

**PART I – THE SCHEDULE****SECTIONS B THROUGH H****TABLE OF CONTENTS**

<b>SECTION B - SUPPLIES OR SERVICES AND PRICES/COSTS</b> .....	<b>1</b>
<b>B-1 SERVICES BEING ACQUIRED</b> .....	<b>1</b>
<b>B-2 CONTRACT TYPE AND VALUE</b> .....	<b>1</b>
<b>B-3 AVAILABILITY OF APPROPRIATED FUNDS</b> .....	<b>2</b>
<b>SECTION C – STATEMENT OF WORK</b> .....	<b>3</b>
<b>C-1 STATEMENT OF WORK</b> .....	<b>3</b>
<b>SECTION D - PACKAGING AND MARKING</b> .....	<b>15</b>
<b>D-1 PACKAGING AND MARKING</b> .....	<b>15</b>
<b>SECTION E - INSPECTION AND ACCEPTANCE</b> .....	<b>16</b>
<b>E-1 FAR 52.246-5 INSPECTION OF SERVICES – COST REIMBURSEMENT</b> <b>(APR 1984)</b> .....	<b>16</b>
<b>E-2 INSPECTION AND ACCEPTANCE</b> .....	<b>16</b>
<b>SECTION F - DELIVERIES OR PERFORMANCE</b> .....	<b>17</b>
<b>F-1 PLACE OF PERFORMANCE</b> .....	<b>17</b>
<b>F-2 PERIOD OF PERFORMANCE</b> .....	<b>17</b>
<b>F-3 FAR 52.242-15 STOP-WORK ORDER (AUG 1989) ALTERNATE I (APR 1984)</b> .....	<b>17</b>
<b>SECTION G - CONTRACT ADMINISTRATION DATA</b> .....	<b>19</b>
<b>G-1 GOVERNMENT CONTACTS</b> .....	<b>19</b>
<b>G-2 CONTRACTOR CONTACT</b> .....	<b>19</b>
<b>SECTION H - SPECIAL CONTRACT REQUIREMENTS</b> .....	<b>20</b>
<b>H-1 PERFORMANCE DIRECTION</b> .....	<b>20</b>
<b>H-2 CONTRACTOR ASSURANCE SYSTEM</b> .....	<b>21</b>
<b>H-3 NNSA/NSO OVERSIGHT</b> .....	<b>22</b>
<b>H-4 ACCOUNTABILITY</b> .....	<b>23</b>
<b>H-5 PARENT ORGANIZATION’S OVERSIGHT PLAN</b> .....	<b>23</b>
<b>H-6 UTILIZATION OF PARENT ORGANIZATION SYSTEMS</b> .....	<b>24</b>
<b>H-7 STANDARDS MANAGEMENT</b> .....	<b>25</b>
<b>H-8 AWARD TERM</b> .....	<b>26</b>
<b>H-9 PERFORMANCE BASED MANAGEMENT</b> .....	<b>27</b>
<b>H-10 PERFORMANCE INCENTIVES</b> .....	<b>28</b>
<b>H-11 ENVIRONMENTAL, SAFETY, AND HEALTH COMPLIANCE DATA</b> .....	<b>29</b>
<b>H-12 APPLICATION OF DOE/NNSA DIRECTIVES</b> .....	<b>30</b>
<b>H-13 SECURITY</b> .....	<b>31</b>
<b>H-14 ENTERPRISE PURCHASING</b> .....	<b>31</b>
<b>H-15 NNSA DIRECT CONTRACTS</b> .....	<b>32</b>
<b>H-16 CONTRACTOR EMPLOYEES</b> .....	<b>33</b>
<b>H-17 ADVANCE UNDERSTANDINGS REGARDING ADDITIONAL ITEMS OF</b> <b>ALLOWABLE AND UNALLOWABLE COSTS AND OTHER MATTERS</b> .....	<b>33</b>
<b>H-18 WORKFORCE TRANSITION, CONTRACTOR COMPENSATION, BENEFITS,</b> <b>PENSION, AND LABOR RELATIONS</b> .....	<b>34</b>

