

**PART I – THE SCHEDULE**

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**PART I – THE SCHEDULE**

**SECTION H - SPECIAL CONTRACT REQUIREMENTS**

**H.1 952.242-70 TECHNICAL DIRECTION (DEC 2000)**

(a) Performance of the work under this Contract shall be subject to the technical direction of the DOE Contracting Officer's Representative (COR). The term "technical direction" is defined to include, without limitation:

- (1) Providing direction to the Contractor that redirects Contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details, or otherwise serve to accomplish the contractual Statement of Work.
- (2) Providing written information to the Contractor that assists in interpreting drawings, specifications, or technical portions of the work description.
- (3) Reviewing and, where required by the Contract, approving, technical reports, drawings, specifications, and technical information to be delivered by the Contractor to the Government.

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

(c) Technical direction must be within the scope of work stated in the Contract. The COR does not have the authority to, and may not, issue any technical direction that:

- (1) Constitutes an assignment of additional work outside the Statement of Work;
- (2) Constitutes a change as defined in the contract clause entitled "Changes;"
- (3) In any manner causes an increase or decrease in the total estimated contract cost, the fee (if any), or the time required for contract performance;
- (4) Changes any of the expressed terms, conditions or specifications of the Contract; or
- (5) Interferes with the Contractor's right to perform the terms and conditions of the Contract.

(d) All technical direction shall be issued in writing by the COR.

(e) The Contractor must proceed promptly with the performance of technical direction duly issued by the COR in the manner prescribed by this clause and within its authority under the provisions of this clause. If, in the opinion of the Contractor, any instruction or direction by the COR falls within one of the categories defined in (c)(1) through (c)(5) of this clause, the Contractor must not proceed and must notify the Contracting Officer in writing within five (5) working days after receipt of any such instruction or direction and must request the Contracting Officer to modify the Contract accordingly. Upon receiving the notification from the Contractor, the Contracting Officer must:

(1) Advise the Contractor in writing within thirty (30) days after receipt of the Contractor's letter that the technical direction is within the scope of the Contract effort and does not constitute a change under the Changes clause of the Contract;

(2) Advise the Contractor in writing within a reasonable time that the Government will issue a written change order; or

(3) Advise the Contractor in writing within a reasonable time not to proceed with the instruction or direction of the COR.

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

## **H.2 RESPONSIBLE CORPORATE OFFICIAL**

The Contractor shall guarantee performance as evidenced by the Guarantee of Performance (Clause H.3). If a separate business entity is established for this Contract, the Contractor's parent company shall guarantee performance as evidenced by the Guarantee of Performance (Clause H.3). If the Contractor is a joint venture or other similar entity where more than one company is involved, the parent companies shall assume joint and severable liability for the performance of the Contractor. In the event any of the signatories to the Guarantee of Performance enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer. Notwithstanding the provisions of this clause, the Government may contact, as necessary, the single responsible corporate official identified below, who is at a level above the Contractor and who is accountable for the performance of the Contractor, regarding Contractor performance issues. Should the responsible corporate official change during the period of the Contract, the Contractor shall promptly notify the Contracting Officer in writing of the change in the individual to contact.

Name:	John Hopkins
Position:	Group Executive
Company/Organization:	Fluor Corporation
Address:	One Enterprise Drive Aliso Viejo, CA 92656-2606
Phone:	949-349-2505
Facsimile:	949-349-5253
E-mail:	<a href="mailto:john.hopkins@fluor.com">john.hopkins@fluor.com</a>

## **H.3 GUARANTEE OF PERFORMANCE AGREEMENT**

The Contractor or the Contractor's parent organization(s) has (have) provided a Guarantee of Performance Agreement in a manner and form acceptable to the Contracting Officer assuring the performance, duties, and responsibilities including repayment of unearned provisional fee, will be satisfactorily fulfilled. The Guarantee of Performance Agreement dated 7/10/00 is incorporated herein by reference and made part of this Contract.

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**H.4 SMALL BUSINESS SUBCONTRACTING PLAN**

The Contractor's Small Business Subcontracting Plan and Small Disadvantaged Business Participation Program (SDBP), as approved by the Contracting Officer, on November 3, 2000 are hereby incorporated into Section J, Attachment 8 of this Contract. Future revisions to the Plan/Program shall be accomplished by Contract modification. See the Contract clauses entitled, "Incentive Subcontracting Program" and "Small Disadvantaged Business Participation Program-Incentive Subcontracting" regarding incentives to be paid for exceeding goals/targets.

Performance against the above Plan/Program will be considered in the past performance evaluation conducted yearly by the Contracting Officer.

**H.5 ADMINISTRATION OF SUBCONTRACTS**

- a. The administration of all subcontracts entered into and/or managed by the Contractor, including responsibility for payment hereunder, shall remain with the Contractor unless assigned at the direction of DOE.
- b. The Government reserves the right to direct the Contractor to assign to the Government or another Contractor any subcontract awarded under this Contract.
- c. The Contractor agrees to accept transfer of existing subcontracts as determined necessary by DOE for continuity of operations. The Contractor agrees to accept assignment (or transfer of contract technical monitoring and administration responsibilities) of DOE prime contracts. The Contractor shall attempt to negotiate changes to the assigned subcontracts incorporating mandatory flow-down provisions at no cost. If the subcontractor refuses to accept the changes or requests price adjustments, the Contractor will notify the Contracting Officer in writing.

