor understands and agrees that DOE may unilaterally deny a security badge to an employee and that the denial remains effective until such time as DOE determines that access may be granted. Upon notice from DOE that an employee's application for a security badge is or will be denied, the Contractor shall promptly identify a substitute employee and initiate the process for gaining access for the substitute. DOE's denial of a security badge to individual employees shall not be cause for extension of the period of performance of this BOA or any Contractor claim against DOE.

(d) The Contractor shall return to the Contracting Officer or designee the badge(s) or other credential(s) provided by DOE pursuant to this clause, granting physical access to DOE-owned or leased facilities by the Contractor's employee(s), upon (1) the termination of this BOA; (2) the expiration of this BOA; (3) the termination of employment on this BOA by an individual employee; or (4) demand by DOE for return of the badge.

(e) The Contractor shall include this clause, including this paragraph (e), in any subcontract, awarded in the performance of this BOA, in which one or more subcontractor employees will require physical access to DOE–owned or leased facilities.

## H.23 CONTRACT PARTICIPATION BY FOREIGN NATIONALS

The Contractor shall notify the DCO, in writing, prior to any visit to a DOE facility by any foreign national in connection with the work being performed under the individual Task Order. This notification shall be made at least 45 days prior to the planned visit unless a shorter period is authorized by the DCO.

## H.24 PERSONNEL SECURITY CLEARANCES

Specific personnel security requirements shall be specified under individual Task Orders.

## H.25 PROTECTION OF UNCLASSIFIED NUCLEAR INFORMATION

(a) The Contractor shall take appropriate action to establish and maintain a system to ensure that any Unclassified Controlled Nuclear Information (UCNI) in the Contractor's possession in connection with the performance of work under this BOA and all eventual task orders is

protected from unauthorized disclosure and dissemination in accordance with DOE regulations.

(b) The term "Unclassified Controlled Nuclear Information" means unclassified information protected against unauthorized dissemination pursuant to section 148 of the Atomic Energy Act with respect to atomic energy defense programs, and which pertain to:

(1) Design of production facilities or utilization facilities;

(2) Security measures relating to the protection of production or utilization facilities, nuclear materials contained in these facilities, nuclear materials in transit; or

(3) Design, production, or utilization of atomic weapons or components thereof, if such information was declassified or removed from the Restricted Data category, and if the unauthorized dissemination of such information could reasonably be expected to result in significant adverse effect on the public health and safety or the common defense by increasing the likelihood of illegal production of nuclear weapons, or theft, diversion or sabotage of nuclear materials, equipment or facilities.

(c) Access to UCNI shall be limited to those persons determined to require access to UCNI in the performance of official duties, and in conformance with applicable DOE Orders.

(d) While in use, UCNI shall be under the control of an authorized individual. As a minimum, UCNI shall be stored in locked desks, file cabinets, offices, or facilities where access is controlled.

(e) Each document or other material that is determined to contain UCNI shall be marked in a conspicuous manner to indicate the presence of UCNI. When transmitted outside an authorized place or storage, these documents shall be packaged to preclude disclosure of the presence of UCNI. All markings and transmittals, including electronic media, will be accomplished in accordance with applicable DOE orders.

(f) The Contractor agrees to conform to all regulations and requirements of the Department of Energy concerning UCNI as specified in the task order.

(g) Persons who violate prohibitions against unauthorized disclosure of UCNI may be subject to civil and criminal penalties under Sections 148 and 223 of the Atomic Energy Act of *1954*, as amended.

(h) This article, including this paragraph (h) shall be included in all subcontracts which involve access to UCNI.

## H.26 PROTECTION OF CLASSIFIED MATTER

Documents originated by the Contractor or furnished by the DCO to the Contractor in connection with this BOA may contain classified matter. The Contractor shall be responsible for protecting such information from unauthorized dissemination in accordance with applicable DOE Regulations and Directives as specified in the task order.

## H.27 REPORTING OF FRAUD, WASTE, ABUSE, CORRUPTION, OR MISMANAGEMENT

The Contractor is required to comply with the following in accordance with the applicable DOE Order 221.1A Reporting Fraud, Waste and Abuse to the Office of Inspector General:

(a) Notify their employees annually of their duty to report directly to the DOE Inspector General (IG) allegations or suspicions of fraud, waste, abuse, corruption, or mismanagement in DOE programs, operations, funds, or contracts. The Contractor employees should, when appropriate, report directly to the IG any information concerning wrongdoing by employees of DOE, Contractors, or subcontractors. The Contractor employees should also report to the DOE IG any allegations of reprisals taken against Contractor employees who have reported fraud, waste, abuse, corruption, or mismanagement to the IG;

(b) Display and publish the DOE IG hotline telephone number in common areas of buildings, such as cafeterias, public telephone areas, official bulletin boards, reception rooms, and building lobbies; and

(c) Publish the DOE IG hotline telephone number in phone books and newsletters.

## H.28 CANCELATION OF BASIC ORDERING AGREEMENT

This Basic Ordering Agreement may be cancelled by either party, the Government or the Contractor, by transmitting a written notice of cancellation 30 days prior to the proposed end date. Any such cancellation shall have no effect on any task orders issued prior to the effect date of the cancellation.

## H.29 UPDATE OF BASIC ORDERING AGREEMENT

In accordance with FAR 16.703 (c) (vi) (2), this basic ordering agreement will be reviewed annually by the Contracting Officer before the anniversary of the effective date and revised if necessary to conform with all requirements of the associated regulation. This basic ordering agreement may need to be revised prior to annually due to mandatory statutory requirements. Any revisions will be implemented through a written modification to the basic ordering agreement and signed by both parties. The basic ordering agreement can only be changed by modification of the agreement itself and not by adjustments made to individual orders issued under it. Changes made to the basic ordering agreement shall not retroactively affect orders previously issued.

## H.30 PERMITS & LICENSING

The Contracting Officer and/or DCO have a right to exclude from competition of an individual task order a Contractor whose requisite licenses or permits have been suspended or may not have the requisite licenses or permits and/or who may be capable of receiving waste at the time of the issuance of the request for task proposals. The Contractor shall notify DOE immediately upon the occurrence of the above event.

## H.31 CONTRACTOR'S PROGRAM/TASK MANAGER

(a) The Contractor shall designate a Program Manager who will be the Contractor's authorized supervisor for technical and administrative performance of all work performed under each task order and any administrative actions required associated with this BOA. If applicable, the Program Manager shall provide the single point of contact between the Contractor and the DCOR under each task order.

(b) The Program Manager shall receive and execute, on behalf of the Contractor, such technical directions as the DCOR may issue within the terms and conditions of the task order.

## H.32 SMALL BUSINESS SUBCONTRACTING PLAN

The "master" Small Business Subcontracting Plan, submitted by the Contractor consistent with the provisions of the clause entitled, "FAR 52.219-9 Small Business Subcontracting Plan," in Section I, and approved by the Contracting Officer on **TBD,** is incorporated in and made a material part of this BOA as Section J, Attachment J.4.

To determine compliance with the Section J, Attachment J.4 Small Business Subcontracting Plan, the Contractor shall complete an Individual Subcontract Report (ISR), as required by FAR 52.219-9, semi-annually during BOA performance for the periods ending March 31st and September 30th. The ISR shall be submitted semi-annually within 30 days of the end of each six month period, unless otherwise directed by the Contracting Officer. The ISR shall also be submitted within 30 days of BOA completion. The Contractor shall also submit a Summary Subcontract Report (SSR) annually for each 12-month period ending September 30th. The SSR shall be submitted within 30 days of the end of each 12-month period. The SSR shall also be submitted within 30 days of BOA completion. Both the ISR and the SSR shall be submitted through the Electronic Subcontracting Reporting System (eSRS) at www.esrs.gov.

The SSR submitted at the close of each fiscal year shall include a Year-End Supplementary Report for Small Disadvantaged Businesses. The report shall include subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. If the data is not available when the year-end SSR is submitted, the Contractor shall submit the Year-End Supplementary Report for Small Disadvantaged Businesses within 90 days of submitting the year-end SSR.

## H.33 PARTNERING

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

between the Government and the Contractor. The partnership strives to draw on the strengths of each organization in an effort to achieve a quality project done right the first time, within budget, and on schedule.

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

# PART II –CONTRACT CLAUSES

## SECTION I

## CONTRACT CLAUSES

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| | | **SUSPENDED, OR PROPOSED FOR DEBARMENT (AUG 2013)** |
| **I.17** | **52.209-9 UPDATES OF INFORMATION REGARDING RESPONSIBILITY MATTERS (JUL 2013)**<br><br>(a) The Contractor shall update the information in the Federal Awardee Performance and Integrity Information System (FAPIIS) on a semi-annual basis, throughout the life of the contract, by posting the required information in the System for Award Management database via https:// www.acquisition.gov.<br><br>(b) As required by section 3010 of the Supplemental Appropriations Act, 2010 (Pub. L. 111-212), all information posted in FAPIIS on or after April 15, 2011, except past performance reviews, will be publicly available. FAPIIS consists of two segments—<br><br>(1) The non-public segment, into which Government officials and the Contractor post information, which can only be viewed by—<br><br>(i) Government personnel and authorized users performing business on behalf of the Government; or<br>(ii) The Contractor, when viewing data on itself; and<br><br>(2) The publicly-available segment, to which all data in the non-public segment of FAPIIS is automatically transferred after a waiting period of 14 calendar days, except for—<br><br>(i) Past performance reviews required by subpart 42.15;<br>(ii) Information that was entered prior to April 15, 2011; or<br>(iii) Information that is withdrawn during the 14-calendar- day waiting period by the Government official who posted it in accordance with paragraph (c)(1) of this clause.<br><br>(c) The Contractor will receive notification when the Government posts new information to the Contractor's record.<br><br>(1) If the Contractor asserts in writing within 7 calendar days, to the Government official who posted the information, that some of the information posted to the non-public segment of FAPIIS is covered by a disclosure exemption under the Freedom of Information Act, the Government official who posted the information must within 7 calendar days remove the posting from FAPIIS and resolve the issue in accordance with agency Freedom of Information procedures, prior to reposting the releasable information. The contractor must cite 52.209-9 and request removal within 7 calendar days of the posting to FAPIIS.<br><br>(2) The Contractor will also have an opportunity to post comments regarding information that has been posted by the Government. The comments will be retained as long as the associated information is retained, i.e., for a total period of 6 years. Contractor comments will remain a part of the record unless the Contractor revises them.<br><br>(3) As required by section 3010 of Pub. L. 111-212, all information posted in FAPIIS on or after April 15, 2011, except past performance reviews, will be publicly available.<br><br>(d) Public requests for system information posted prior to April 15, 2011, will be handled under Freedom of Information Act procedures, including, where appropriate, procedures promulgated | |

