

**PART I – THE SCHEDULE**

**SECTION B**

**SUPPLIES OR SERVICES AND PRICES/COSTS**

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**B.1 DOE-B-2012 SUPPLIES/SERVICES BEING PROCURED/DELIVERY REQUIREMENTS (OCT 2014)**

The Contractor shall furnish all personnel, facilities, equipment, material, supplies, and services (except as may be expressly set for in this contract as furnished by the Government) and otherwise do all things necessary for, or incident to, the performance of work as described in Section C, Performance Work Statement.

**B.2 CONTRACT COST AND FEE**

(a) This is a performance based contract that includes Cost-Plus-Award-Fee (CPAF), Cost Reimbursable (CR) (non-fee bearing), and Indefinite-Delivery Indefinite-Quantity (IDIQ) type Contract Line Item Numbers (CLINs).

(b) The Contract consists of the following CLINs:

<b>Table B.2-1 Contract CLIN Structure</b>				
	CLIN	CLIN Title	Contract Type	PWS Section
	0001	Contract Transition	CR (no fee)	C.0.4
Base Period	0101	Liquid Waste Operations	CPAF	C.1.1, C.1.2, C.1.3, C.2.7
	0102	SWPF Integration & Transition	CPAF	C.2.2, C.2.3
	0103	SWPF Operations (option)	CPAF	C.1.4
	0104	SDU Construction	CPAF	C.2.1
	0105	Tank Closures	CPAF	C.2.4
	0106	Safety Basis Upgrade	CPAF	C.2.5
	0107	System Optimization	CPAF	C.2.6
	0108	Liquid Waste Program Support	CPAF	C.3
Option Period	0201	Liquid Waste Operations	CPAF	C.1, C.2.7
	0202	SDU Construction	CPAF	C.2.1
	0203	Tank Closures	CPAF	C.2.4
	0204	Safety Basis Upgrade	CPAF	C.2.5
	0205	System Optimization	CPAF	C.2.6
	0206	Liquid Waste Program Support	CPAF	C.3
Base	0002	IDIQ	IDIQ	C.4
Option	0003	IDIQ	IDIQ	C.4

(c) This Section establishes the estimated Contract Cost and Fee for each CLIN. Within Table B.2-2, the following definitions apply:

- (1) *Estimated Cost* for each CLIN is defined as the cost to perform the CLIN agreed to by the parties at contract inception, as may be revised by modification to the contract in accordance with the contract terms. The exception is the IDIQ CLINs, for which the amount shown in Table B.2-2 reflects the maximum quantity of supplies or services the Government will acquire under the IDIQ CLINs (inclusive of any fee or profit).
- (2) *Available Award Fee* is defined as the amount of award fee that may be earned under the Contract for each applicable CLIN.

(3) *Target Activity PBI Fee* is defined as the amount of fee that may be earned for Activity Completion Milestone Performance Based Incentives (PBIs) for each applicable CLIN.

(4) *Estimated Cost and Fee* is defined as the total of the Estimated Cost, Available Award Fee, and Target Activity PBI Fee.

<b>Table B.2-2 Contract Cost and Fee</b>					
<b>[Table to be completed by offeror and inserted by DOE at time of contract award]</b>					
CLIN	CLIN Title	Estimated Cost	Available Award Fee*	Target Activity PBI Fee	Estimated Cost and Fee
0001	Contract Transition		N/A	N/A	
0101	Liquid Waste Operations				
0102	SWPF Integration & Transition			N/A	
0103	SWPF Operations (option)				
0104	SDU Construction			N/A	
0105	Tank Closures				
0106	Safety Basis Upgrade			N/A	
0107	System Optimization			N/A	
0108	Liquid Waste Program Support			N/A	
	Base Period – Total				
0201	Liquid Waste Operations				
0202	SDU Construction			N/A	
0203	Tank Closures				
0204	Safety Basis Upgrade			N/A	
0205	System Optimization			N/A	
0206	Liquid Waste Program Support			N/A	
	Option Period – Total				
0002	IDIQ – Base	TBD	TBD	TBD	\$56,000,000
0003	IDIQ – Option	TBD	TBD	TBD	56,000,000
	Total Contract Value				

\*Available Award Fee will include award fee and PBIs as defined in B.9, DOE-H-2060 Base and Award Fee. Additional PBIs will be defined during contract performance as part of the Performance Evaluation Management Plan (PEMP). Also, no base fee is payable under this contract.