**H.6 952.215-70 KEY PERSONNEL (DEC 2000)**

(a) The personnel listed below or elsewhere in this contract are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel, the Contractor must: (1) Notify the Contracting Officer reasonably in advance; (2) submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract; and (3) obtain the Contracting Officer's written approval. Notwithstanding the foregoing, if the Contractor deems immediate removal or suspension of any member of its management team is necessary to fulfill its obligation to maintain satisfactory standards of employee competency, conduct, and integrity under the clause at 48 CFR 970.5203-3, Contractor's Organization, the Contractor may remove or suspend such person at once, although the Contractor must notify Contracting Officer prior to or concurrently with such action.

(b) The list of personnel may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel.

<u>NAME</u>	<u>ASSIGNMENT</u>
Jamie Jameson	Closure Project Director
Cornelius Murphy	Field Closure Project Director

**Section H**

## H.7 WORKFORCE TRANSITION AND MANAGEMENT

In order to: (i) achieve an orderly transition; (ii) be fair to incumbent employees; (iii) maintain a productive and flexible workforce; and (iv) minimize the impacts to other DOE programs, the Contractor will adhere to the following requirements in its human resource management actions. These provisions do not apply to subcontractors performing construction services covered by the Davis Bacon Act (DBA).

### a. Employee Transition and Continuity of Employment

1. At the time the Contractor becomes responsible for the work, all current incumbent employees of Fluor Fernald, up to, but not including Level 2 will be given the right of first refusal for employment with the Contractor and remain in their current positions upon contract take over.
2. Continued employment of employees at Levels 0, 1 & 2 is at the discretion of the Contractor.
3. As necessary throughout the term of the contract, the Contractor will have flexibility to reorganize and "rightsize" its workforce as needed to effectively and efficiently perform its mission with the appropriate number of employees and required skill mix. All such workforce restructuring actions must comply with the provisions outlined in subparagraph (i) of this clause. A staffing analysis based upon the detailed manpower planning process referenced in subparagraph (i) must be submitted with the revised baseline required to be submitted to DOE within six (6) months of contract award. Any workforce restructuring actions proposed by the Contractor prior to approval of the revised baseline will require approval by DOE.

### b. Pay and Benefits

1. In order to minimize unnecessary disruption to the existing workforce and minimize severance costs, incumbent Contractor employees below Level 2 who transition to the Contractor will retain substantially equivalent pay and benefits during takeover. This includes pension, investment, medical, and other human resource health and welfare programs now in existence at the FCP. This requirement extends until the revised baseline required to be submitted by the Contractor within six (6) months following contract award is approved by DOE. No changes are to be made to current FCP retirees' medical or pension benefits.
2. The Contractor may establish monetary incentive programs to motivate and recognize employees, improve performance, and retain critical skills required through Site Closure. Such incentives will be aligned to achievement of closure mission objectives. The annual cost of such programs will be part of the Target Cost of the Contract.

### c. Pensions and Other Employee Benefit Plans

1. The Contractor will, in addition to becoming the sponsoring employer for medical, retiree medical and disability plans, become the sponsoring employer for

the FCP pension and investment plans, and will have responsibility for administering and maintaining their qualified status.

2. The Contractor must submit actuarial certification and employer certification as the sponsoring employer and participating employer in FCP pension plans in order that such plans be in full compliance with Internal Revenue Code and Employee Retirement Income Security Act (ERISA) requirements including, but not limited to, any applicable non-discrimination testing. This will be accomplished by the Contractor submitting Form 5500 in accordance with Section J, Attachment 3, Reporting Requirements.
3. In keeping with the closure focus of site activities, the Contractor will maximize efforts which continue and expand upon current FCP pension plan provisions regarding the concept of lump sum benefits and portability of pension benefits.
4. If this contract:
  - (a) Is terminated,
  - (b) Expires without a follow-on contract, or
  - (c) Is replaced with a contract which does not contain a post-contract welfare benefit program for which DOE has a continuing funding obligation, the Contractor will continue as plan sponsor and administrator of existing benefit programs if requested by DOE. These programs include pension and welfare benefit plans for those employees who earned such benefits, including: retirees; disabled employees; and eligible dependents and survivors.
5. In accordance with DOE-approved Contractor benefit plans, the Contractor will provide benefit continuation on a funding basis acceptable to DOE.
  - (a) During the final six (6) months of this contract, the Contracting Officer shall provide written direction to the Contractor regarding certain post-employment employee benefits systems, such as pension systems, post-retirement medical insurance, and post-retirement life insurance.
  - (b) The Contracting Officer may direct any of a number of potential means of addressing the continuing responsibilities for these systems. The direction will identify the potential means of addressing such responsibilities that may include, but are not limited to: termination of the plans in accordance with relevant laws and regulations; continuation of the plans on a "pay-as-you-go" basis under a separate contract with the Contractor; or transfer of plan responsibilities to another Contractor or third party. The selection among these options is at the sole discretion of the Contracting Officer. The Contractor will implement the options as directed by the Contracting Officer.
  - (c) To the extent that the Contractor incurs costs under this contract in implementing the Contracting Officer direction, the Contractor's

allowable costs will be reimbursed according to the Allowable Cost and Payment provisions of this contract.