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| | under E.O. 12600. | |
| **I.18** | **52.209-10** | **PROHIBITION ON CONTRACTING WITH INVERTED DOMESTIC CORPORATIONS (DEC 2014)** |
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| **I.42** | **52.222-41** | **SERVICE CONTRACT LABOR STANDARDS (MAY 2014)** |
| **I.43** | **52.222-42 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (MAY 2014)**<br><br>In compliance with the Service Contract Labor Standards statute and the regulations of the Secretary of Labor (29 CFR part 4), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe benefits payable to each if they were employed by the contracting agency subject to the provisions of 5 U.S.C. 5341 or 5332. *This Statement is for Information Only: It is not a Wage Determination*<br><br>**Employee Class Monetary Wage—Fringe Benefits**<br>_____ _____<br>_____ _____<br>_____ _____<br>_____ _____ | |
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| **I.54** | **52.227-11** | **PATENT RIGHTS – OWNERSHIP BY THE CONTRACTOR (MAY 2014)**<br><br>**Fill-In: (j) "TBD" (to be completed in each applicable order)** |
| **I.55** | **52.227-14** | **RIGHTS IN DATA—GENERAL (MAY 2014)** |
| **I.56** | **52.227-23** | **RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUN 1987)**<br><br>**Fill-In: "TBA"** |
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| **I.60** | **52.232-11** | **EXTRAS (APR 1984)** |
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| **I.64** | **52.232- 33** | **PAYMENT BY ELECTRONIC FUNDS TRANSFER – SYSTEM FOR AWARD MANAGEMENT (JUL 2013)** |
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| **I.67** | **52.233-4** | **APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (OCT 2004)** |
| **I.68** | **52.237-2** | **PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984)** |
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| **I.71** | **52.243-1** | **CHANGES – FIXED PRICE (AUG 1987) – ALT I (APR 1984)** |
| **I.72** | **52.244-2 SUBCONTRACTS (OCT 2010)**<br><br>**Fill-In: (d) "TBD" (to be completed in each applicable order)**<br>**(j) "TBD" (to be completed in each applicable order)** | |
| **I.73** | **52.244-6** | **SUBCONTRACTS FOR COMMERCIAL ITEMS (OCT 2014)** |

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| **I.79** | **52.249-8** | **DEFAULT (FIXED-PRICE SUPPLY AND SERVICE) (APR 1984)** |
| **I.80** | **52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)**<br><br>This Contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es): https://www.**acquisition**.gov/far/ | |
| **I.81** | **52.253-1** | **COMPUTER GENERATED FORMS (JAN 1991)** |
| **I.82** | **DEAR 952.202-1 DEFINITIONS (FEB 2011)**<br><br>(a) As prescribed in 902.201, insert the clause at 48 CFR 52.202-1, Definitions, in all contracts. The following shall be added to the clause as paragraph (c):<br><br>(c) When a solicitation provision or contract clause uses a word or term that is defined in the Department of Energy Acquisition Regulation (DEAR) (48 CFR chapter 9), the word or term has the same meaning as the definition in 48 CFR 902.101 or the definition in the part, subpart, or section of 48 CFR chapter 9 where the provision or clause is prescribed in effect at the time the solicitation was issued, unless an exception in (a) applies. | |
| **I.83** | **DEAR 952.203-70 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000)**<br><br>(a) The Contractor shall comply with the requirements of "DOE Contractor Employee Protection Program" at 10 CFR Part 708 for work performed on behalf of DOE directly related to activities at DOE-owned or-leased sites.<br><br>(b) The Contractor shall insert or have inserted the substance of this clause, including this paragraph (b), in subcontracts at all tiers, for subcontracts involving work performed on behalf of DOE directly related to activities at DOE-owned or leased sites. | |
| **I.84** | **DEAR 952.204-2 SECURITY (MAR 2011)**<br><br>(a) *Responsibility*. It is the Contractor's duty to protect all classified information, special nuclear material, and other DOE property. The Contractor shall, in accordance with DOE security regulations and requirements, be responsible for protecting all classified information and all classified matter (including documents, material and special nuclear material) which are in the Contractor's possession in connection with the performance of work under this contract against sabotage, espionage, loss or theft. Except as otherwise expressly provided in this contract, the | |

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| | Contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter or special nuclear material in the possession of the Contractor or any person under the Contractor's control in connection with performance of this contract. If retention by the Contractor of any classified matter is required after the completion or termination of the contract, the Contractor shall identify the items and classification levels and categories of matter proposed for retention, the reasons for the retention, and the proposed period of retention. If the retention is approved by the Contracting Officer, the security provisions of the contract shall continue to be applicable to the classified matter retained. Special nuclear material shall not be retained after the completion or termination of the contract.<br>(b) *Regulations*. The Contractor agrees to comply with all security regulations and contract requirements of DOE as incorporated into the contract.<br>(c) *Definition of Classified Information*. The term *Classified Information* means information that is classified as Restricted Data or Formerly Restricted Data under the Atomic Energy Act of 1954, or information determined to require protection against unauthorized disclosure under Executive Order 12958, *Classified National Security Information*, as amended, or prior executive orders, which is identified as *National Security Information*.<br><br>(d) *Definition of Restricted Data*. The term *Restricted Data* means all data concerning design, manufacture, or utilization of atomic weapons; production of special nuclear material; or use of special nuclear material in the production of energy, but excluding data declassified or removed from the Restricted Data category pursuant to 42 U.S.C. 2162 [Section 142, as amended, of the Atomic Energy Act of 1954].<br>(e) *Definition of Formerly Restricted Data*. The term *"Formerly Restricted Data"* means information removed from the Restricted Data category based on a joint determination by DOE or its predecessor agencies and the Department of Defense that the information-- (1) relates primarily to the military utilization of atomic weapons; and (2) can be adequately protected as National Security Information. However, such information is subject to the same restrictions on transmission to other countries or regional defense organizations that apply to Restricted Data.<br>(f) *Definition of National Security Information*. The term "*National Security Information*" means information that has been determined, pursuant to Executive Order 12958, Classified National Security Information, as amended, or any predecessor order, to require protection against unauthorized disclosure, and that is marked to indicate its classified status when in documentary form.<br>(g) *Definition of Special Nuclear Material*. The term “s*pecial nuclear material*” means-- (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which, pursuant to 42 U.S.C. 2071 [section 51 as amended, of the Atomic Energy Act of 1954] has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.<br>(h) *Access authorizations of personnel.* (1) The Contractor shall not permit any individual to have access to any classified information or special nuclear material, except in accordance with the Atomic Energy Act of 1954, and the DOE's regulations and contract requirements applicable to the particular level and category of classified information or particular category of special nuclear material to which access is required.<br>(2) The Contractor must conduct a thorough review, as defined at 48 CFR 904.401, of an uncleared applicant or uncleared employee, and must test the individual for illegal drugs, prior to selecting the individual for a position requiring a DOE access authorization.<br>(i) A review must-- verify an uncleared applicant’s or uncleared employee’s educational background, including any high school diploma obtained within the past five years, and degrees or diplomas granted by an institution of higher learning; contact listed employers for the last three |

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| | years and listed personal references; conduct local law enforcement checks when such checks are not prohibited by state or local law or regulation and when the uncleared applicant or uncleared employee resides in the jurisdiction where the Contractor is located; and conduct a credit check and other checks as appropriate.<br><br>(ii) Contractor reviews are not required for an applicant for DOE access authorization who possesses a current access authorization from DOE or another Federal agency, or whose access authorization may be reapproved without a federal background investigation pursuant to Executive Order 12968, Access to Classified Information (August 4, 1995), Sections 3.3(c) and (d).<br>(iii) In collecting and using this information to make a determination as to whether it is appropriate to select an uncleared applicant or uncleared employee to a position requiring an access authorization, the Contractor must comply with all applicable laws, regulations, and Executive Orders, including those-- (A) governing the processing and privacy of an individual's information, such as the Fair Credit Reporting Act, Americans with Disabilities Act (ADA), and Health Insurance Portability and Accountability Act; and (B) prohibiting discrimination in employment, such as under the ADA, Title VII and the Age Discrimination in Employment Act, including with respect to pre- and post-offer of employment disability related questioning.<br>(iv) In addition to a review, each candidate for a DOE access authorization must be tested to demonstrate the absence of any illegal drug, as defined in 10 CFR 707.4. All positions requiring access authorizations are deemed *testing designated positions* in accordance with 10 CFR part 707. All employees possessing access authorizations are subject to applicant, random or for cause testing for use of illegal drugs. DOE will not process candidates for a DOE access authorization unless their tests confirm the absence from their system of any illegal drug.<br>(v) When an uncleared applicant or uncleared employee receives an offer of employment for a position that requires a DOE access authorization, the Contractor shall not place that individual in such a position prior to the individual's receipt of a DOE access authorization, unless an approval has been obtained from the head of the cognizant local security office. If the individual is hired and placed in the position prior to receiving an access authorization, the uncleared employee may not be afforded access to classified information or matter or special nuclear material (in categories requiring access authorization) until an access authorization has been granted.<br>(vi) The Contractor must furnish to the head of the cognizant local DOE Security Office, in writing, the following information concerning each uncleared applicant or uncleared employee who is selected for a position requiring an access authorization--<br>A. The date(s) each Review was conducted;<br>B. Each entity that provided information concerning the individual;<br>C. A certification that the review was conducted in accordance with all applicable laws, regulations, and Executive Orders, including those governing the processing and privacy of an individual's information collected during the review;<br>D. A certification that all information collected during the review was reviewed and evaluated in accordance with the Contractor's personnel policies; and<br><br>E. The results of the test for illegal drugs.<br><br>(i) *Criminal liability*. It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to protect any classified information, special nuclear material, or other Government property that may come to the Contractor or any person under the Contractor's control in connection with work under this contract, may subject the Contractor, its agents, employees, or Subcontractors to criminal liability under the laws of the United States (see the Atomic Energy Act of 1954, 42 U.S.C. 2011 et seq.; 18 |