(d) Payment of fee will be made in accordance with B.8, Target Activity PBI Fee, and B.9, DOE-H-2060 Base and Award Fee.

(e) Under the IDIQ CLIN, the Government may issue CPAF or Firm-Fixed-Price Task Orders depending on the nature of the requirement for the delivery of work. Payment for the services ordered and delivered shall be made in accordance with applicable contract clause addressing payment as included in each individual task order.

The minimum ordering quantity in accordance with FAR 52.216-22(b) is \$1,000. The maximum quantity of supplies or services the Government will acquire under the

IDIQ CLINs is \$112,000,000. The IDIQ maximum value of \$112,000,000 is for the full period of performance, including the base period and option period, if exercised. The performance period for the IDIQ CLIN is identified in Section F, Deliveries or Performance, and is expected to be extended if the option period is exercised.

### **B.3 DOE-B-2013 OBLIGATION OF FUNDS (OCT 2014)**

This is a Cost-Plus-Award Fee type contract. Pursuant to the clause of this contract at FAR 52.232-22, Limitation of Funds, total funds in the amount(s) specified below are obligated for the payment of allowable costs and fee. It is estimated that this amount is sufficient to cover performance through the date(s) shown below.

[To be inserted by the Government at the time of contract award]

### **B.4 DOE-B-2014 OPTION TO EXTEND THE TERM OF THE CONTRACT: ESTIMATED COST, FEE AND PERIOD OF PERFORMANCE (OCT 2014)**

- (a) In accordance with the clause at FAR 52.217-9, Option to Extend the Term of the Contract, the Government may unilaterally extend the contract period of performance (as set forth in Section F, Deliveries) to require the Contractor to perform the work set out by Section C, Description/Specs/Work Statement of the contract. In the event that the Government elects to exercise its unilateral right to extend the term of the contract pursuant to this clause and FAR 52.217-9, all terms and conditions of the contract will remain in full force and effect.
- (b) The Contracting Officer will consider factors set forth in FAR 17.207, Exercise of Options, in determining whether to exercise an option to extend the term of the contract. The Government is concerned with ensuring that the Contractor's performance meets, or exceeds, the performance requirements of the contract in a cost-effective manner. Accordingly, the Contracting Officer will consider the Contractor's performance as part of the determination to exercise any option to extend the contract term.
- (c) The Estimated Cost, Fee, and Period of Performance of each option to extend the term of the contract are set forth in Table B.2-1, Table B.2-2, and Section F, Deliveries.

### **B.5 DOE-B-2015 TASK ORDER FEE CEILING (OCT 2014) (DEVIATION)**

- (a) The fee amount, specified as a percentage, is 10% for cost-plus-award-fee type Task Orders and shall serve as the fee ceiling for all cost-plus-award-fee Task Orders issued under the contract.
- (b) The fee amount for each Task Order will be negotiated and established in each individual Task Order. The Contractor may propose whatever fee amount it determines appropriate for the individual task order, provided that the fee amount as a percentage of the estimated cost of each proposed Task Order does not exceed the fee percentage ceiling for cost-plus-award-fee Task Orders, as specified above. For cost-plus-award-fee Task Orders, the fee ceiling percentage applies to the total of the amount proposed for award fee.