d. Continuity of Service Credit

All Fluor Fernald employees currently in site-wide benefit plans will maintain their current service credit date for benefit earnings. Employees of Fluor Fernald Teaming Partner companies who are not currently members of site-wide benefit plans will have their service credit determined by the DOE Contracting Officer at the time of transition if they are hired directly by the Contractor.

e. Severance Pay

1. No severance pay is warranted on the date incumbent employees transition to the Contractor, since the transition will occur under substantially equivalent employment conditions.
2. Employees will retain their severance pay benefits earned with Fluor Fernald should they ever be separated involuntarily (except for cause) by the Contractor.
3. Severance pay based on the length of service with Fluor Fernald, including severance pay based on service with the Contractor, will be paid if an individual subsequently is separated involuntarily (except for cause) by the Contractor.
4. Prorated repayment of severance will be required should an individual who accepts severance pay subsequently be employed by the Contractor under substantially equivalent pay and benefits, based upon the length of time between separation and new hire date.

f. Labor Relations (Also refer to the clause entitled "Collective Bargaining Agreements - Protective Services" contained in Section I.)

1. The Contractor agrees to conduct its labor relations program in accordance with DOE's intent that labor policies and practices reflect the best experience of American industry in aiming to achieve the type of stable labor-management relations essential to the successful accomplishment of DOE's programs at reasonable cost. Collective bargaining will be left to the orderly processes of negotiation and agreement between Contractor management and certified employee representatives with maximum possible freedom from Government involvement. Contractor management's trusteeship for working on DOE facilities and programs critical to the national interest includes the duty to adopt practices which are fundamental to the friendly adjustment of disputes, and which experience has shown promote orderly collective bargaining relationships.
2. The Contractor will maintain positive labor-management relations. The Contractor will respect the rights of employees to: self-organize; form, join, or assist labor organizations; bargain collectively through representatives of their own choosing; engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; and have the right to refrain from any or all of such activities.

3. The Contractor will accept transfer of, assume responsibility and accountability for, and recognize the current bargaining agents and their existing collective bargaining agreements which currently cover FCP activities.
4. The Contractor is considered a successor Contractor as this term is used under the National Labor Relations Act, and agrees to honor successorship language contained in the collective bargaining agreements currently applicable to FCP activities. Those organizations are as follows:
  - (a) Fernald Atomic Trades and Labor Council, AFL-CIO (FAT&LC).
  - (b) International Guards Union of America (IGUA) Local No. 14.
  - (c) Greater Cincinnati Building and Construction Trades Council, AFL-CIO (GCBCTC).

g. Employee Relations

The Contractor is expected to maintain a positive employee relations environment that will foster high productivity at reasonable cost. The Contractor will implement effective employee concerns resolution programs.

h. Application for Contractor Compensation

The Contractor shall submit Application for Contractor Compensation Approval (DOE F3220.5) forms for DOE approval, on an annual basis, for each of the five most highly compensated employees in management positions within the Contractor's organization. Reimbursement of the salary for the top Contractor management official is subject to the limitations contained in Section B.5 of DOE Acquisition Letter No. 2000-12, dated December 15, 2000. The Contracting Officer may require the submission, for approval, of F3220.5s for any employee whose total annual reimbursed compensation exceeds \$100,000, if deemed necessary.

i. Workforce Restructuring (Also refer to the clauses entitled "Displaced Employee Hiring Preference" and "Workforce Restructuring Under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993" contained in Section I.)

1. The Contractor will comply with the provisions of the Ohio Field Office Workforce Restructuring Plan for the Fernald and Mound Sites, "An End in Sight", dated July 1997, as well as any site-specific plans developed by DOE for the FCP. The Contractor will use its best efforts to accomplish workforce restructuring or displacement so as to mitigate social and economic impacts on the local community.
2. The Contractor will continue the detailed manpower planning process currently in place at the FCP which aligns staffing levels and required skill mix with project work. The process identifies job classifications and staffing levels over time, integrated with the site project baseline. The Contractor will share this information periodically with its employees.