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| | U.S.C. 793 and 794).<br><br>(j) *Foreign Ownership, Control, or Influence.* (1) The Contractor shall immediately provide the cognizant security office written notice of any change in the extent and nature of foreign ownership, control or influence over the Contractor which would affect any answer to the questions presented in the Standard Form (SF) 328, *Certificate Pertaining to Foreign Interests*, executed prior to award of this contract. In addition, any notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice, shall also be furnished concurrently to the Contracting Officer. Contractors are encouraged to submit this information through the use of the online tool at https://foci.td.anl.gov. When completed the Contractor must print and sign one copy of the SF 328 and submit it to the Contracting Officer.<br>(2) If a Contractor has changes involving foreign ownership, control, or influence, DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, DOE will consider proposals made by the Contractor to avoid or mitigate foreign influences.<br>(3) If the cognizant security office at any time determines that the Contractor is, or is potentially, subject to foreign ownership, control, or influence, the Contractor shall comply with such instructions as the Contracting Officer shall provide in writing to protect any classified information or special nuclear material.<br>(4) The Contracting Officer may terminate this contract for default either if the Contractor fails to meet obligations imposed by this clause or if the Contractor creates a foreign ownership, control, or influence situation in order to avoid performance or a termination for default. The Contracting Officer may terminate this contract for convenience if the Contractor becomes subject to foreign ownership, control, or influence and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the foreign ownership, control, or influence problem.<br>(k) *Employment announcements.* When placing announcements seeking applicants for positions requiring access authorizations, the Contractor shall include in the written vacancy announcement, a notification to prospective applicants that reviews, and tests for the absence of any illegal drug as defined in 10 CFR 707.4, will be conducted by the employer and a background investigation by the Federal government may be required to obtain an access authorization prior to employment, and that subsequent reinvestigations may be required. If the position is covered by the Counterintelligence Evaluation Program regulations at 10 CFR 709, the announcement should also alert applicants that successful completion of a counterintelligence evaluation may include a counterintelligence-scope polygraph examination.<br><br>(l) *Flow down to subcontracts.* The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph, in all subcontracts under its contract that will require subcontractor employees to possess access authorizations. Additionally, the Contractor must require such subcontractors to have an existing DOD or DOE facility clearance or submit a completed SF 328, *Certificate Pertaining to Foreign Interests*, as required in 48 CFR 952.204-73, Facility Clearance, and obtain a foreign ownership, control and influence determination and facility clearance prior to award of a subcontract. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the Contracting Officer. For purposes of this clause, Subcontractor means any subcontractor at any tier and the term "Contracting Officer" means the DOE Contracting Officer. When this clause is included in a subcontract, the term "Contractor" shall mean subcontractor and the term "contract" shall mean subcontract. |

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| **I.85** | **DEAR 952.204-70 CLASSIFICATION/DECLASSIFICATION (SEP 1997)**<br><br>In the performance of work under this contract, the Contractor or subcontractor shall comply with all provisions of the Department of Energy's regulations and mandatory DOE directives which apply to work involving the classification and declassification of information, documents, or material. In this section, "information" means facts, data, or knowledge itself; "document" means the physical medium on or in which information is recorded; and "material" means a product or substance which contains or reveals information, regardless of its physical form or characteristics. Classified information is "Restricted Data" and "Formerly Restricted Data" (classified under the Atomic Energy Act of 1954, as amended) and "National Security Information" (classified under Executive Order 12958 or prior Executive Orders). The original decision to classify or declassify information is considered an inherently Governmental function. For this reason, only Government personnel may serve as original classifiers, i.e., Federal Government Original Classifiers. Other personnel (Government or Contractor) may serve as derivative classifiers which involves making classification decisions based upon classification guidance which reflect decisions made by Federal Government Original Classifiers.<br><br>The Contractor or subcontractor shall ensure that any document or material that may contain classified information is reviewed by either a Federal Government or a Contractor Derivative Classifier in accordance with classification regulations including mandatory DOE directives and classification/declassification guidance furnished to the Contractor by the Department of Energy to determine whether it contains classified information prior to dissemination. For information which is not addressed in classification/declassification guidance, but whose sensitivity appears to warrant classification, the Contractor or subcontractor shall ensure that such information is reviewed by a Federal Government Original Classifier.<br><br>In addition, the Contractor or subcontractor shall ensure that existing classified documents (containing either Restricted Data or Formerly Restricted Data or National Security Information) which are in its possession or under its control are periodically reviewed by a Federal Government or Contractor Derivative Declassifier in accordance with classification regulations, mandatory DOE directives and classification/declassification guidance furnished to the Contractor by the Department of Energy to determine if the documents are no longer appropriately classified. Priorities for declassification review of classified documents shall be based on the degree of public and researcher interest and the likelihood of declassification upon review. Documents which no longer contain classified information are to be declassified. Declassified documents then shall be reviewed to determine if they are publicly releasable. Documents which are declassified and determined to be publicly releasable are to be made available to the public in order to maximize the public's access to as much Government information as possible while minimizing security costs.<br><br>The Contractor or subcontractor shall insert this clause in any subcontract which involves or may involve access to classified information. |
| **I.86** | **DEAR 952.204-75 PUBLIC AFFAIRS (DEC 2000)**<br><br>(a) The Contractor must cooperate with the Department in releasing unclassified information to the public and news media regarding DOE policies, programs, and activities relating to its effort under the contract. The responsibilities under this clause must be accomplished through coordination with the Contracting Officer and appropriate DOE public affairs personnel in accordance with procedures defined by the Contracting Officer. |

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| | (b) The Contractor is responsible for the development, planning, and coordination of proactive approaches for the timely dissemination of unclassified information regarding DOE activities onsite and offsite, including, but not limited to, operations and programs. Proactive public affairs programs may utilize a variety of communication media, including public workshops, meetings or hearings, open houses, newsletters, press releases, conferences, audio/visual presentations, speeches, forums, tours, and other appropriate stakeholder interactions.<br><br>(c) The Contractor's internal procedures must ensure that all releases of information to the public and news media are coordinated through, and approved by, a management official at an appropriate level within the Contractor's organization.<br><br>(d) The Contractor must comply with DOE procedures for obtaining advance clearances on oral, written, and audio/visual informational material prepared for public dissemination or use.<br><br>(e) Unless prohibited by law, and in accordance with procedures defined by the Contracting Officer, the Contractor must notify the Contracting Officer and appropriate DOE public affairs personnel of communications or contacts with Members of Congress relating to the effort performed under the contract.<br><br>(f) In accordance with procedures defined by the Contracting Officer, the Contractor must notify the Contracting Officer and appropriate DOE public affairs personnel of activities or situations that may attract regional or national news media attention and of non-routine inquiries from national news media relating to the effort performed under the contract.<br><br>(g) In releases of information to the public and news media, the Contractor must fully and accurately identify the Contractor's relationship to the Department and fully and accurately credit the Department for its role in funding programs and projects resulting in scientific, technical, and other achievements. |
| **I.87** | **DEAR 952.208-70 PRINTING (APR 1984)**<br><br>The Contractor shall not engage in, nor subcontract for, any printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations in effect on the effective date of this Contract) in connection with the performance of work under this Contract. Provided, however, that performance of a requirement under this Contract involving the duplication of less than 5,000 copies of a single unit, or no more than 25,000 units in the aggregate of multiple units, will not be deemed to be printing. A unit is defined as one sheet, size 8½ by 11 inches one side only, one color. A requirement is defined as a single publication document.<br><br>(1) The term "printing" includes the following processes: composition, plate making, presswork, binding, microform publishing, or the end items produced by such processes.<br><br>(2) If fulfillment of the Contract will necessitate reproduction in excess of the limits set forth above, the Contractor shall notify the Contracting Officer in writing and obtain the Contracting Officer's approval prior to acquiring on DOE's behalf production, acquisition, and dissemination of printed matter. Such printing must be obtained from the Government Printing Office (GPO), a Contract source designated by GPO or a Joint Committee on Printing authorized federal printing plant.<br><br>(3) Printing services not obtained in compliance with this guidance will result in the cost of such |

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| | printing being disallowed.<br><br>(4) The Contractor will include in each of his subcontracts hereunder a provision substantially the same as this clause including this paragraph (4). |
| **I.88** | **DEAR 952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST (AUG 2009) – ALT I (FEB 2011)**<br><br>(a) Purpose. The purpose of this clause is to ensure that the Contractor (1) is not biased because of its financial, contractual, organizational, or other interests which relate to the work under this contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.<br><br>(b) Scope. The restrictions described herein shall apply to performance or participation by the Contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "Contractor") in the activities covered by this clause as a prime Contractor, subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.<br>(1) Use of Contractor's Work Product.<br>(i) The Contractor shall be ineligible to participate in any capacity in Department contracts, subcontracts, or proposals therefore (solicited and unsolicited) which stem directly from the Contractor's performance of work under this contract for a period of six (6) months after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first. Furthermore, unless so directed in writing by the Contracting Officer, the Contractor shall not perform any advisory and assistance services work under this contract on any of its products or services or the products or services of another firm if the Contractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the Contractor from competing for follow-on contracts for advisory and assistance services.<br>(ii) If, under this contract, the Contractor prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the Contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The Contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the Contracting Officer, in which case the restriction in this subparagraph shall not apply.<br>(iii) Nothing in this paragraph shall preclude the Contractor from offering or selling its standard and commercial items to the Government.<br>(2) Access to and use of information.<br>(i) If the Contractor, in the performance of this contract, obtains access to information, such as Department plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data which has not been released or otherwise made available to the public, the Contractor agrees that without prior written approval of the Contracting Officer it shall not—<br>(A) use such information for any private purpose unless the information has been released or otherwise made available to the public;<br>(B) compete for work for the Department based on such information for a period of six (6) months after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first;<br>(C) submit an unsolicited proposal to the Government which is |