**H-19 WORKERS COMPENSATION.....43**  
**H-20 SERVICE CONTRACT ACT OF 1965 (41 U.S.C. 351) .....44**  
**H-21 WALSH HEALY PUBLIC CONTRACTS ACT .....44**  
**H-22 MODIFICATION AUTHORITY.....45**  
**H-23 PRIVACY ACT SYSTEMS OF RECORDS .....45**  
**H-24 FLOWDOWN OF RIGHTS TO PROPOSAL DATA.....45**  
**H-25 CONTINUATION OF PREDECESSOR CONTRACTOR’S OBLIGATIONS .....46**  
**H-26 PERFORMANCE GUARANTEE.....46**  
**H-27 SEPARATE CORPORATE ENTITY.....46**  
**H-28 CONTRACTOR COMMITMENTS.....46**  
**H-29 PERFORMANCE OF WORK AT DOE FACILITIES AND SITES OTHER THAN  
 THE NEVADA TEST SITE AND SATELLITE FACILITIES .....46**  
**H-30 ADDITIONAL TECHNICAL DATA REQUIREMENTS .....47**  
**H-31 CONTRACTOR USE OF GOVERNMENT VEHICLES – WORK TO DOMICILE .....47**  
**H-32 CONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATIONS OR ALLEGED  
 VIOLATIONS, FINES, AND PENALTIES .....47**  
**H-33 CONTROL OF NUCLEAR MATERIALS.....48**  
**H-34 AGREEMENTS TO PERFORM NON-DOE ACTIVITIES.....48**  
**H-35 LIAISON SUPPORT WITH OTHER GOVERNMENT AGENCIES.....49**  
**H-36 THIRD PARTIES .....50**  
**H-37 NNSA ON-SITE CLEANUP .....50**

**SECTION B - SUPPLIES OR SERVICES AND PRICES/COSTS****B-1 SERVICES BEING ACQUIRED**

The Contractor shall, in accordance with the terms and conditions of this Contract, provide the personnel, equipment, materials, supplies, and services (except as may be furnished by the Government) and otherwise do all things necessary for, or incident to, providing its best efforts to effectively and efficiently manage and operate the Nevada Test Site and satellite facilities for the U.S. Department of Energy (DOE) National Nuclear Security Administration (NNSA).

**B-2 CONTRACT TYPE AND VALUE**

This Contract is a cost-reimbursement management and operating type contract employing performance incentives. The Estimated Cost, Performance Incentive Fee, and Fixed Fee for Work for Others are set forth below.

- (a) (1) The Estimated Cost (exclusive of the Contractor's Fee) is set forth below:

<u>Contract Period</u>	<u>Estimated Cost</u>
Transition (01 Apr 06 – 30 Jun 06)	\$ <u>-0-</u>
01 Jul 06 – 30 Sep 06	\$ <u>130,000,000 *</u>

- (2) The Estimated Cost for each subsequent NNSA fiscal year (exclusive of the Contractor's Fees) will be established by NNSA prior to the commencement of the applicable fiscal year in accordance with NNSA policy and incorporated into paragraph (a)(1) above by modification.

- (b) (1) The Maximum Available Performance Incentive Fee for each fiscal year will be established by NNSA prior to the commencement of the applicable fiscal year in accordance with NNSA policy and incorporated into paragraph (b)(3) below by modification.

- (2) The Fixed Fee for Work for Others for each subsequent fiscal year will be established by NNSA prior to the commencement of the applicable fiscal year in accordance with NNSA policy and incorporated into paragraph (b)(3) below by modification.

- (3) The total available fee pool is a combination of the Performance Incentive Fee and Fixed Fee related to the Work for Others effort. This total available fee pool for the specified period is set forth below:

Contract Period	Maximum Available Performance Incentive Fee		Work for Others Fixed Fee	Total Available Fee Pool
01 Jul 06 – 30 Sep 06	<u>\$2,665,068</u>	+	<u>\$2,283,782</u>	<u>\$4,948,850*</u>

[\*Estimated total amount. The Total Available Fee Pool will be finalized by the Government prior to contract start date of July 1, 2006 based on NNSA's Fee Policy.]