## **H.8 DEPARTMENT OF LABOR WAGE DETERMINATION**

In the performance of this Contract, the Contractor and/or subcontractors shall comply with the requirements of U.S. Department of Labor Wage Determination Numbers 1994-2413, Revision No. 20, dated June 18, 2003, CBA-2003-42, Revision No. 0, dated November 4, 2003, and CBA-2003-103, Revision No. 0, dated December 12, 2003, if the contract or subcontracts are covered by the Service Contract Act. These Wage Determinations are attached to this contract (see Section J). Revised wage determinations shall be required from the Department of Labor by the Contracting Officer and incorporated into this contract at least once every two (2) years but not more often than yearly. The Contractor shall provide information as requested by the Contracting Officer in support of obtaining the revised wage determinations. The Contractor and/or subcontractors shall comply with the revised wage determinations for Service Contract Act covered employees.

## **H.9 PROJECT CONTROL SYSTEMS AND REPORTING REQUIREMENTS**

### **H.9.01 Project Control System Requirements**

- a. The Contractor shall establish, maintain and use a project control system meeting the requirements specified in the contract, in the following paragraphs titled "Baseline Development," "Project Performance," and "Baseline Change Management" of this Section H.9. The Contractor may use a pre-existing project control system if such system satisfactorily addresses the system requirements defined below.
- b. The project control system must also meet the requirements of the following DOE guidance:
  1. Integrated Planning, Accountability, and Budgeting System B Information Systems (IPABS-IS) Data Requirements, February 16, 1999.
  2. Integrated Planning, Accountability, and Budgeting System (IPABS) Handbook, February 16, 1999;
  3. HQ Baseline Change Control Charter, Office of Environmental Management, Rev. 0, June 23, 1999; and
  4. DOE Order 413.3, Program and Project Management for the Acquisition of Capital Assets, October 13, 2000, Specific Contractor Requirement Document.
- c. The site's existing Integrated Project Execution System (IPEX) database is to be used and maintained through this period.

### **H.9.02 Baseline Development**

- a. Baseline and Work Scope Cost and Reporting
  1. Work Breakdown Structure. The Work Breakdown Structure (WBS) shall provide the basis for all project control system components, including estimating, scheduling, budgeting, performing, managing, and reporting, as required under

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this contract. The WBS shall: be derived from the Statement of Work (SOW) described in Section C; be included within the change control process; be approved by the Contracting Officer; and, conform to any implementation guidance which may be provided by the Contracting Officer. The WBS shall first be broken into one leg for the project work and another for miscellaneous non-project level of effort activities. The project work leg shall then be broken out into the project baseline summaries (PBS) as stated in the Statement of Work (Section C). Below each PBS, the Contractor may breakdown the work as needed.

b. **Cost Estimating**

Estimates shall be integrated with the WBS and use estimating methodologies that are consistent with DOE Order 413.3.

Estimates shall be prepared consistent with the established project baseline and can be identified by cost account, WBS element, or rolled up to cost account, Project Baseline Summary (PBS), Budget and Report (B&R) code and fee. The control system must maintain capability to provide Total Estimated Cost (TEC); Total Project Cost (TPC); Estimates-to-Complete (ETC); and Estimates-at-Completion (EAC), along with tracking of the Target Cost and Target Schedule.

c. **Planning and Scheduling Baseline**

1. **Project Risk Management.** The Risk Management Plan shall be developed that identifies the various internal and external risks to achieving the project baseline. The Risk Management Plan will analyze possible alternatives to mitigate impacts, select and define specific alternatives including cost and implementation schedules for each alternative, and provide for routine reporting and updating of the Plan semiannually.
2. **Schedule.** Schedules shall be developed that integrate with the WBS and cost accounts and represent all project work scope regardless of funding source. Certain non-project level of effort work scope may be excluded. Each cost account will have assigned duration representing work scope accomplishment. Activity logic links shall depict all work scope constraints and decision points and shall be integrated into a total project network schedule. Work scope critical path network schedules and milestones are required for the total project, for each PBS, but at a minimum at least one level below the PBS to develop time phased budgets that are integrated with the schedule. Float analysis will be summarized at the PBS and total project levels.

The Contractor shall propose at least five major milestones from the FCP baseline by September 1 of each year for approval by the Contracting Officer. These milestones shall represent the significant physical accomplishments scheduled for each fiscal year. Performance against these milestones will be considered when determining adjustments to the conditional fee payments.

d. Funds and Baseline Management

1. The Contractor shall analyze DOE proposed or directed funding changes for their impact on technical, schedule, and cost elements of the baseline along with potential impacts to the Target Cost and Target Schedule.
2. Any Contractor requested changes or DOE directed changes shall be addressed through the established change control process detailed in Section H.9.04. This process will not, in and of itself, have the authority to change the Target Project Cost and Schedule.
3. Recording Costs. All actual direct costs incurred for resources applied in the performance of work shall be recorded on a timely basis each month. Actual costs incurred must be recorded in the same accounting period that performance is measured and recorded. Any indirect costs shall also be collected and appropriately allocated to the project.
4. Collecting Costs. Costs shall be collected at a charge number level and be able to be summed through the WBS, PBS, and by major Contractor functional organization(s). Mischarges on time cards or other administrative or accounting errors shall be corrected in a timely manner.
5. Records shall maintain a clear distinction between approved changes in funding and baseline changes.

e. Current Year Work Plan.