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| | based on such information until one year after such information is released or otherwise made available to the public; and<br>(D) release such information unless such information has previously been released or otherwise made available to the public by the Department.<br>(ii) In addition, the Contractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business, or financial information under this contract, it shall treat such information in accordance with any restrictions imposed on such information.<br>(iii) The Contractor may use technical data it first produces under this contract for its private purposes consistent with paragraphs (b)(2)(i) (A) and (D) of this clause and the patent, rights in data, and security provisions of this contract.<br>(c) Disclosure after award.<br><br>(1) The Contractor agrees that, if changes, including additions, to the facts disclosed by it prior to award of this contract, occur during the performance of this contract, it shall make an immediate and full disclosure of such changes in writing to the Contracting Officer. Such disclosure may include a description of any action which the Contractor has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. The Department may, however, terminate the contract for convenience if it deems such termination to be in the best interest of the Government.<br>(2) In the event that the Contractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to the Contracting Officer, DOE may terminate this contract for default.<br><br>(d) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this contract, including the existence of an actual or potential organizational conflict of interest at the time of or after award, the Government may terminate the contract for default, disqualify the Contractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this contract.<br>(e) Waiver. Requests for waiver under this clause shall be directed in writing to the Contracting Officer and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the Government, the Contracting Officer may grant such a waiver in writing.<br>Alternate I<br>In accordance with 909.507-2 and 970.0905, include the following alternate in the specified types of contracts.<br><br>(f) Subcontracts.<br><br>(1) The Contractor shall include a clause, substantially similar to this clause, including this paragraph (f), in subcontracts expected to exceed the simplified acquisition threshold determined in accordance with 48 CFR part 13 and involving the performance of advisory and assistance services as that term is defined at 48 CFR 2.101. The terms "contract, " "Contractor," and "Contracting Officer" shall be appropriately modified to preserve the Government's rights.<br><br>(2) Prior to the award under this contract of any such subcontracts for advisory and assistance services, the Contractor shall obtain from the proposed subcontractor or consultant the disclosure required by 48 CFR 909.507-1, and shall determine in writing whether the interests disclosed present an actual or significant potential for an organizational conflict of interest. Where an actual |

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| | or significant potential organizational conflict of interest is identified, the Contractor shall take actions to avoid, neutralize, or mitigate the organizational conflict to the satisfaction of the Contractor. If the conflict cannot be avoided or neutralized, the Contractor must obtain the approval of the DOE Contracting Officer prior to entering into the subcontract. |
| **I.89** | **DEAR 952.226-74, DISPLACED EMPLOYEE HIRING PREFERENCE (JUNE 1997)**<br><br>(a) Definition. Eligible employee means a current or former employee of a contractor or subcontractor employed at a Department of Energy Defense Nuclear Facility (1) whose position of employment has been, or will be, involuntarily terminated (except if terminated for cause), (2) who has also met the eligibility criteria contained in the Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, and (3) who is qualified for a particular job vacancy with the Department or one of its contractors with respect to work under its contract with the Department at the time the particular position is available.<br><br>(b) Consistent with Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, the Contractor agrees that it will provide a preference in hiring to an eligible employee to the extent practicable for work performed under this contract.<br><br>(c) The requirements of this clause shall be included in subcontracts at any tier (except for subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed $500,000. |
| **I.90** | **DEAR 952.242-70 TECHNICAL DIRECTION (DEC 2000)**<br>(a) Performance of the work under this contract shall be subject to the technical direction of the DOE Contracting Officer's Representative (COR). The term "technical direction" is defined to include, without limitation:<br><br>(1) Providing direction to the Contractor that redirects contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details, or otherwise serve to accomplish the contractual Statement of Work.<br>(2) Providing written information to the Contractor that assists in interpreting drawings, specifications, or technical portions of the work description.<br>(3) Reviewing and, where required by the contract, approving, technical reports, drawings, specifications, and technical information to be delivered by the Contractor to the Government.<br><br>(b) The Contractor will receive a copy of the written COR designation from the Contracting Officer. It will specify the extent of the COR's authority to act on behalf of the Contracting Officer.<br><br>(c) Technical direction must be within the scope of work stated in the contract. The COR does not have the authority to, and may not, issue any technical direction that—<br><br>(1) Constitutes an assignment of additional work outside the Statement of Work;<br>(2) Constitutes a change as defined in the contract clause entitled "Changes;"<br>(3) In any manner causes an increase or decrease in the total estimated contract cost, the fee (if any), or the time required for contract performance;<br>(4) Changes any of the expressed terms, conditions or specifications of the contract; or<br>(5) Interferes with the Contractor's right to perform the terms and conditions of the contract.<br><br>(d) All technical direction shall be issued in writing by the COR. |

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| | (e) The Contractor must proceed promptly with the performance of technical direction duly issued by the COR in the manner prescribed by this clause and within its authority under the provisions of this clause. If, in the opinion of the Contractor, any instruction or direction by the COR falls within one of the categories defined in (c)(1) through (c)(5) of this clause, the Contractor must not proceed and must notify the Contracting Officer in writing within five (5) working days after receipt of any such instruction or direction and must request the Contracting Officer to modify the contract accordingly. Upon receiving the notification from the Contractor, the Contracting Officer must—<br><br>(1) Advise the Contractor in writing within thirty (30) days after receipt of the Contractor's letter that the technical direction is within the scope of the contract effort and does not constitute a change under the Changes clause of the contract;<br>(2) Advise the Contractor in writing within a reasonable time that the Government will issue a written change order; or<br>(3) Advise the Contractor in writing within a reasonable time not to proceed with the instruction or direction of the COR.<br><br>(f) A failure of the Contractor and Contracting Officer either to agree that the technical direction is within the scope of the contract or to agree upon the contract action to be taken with respect to the technical direction will be subject to the provisions of the clause entitled "Disputes." |
| **I.91** | **DEAR 952.250-70 NUCLEAR HAZARDS INDEMNITY AGREEMENT (JUN 1996)**<br><br>(a) Authority. This clause is incorporated into this contract pursuant to the authority contained in subsection 170d. of the Atomic Energy Act of 1954, as amended (hereinafter called the Act.)<br>(b) Definitions. The definitions set out in the Act shall apply to this clause.<br>(c) Financial protection. Except as hereafter permitted or required in writing by DOE, the Contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability, as described in paragraph (d)(2) below. DOE may, however, at any time require in writing that the Contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the Contractor by DOE.<br>(d)(1) Indemnification. To the extent that the Contractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE, DOE will indemnify the Contractor and other persons indemnified against (i) claims for public liability as described in subparagraph (d)(2) of this clause; and (ii) such legal costs of the Contractor and other persons indemnified as are approved by DOE, provided that DOE's liability, including such legal costs, shall not exceed the amount set forth in section 170e.(1)(B) of the Act in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or $100 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.<br>(2) The public liability referred to in subparagraph (d)(1) of this clause is public liability as defined in the Act which (i) arises out of or in connection with the activities under this contract, including transportation; and (ii) arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.<br>(e)(1) Waiver of Defenses. In the event of a nuclear incident, as defined in the Act, arising out of nuclear waste activities, as defined in the Act, the Contractor, on behalf of itself and other persons indemnified, agrees to waive any issue or defense as to charitable or governmental immunity. |

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| | (2) In the event of an extraordinary nuclear occurrence which—<br>(i) Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or<br><br>(ii) Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or<br>(iii) Arises out of or results from the possession, operation, or use by the Contractor or a subcontractor of a device utilizing special nuclear material or by-product material, during the course of the contract activity; or<br>(iv) Arises out of, results from, or occurs in the course of nuclear waste activities, the Contractor, on behalf of itself and other persons indemnified, agrees to waive:<br>(A) Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault of persons indemnified, including, but not limited to—<br>1. Negligence;<br>2. Contributory negligence;<br>3. Assumption of risk; or<br>4. Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God;<br>(B) Any issue or defense as to charitable or governmental immunity; and<br>(C) Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or change and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.<br>(v) The term extraordinary nuclear occurrence means an event which DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in 10 CFR part 840.<br>(vi) For the purposes of that determination, "offsite" as that term is used in 10 CFR part 840 means away from "the contract location" which phrase means any DOE facility, installation, or site at which contractual activity under this contract is being carried on, and any contractor-owned or controlled facility, installation, or site at which the Contractor is engaged in the performance of contractual activity under this contract.<br>(3) The waivers set forth above—<br><br>(i) Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action;<br>(ii) Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;<br>(iii) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;<br>(iv) Shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;<br>(v) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law; |

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| | (vi) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;<br>(vii) Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection; and<br>(viii) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (A) the limit of liability provisions under subsection 170e. of the Act, and (B) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.<br>(f) Notification and litigation of claims. The Contractor shall give immediate written notice to DOE of any known action or claim filed or made against the Contractor or other person indemnified for public liability as defined in paragraph (d)(2). Except as otherwise directed by DOE, the Contractor shall furnish promptly to DOE, copies of all pertinent papers received by the Contractor or filed with respect to such actions or claims. DOE shall have the right to, and may collaborate with, the Contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right to (1) require the prior approval of DOE for the payment of any claim that DOE may be required to indemnify hereunder; and (2) appear through the Attorney General on behalf of the Contractor or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the Contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.<br>(g) Continuity of DOE obligations. The obligations of DOE under this clause shall not be affected by any failure on the part of the Contractor to fulfill its obligation under this contract and shall be unaffected by the death, disability, or termination of existence of the Contractor, or by the completion, termination or expiration of this contract.<br>(h) Effect of other clauses. The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this contract, including the clause entitled Contract Disputes, provided, however, that this clause shall be subject to the clauses entitled Covenant Against Contingent Fees, and Accounts, records, and inspection, and any provisions that are later added to this contract as required by applicable Federal law, including statutes, executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.<br>(i) Civil penalties. The Contractor and its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to civil penalties, pursuant to 234A of the Act, for violations of applicable DOE nuclear-safety related rules, regulations, or orders.<br>(j) Criminal penalties. Any individual director, officer, or employee of the Contractor or of its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to criminal penalties, pursuant to 223(c) of the Act, for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.<br>(k) Inclusion in subcontracts. The Contractor shall insert this clause in any subcontract which may involve the risk of public liability, as that term is defined in the Act and further described in paragraph (d)(2) above. However, this clause shall not be included in subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC agreements of indemnification under section 170c. or k. of the Act for the activities under the subcontract.<br>Effective date<br>( ) See Note II below for instructions related to this section on Effective Date.<br>Relationship to general indemnity |