- (c) Up to thirty-five percent (35 percent) of the total available fee pool shown in (b)(3) above for a given contract period may be paid to the Contractor provisionally in equal monthly increments of one-twelfth (1/12) of the total available fee pool amount per month. The final determination of fee will be made by the Fee Determining Official (FDO), in accordance with the fee clauses of this Contract. In the event that overpayment results from the payment of fee on a provisional basis, the Contractor shall reimburse such overpayment to the Government upon demand, payable with interest in accordance with the Section I Clause entitled "Interest".
- (d) In the event Congressional appropriation deviates by more than (plus or minus) 25 percent from the "Laboratory Table" in the President's Budget annual requests, the Contracting Officer shall unilaterally modify the contract to adjust the Maximum Available Incentive Fee based on NNSA fee policy.
- (e) Pursuant to the Contract's Section I clause entitled "Obligation of Funds," the total amount obligated by the Government is \$702,000 and associated accounting and appropriation data are:

PR Number	App Symbol	Allott	B&R No.	FT	FP	OBJ	XID	Amount
NA25946	89X0240	DP0901250		TC	XN	25200		\$702,000

**B-3 AVAILABILITY OF APPROPRIATED FUNDS**

Except as may be specifically provided to the contrary in the Contract's Section I clause entitled "Nuclear Hazards Indemnity Agreement," the duties and obligations of the Government hereunder calling for the expenditure of appropriated funds are subject to the availability of funds appropriated by Congress, which the NNSA may legally spend for such purposes.

**SECTION C – STATEMENT OF WORK****C-1 STATEMENT OF WORK****1.0 General**

The Contractor shall, in accordance with the terms and conditions of this Contract, provide the management expertise and leadership necessary and appropriate to accomplish the missions assigned by the National Nuclear Security Administration (NNSA) through the NNSA/Nevada Site Office (NNSA/NSO) at the Nevada Test Site (NTS) and satellite facilities and to perform the work described in this Statement of Work (SOW).

Inasmuch as the assigned missions of the NTS and satellite facilities are dynamic, this SOW is not intended to be exclusive or restrictive, but is intended to provide a broad framework and general scope of the work to be performed at the NTS and satellite facilities. This SOW does not represent a commitment to, or imply funding for, specific projects or programs. All projects and programs from NNSA or other work sponsors will be authorized by NNSA in accordance with the terms and conditions of this Contract.

Work under this Contract, which encompasses nuclear facilities and nonnuclear facilities including high hazard operations, shall comply with all applicable Federal, state, and local statutes and regulations, and all applicable Department of Energy (DOE) directives and NNSA policies. (Applicable DOE directives and NNSA policies shall hereinafter be referenced as DOE/NNSA directives.) The term “nuclear facilities” is defined as those facilities, activities, or operations that involve, or will involve, radioactive and/or fissionable materials in such form and quantity that a nuclear hazard potentially exists to workers, the public, or the environment. “Nonnuclear facilities” are those facilities, activities, or operations where a nuclear hazard potential does not exist. “High hazard operations” are those activities or operations such as detonation of high explosives, planned chemical releases, and live fire exercises. The Contractor, in the performance of this Contract, shall implement national security programs; protect the environment; and ensure the safety, security, and health of employees and the public. In addition to performing the contract work, the Contractor shall implement appropriate program, project, and quality management systems to track progress and increase cost-effectiveness of work activities; balance good business decisions with fiscal efficiency (including implementing an effective make/buy process that reflects good value judgments); develop integrated plans and schedules to achieve program objectives on time; maintain sufficient resources to manage activities and execute technical projects throughout the life of a program; utilize appropriate technologies to reduce costs and improve performance; maintain facilities, infrastructure, and equipment necessary to accomplish assigned missions; protect classified, controlled, and proprietary

information; and accomplish work safely. In performing work under this Contract, the Contractor shall establish and maintain a cooperative working relationship with the Nuclear Weapons Laboratories (Los Alamos National Laboratory, Lawrence Livermore National Laboratory, and Sandia National Laboratories), as appropriate.