The Contractor shall submit to the Contracting Officer or designee the budget allocations to each PBS for the upcoming fiscal year with a focus on differences to the activities described in the Project Baseline for that specific year. This deliverable is known as the Current Year Work Plan (CYWP), as derived from the FCP Baseline.

**H.9.03 Project Reporting**

a. Performance Analysis

1. Project Performance. The Contractor shall provide variance justification for differences between planned and actual performance. This shall be analyzed and reviewed monthly against the total project baseline and the Target Cost and Target Schedule. Performance analysis techniques shall be commercially accepted and documented, and shall utilize earned-value methods and shall be reported to DOE at the PBS level. Performance Metrics (i.e. quantities) are preferred for measurement of all technical work scope unless otherwise approved by the Contracting Officer. For variances greater than 10% the analysis shall describe the causes for variance, impact on other PBS's, and corrective action required.
2. Estimate at Completion. The Estimate at Completion (EAC) for the FCP shall be reviewed and evaluated quarterly for consistency with observed trends in performance, emerging or resolved issues, and changes in the assessment of project risk.

b. Reporting

1. Periodic Plans and Reports. The Contractor shall provide monthly status reports on each PBS and the total project in a format approved by the Contracting Officer. At a minimum, the status should include cost and schedule variance at a suitable WBS level with rollup to the PBS, the status of major milestones and critical technical or programmatic issues. Section J, Attachment 3 (FCP Project Control/Management Reporting Requirements) provides specific information regarding the required plans and reports.
2. Quarterly Critical Analysis (OCAR). The Contractor shall prepare and submit a comprehensive report that critically analyzes the overall status of the FCP as well as any key metrics on a quarterly basis. This report shall include overall narrative summaries, analysis of schedule trends and project float, critical path performance, analysis of critical manpower skills of other resources, budget and funding figures, and project risk updates.
3. Report Consistency. Plans and reports shall be prepared in such a manner as to provide for consistency with the contract Statement of Work, the FCP baseline, the approved Work Breakdown Structure. The Contractor's reporting system shall be able to provide for the following at the PBS level:
  - (a) Timely incorporation of contractual changes affecting estimated cost and schedule;
  - (b) Reconciliation of estimated costs for those elements of the WBS or discrete cost accounts with current performance measurement budgets in terms of changes to the authorized work and internal replanning;
  - (c) Changes to records pertaining to work performed that will change previously reported costs for correction of errors and routine accounting adjustments;
  - (d) Revisions to the Contract's estimated costs for Government-directed changes to the contractual effort.
4. Full Access. The Contractor shall provide the Contracting Officer, or designated authorized representatives, access to any and all information and documents comprising the Contractor's project control and reporting system.
6. Flow-Down of Reporting. The Contractor shall include *graded* reporting requirements in all subcontracts adequate to fairly evaluate performance and support the Contractor reporting requirements. For cost-reimbursement type contracts which exceed \$5 million in life-cycle cost the full reporting requirements of H.9, "Project Control Systems and Reporting Requirements" shall be required.

#### H.9.04 Baseline Change Management

- a. Baseline Changes. The baseline is the source document for all project control and baseline change management. The processes for managing and administering changes to all elements of the baseline shall be timely, formal, and documented. Baseline changes shall be proposed when:
1. Necessitated by significant project delays, events or other impacts; or
  2. The parties have negotiated an equitable adjustment in accordance with the Section I clause entitled, "Changes - Cost-Reimbursement" or other clauses of this contract.
- b. Baseline Thresholds. The approval authority for any increases to the Project Schedule or increases that would require additional funding be made available to the Contractor (either annually or Total Project) shall be approved by the Assistant Secretary for Environmental Management.

Provided that the changes do not affect the items described above, the baseline changes control thresholds for cost shall be the lesser of the following:

DOE Headquarters	\$10,000,000 or 20% of the PBS annually
FCP	\$ 5,000,000
Contractor	Up to the FCP Level

Increases to the Target Cost or Project (or Target) Schedule shall be approved by the Assistant Secretary for Environmental Management.

In some circumstances the Contractor might exceed authorized budget levels for a PBS when a baseline change is not warranted, such as for cost overruns. The current year ETC Analysis shall track and manage changes in funding at each PBS level.

- c. Change Control Processing. Specific change control time frames for consideration and approval will be established by the Contracting Officer. Each change control threshold level shall accommodate emergency changes. Retroactive changes that affect schedule and cost performance data are not allowed except to correct administrative errors. A record of all approved changes, at any level, shall be maintained through the life of the project. Ownership of Change Control Board records and Project Management records resides with DOE.
- d. Target Cost and Schedule Adjustments. Any changes to target cost, target schedule, or target fee shall be executed only through a contract modification by the Contracting Officer pursuant to the contract terms and conditions. Baseline changes will not imply the need for changes to Target Cost, Target Schedule or Target Fee.