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| | ( ) See Note III below for instructions related to this section on Relationship to General Indemnity. | |
| **I.92** | **DEAR 970.5204-2 LAWS, REGULATIONS, AND DOE DIRECTIVES (DEC 2000)**<br><br>(a) In performing work under this contract, the Contractor shall comply with the requirements of applicable Federal, State, and local laws and regulations (including DOE regulations), unless relief has been granted in writing by the appropriate regulatory agency. A List of Applicable Laws and regulations (List A) may be appended to this contract for information purposes. Omission of any applicable law or regulation from List A does not affect the obligation of the Contractor to comply with such law or regulation pursuant to this paragraph.<br>(b) In performing work under this contract, the Contractor shall comply with the requirements of those Department of Energy directives, or parts thereof, identified in the List of Applicable Directives (List B) appended to this contract. Except as otherwise provided for in paragraph (d) of this clause, the Contracting Officer may, from time to time and at any time, revise List B by unilateral modification to the contract to add, modify, or delete specific requirements. Prior to revising List B, the Contracting Officer shall notify the Contractor in writing of the Department's intent to revise List B and provide the Contractor with the opportunity to assess the effect of the Contractor's compliance with the revised list on contract cost and funding, technical performance, and schedule; and identify any potential inconsistencies between the revised list and the other terms and conditions of the contract. Within 30 days after receipt of the Contracting Officer's notice, the Contractor shall advise the Contracting Officer in writing of the potential impact of the Contractor's compliance with the revised list. Based on the information provided by the Contractor and any other information available, the Contracting Officer shall decide whether to revise List B and so advise the Contractor not later than 30 days prior to the effective date of the revision of List B. The Contractor and the Contracting Officer shall identify and, if appropriate, agree to any changes to other contract terms and conditions, including cost and schedule, associated with the revision of List B pursuant to the clause of this contract entitled, "Changes."<br>(c) Environmental, safety, and health (ES&H) requirements appropriate for work conducted under this contract may be determined by a DOE approved process to evaluate the work and the associated hazards and identify an appropriately tailored set of standards, practices, and controls, such as a tailoring process included in a DOE approved Safety Management System implemented under the clause entitled "Integration of Environment, Safety, and Health into Work Planning and Execution." When such a process is used, the set of tailored (ES&H) requirements, as approved by DOE pursuant to the process, shall be incorporated into List B as contract requirements with full force and effect. These requirements shall supersede, in whole or in part, the contractual environmental, safety, and health requirements previously made applicable to the contract by List B. If the tailored set of requirements identifies an alternative requirement varying from an ES&H requirement of an applicable law or regulation, the Contractor shall request an exemption or other appropriate regulatory relief specified in the regulation.<br>(d) Except as otherwise directed by the Contracting Officer, the Contractor shall procure all necessary permits or licenses required for the performance of work under this contract.<br>(e) Regardless of the performer of the work, the Contractor is responsible for compliance with the requirements of this clause. The Contractor is responsible for flowing down the requirements of this clause to subcontracts at any tier to the extent necessary to ensure the Contractor's compliance with the requirements. | |
| **I.93** | **52.204-14** | **SERVICE CONTRACT REPORTING REQUIREMENTS (JAN 2014)** |

# PART III - LIST OF DOCUMENTS, EXHIBITS,

# AND OTHER ATTACHMENTS

## SECTION J

## LIST OF ATTACHMENTS


| Attachment | Description | Page Number |
|---|---|---|
| J.1 | LIST OF APPLICABLE DOE DIRECTIVES | J-2 |
| J.2 | LIST OF DELIVERABLES | J-3 |
| J.3 | DEPARTMENT OF LABOR WAGE DETERMINATIONS | J-7 |
| J.4 | SMALL BUSINESS SUBCONTRACTING PLAN | J-8 |
| J.5 | DOE OFFICE OF ENVIRONMENTAL MANAGEMENT FY 14 ANNUAL PERFORMANCE AGREEMENT | J-9 |

## SECTION J – LIST OF ATTACHMENTS

## ATTACHMENT J.1

## LIST OF APPLICABLE DOE DIRECTIVES

DOE directives may be found at http://www.directives.doe.gov/. The Contractor shall, comply with all applicable DOE directives, including, but not limited to, the following:

| Order Number/Changes | Title |
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| DOE 0 221.1A | Reporting Fraud, Waste, and Abuse to the Office of Inspector General |
| DOE 0 221.2A | Cooperation with the Office of Inspector General |
| DOE O 226.1B | Implementation of Department of Energy Oversight Policy |
| DOE O 243.1B | Admin Chg.1 Records Management Program |
| DOE O 414.1D | Admin Chg. 1 Quality Assurance |
| DOE O 435.1 | Chg. 1 Radioactive Waste Management |
| DOE M 435.1-1 | Admin Chg. 2 Radioactive Waste Management Manual |
| DOE P 450.4A | Integrated Safety Management System Policy |
| DOE O 458.1 | Admin Chg. 3, Radiation Protection of the Public and the Environment |
| DOE O 460.1C | Packaging and Transportation Safety |
| DOE O 460.2A | Departmental Materials Transportation and Packaging Management |
| DOE O 471.3 | Admin Chg. 1 Identifying and Protecting Official Use Only Information |
| DOE M 471.3-1 | Admin Chg. 1 Manual for Identifying and Protecting Official Use Only Information |
| DOE 5400-5 | Radiation Protection of the Public and the Environment |
| EM-QA-001 | EM Quality Assurance Program |

## SECTION J – LIST OF ATTACHMENTS

## ATTACHMENT J.2

## LIST OF DELIVERABLES

All deliverables shall be provided to the Contracting Officer or the Designated Contracting Officer for the task order in an editable electronic format (i.e., rather than PDF). Omission of any deliverable from the List of Deliverables does not affect the obligation of the Contractor to comply with such requirement.

| | Description | Due Date | Contract Reference | POC |
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| 1. | Review of Waste Generator Sampling and Analysis Plans | Within 30 days of request | C.03.1.4 | Waste Generator / Ordering Activity |
| 2. | Certification of Release / Certificate of Disposal | Within 30 days after approval | C.03.2.5<br>C.03.3.6<br>C.03.4.5 | Waste Generator / Ordering Activity |
| 3. | Notice to Transport | Within 5 days of approval | C.03.1.12;<br>C.03.2.8;<br>C.03.3.9<br>C.03.4.9 | Waste Generator / Ordering Activity |
| 4. | Record of Transportation Survey | Upon request | C.03.1.13;<br>C.03.2.9;<br>C.03.3.10<br>C.03.4.10 | Waste Generator / Ordering Activity and DCO |
| 5. | Notice of Contamination | Within 24 hours of detection, verbally and in writing | C.03.1.13;<br>C.03.2.9;<br>C.03.3.10<br>C.03.4.10 | Waste Generator / Ordering Activity and DCO |
| 6. | Notice of Transportation Infraction | Within 24 hours of discovery by telephone/in writing within 48 hours | C.03.1.17;<br>C.03.2.13;<br>C.03.3.14<br>C.03.4.14 | Waste Generator / Ordering Activity and DCO |
| 7. | Certification of Release | As requested | C.03.2.20<br>C.03.3.21<br>C.03.4.21 | Waste Generator / Ordering Activity or DCO |
| 8. | Notification of Damage to Conveyances | In writing within 24 hours of incident | C.03.1.21;<br>C.03.2.16;<br>C.03.3.17<br>C.03.4.17 | Waste Generator / Ordering Activity and |

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| 9. | Notification of Exceeding Storage Limits | In writing within 60 days prior to exceeding storage limits | C.03.1.23 | Waste Generator / Ordering Activity |
| 10. | Applicable Documents, Records, Modifications | As requested, within 48 hours | C.03.1.24; C.03.2.18; C.03.3.19 C.03.4.19 | DCO |
| 11. | Response to questions regarding documentation and reports | Within 48 hours, verbally and in writing | C.03.1.25; C.03.2.19; C.03.3.20 C.03.4.20 | Waste Generator / Ordering Activity or DCO |
| 12. | Permits, License, Waste Acceptance Criteria (WAC), and any other authorizations, RCRA permit requirements, applicable exemptions, revisions, and other requirement etc. | As requested | C.03.1.26; C.03.2.21 C.03.3.22 C.03.4.22 | DCO |
| 13. | Notification of start of treatment processing | Within 10 days prior to start of treatment processing, verbally and in writing | C.03.1.27 | Waste Generator / Ordering Activity |
| 14. | Laboratory permits, certifications, licenses, and audit reports | Within 10 days of request | C.03.1.28 C.03.2.22 C.03.3.23 C.03.4.23 | Waste Generator / Ordering Activity |
| 15. | Documentation of Waste Treatment | Within 15 working days of treatment completion | C.03.1.29 | Waste Generator / Ordering Activity |
| 16. | Notice of Violation | Verbally within 24 hours | C.03.1.30 C.03.2.23 C.03.3.24 C.03.4.24 | DCO |
| 17. | Notification of event impacting schedule | Verbally within 48 hours of discovery | C.03.1.31 C.03.2.24 C.03.3.25 C.03.4.25 | Waste Generator / Ordering Activity |
| 18. | Waste Treatment Report BSFR Report Recycle/Reuse Report | Anniversary of BOA award | C.03.1.32 C.03.2.25 C.03.3.26 C.03.4.26 | BOA CO and DOE EM Office of Disposal Operations (EM-32) and DOE EM Office of Disposal |

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| | | | | Operations (EM-31) |
| 19. | Final Summary Report | Within 30 days after completion of all task orders issued under the BOA | C.03.1.32<br>C.03.2.26<br>C.03.3.26<br>C.03.4.26 | BOA CO |
| 20. | Nonconformances | Within 24 hours of discovery by telephone/in writing within 48 hours | C.03.1.34<br>C.03.2.28<br>C.03.3.28<br>C.03.4.28 | Waste Generator / Ordering Activity or DCO |
| 21. | Release of Information | At least 10 days prior to the planned issue date | H.04 | DCO |
| 22. | Individual Subcontract Report (ISR) | Semi Annually within 30 days of the end of each six month period and within 30 days of BOA completion. | H.32 | BOA CO |
| 23. | Summary Subcontract Report (SSR) | Annually, within 30 days of the end of each 12-month period. | H.32 | BOA CO |
| 24. | Small Disadvantaged Business Year-End Supplementary Report | If applicable, 90-days after submitting SSR | H.32 | BOA CO |
| 25. | Most Favored Rate Notification of Lower Rates | Within 30 days of utilization of the lower rate. | H.33 | BOA CO and DCO |
| 26. | Disclosure of Lobbying Activities | As required or within 30 days of the end of the calendar quarter in which the change occurs | I.8 FAR 52.203-12 | BOA CO |
| 27. | System for Award Management Updates | Minimum of one business day's written notification | I.15 FAR 52.204-13 | BOA CO |
| 28. | Reporting Executive Compensation and First-Tier Subcontract Awards | Within 30 days after award and annually thereafter. | I.14 FAR 52.204-10 | BOA CO |
| 29. | Updates of Publicly Available Information Regarding Responsibility Matters | Semi-annually. | I.17 FAR 52.209-9 | BOA CO |
| 30. | Employment Reports for Special Disabled Veterans and Veterans of the Vietnam Era (Federal Contractor Veterans' Employment Report VETS-100) | Annually by September 30. | I.37 FAR 52.222-37 | BOA CO |

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| 31. | Bankruptcy Notification | Within 5 days of the initiation of the proceeding relating to the filing. | I.68 FAR 52.242-13 | BOA CO/DCO |
| 32. | Service Contract Reporting Requirements | Annually by October 31 | FAR 52.204-14 Service Contract Reporting Requirements | BOA CO |

**SECTION J – LIST OF ATTACHMENTS**

**ATTACHMENT J.3**

**DEPARMENT OF LABOR WAGE DETERMINATIONS**

**(SCA Wage Determinations for the Contractor's authorized waste treatment facilities can be found at: http://www.wdol.gov/)**

**SECTION J – LIST OF ATTACHMENTS**

**Attachment J.4**

**Small Business Subcontracting Plan**

**(Not Applicable to this BOA)**

**ATTACHMENT J.5 DOE Office of Environmental Management FY 14 Annual Performance Agreement**

# FY14 Annual Performance Agreement

U.S. Department of Energy

U.S. Department of Energy

Rev 3.2

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**Office of Environmental Management**
**FY 2014 Performance Agreement**

The Office of Environmental Management (EM) is working to complete the safe cleanup of the environmental legacy brought about by five decades of nuclear weapons development and government-sponsored nuclear energy research. For FY 2014, EM's commitments advance the program and management goals, priorities, and expectations of the Department of Energy (DOE). They will move us toward a more efficient and effective organization by using a business model that reflects the management philosophy of empowering the Field with the authorities and resources necessary to successfully execute the EM Program mission safely. The “lapse in appropriations” at the beginning of the fiscal year has disrupted work execution and may delay completion of proposed milestones.