**B.6 EXECUTION OF CLINS**

- (a) Sequence of Execution. Upon the Notice to Proceed, the Transition CLIN (0001) will be executed. Upon completion of Transition, the base period Liquid Waste Operations CLIN (0101), the Liquid Waste Operations Support CLINs (0102, 0104, 0105, 0106, and 0107), and the Liquid Waste Program Support CLIN (0108) will be executed. The base period SWPF Operations CLIN (0103) is an option that may be exercised by the Government. Option period CLINs 0201, 0202, 0203, 0204, 0205, and 0206 may be exercised in accordance with FAR 52.217-9, Option to Extend the Term of the Contract. The exercise of any option under this contract is a unilateral right of the Government. An estimated start date for SWPF Operations CLIN (0103), if exercised, is indicated in Section F, clause DOE-F-2003.
- (b) The exercise of the option for CLIN 0103 is a unilateral right of the Government. The option, if exercised, will be exercised by modification to the contract within the base period of performance of the contract, and will otherwise be exercised in accordance with FAR 17.204. The Contractor is required to begin work on CLIN 0103 within 60 days of the option being exercised, provided that the Contracting Officer has provided the Contractor with a Nonbinding Notice of the Government's Intent to Exercise the CLIN 0103 Option at least 30 days prior to the option exercise.

**B.7 ESTIMATED ANNUAL CONTRACT VALUE**

- (a) DOE expects to obligate funding to the Contract in accordance with the estimated annual Contract value:

<b>Table B.7-1 Estimated Annual Contract Value</b> [Table to be completed by DOE at time of contract award based on the offeror's proposal]	
Gov't Fiscal Year	Contract Value (in \$M)*
FY17 (Transition)	TBD
FY17	TBD
FY18	TBD
FY19	TBD
FY20	TBD
FY21	TBD
FY22	TBD
FY23	TBD
FY24	TBD
Base Period Total	TBD
FY24	TBD
FY25	TBD
FY26	TBD
FY27	TBD
Option Period Total	TBD
Contract Total	TBD

\* Projected FY contract value less the IDIQ maximum value. Table B.7-1 will be updated as IDIQ task orders are awarded.

- (b) The above is anticipated funding only and is subject to the appropriations of Congress. It is not a guarantee that the funding will be provided or obligated in the amounts stated.

**B.8 TARGET ACTIVITY PBI FEE**

- (a) The DOE objective under this Contract is to support the SRS Liquid Waste mission work. The primary focus of the liquid waste mission work is salt waste processing and disposition, bulk waste removal, and waste tank closures. DOE’s goal is to incentivize the Contractor to meet or exceed the Contract performance requirements, and to do so within the total estimated contract value and completion dates. Incentives are structured to ensure a strong financial motivation for the Contractor to achieve the Contract requirements. As outlined below, there is a performance expectation for the Contractor to earn Target Activity PBI Fee based on completion of salt waste processing and disposition, bulk waste removal, and waste tank closures.

Target Activity PBI Fee will be part of the annual PEMP, and is established for CLINs 0101, 0103, 0105, 0201, and 0203 as indicated in Table B.2-2 above. Target Activity PBIs will be set forth in the PEMP for salt waste processing (C.1.1.2.2), bulk waste removal (C.1.1.2.4), and waste tank closures (C.2.4).

- (b) Target Activity PBI Fee will be earned based on the successful completion of liquid waste processing activities set forth in the PWS. The Target Activity PBI Fee shall be calculated as follows for the specified Activity Completion Milestones:

(1) Base Period Target Activity PBI Fee:

(i) CLIN 0101 and CLIN 0103 – Target Activity PBI Fee

Target Activity PBI Fee for CLINs 0101 and 0103 is split between salt waste processing (90%) and bulk waste removal (10%).