#### H.10 QUALITY ASSURANCE PROGRAM

The Contractor shall establish and maintain a formal Quality Assurance that satisfies the Quality Assurance Requirements contained in DOE Orders appended to this contract (Section J, Attachment 2). The Contractor shall also meet the requirements of the Sitewide CERCLA Quality Assurance Project Plan

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(SCQ). Any subcontracts issued in support of this Contract shall require subcontractors to comply with the above requirements.

#### **H.11 PRICE ANDERSON AMENDMENTS ACT NONCOMPLIANCE**

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

#### **H.12 DEFENSE NUCLEAR FACILITIES SAFETY BOARD**

The Contractor shall support preparation of DOE responses to DNFSB issues and recommendations which affect or can affect contract work. In accordance with the law, the Contractor shall fully cooperate with the DNFSB and provide access to such work areas, personnel, and information as necessary. The Contractor shall maintain a document process consistent with DOE M 140.1-B, "Interface with the Defense Nuclear Facilities Board," dated March 30, 2001. The Contractor shall be accountable for ensuring that subcontractors adhere to these requirements.

#### **H.13 LEGAL MANAGEMENT PLAN**

- (a) The Contractor shall comply with 10 CFR Part 719, and submit a Legal Management Plan that includes the items set forth in 10 CFR 719.10 to the Contracting Officer for approval within sixty (60) calendar days.
- (b) The Plan will describe the Contractor's practices for managing legal costs and matters for which it procures the services of retained legal counsel. Once approved by the Contracting Officer, the Plan, as well as regulations and contract provisions, forms the basis for approvals by the Contracting Officer to reimburse litigation and other legal expenses. The Plan may be revised from time to time to conform to legal management rules or policies established by the DOE.

#### **H.14 952.204-75 PUBLIC AFFAIRS (DEC 2000)**

- (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.
- (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.

- (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.
- (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.
- (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.
- (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.
- (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.

#### **H.15 PERMITS, APPLICATIONS AND LICENSES**

- a. Except as otherwise directed by the Contracting Officer, on behalf of the DOE the Contractor shall procure and execute all necessary permits or licenses and abide by all applicable laws, regulations, and ordinances of the United States and of the state, territory, and political subdivision in which the work under this contract is performed.
- b. In recognition of the Contractor's responsibility to operate in compliance with all applicable environmental requirements, the Contractor agrees to sign environmental permits and applications as "operator" if directed by the DOE Contracting Officer. To clarify the resulting obligations under the contract, the parties agree to the following:
  - 1. The Contractor is responsible for obtaining all necessary environmental permits, and for signing permit applications if deemed appropriate by DOE. The Contractor shall accept assignment of permits currently held by DOE and its existing operating Contractor.
  - 2. DOE agrees that if bonds, insurance, or administrative fees are required as a condition for such permits, such costs shall be allowable. In the event that such costs are determined by DOE to be excessive or unreasonable, DOE shall provide the regulatory agency with an acceptable form of financial responsibility.
  - 3. The Contractor shall submit all reports required by permits directly to DOE unless otherwise directed by the Contracting Officer.

## **H.16 INSURANCE REQUIREMENTS**

- a. The Contractor shall participate in the State of Ohio Workers Compensation Fund and must ensure that all coverage required by Ohio law and regulation is provided to eligible workers. The Contractor shall also procure and maintain Fiduciary Liability and Fidelity/Crime insurance in amounts sufficient to satisfy the requirements of federal law and regulation.
- b. In addition, the Contractor is authorized to utilize additional commercial insurance of the same types and up to the same policy limits as those currently approved for use by the prime Contractors at other DOE closure sites.
  - DOE will reimburse the Contractor for 80% of the amount paid for such additional commercial insurance coverage as an allowable cost under this contract.
  - The Contractor will pay the remaining 20% of the premium cost for such additional commercial insurance
- c. Contractor will provide written notification to DOE of the intended policy coverage for additional commercial insurance prior to execution of any insurance policy involved. The Contracting Officer will promptly notify Contractor if the types or amounts of intended coverage are inconsistent with the agreed limitations.
- d. The Contractor shall propose any other types or additional amounts of insurance coverage deemed necessary to meet normal and customary claims. Prior written approval of the Contracting Officer is required unless the Contracting Officer expressly provides retroactive approval on any such additional insurance coverage. The Contractor is responsible for paying 100% of the cost of such other insurance if Contracting Officer approval is not received.
- e. Notwithstanding the above, the Contractor is responsible to increase the approved amounts of insurance under either paragraph a or b above to meet any new or additional requirements of any Federal, State or Local law or regulation imposing insurance amounts. The Contractor must provide to the Contracting Officer written notification of any new insurance requirements and documentation of their applicability.
- f. To the extent that insurance coverage, obtained in any manner, provided pursuant to this clause would also compensate the Contractor for any costs which would be unallowable or unreimbursable under the terms of this contract, any separate or incremental costs attributable to such coverage shall not be allowable under this contract.
- g. Contractor is authorized to provide the additional coverage approved under subparagraph b through a Contractor Controlled Insurance Program (CCIP). If Contractor elects not to implement such a program at the time of contract award, Contractor agrees to explore the option for a CCIP during the first six months of contract performance. Contractor will provide data to the Contracting Officer analyzing whether such a program represents a better benefit. If the parties mutually agree to implement an alternate CCIP, the reimbursability provisions of subparagraph b above will be applied to the costs of the CCIP when it is implemented."