This Performance Agreement articulates the link between DOE’s Strategic Goals and those of EM. It is intended to communicate the metrics used to measure progress, and convey the commitment of EM’s Senior Management to the mission of DOE. This Agreement is the commitment by the EM leadership team to turn ideas into reality and resources into results.

DOE Strategic Plan and EM’s Mission

In May 2011, the Department released its Strategic Plan, a document that outlines the broad, cross-cutting and collaborative goals that stretch across our complex. The Strategic Plan is intended to serve as a blueprint for DOE to help address the Nation’s energy, environmental, and nuclear challenges through transformative science and technology solutions. At the heart of that plan are the following Departmental goals:

**DOE Goal 1: Transform Our Energy Systems.** Catalyze the timely, material and efficient transformation of the Nation’s energy system and secure U.S. leadership in clean energy technologies

**DOE Goal 2: The Science and Engineering Enterprise.** Maintain a vibrant U.S. effort in science and engineering as a cornerstone of our economic prosperity with clear leadership in strategic areas

**DOE Goal 3: Secure Our Nation.** Enhance nuclear security through defense, nonproliferation, and environmental efforts

**DOE Goal 4: Management and Operational Excellence.** Establish an operational and adaptable framework that combines the best wisdom of all Department stakeholders to maximize mission success

The plan expresses how the Department’s missions and programs are designed to bring the best minds and capabilities to bear on important problems. DOE draws on the diverse talents of our federal workforce, scientists and engineers from national laboratories, academia, and the private sector in multidisciplinary teams, striving to find solutions to the most complex and pressing challenges. At the time of this writing, DOE has initiated efforts to develop a new Strategic Plan. Once completed, this Performance Agreement will be updated, as appropriate.

Measuring Progress

EM leadership has developed and assigned specific efforts targeted to further the overall mission of the organization. These management initiatives are each led by an assigned Deputy Assistant Secretary sponsor and will be implemented through a Plan of Action and Milestones (POAM). A review of the

status of these initiatives will be conducted on a bimonthly basis to ensure the organization is on-track to meet these high level commitments:

- Partner with NE to develop a strategy and alternatives for the utilization of WIPP for expanded material and waste forms. Resolve storage and disposition pathways of other waste forms
- Execute a National Academy of Science (NAS) study on Waste Classification in coordination with EM-10
- Complete first shipment of Hanford Tank Waste, considered and classified as TRU, to WIPP
- Complete construction of Low Activity Waste (LAW) facility at Hanford, along with direct feed capability and begin radioactive operations of the LAW facility no later than December 2019
- Complete construction by December 2016 and begin radioactive operations for the Salt Waste Processing Facility by December 2018
- Complete treatment of liquid sodium bearing waste at Idaho and close the four remaining liquid waste storage tanks. Achieve full operations, with high reliability, of IWTU
- Award of Paducah Site Surveillance & Maintenance contract
- Award the Expression of Interest/Request for Offerors for the future use of the Paducah gaseous diffusion plant and facilities and uranium tails
- Complete a site-by-site and contract-by-contract plan to consider and implement (as appropriate) the Deputy Secretary's principles for aligning contract management. Plan should include specific milestones and should include the participation of the relevant field office manager and the relevant DAS
- Review the regulatory framework for each site to determine flexibility in aligning expectations (to include potential new milestones and agreements under discussion) with current and out-year budget projections
- Implement process/procedures for scrap metal recycling to address: 1) clean materials in clean areas, 2) clean material in contaminated areas, and 3) contaminated materials in contaminated areas. Initial approach may focus on nickel recycling
- Prepare an EM analysis to assess the EM HQ and Field workforce/skills mix to justify increasing EM’s FTE personnel cap. Prepare a presentation to OMB
- Determine viability of processing graphite matrix coated used nuclear fuel (UNF) at SRS
- Continue Safety Conscious Work Environment (SCWE) training for all HQ EM staff. Develop and implement ongoing Safety Culture sustainment actions based on the information from the safety culture extent of condition review and benchmarking data
- Analyze Infrastructure and Min-Safe activities and costs across EM sites. Establish guidance if necessary
- Continue H-canyon operations in support of non-proliferation activities. Facilitate cost-effective use of the Nation’s only large-scale operating chemical and nuclear processing facility and comply with the public law by maximizing utilization of H-canyon facilities

## Goals and Metrics

EM's primary responsibility is the safe cleanup of the environmental legacy of research and materials production by DOE and its predecessor agencies for which Congress established the EM Program. Programmatic success will be measured by *what* is accomplished, that is the number of sites restored, quantities of waste treated and disposed of, amounts of soil and groundwater remediated, etc. However, overall success will also be measured by *how* the program is managed, i.e., through critical management goals such as safety performance, project and contract management, and excellence in business management practices. To support this commitment to both improvement and programmatic success, EM has identified the following goals, strategies and metrics specifically for FY 2014. These goals evolve directly from DOE’s 2012 Amended Strategic Goals articulated by the Secretary of Energy.

*Safety Culture*

The safety of EM workers is a core value that is incorporated into every aspect of the EM program. To best protect our workers, EM has a goal of zero accidents or incidents in the work place and to date, has maintained a strong safety record. EM continues to utilize the Integrated Safety Management System to ensure that all work activities are appropriately scoped, analyzed for hazards, comprehensively planned to eliminate or mitigate those hazards, and effectively performed by trained employees. In addition, EM follows DOE Order 226.1B; *Implementation of Department of Energy Oversight Policy* that establishes the philosophy that line management is responsible for ensuring safety when work is performed. EM seeks to continue safety improvements by instituting corrective actions, promoting lessons learned, and developing new or improved processes.

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| Goal 1: | Improve safety, security and quality performance towards a goal of zero accidents, incidents, and defects and continue to improve the EM Complex-Wide Safety Culture |

Strategies

- Use rigorous management oversight to help ensure EM sites and projects integrate safety, security and quality throughout their lifecycle, including planning, procurement, design, engineering, construction, commissioning, operation, deactivation/decommissioning, and environmental restoration
- Foster a safety culture that promotes quality work in a safe and secure manner by establishing strong leadership behaviors that reflect EM's expectations
- EM will further the implementation of Safety Conscious Work Environment (SCWE) training to all HQ EM staff. Develop and implement ongoing safety culture sustainment actions based on the information from the safety culture extent of condition review and benchmarking data in accordance with DOE's Safety Culture Improvement Implementation Plan
- Develop a transparent relationship with the Defense Nuclear Facilities Safety Board (DNFSB) to expeditiously resolve DNFSB concerns and issues
- For response to formal DNFSB correspondence requiring field input, the Field will submit final products at least 30 days prior to the established formal deliverable due date for Headquarters processing
- Collect key performance metrics that monitor the health of key security programs and equipment to prevent identified adverse outcomes or events, track data, and investigate and address emergent negative trends
- EM will continue to implement its Corporate Quality Program consistent with the quality requirements established in DOE O 414.1D, "Quality Assurance"

Metrics

- Metric 1.01: Maintain an average Total Recordable Case rate of <1.1 and a Days Away from Work, Restricted Work or Transfer case rate of <0.6
- Metric 1.02: Finalize implementation of EM-QA-001 Revision 1 by September 30, 2014, and verify through a HQ assessment of each EM field organization

- Metric 1.03: Ensure at least 80 percent of EM sites and contractors have documented performance metric processes and maintain key performance metrics that monitor the health of key security programs and equipment
- Metric 1.04: Maintain less than 20 percent overdue action items resulting from Defense Nuclear Facilities Safety Board (DNFSB) letters or recommendations
- Metric 1.05: Meet Federal Information Security Management Act (FISMA) requirements in accordance with planned EM activities
- Metric 1.06: Accomplish a web application penetration test of 50 public facing applications throughout the enterprise by September 30, 2014, such that vulnerabilities are discovered and mitigated

*Reducing Lifecycle Cost*

EM will continue to identify opportunities to make strategic investments that reduce the overall cost of the cleanup program while shortening project and program schedules. The current life-cycle cost estimate for EM is $274 to $309 billion. This includes $100 billion in actual costs from 1997 through 2011, and an additional estimate of $174 to $209 billion to complete EM's remaining mission in the timeframe of 2050 to 2062. EM will continue to identify opportunities, including technology development, to reduce the life-cycle cost of its program. In FY 2014, EM plans to continue investing in technologies that might/could reduce life-cycle costs, such as modeling to predict complex behaviors of radionuclides; developing in situ decommissioning sensor performance monitoring; investigating small column ion exchange technology to reduce cost of treating liquid waste; and evaluating the effects of placing heat-generating radioactive waste in a salt repository.