(A) Salt Waste Processing (Rate per gallon)

$$\begin{array}{l} \text{Target} \\ \text{Activity} \\ \text{PBI} \\ \text{Rate \#1} \end{array} = \frac{(\text{CLIN 0101 Total Target Activity PBI Fee Dollars} + \text{CLIN 0103 Total Target Activity PBI Fee Dollars}) \times 90\%}{42,000,000 \text{ gallons}}$$

Cumulative Base Period Salt Waste Processed (BPSWP) = the total volume of salt waste processed to date, as measured in accordance with Section C.1.1.2.2, for all years of the contract base period.

Award Periodic Volume of Salt Waste Processed (APVSWP) = the BPSWP at the end of the award period (year or partial year) minus the BPSWP at the end of the previous award period.

For all years or fraction of a year for which the BPSWP is less than or equal to 42 Mgal, formula #1 below will be used, after which formula #2 below will be used.

Formula #1: Annual Target Activity PBI Fee Earning Calculation: Target Activity PBI Rate #1 x APVSWP = Annual Fee Dollars Earned

Formula #2: Annual Target Activity PBI Fee Earning Calculation: Target Activity PBI Rate #1 x APVSWP x 125% = Annual Fee Dollars Earned

(B) Bulk Waste Removal (Rate per tank)

$$\begin{array}{l} \text{Target} \\ \text{Activity} \\ \text{PBI} \\ \text{Rate \#2} \end{array} = \frac{(\text{CLIN 0101 Total Target Activity PBI Fee Dollars} + \text{CLIN 0103 Total Target Activity PBI Fee Dollars}) \times 10\%}{8 \text{ tanks}}$$

For up to and including 8 tanks (cumulative):

Annual Target Activity PBI Fee Earning Calculation: Target Activity PBI Rate #2 x Annual Tanks Bulk Waste Removal = Annual Fee Dollars Earned

For greater than 8 tanks (cumulative):

Annual Target Activity PBI Fee Earning Calculation: Target Activity PBI Rate #2 x Annual Tanks Bulk Waste Removal x 125% = Annual Fee Dollars Earned

(ii) CLIN 0105 – Target Activity PBI Fee

(A) Waste Tank Closures (Rate per tank)

$$\begin{array}{l} \text{Target} \\ \text{Activity} \\ \text{PBI} \\ \text{Rate \#3} \end{array} = \frac{\text{CLIN 0105 Target Activity PBI Fee Dollars}}{5 \text{ tanks}}$$

For up to and including 5 tanks (cumulative):

Annual Target Activity PBI Fee Earning Calculation: Target Activity PBI Rate #3 x Annual Tanks Closed = Annual Fee Dollars Earned

For greater than 5 tanks (cumulative):

Annual Target Activity PBI Fee Earning Calculation: Target Activity PBI Rate #3 x Annual Tanks Closed x 125% = Annual Fee Dollars Earned

(2) Option Period Target Activity PBI Fee

(i) CLIN 0201 – Target Activity PBI Fee

Target Activity PBI Fee for CLIN 0201 is split between salt waste processing (90%) and bulk waste removal (10%).

(A) Salt Waste Processing (Rate per gallon)

$$\begin{array}{l} \text{Target} \\ \text{Activity} \\ \text{PBI} \\ \text{Rate \#4} \end{array} = \frac{\text{CLIN 0201 Target Activity PBI Fee Dollars} \times 90\%}{26,000,000 \text{ gallons}}$$

Cumulative Option Period Salt Waste Processed (OPSWP) = the total volume of salt waste processed to date, as measured in accordance with Contract Section C.1.1.2.2, for all years of the contract option period.

Award Periodic Volume of Salt Waste Processed (APVSWP) = the OPSWP at the end of the award period (year or partial year) minus the OPSWP at the end of the previous award period.

For all years or fraction of a year for which the BPSWP is less than or equal to 26 Mgal, formula #1 below will be used, after which formula #2 below will be used.