#### **H.17 PRESERVATION OF ANTIQUITIES, WILDLIFE AND LAND AREAS**

Federal law provides for the protection of antiquities located on land owned or controlled by the U.S. Government. Antiquities include Indian graves or campsites, relics, and artifacts. The Contractor shall control the movements of its personnel and its subcontractor's personnel at the job site to ensure that any existing antiquities discovered thereon will not be disturbed, removed, or destroyed by such personnel. It shall be the duty of the Contractor to immediately report to DOE the existence of any such antiquities so discovered. The Contractor shall also preserve all vegetation except where such vegetation must be removed for survey or construction purposes. Further, all wildlife shall be protected to the maximum extent practicable.

Except as required by or specifically provided for in other provisions of this contract, the Contractor shall not perform any excavations, earth borrow, preparation of borrow areas, or otherwise disturb the surface soils within the job site without the prior approval of DOE or its designee.

#### **H.18 LOADING, BLOCKING, AND BRACING OF FREIGHT CAR SHIPMENTS**

Any media to be included in any carload shipment by rail shall be loaded, blocked, and braced by the Contractor in accordance with the standards published by the Association of American Railroads and effective at the time of shipment.

- a. Shipments for which the Association of American Railroads has published no such standards, shall be loaded, blocked, and braced in accordance with standards established by the shipper as evidenced by written acceptance of an authorized representative of the carrier.
- b. The Contractor shall be liable for payment of any damage caused by the failure to load, block, and brace in accordance with acceptable standards set forth herein.
- c. A copy of the pamphlet of the Association of American Railroads may be obtained from that Association.

#### **H.19 LOBBYING RESTRICTION**

The Contractor agrees that none of the funds obligated on this award 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 statute and regulation.

#### **H.20 NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS--SENSE OF CONGRESS**

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

#### **H.21 PROHIBITION OF CONTRACTS WITH PERSONS FALSELY LABELING PRODUCTS AS MADE IN AMERICA**

Pursuant to FAR 9.405(a), awards shall not be made to entities that are included on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs. If DOE, or DOE Contractor personnel become aware of a possible violation of the prohibition against falsely mislabeling products as

made in America, and the entity is not on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, the matter should be promptly reported through the DOE Contracting Officer to the Office of Management Systems, Office of Procurement and Assistance Management, for potential debarment of the entity pursuant to FAR 9.406-2(a)(4) and 9.406-2(b)(1)(iii).

## **H.22 PRIVACY ACT SYSTEM OF RECORDS**

The Contractor shall be responsible for the design, development, or operation of the following system of records which are subject to the Privacy Act of 1974:

DOE-5	Personnel Records of Former Contractor Employees
DOE-33	Personnel Medical Records - (DOE and Contractor Employees)
DOE-35	Personnel Radiation Exposure Records
DOE-38	Occupational and Industrial Accident Records
DOE-51	Employee and Visitor Access Control Records
DOE-52	Alien (Foreign Nationals) Visits and Participation
DOE-88	Epidemiological and Other Health Studies, Surveys and Surveillances

The above list shall be revised from time to time by mutual agreement between the Contractor and Contracting Officer as may be necessary to keep it current. Such changes need not be formally incorporated before annual fee and scope modifications, but shall have the same effect as if actually listed above, for the purpose of satisfying the listing requirement in the clause entitled "Privacy Act" in Section I.

## **H.23 CERTIFICATIONS AND OTHER STATEMENTS OF THE OFFEROR**

The Representations, Certifications, and Other Statements of the Offeror submitted with the offer for this contract are, by reference, hereby incorporated in and made a part of this contract.

## **H.24 USE OF RECOVERED MATERIALS**

The DOE policy is to acquire items composed of the highest percentage of recovered/recycled materials practicable (consistent with published minimum content standards), without adversely affecting performance requirements; consistent with maintaining a satisfactory level of competition; and consistent with maintaining cost effectiveness, and not having a price premium paid for products containing recovered/recycled materials.

- a. In the performance of this contract, the Contractor shall comply with the requirements of the following issuances:
  - (1) Executive Order 13101 of June 3, 1999, entitled "Greening the Government Through Waste Prevention, Recycling and Federal Acquisition,"
  - (2) Section 6002 of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended (42 U. S. C. 6962, Pub. L. 95-580, 90 Stat. 2822),
  - (3) Title 40 of the Code of Federal Regulations, subchapter I, part 247 (Comprehensive Guidelines for the Procurement of Products Containing Recovered Materials) and such other subchapter I parts or Comprehensive Procurement Guidelines as the Environmental Protection Agency may issue from

time to time as guidelines for the procurement of products that contain recovered/recycled materials, and

- (4) "U.S. Department of Energy Affirmative Procurement Program for Products Containing Recovered Materials," and related guidance documents as they are identified in writing by the Department. (DOE's Preference Program for Designated Products Containing Recovered Materials (Recommended Recovered Materials Content Ranges) is available at:

<http://twilight.saic.com/ap/RecycledContent.htm>

All major groups (paper products, construction materials, non-paper office products, vehicular products, transportation products, landscape products, park and recreation products, and miscellaneous products), as well as all subgroups, are included for reporting purposes.