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| Goal 2: | Continue cleanup progress in a cost effective manner that is risk-informed, engages stakeholders, applies innovative solutions and provides value to the American taxpayer |

Strategies

- Reduce risk, lower cost, and accelerate project completion by using the best scientific and technical resources available to ensure the technologies selected for development and deployment are appropriate
- Ensure projects have the tools necessary to succeed in the most efficient manner by working with the Federal staff, contractors, and union representatives to identify their needs
- Use Construction Project Reviews to identify and assist in resolution of key project issues regarding scope, cost, schedule, project risk management, security requirements, and technical approach
- Ensure Construction Project Review recommendations align with contract requirements. Partnership agreements may be considered but are informal
- Continue to implement the Operations Activity Protocol issued as Revision 0, March 15, 2012, conduct quarterly reviews of operations activities and revise as needed based on lessons from implementation
- Work to resolve storage and disposition pathways for HLW and spent nuclear fuel managed by the DOE
- Implement process/procedures for scrap metal recycling to address: 1) clean materials in clean areas, 2) clean material in contaminated areas, and 3) contaminated materials in contaminated areas. Initial approach may be to focus on nickel recycling

- Partner with NE to develop a strategy and alternatives for the utilization of WIPP for NNSA surplus material disposition and expansion of the WIPP mission
- Continue to safely transport and dispose of RH-TRU from Argonne National Laboratory in support of reducing laboratory facility from Category 2 to Category 3 as funding allows
- Reduce the life cycle cost by evaluating and implementing opportunities transferring leasing EM assets for reindustrialization and reutilization especially for renewable energy projects in support of DOE mission
- Work towards substantially completing the Low Activity Waste Vitrification Facility Construction by December 31, 2014
- Expand the use of authorized limits to support a cost effective approach to site remediation and D&D: specifically apply to Gaseous Diffusion Plants, in coordination with Portsmouth and/or Paducah
- Finalize and implement Operation Activity Manager certification program metrics

Metrics

- Metric 2.01: Working with stakeholders, industry and the sites create at least one business model for reindustrialization and reutilization for renewable energy projects on EM lands based on public-private partnership approach
- Metric 2.02: Review the regulatory framework for each site to determine flexibility in aligning expectations with current and out-year budget projections
- Metric 2.03: Complete final evaluation for procurement process to acquire services to deactivate the Paducah Gaseous Diffusion Plant upon turnover from the USEC
- Metric 2.04: Finalize agreement for sale of depleted and off-specification Uranium Hexafluoride Inventories at Paducah and Portsmouth
- Metric 2.05: Initiate an Environmental Assessment (EA) to evaluate the impacts of the receipt, storage and disposition of the German graphite spheres
- Metric 2.06: Conduct two workshops through the National Academy of Sciences on best practices for risk-informing decisions on remedies and closure and post-closure activities
- Metric 2.07: Implement requirement for certification of Operation Activity Managers by December 31, 2013

*Achieving Excellence in Contract and Project Management*

To ensure that EM delivers the best value for the American taxpayers, the FY 2014 budget request reflects continued improvement in acquisition, contract, and project management. EM will further improve acquisition processes by obtaining early involvement and approvals on various acquisition approaches from DOE senior management, including the Office of Acquisition and Project Management, the Office of the General Counsel, and the Office of Small and Disadvantaged Business Utilization.

EM's continued progress in contract and project management has resulted in EM meeting three of the five criteria needed in order to be removed from the Government Accountability Office's (GAO) High Risk List. One of GAO's remaining concerns is that EM must provide the capacity (people and resources) to address problems. EM's reorganization of February 2012 established project sponsor positions at Headquarters for all capital asset projects Field project and contract management resources will be evaluated to determine and address any gaps in staffing and skills for proper oversight so that any gaps can be addressed. GAO's second remaining concern is that EM must monitor and independently validate the corrective measures that it has taken to help ensure they are both effective and sustainable over the long term. EM's Annual Performance Agreement has been established as a vehicle for measuring,

tracking, and validating progress. EM has also developed a Continuous Improvement Program for Contract and Project Management to guide and monitor improvements.

| Goal 3: | Improve management of contracts and projects/operations activities with the objective of delivering results on time and within cost |
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Strategies

- Annually assess contract and project management staffing and skills to build and sustain needed capacity for Federal oversight of EM mission. *(GAO High Risk Criteria)*
- Independently validate the effectiveness and sustainability of contract and project management improvement actions through project and contract management reviews. *(GAO High Risk Criteria)*
- Improve acquisition planning and contract management by adhering to principles described in Deputy Secretary's policy memorandum of December 13, 2012: 1) always seeking to align contractor interest with taxpayer interest; and 2) structuring contracts so that each party bears responsibility for its own actions
- Improve the timeliness of approvals for contract performance baselines, contract modifications, and project/operations activity changes to maintain contract, project/operations activity and budget alignment by ensuring change management requirements and guidance is understood and being followed
- Increase the use of prime contractor small businesses
- Become a stronger owner by ensuring requirements are clearly delineated in the contracts, by holding contractors accountable for delivering results, and by ensuring contractors' performance is fairly documented
- Execute world-class contract and project management, and administration of traditional contracts in accordance with OMB Circular A-123, Federal Acquisition Regulation, Department of Energy Acquisition Regulation, EM Head of Contracting Activity directives to ensure the activities listed below are executed in strict compliance: 1) separation of duties and functions; 2) performance evaluation and measurement; 3) fee determination; 4) timely approval, recording/documentation of changes; 5) resolution of audit findings and other deficiencies; 6) management of acquisition workforce; 7) proper review and certification of business systems; and 8) timely contract closeout
- Make progress in resolving the five oldest outstanding contract changes at each site

Metrics

- Metric 3.01: Achieve the overall prime contract small business goal of 6% for each site with a stretch goal of meeting the current DOE goal
- Metric 3.02: Approve contract performance baselines with work aligned with the contract for the following contracts: 1) DUF6 Conversion Plants; 2) ORP Tank Operations; 3) Waste Treatment and Immobilization Plant project; 4) Salt Waste Processing Facility project; and for all new contracts within 180 days after transition
- Metric 3.03: Implement partnering agreements for the following two contracts: 1) Savannah River Nuclear Solutions; and 2) Idaho Treatment Group
- Metric 3.04: Ensure 90% of capital projects have Federal Project Directors that are certified at the appropriate level assigned to projects not later than CD-3

- Metric 3.05: Complete 16 project peer reviews for active post CD-0 capital projects with TPCs greater than $10M
- Metric 3.06: Complete a site-by-site and contract-by-contract plan to consider and implement (as appropriate) the Deputy Secretary's principles for aligning contract management
- Metric 3.07: Ensure 95% of contractors maintain their Earned Value Management System certification, when EVMS is required by the contract

*Management Excellence*

As described in DOE's Strategic Plan, EM's success will require a sustained commitment to management excellence from Headquarters to every site office, service center, laboratory, and production facility. Management principles will be translated into action by focusing on operational and technical excellence. That excellence requires developing the most highly qualified, capable, and flexible federal workforce. Additionally, our management principles require implementation of a performance-based culture that clearly links work to agency goals, hold employees accountable for meeting our mission, and appropriately rewards employees for their efforts. These concepts are represented in EM's fourth goal.

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| Goal 4: | Achieve excellence in leadership and resource management by championing financial stewardship, integrating business processes, optimizing EM culture change, and improving communications with the objective of enhancing accountability and achieving performance results |

Strategies

- Use surveys to identify where EM can enhance its customer and stakeholder relationships and implement improvements
- Utilize the results of the Employee Viewpoint Survey to implement actions that will improve all aspects of the EM Workplace and enhance mission execution

Metrics

- Metric 4.01: Analyze Infrastructure and Min-Safe activities and costs across EM sites. Complete Report on the Analysis of Infrastructure And Min-Safe Activities
- Metric 4.02: Prepare an analysis to assess the EM HQ and Field workforce/skills mix and prepare a presentation to OMB by December 2013.
- Metric 4.03: Ensure at least 90% of employees are either on current IDPs or EEPs that align to EM goals and objectives. Review employee Learning and Development progress on a quarterly basis
- Metric 4.04: Develop a strategic framework that integrates leadership culture, employee engagement, safety conscious work environment and diversity and inclusion to implement improvements in organizational culture
- Metric 4.05: Develop an EM complex-wide Human Capital Management Plan to include strategies for Knowledge Transfer
- Metric 4.06: Develop an EM career intern program based on the DOE new Pathways program

*Sustainability*

As stated in the DOE Strategic Plan, "*The Department is uniquely positioned to lead by example in transforming domestic energy use. Integrating sustainability throughout the Department is an essential aspect of implementing Executive Order 13514, Federal Leadership in Environmental Energy, and Economic Performance, and Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management, as well as related statutes, and meeting or exceeding all required energy management and environmental goals. As stated in the U.S. Department of Energy Strategic Sustainability Performance Plan (SSPP), the Department will reduce greenhouse gas emissions from onsite combustion of fossil fuel, fugitive emissions, and purchased power by 28% and reduce emissions from outside sources—such as business travel and employee commuting—by 13% by 2020. We will strive to exceed these goals at our own facilities by incorporating sustainability into all corporate management decisions,*
*continually improving our operations and existing infrastructure to maximize efficient use of energy and natural resources, and ensuring, whenever built, new facilities are highly energy efficient.* We will also meet the new goal on Climate Change Adaptation which has been elevated by the President's Climate Action Plan in June, 2013". The strategies and metrics of EM's Goal 5 are our responses to the Sustainability challenge.

| Goal 5: | Execute the EM Mission in a Sustainable Manner |
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Strategies

- Meet Executive Order 13514 - reduce energy intensity in agency buildings, by soliciting suggestions from the staff and contractors
- Identify means for reducing the overall EM carbon footprint
- Utilize the Department's Energy Saving Performance Contract (if viable) or alternative data center optimization practices to reduce the IT data center's infrastructure footprint while providing state of the art services
- Identify activities that promote climate change adaptation and mitigation
- Work with local jurisdictions, as appropriate, to develop regional partnerships for climate change information sharing and collaboration

Metrics

- Metric 5.01: Promote effective IT energy conservation practices across EM, with at least 3 sites joining, or continuing to participate in, EPA's "Federal Green Challenge" (FGC) or winning a DOE Sustainability (Green IT) award by September 30, 2014
- Metric 5.02: Utilize DOEGRIT or DC Pro energy efficiency assessment tools at 2 EM data centers to document baseline configurations by September 30, 2014
- Metric 5.03: Reduce EM's IT data center footprint by 20% by September 30, 2014
- Metric 5.04: Conduct detailed risk or vulnerability assessments, as appropriate, for selected EM site(s)
- Metric 5.05: Update site sustainability plans to address climate change resiliency

Process and Procedure

The Office of Program Planning and Budget will track/monitor the progress on strategies and metrics identified in this agreement and provide periodic reports to EM Management. EM DASs, Field

Managers and Office Directors will update the status of all items on a quarterly basis through the predetermined tracking or reporting systems involving the appropriate field sites as needed. All changes to goals and/or metrics will be fully vetted, documented and used as lessons learned when appropriate. All the results will be evaluated and assessed to ensure success meeting of goals as well as their effectiveness and appropriateness. The results of these assessments will be considered for lessons learned and possible impact on FY 2014 goals.