## 2.0 Nevada Test Site and Satellite Facilities Mission

The NTS is a unique expanse of Federally controlled land and facilities in a remote region of southern Nevada. The approximately 1,375 square miles that make up the NTS are surrounded by the U.S. Air Force Nellis Test and Training Range and unpopulated land controlled by the Bureau of Land Management. The biological, geological, hydrological, meteorological, and radiological environments are well characterized. The *Final Environmental Impact Statement for the Nevada Test Site and Off-Site Locations in the State of Nevada* and the associated Record of Decision allow for the execution of a variety of complex and unique projects and experiments while ensuring the protection of the public and the environment.

The NTS represents the United States' unique capability to support nuclear testing and complex dynamic experiments that involve Special Nuclear Materials or hazardous materials. These experiments, relying on integrated support from the Contractor, are conducted by the Nuclear Weapons Laboratories in support of the Stockpile Stewardship Program.

The basic purpose of this Contract is to provide support and infrastructure for experiments and activities at the NTS and satellite facilities. The Contractor shall be responsible for a wide range of activities (as elaborated below) in support of DOE/NNSA missions that include the following: nuclear explosives operations; remote field experiments and operations; physical and environmental science; nuclear waste management systems and technology; design and fabrication of electronic, mechanical, and structural systems; remote and robotic sensing; management of multi-laboratory facilities, mining, engineering, and construction operations; chemical, explosives, and hazardous materials systems and technologies; and waste management for various categories of waste (including, but not limited to, sewage/septic, solid waste, hazardous waste, low-level radioactive waste, low-level mixed waste, and transuranic and mixed transuranic waste). The Contractor shall be responsible for a wide-range of facilities, laboratories, and equipment that support the custom design, construction, and fielding of experimental systems ranging from small electronic and remote sensing packages to fielding complex systems in hostile environments for use anywhere in the world.

3.0 Programmatic Activities

3.1 Defense Experimentation and Stockpile Stewardship

The Contractor, in response to the requirements of and in coordination with the Nuclear Weapons Laboratories and other experimenters and users, shall provide the test beds, infrastructure, and appropriate scientific, engineering, and technical staff to support defense-related nuclear and nonnuclear experiments as well as other national security programs, including maintaining the NTS capability to conduct an underground nuclear test within the required readiness time.

The Contractor shall also provide similar technical and operational expertise in support of a wide variety of complex nonnuclear defense research and development experiments, many of which must be conducted in isolated and/or harsh environments.

3.2 Emergency Response and Nonproliferation

The Contractor, in response to the requirements of and in coordination with the national laboratories and other Federal, state, and local agencies and other users, shall provide laboratory and field capabilities to assess threats and manage radiological emergencies involving a variety of hazardous situations. The Contractor shall provide response and detection capabilities to the Nuclear Emergency Support Team, National Security Special Events, Aerial Measuring Systems, NNSA Accident Response Group, Federal Radiological Monitoring and Assessment Center, and other specialized groups of relevant expertise as may from time-to-time be organized during the term of the contract. The Contractor shall develop and support a broad array of critical response resources (including ground-based and airborne (fixed- and rotary-winged aircraft) analytical and logistic capabilities) that may be used to detect and deter the proliferation of nuclear weapons, devices, and materials, monitor suspect environmental and radiological sites, and aid in the characterization of radiologically contaminated locations both in the United States and abroad.

3.3 Environmental Management

The Contractor, in close working relationships with the Environmental Restoration contractor and other DOE/NNSA stakeholders, shall perform the onsite physical environmental restoration and waste management programs. In addition, the Contractor shall manage the staging, storage,

treatment, transportation, and disposal of wastes generated through operational and environmental restoration programs at the NTS or other NNSA locations. The Contractor shall minimize waste through pollution prevention and recycling activities.

The Contracting Officer may de-scope onsite cleanup from this SOW and transfer the scope to an NNSA Cleanup Contractor in accordance with Section H clause entitled "NNSA On-Site Cleanup."

#### 3.4 Other DOE and Non-DOE Support

The Contractor shall capitalize on the unique resources and capabilities available at the NTS and satellite facilities to perform and manage, compatible with NNSA work schedules, a variety of reimbursable work for other governmental organizations in support of a broad range of national security goals and programs.