- b. The Contractor shall prepare and submit reports on matters related to the use of environmentally preferable products and services from time to time in accordance with written direction from the Contracting Officer.
- c. In complying with the requirements of paragraph a. of this clause, the Contractor shall coordinate its concerns and seek implementing guidance on Federal and Department policy, plans, and program guidance with the Contracting Officer. Reports required pursuant to paragraph b. of this clause shall be submitted through the Contracting Officer.

#### **H.25 ALLOCATION OF LIABILITY FOR FINES AND PENALTIES TO RESPONSIBLE PARTY**

- a. Liability and responsibility for civil fines or penalties arising from or related to violations of environmental, safety, health, or quality requirements shall be borne by the party that caused the violation (Contractor's, subcontractors teaming partners, joint ventures, etc.). This clause resolves liability for fines and penalties, though the cognizant regulatory authority may assess such fine or penalty upon either party or both parties without regard to the allocation of responsibility or liability under this contract. The allocation of liability for such fine or penalty is effective regardless of which party signs permit applications, manifests, reports or other required documents, is a permittee, or is named subject of an enforcement action or assessment of a fine or penalty.
- b. Regardless of which party to this Contract is the named subject (Contractor or DOE) of an enforcement action for noncompliance with the environmental, safety, health, or quality requirements by the cognizant regulatory authority, liability for payment of any fine or penalty as a result of Contractor actions or in actions is the responsibility of the Contractor and not reimbursable under this contract. Cost of fines and penalties resulting from violations of, or failure of the Contractor to comply with Federal, State, local, or foreign laws and regulations, are unallowable except under the conditions stipulated at FAR 31.205-15.

## **H.26 CEILING ON CORPORATE HOME OFFICE ALLOCATION**

Limits are hereby placed on the Government liability under the contract for the Contractor's Corporate Home Office Allocation as set forth below. The amount identified represents the ceiling amount that may be reimbursed under this contract. The Contractor shall bill provisional amounts up to the ceiling amount. Should actuals show that the amount will be significantly lower than the ceiling, the Contractor shall submit a request to revise the provisional billing rates accordingly.

Corporate Home Office Allocation:      \$800,000.00 per year.

## **H.27 RESOLUTION OF LITIGATION AND SETTLEMENT COSTS**

This Contract will require the focus of both DOE and the Contractor in order to successfully achieve the aggressive cost and schedule targets contained herein. In order to facilitate closure of Contract No. DE-AC24-92OR21972 and the efficient transition to Contract No. DE-AC24-01OH20115, the parties have agreed to the resolution of certain items concerning past litigation, current litigation, future litigation, and financial accountability. The specific resolution items are hereby incorporated into Section J, Attachment 11 of this Contract.

## **H.28 GOVERNMENT FURNISHED SERVICES/ITEMS**

The Government and the Contractor recognize that implementation of the Statement of Work in an optimized fashion is dependent upon many activities, including provision by the Government of certain Government Furnished Services/Items as identified in Section J, Attachment 12, of this contract. In the event a Government Furnished Service/Item is almost due in accordance with Attachment 12, and the Contractor deems that an impact to cost and/or schedule is imminent if the GFS/I is not provided on time, the Contractor shall notify the DOE Contracting Officer of the perceived impact.

If the GFS/I is not provided within the schedule set out in Attachment 12, the Contractor is then entitled to notify the Contracting Officer of the impact it deems to be associated with the late delivery by the government and to pursue remedies in the manner and subject to the limitations set out in subparagraphs (b) and (h) of the clause of this contract entitled "Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts)".

## **H.29 CONTRACTOR EMPLOYEES**

In carrying out the work under this contract, the Contractor shall be responsible for the employment of all professional, technical, skilled and unskilled personnel engaged and to be engaged by the Contractor in the work hereunder, and for the training of personnel. Persons employed by the Contractor shall be and remain employees of the Contractor, and shall not be deemed employees of the Department of Energy or the Government. Nothing herein shall require the establishment of any employer-employee relationship between the Contractor and consultants or others whose services are utilized by the Contractor for work hereunder. Allowability or unallowability of costs for Contractor employees performing work under this contract are defined in FAR Part 31.

## **H.30 CONTRACTOR'S MANAGERIAL PERSONNEL**

For the purpose of Clause I.114, "Insurance-Litigation and Claims", "Contractor's Managerial Personnel" is defined as the Executive Project Director, the Senior Director of Projects, the Director of Projects and the managerial personnel that report directly to those three positions.

## **Section H**