Formula #1: Annual Target Activity PBI Fee Earning Calculation: Target Activity PBI Rate #4 x APVSWP = Annual Fee Dollars Earned

Formula #2: Annual Target Activity PBI Fee Earning Calculation: Target Activity PBI Rate #4 x APVSWP x 125% = Annual Fee Dollars Earned

(B) Bulk Waste Removal (Rate per tank)

$$\begin{array}{l} \text{Target} \\ \text{Activity} \\ \text{PBI} \\ \text{Rate \#5} \end{array} = \frac{\text{CLIN 0201 Target Activity PBI Fee Dollars} \times 10\%}{2 \text{ tanks}}$$

For up to and including 2 tanks (cumulative):

Annual Target Activity PBI Fee Earning Calculation: Target Activity PBI Rate #5 x Annual Tanks Bulk Waste Removal = Annual Fee Dollars Earned

For greater than 2 tanks (cumulative):

Annual Target Activity PBI Fee Earning Calculation: Target Activity PBI Rate #5 x Annual Tanks Bulk Waste Removal x 125% = Annual Fee

Dollars Earned

(ii) CLIN 0203 – Target Activity PBI Fee

(A) Waste Tank Closures (Rate per tank)

$$\begin{array}{l} \text{Target} \\ \text{Activity} \\ \text{PBI} \\ \text{Rate \#6} \end{array} = \frac{\text{CLIN 0203 Target Activity PBI Fee Dollars}}{2 \text{ tanks}}$$

For up to and including 2 tanks (cumulative):

Annual Target Activity PBI Fee Earning Calculation: Target Activity PBI Rate #6 x Annual Tanks Closed = Annual Fee Dollars Earned

For greater than 2 tanks (cumulative):

Annual Target Activity PBI Fee Earning Calculation: Target Activity PBI Rate #6 x Annual Tanks Closed x 125% = Annual Fee Dollars Earned

- (c) Target Activity PBI Fee Payments: Incentives are earned and payable annually upon the Contracting Officer's written determination that the Contractor has completed the target activity milestones for PWS work scope in accordance with the criteria set forth in the PEMP.

**B.9 DOE-H-2060 BASE AND AWARD FEE (OCT 2014)**

- (a) The Government shall pay the Contractor for performing this contract the base fee, if any, and any award-fee that may be earned from the available award-fee, specified in Section B in accordance with this clause and other applicable clauses of the contract.
- (b) Base Fee Payment. The base fee, if any, shall be payable on a schedule specified in another clause of this contract or as determined by the Contracting Officer and subject to the following provisions. The Contracting Officer shall withhold a reserve not to exceed 15 percent of the total base fee or \$100,000, whichever is less, to protect the Government's interest.
- (c) Award-fee.
- (1) Performance Evaluation Management Plan.
- (A) A Performance Evaluation Management Plan (PEMP) shall be issued unilaterally by the Contracting Officer for each evaluation period that establishes the criteria and procedures for evaluating the Contractor's performance for the purpose of determining any award-fee earned. The PEMP shall include, as a minimum, the following:

- (i) Evaluation criteria linked to the contract's performance objectives as defined in terms of cost, schedule, technical, or other contract performance requirements or objectives;
  - (ii) Means of how the Contractor's performance will be measured against the evaluation criteria;
  - (iii) Award-fee evaluation period;
  - (iv) Amount of the total available award-fee that is allocated to the evaluation period, including the allocation for award-fee criteria and performance-based incentive criteria; and
  - (v) Methodology for application of subjective evaluation ratings or attainment of predetermined objectives to earned fee.
- (B) There are two categories of evaluation criteria that may be used in determining award-fee earned: award-fee criteria and performance-based incentive criteria. Each of these categories, in general, is defined as follows:
- (i) Award-fee Criteria – Evaluation criteria that are qualitative or subjective for which it is neither feasible nor effective to devise pre-determined objective criteria applicable to cost, schedule, technical or other contract performance requirements or objectives. These types of criteria require a judgmental evaluation process and allow the Government the flexibility to evaluate both actual performance and the conditions under which it was achieved.
  - (ii) Performance-Based Incentive Criteria – Evaluation Criteria which can be defined by predetermined, objective incentive criteria applicable to cost, schedule, technical or other contract performance requirements or objectives. Performance measurement standards contain well-defined parameters for measuring performance against evaluation criteria. These criteria may extend beyond one evaluation period when appropriate to incentivize the completion of long-term objectives.
- (C) The length of evaluation periods shall be determined unilaterally by the Contracting Officer. The evaluation periods should provide a balance between the Contractor's ability to have sufficient performance time for the Government to evaluate; but evaluation periods should provide the ability for the Government to provide timely evaluations on the Contractor's performance without being administratively burdensome.
- (D) The PEMP shall be provided to the Contractor 1 calendar day prior to the beginning of the first and each successive evaluation period. If there is not sufficient time for the PEMP to be provided to the Contractor in the required number of days in advance of the beginning of the evaluation period, the Contractor shall not be evaluated on its performance until 1 calendar day after the PEMP is received by the Contractor. The PEMP may be revised unilaterally at any time during the evaluation period; but the revised PEMP, or

revised portion thereof, shall not be effective until 1 calendar day after the Contractor receives the revised PEMP.

(2) Performance Evaluation and Fee Determination.

- (A) Monitoring Performance. During the evaluation period, performance monitors will track the Contractor's performance in accordance with the PEMP. Interim evaluations may be provided to the Contractor to identify strengths, weaknesses and deficiencies in the Contractor's performance during the current evaluation period. At the end of an evaluation period, performance monitors will assess the Contractor's performance in accordance with the PEMP and report the results to the Award-fee Board (AFB).
- (B) Contractor Self-Assessment. Following each evaluation period, the Contractor may provide a written self-assessment of its performance to the AFB to be considered in its report to the Fee Determining Official (FDO). The self-assessment shall be submitted not later than 21 calendar days after the end of each evaluation period. The self-assessment shall address strengths, weaknesses and deficiencies in the Contractor's performance during the evaluation period. Where deficiencies in performance are noted, the Contractor should describe the actions planned or taken to correct such deficiencies to avoid their recurrence.
- (C) Award-fee Board Recommendation. The AFB will consider the performance monitors' reports and any other pertinent information, including the Contractor's self-assessment, and prepare a report for the FDO with findings and recommendations. The Contractor will be provided a draft copy of the AFB's report and will be afforded an opportunity to identify factual errors. The AFB's draft report is not subject to negotiation with the Contractor. The Contractor will be provided a copy of the final AFB report immediately after the report is finalized.
- (D) Award-fee Determination. The FDO will review the AFB's recommendation, the Contractor's self-assessment and other pertinent information related to the Contractor's performance. The FDO will make a final, written determination, consistent with the PEMP, as to the amount of the award-fee earned. The FDO's final determination will be provided to the Contractor no later than 90 calendar days after the end of the evaluation period. The FDO, AFB representative, or Contracting Officer will provide a debriefing to the Contractor on the final determination. All FDO decisions regarding award-fee are made solely at the discretion of the Government, including but not limited to, the characterization of the Contractor's performance, amount of earned fee, if any, and the methodology used to calculate the earned fee.
- (3) Unsatisfactory Performance. No award-fee shall be earned if the Contractor's overall performance in the aggregate is below satisfactory.
- (4) Unearned Award-fee. Any unearned award-fee, for which the Contractor had the opportunity to earn during an evaluation period, shall not be transferred to

subsequent evaluation periods, thus not allowing the Contractor an additional opportunity to earn that previously unearned award-fee.

- (5) Award-fee Payment. After the FDO's award-fee determination, the Contracting Officer will issue a unilateral modification to the contract setting forth the amount of earned fee. Payment will be made after the modification has been issued and consistent with other clauses of this contract related to payments. The PEMP may provide for the payment of earned fee for performance-based incentives completed prior to the end of the evaluation period or provisional payments of earned fee based on established progress in meeting performance-based incentives extending beyond an individual evaluation period.