EM Senior Advisor Support

In order to accomplish the goals herein described, it is the EM Senior Advisor's objective to *provide visible, high profile support to:*

- Ensure that the necessary resources are in place to promote the success of these goals
- Communicate goal achievement and progress periodically through EM Updates, Reports and other media
- Formally recognize superior efforts in achieving goals through incentive awards
- Communicate, negotiate and mitigate responses and issues with senior Department and private sector officials

*Office of Environmental Management*

## Terms of Agreement

This agreement is intended to improve the internal management of the U.S. Department of Energy's Office of Environmental Management and is not intended to and does not create any right, benefit, trust or responsibility, substantive or procedural, enforceable by law or equity by any party against the U.S. Department of Energy, its agencies, its officers, or any person. This agreement will remain in effect until modified. It is expected that it will be updated as needed to reflect significant changes in budget, policy, personnel or other factors that may affect the accomplishment of objectives. This agreement represents our joint commitment to an EM that works better, costs less, and fulfills our sacred trust to the American People.

EM Senior Advisor — Date

Principal Deputy Assistant Secretary — Date 11/7/13

Chief of Staff — Date 11/7/13

Office of External Affairs — Date 11/7/13

Deputy Assistant Secretary, Site Restoration — Date 11/25/13

Deputy Assistant Secretary, Tank Waste & Nuclear Material — Date 11/6/13

Deputy Assistant Secretary, Waste Management — Date 11/25/13

Deputy Assistant Secretary, Safety, Security & Quality Programs — Date 11/25/13

Deputy Assistant Secretary, Acquisition & Project Management — Date Nov 6, 2013

Deputy Assistant Secretary, Program Planning & Budget — Date 11/22/13

Deputy Assistant Secretary, Human Capital & Corporate Services — Date 11/25/13

Associate Principal Deputy Assistant Secretary — Date 11/20/13

Manager, Carlsbad Field Office — Date 11/6/13

Manager, Consolidated Business Center — Date 11/6/13

Manager, Idaho Operations Office — Date 11/25/2013

Manager, Oak Ridge Operations Office — Date 11/22/13

Manager, Office of River Protection — Date 11/22/13

Manager, Portsmouth/Paducah Project Office — Date 11/12/13

Manager, Richland Operations Office — Date 11/25/13

Manager, Savannah River Site — Date 11/6/13

**ETEC**

Metrics

- ETEC-01: Complete chemical and radiological soil characterization that defines the nature and extent at the ETEC site by June 30, 2014
- ETEC-02: Complete the Notice of Intent (NOI) and re-Scoping of the NEPA process by April 30, 2014
- ETEC-03: Complete the groundwater characterization for the Area IV responsibilities by September 30, 2014

**Idaho**

Strategy

- Maintain shipments of TRU waste to WIPP in accordance with WIPP's integrated schedule

Metrics

- INL-01: Begin hot operations of the Idaho Integrated Waste Treatment Unit (IWTU) by June 30, 2014
- INL-02: Initiate treatment of liquid sodium bearing waste by May 30, 2014
- INL-03: Complete exhumation work at the Accelerated Retrieval Project (ARP) II and III facilities by March 30, 2014

**LANL**

Strategies

- Submit approval of interim work plan on chromium in groundwater
- Resolve litigation on 2010 RCRA Permit

Metrics

- LANL-01: Complete Framework Agreement Legacy TRU Waste Disposal Component: Dispose of 1,106 m3 legacy TRU waste under 3706 TRU Campaign by June 30, 2014
- LANL-02: Submit supplemental interim work plan on chromium in groundwater
- LANL-03: Submit integrated Lifecycle Baseline to Headquarters for approval by July 30, 2014

**Moab**

Strategy

- Continue efforts to reduce project life cycle costs and reduce the overall project completion schedule

Metrics

- Moab-01: Safely transport and dispose of 650K tons of Uranium Mill Tailings by September 30, 2014
- Moab-02: Continue groundwater cleanup with the extraction of 15,000,000 gallons of water and removal of 250 lbs of uranium by September 30, 2014

**Nevada**

Strategies

- Continue progress toward closure of approximately 900 subsurface contaminated groundwater sites
- Continue audits and waste certification reviews in support of generator programs to ensure compliance with the Nevada National Security Site Waste Acceptance Criteria

Metric

- NNSS-01: Complete characterization activities for 19 contaminated soil sites and closure of 16 contaminated soil sites

**Oak Ridge**

Strategy

- Establish a TRU Central Characterization Program through CBFO

Metrics

- ORO-01: Submit integrated lifecycle baseline updates to Headquarters for approval by December 31, 2013
- ORO-02: Obtain agreement from regulators for the siting of the Environmental Management Disposal Facility by September 30, 2014
- ORO-03: Submit CD-1 package for the Outfall 200 project in sufficient time for approval by September 30, 2014
- ORO-04: Complete demolition and waste disposal for four of the remaining six units of the K-25 Building at Oak Ridge's East Tennessee Technology Park by September 30, 2014
- ORO-05: Renegotiate the current STP milestone for construction start of the sludge build out project by September 30, 2014

**Office of River Protection**

Strategies

- Resolve issues with respect to the High Level Waste Facility sufficiently that plans can be completed and construction ramped up to planned level in FY14
- Continue construction on Analytical Laboratory, Low Activity Waste Facility, and Balance of Facilities
- Define the path forward for the tanks that potentially contain contact-handled TRU waste

Metrics

- ORP-01: Complete the High-Level Waste (HLW) Facility Technical Issue Resolution Plan so that decision can be made on resumption of HLW production engineering and appropriate construction by June 30. 2014
- ORP-02: Complete an initial version of the Interface Control Document (ICD) 19 that provides the waste characterization feed parameters necessary to optimize Full Scale Vessel Testing by September 30, 2014
- ORP-03: Complete hard-heel waste removal from 4 single shell tanks in C Farm by September 30, 2014
- ORP-04: Restart the 242-A Evaporator and conduct 3 evaporator campaigns by July 30, 2014

**Portsmouth/Paducah**

Metrics

- PPPO-01: Complete process to support issuance of ROD on CERCLA cell at Paducah
- PPPO-02: Submit to Ohio Environmental Protection Agency (Ohio EPA) the Proposed Plan for the Site-Wide Waste Disposition Evaluation Project by September 30, 2014
- PPPO-03: Establish long term operational parameters and align operational baseline for DUF6 by September 30, 2014
- PPPO-04: Submit to Ohio EPA the Proposed Plan for the Process Buildings and Complex Facilities D&D Evaluation Project by September 30, 2014
- PPPO-05: Disposition Legacy and newly generated LLW & MLLW of 10,000 cubic meters
- PPPO-06: Remove 50 complete cells of process gas equipment from X-326 process building at the Portsmouth Gaseous Diffusion Plant
- PPPO-07: Complete shipment of a combination of 500 converters and compressors from the X-326 process building

**Richland**

Strategies

- Initiate implementation of beryllium corrective action plan products into the site's Chronic Beryllium Disease Prevention Program (CBDPP)
- Issue the draft natural gas pipeline Environmental Impact Statement for public comment

Metrics

- RL-01: Complete removal of the 174 glove boxes associated with Plutonium Finishing Plant capital asset project
- RL-02: Complete cleanup of 80 waste sites in the Columbia River Corridor
- RL-03: Complete decontamination and demolition of all (11) surplus facilities in the Columbia River Corridor (except 324 Building and 100K)
- RL-04: Remediate 1.8 Billion gallons of contaminated groundwater
- RL-05: Complete a Pretreatment Facility Technical Issue Resolution Plan for the Waste Treatment Plant project that outlines scope and schedule to resume Pre-Treat Facility engineering and return the HLW Facility to construction status by September 30, 2014

**Savannah River**

Strategies

- Continue processing Used Nuclear Fuel (e.g., Sodium Reactor Experiment (SRE); Material Testing Reactor (MTR); and High Flux Isotope Reactor (HFIR) at H Canyon)
- Dissolve plutonium feedstock in H Canyon to feed HB line for conversion to oxide (for MOX), meeting HB-Line throughput requirements
- Perform activities to reduce the risk to personnel and the environment by reducing the residual plutonium-238 contamination in the F-Area Materials Storage Facility (235-F) as committed in DNFSB Recommendation 2012-1

Metrics

- SRS-01: Dissolve plutonium feedstock in H Canyon at the Savannah River Site to feed HB line for conversion to oxide (for MOX), meeting HB-Line throughput requirements

- SRS-02: Perform activities to reduce the risk to personnel and the environment by reducing the residual plutonium-238 contamination in the F-Area Materials Storage Facility (235-F) as committed in DNFSB Recommendation 2012-1
- SRS-03: Produce 100 canisters of highly radioactive waste with 2 million curies at the Defense Waste Processing Facility at Savannah River by September 30, 2014
- SRS-04: Perform activities to support 46 TRUPACT3 shipments of Legacy CH-TRU Waste out of SRS to the WIPP by September 30, 2014.
- SRS-05: Close Tanks 5 and 6 at the Savannah River Site by September 30, 2014
- SRS-06: Tank waste processed for disposition (mass of sodium): 400 metric tons by September 30, 2014
- SRS-07: Accept FRR and DRR receipts as agreed to with NNSA
- SRS-08: Complete processing Sodium Reactor Experiment (SRE) Fuel and begin treatment of aluminum-clad spent nuclear fuel
- SRS-09: Determine viability of processing graphite matrix coated used nuclear fuel (UNF)
- SRS-10: Complete CPA 100 foot elevation north labyrinths piping installation.
- SRS-11: Implement Savannah River National Laboratory Infrastructure Plan to reduce operational cost by facility and scientific instrument renewal as well as an improved Asset Condition Index

**West Valley**

Strategy

- Build a dry cask storage system for HLW canisters to permit timely D&D of the site.

Metrics

- WVDP-01: Complete demolition of the Environmental Lab by June 30, 2014
- WVDP-02: Complete fabrication of eight Vertical Storage Casks and eight Multi Purpose Canisters for the High-Level Waste Canister Relocation Project by September 30, 2014
- WVDP-03: Complete Vitrification Cell decontamination and final survey by September 30, 2014