#### 4.0 Operations, Facilities, and Infrastructure Support

##### 4.1 Integrated Safety Management (ISM) System

The Contractor shall implement an ISM System that effectively establishes environment, safety, and health management programs and processes that support the safe performance of all work, including activities conducted for the NNSA/NSO through subcontractors or other entities.

The Contractor shall include, as part of the ISM System, an Environmental Management System. The Contractor shall ensure that environmental compliance activities meet all regulatory requirements and adequately protect the environment and public health.

The Contractor's risk-based ISM System shall include but not be limited to accident prevention; criticality safety; nuclear safety; nuclear explosive and explosive safety; firearms safety; electrical, industrial, construction, and aviation safety; hazards identification; safety analysis and risk management; fire prevention and protection/suppression; hazardous material and nuclear explosive packaging and transportation operations; and safety training.

The Contractor's health management program shall include industrial hygiene, health physics, radiological protection, occupational medicine, health auditing and surveys, and training. The Contractor shall cooperate with worker health studies conducted by other Federal agencies and contract/financial assistance researchers under NNSA and DOE sponsorship.

#### 4.2 Safeguards and Security Management

The Contractor shall conduct safeguards and security programs including, but not limited to, physical and technical security planning, classified automated data processing security, personnel security, managing Classified Removable Electronic Media, classified information security, and classification/declassification. The Contractor shall interact effectively with the NNSA/NSO Protective Force Contractor to fully integrate safeguards and security at the NTS and designated satellite facilities. At some satellite facilities, such as Livermore Operations and Los Alamos Operations, the Contractor shall conduct operations security, entry and access control, and security education and awareness.

#### 4.3 Nuclear Operations

The Contractor shall provide nuclear facility safety management at facilities, such as the Radioactive Waste Management Sites in Area 5 and Area 3, the G-Tunnel Disposition Facility, and the Radiological Nuclear Countermeasures Test and Evaluation Complex, and support to the Device Assembly Facility. The Contractor shall comply with all applicable nuclear safety related Federal regulations and DOE orders and other nuclear safety requirements (including reporting requirements and instructions) of NNSA.

#### 4.4 Engineering, Design, and Construction

##### 4.4.1 Facility Operations and Infrastructure

##### 4.4.1.1 Project Management

The Contractor shall establish, maintain, and use a project management system, including an Earned Value Management System (EVMS) meeting the requirements of ANSI standard ANSI/EIA-748. The Contractor shall apply the project management system, using a graded approach, to all projects, including programmatic research and development activities in support of funded programs and operating expense funded, general plant, and line-item construction projects.

The Contractor shall provide the skills and capabilities to develop, plan, and execute projects to ensure that all mission objectives are appropriately controlled and successfully implemented. This includes tracking cost, scope, schedule commitments, and reporting technical

performance. Reporting shall be accomplished in accordance with prudent project management principles and as required by individual mission needs. The Contractor shall provide project management support to the national laboratories and other customers to facilitate cost estimating and scheduling for projects as needed.

**4.4.1.2 Engineering and Scientific Services**

The Contractor shall provide scientists, engineers, and technicians with skills to match the support requirements of this SOW. The Contractor shall consult with program officials at NNSA, NNSA/NSO, the national laboratories, and other partners and customers to define the functions to be executed in achieving NNSA/NSO missions. The Contractor shall provide strategic staffing plans to meet long-range program projections.

The Contractor shall provide design and risk analysis, value engineering, configuration management, conceptual designs, preliminary designs, material testing, and surveying in support of engineering designs (Title I); final designs and construction drawings (Title II); and as-built drawings pursuant to construction inspections, surveying, and material testing (Title III) services for activities supporting NNSA/NSO and its programmatic customers. The Contractor shall provide the skills necessary to accomplish this work to the safety and quality levels required for all facilities up to and including nuclear facilities, as applicable, while meeting demanding customer time constraints and milestones.

**4.4.1.3 Construction**

The Contractor shall design, construct, or modify buildings, underground excavations and facilities, surfaced areas, utility components, and other types of infrastructure projects as required by NNSA/NSO to meet mission goals and objectives. The Contractor must be capable of meeting appropriate quality assurance requirements, including the requirements for nuclear facilities.