#### **B.10 FEE REDUCTIONS**

- (a) All annual available fee in each year of Contract performance is subject to reductions imposed by the terms and conditions of this Contract, including, but not limited to:
  - (1) Section B Clause entitled, *Target Activity PBI Fee*;
  - (2) Section B Clause entitled, *DOE-H-2060 Base and Award Fee*;
  - (3) Section B Clause entitled, *Small Business Subcontracting Fee Reduction*;
  - (4) Section E Clause entitled, *FAR 52.246-3, Inspection of Supplies – Cost Reimbursement*;
  - (5) Section E Clause entitled, *FAR 52.246-5, Inspection of Services – Cost Reimbursement*;
  - (6) Section H Clause entitled, *DOE-H-2070 Key Personnel*;
  - (7) Section I Clause entitled, *FAR 52.203-10, Price or Fee Adjustment for Illegal or Improper Activity*;
  - (8) Section I Clause entitled, *FAR 52.215-11, Price Reduction for Defective Cost or Pricing Data – Modifications*;
  - (9) Section I Clause entitled, *FAR 52.215-13, Subcontractor Cost or Pricing Data – Modifications*;
  - (10) Section I Clause entitled, *FAR 52.219-16, Liquidated Damages – Subcontracting Plan*;
  - (11) Section I Clause entitled, *FAR 52.243-2, Changes – Cost Reimbursement*; and
  - (12) Section I Clause entitled, *DEAR 952.223-76, Conditional Payment of Fee or Profit – Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health*.

- (b) The maximum fee reduction in any annual period of Contract performance is the allocated *Annual Award Fee*, as defined in the PEMP that can be earned in the annual period the event occurred.

#### **B.11 SMALL BUSINESS SUBCONTRACTING FEE REDUCTION**

For the purpose of implementing this Clause, the percentage goals established in the Section J Attachment entitled, *Small Business Subcontracting Plan*, will remain in effect for the duration of the Contract.

- (a) The Contractor's performance in meeting small business performance percentage goals in accordance with the Section H Clause entitled, *Subcontracted Work*, and the Contractor's *Small Business Subcontracting Plan*, will be evaluated at the end of each performance period indicated below. The evaluation will be based on the small business subcontracting for each specific contract performance period.
  - (1) At the end of the Base Period; and
  - (2) At the end of the Option Period (if this option is exercised).
- (b) If the Contractor has not met any or all of the subcontracting goals, and/or has failed to provide meaningful work for small businesses, the Contracting Officer may reduce the annual award fee earned for the last year of each performance period. The reduction amount may be up to 25% of the annual award fee criteria earned for the last year of the Base Period and 15% for the last year of the Option Period.

#### **B.12 ALLOWABILITY OF SUBCONTRACTOR FEE**

- (a) If the Contractor is part of a teaming arrangement as described in FAR Subpart 9.601(1), *Contractor Team Arrangements*, the team shall share in the *Total Available Award Fee* and *Total Target Activity PBI Fee* as shown in Table B.2-2. Separate, additional critical subcontractor fee is not an allowable cost under this Contract for individual team members, or for a subcontractor, supplier, or lower-tier subcontractor that is a wholly-owned, majority-owned, or affiliate of any team member.
- (b) The subcontractor fee restriction in paragraph (a) does not apply to members of the Contractor's team that are: (1) small business(es); (2) Protégé firms as part of an approved Mentor-Protégé relationship as identified in the Contractor's Diversity Plan as per the Section H clause at DOE-H-2046, Diversity Program; (3) subcontractors under a competitively awarded firm-fixed price or firm-fixed unit price subcontract; or (4) commercial items as defined in FAR Subpart 2.1, *Definitions*.

#### **B.13 PROVISIONAL PAYMENT OF FEE**

- (a) Notwithstanding any other term or condition of this contract to the contrary, this clause applies to and has precedence over all other terms and conditions of this contract that provide for provisional payment of fee.
- (b) The Contractor must notify the Contracting Officer immediately if it believes any incongruence exists between this clause and any other term or condition of this

contract that provides for provisional payment of fee. If a term or condition of this contract provides for provisional payment of fee but fails to include all of the requirements of this clause, that term or condition will be considered to include the omitted requirements.

- (c) This clause conforms to the Federal Acquisition Regulation and Department of Energy fee policy and constructs. The following definitions and concepts apply.
- (1) Price means cost plus any fee or profit applicable to the contract.
  - (2) The terms profit and fee are synonymous.
  - (3) Incentive means a term or condition whose purpose is to motivate the Contractor to provide supplies or services at lower costs, and in certain instances with improved delivery or technical performance, by relating the amount of profit or fee earned to the Contractor's performance.
  - (4) Earned fee for an incentive means fee due the Contractor by virtue of its meeting the contract's requirements entitling it to fee. Earned fee does not occur until the Contractor has met all conditions stated in the contract for earning fee.
  - (5) Available fee for an incentive means the fee the Contractor might earn but has not yet earned.
  - (6) Provisional payment of fee for an incentive means the Government's paying available fee for an incentive to the Contractor for making progress towards meeting the performance measures for the incentive before the Contractor has earned the available fee.
  - (7) Provisional payment of fee has no implications for the Government's eventual determination that the Contractor has or has not earned the associated available fee. Provisional payment of fee is a separate and distinct concept from earned fee. The Contractor could, for example, receive 100% of possible provisional fee payments yet not earn any fee (the Contractor would be required to return all of the provisional fee payments). The Contractor could, for example, receive 0% of possible provisional fee payments yet earn the entire amount of available fee (it would not receive any fee payments until the Government's determination that the Contractor had earned the associated available fee for the incentive).
  - (8) Clause means a term or condition used in this contract.
- (d) This contract's price, incentives included in its price, and all other terms and conditions reflect the Government's and the Contractor's agreement to link, to the maximum extent practical, the Contractor's earning of fee to its achievement of final outcomes rather than interim accomplishments.
- (e) Certain terms and conditions of this contract provide for provisional payment of fee for certain incentives. Other terms and conditions of this contract provide for each such incentive the requirements the Contractor must meet to earn the fee linked to the incentive. The terms and conditions of this contract that provide for provisional

- payment of fee for certain incentives include for each such incentive the requirements the Contractor must meet before the Government is obligated to pay fee, provisionally, to the Contractor and for the Contractor to have any right to retain the provisionally paid fee.
- (f) The Contracting Officer, at his/her sole discretion, will determine if the Contractor has met the requirements under which the Government will be obligated to pay fee, provisionally, to the Contractor and for the Contractor to have any right to retain the provisionally paid fee.
  - (g) If the Contracting Officer determines the Contractor has not met the requirements to retain any provisionally paid fee and notifies the Contractor, the Contractor must return that provisionally paid fee to the Government within 30 days: (i) the Contractor's obligation to return the provisional paid fee is independent of its intent to dispute or its disputing the Contracting Officer's determination; and (ii) if the Contractor fails to return the provisionally paid fee within 30 days of the Contracting Officer's determination, the Government, in addition to all other rights that accrue to the Government and all other consequences for the Contractor due to the Contractor's failure, may deduct the amount of the provisionally paid fee from: amounts it owes under invoices; amounts it would otherwise authorize the Contractor to draw down under a Letter of Credit; or any other amount it owes the Contractor for payment, financing, or other obligation.
  - (h) If the Contractor has earned fee associated with an incentive in an amount greater than the provisional fee the Government paid to the Contractor for the incentive, the Contractor will be entitled to retain the provisional fee and the Government will pay it the difference between the earned fee and the provisional fee.