**4.4.2 Infrastructure and Asset Maintenance and Management**

The Contractor shall manage real and personal property assets to support existing and future NNSA missions and programs at the NTS and satellite facilities. This includes the reduction of deferred maintenance, maintenance of current assets, and life cycle replacement and/or recapitalization of building and infrastructure major systems and subcomponents. Reporting shall be accomplished in accordance with NNSA/NSO requirements.

**4.4.3 Conduct of Operations**

The Contractor shall conduct operations with appropriate formality and discipline applying an NNSA/NSO-approved graded approach, up to and including nuclear facility rigor as appropriate.

**4.4.4 NTS Operations**

**4.4.4.1 Stewardship of the NTS**

With the exception of facilities specifically assigned to the Nuclear Weapons Laboratories, the Contractor shall manage the land, facilities, and personal property throughout the NTS including, but not limited to: maintenance programs; power systems; road systems; sewage systems; landfills; water systems; fleet and equipment operations; aviation-related facilities; housing, custodial, and food services; commuter services; and communication services. For those facilities assigned to the Nuclear Weapons Laboratories, the Contractor shall provide programmatic support to the Nuclear Weapons Laboratories as required and funded by the appropriate program.

**4.4.4.2 Medical Services**

The Contractor shall provide personnel who are graduates of approved programs and licensed by their respective boards in the state of Nevada to provide emergency, non-occupational palliative, and occupational medical services to all workers and visitors at the NTS. The Contractor shall maintain adequate documentation of services provided.

**4.4.4.3 NTS Emergency Fire and Rescue Response Services**

The Contractor shall provide trained and qualified personnel to provide emergency fire and rescue response services, including firefighters and paramedics. Firefighters shall meet applicable National Fire Protection Association standards. Ambulance service shall be a state of Nevada permitted industrial ambulance service. Paramedic service and cooperative medical and fire and rescue response to surrounding areas is covered by NNSA/NSO Memoranda of Understanding. The Contractor shall maintain and operate fire stations, fire alarm and fire suppression systems, and various fire fighting and rescue equipment at the NTS.

**4.4.4.4 Site Operations**

The Contractor shall coordinate, schedule, and deconflict all operations and activities occurring external to facilities at the NTS including, but not limited to, site access coordination, air space and ground use, incident and emergency notifications, and emergency response dispatch. This includes providing staffing for the NTS Site Operations Center.

**4.4.4.5 Emergency Management Operations**

The Contractor shall provide for emergency planning and preparedness activities for the NNSA/NSO. This shall include providing, managing, and maintaining the capability to respond to and mitigate emergencies in accordance with the NNSA/NSO Consolidated Emergency Management Plan. The Contractor shall manage the NNSA/NSO Emergency Operations Center located in North Las Vegas, Nevada, in accordance with established procedures and coordinate the reporting of operational information on a 24-hour basis. In addition, the Contractor shall operate the Emergency Management Center located at the NTS and shall maintain an alternate Emergency Operations Center located at the Remote Sensing Laboratory-West.

5.0 Business and Administrative Management

5.1 Financial Management

The Contractor shall maintain a financial management system suitable to provide proper accounting in accordance with NNSA requirements, generally accepted accounting principles, cost accounting standards, statutory requirements, and applicable DOE/NNSA directives. The system shall have effective internal controls for all expenditures and include sound financial stewardship and public accountability.

5.2 Purchasing Management

The Contractor shall implement and maintain an NNSA/NSO-approved purchasing system to provide required purchasing support and subcontract administration. The purchasing system shall incorporate quality assurance requirements and be responsive to the needs of customer requirements and programmatic milestones. The Contractor shall, in accordance with their approved purchasing system, acquire materials, supplies, equipment, facilities, property, and services required in connection with the work under this Contract that are not furnished by the Government.

5.3 Personal Property Management

The Contractor shall have an NNSA-approved management system for overall integrated planning, acquisition, maintenance, operation, control, accountability, utilization, and disposal of Government-owned personal property.

5.4 Information Technology Management

The Contractor shall implement and maintain information technology services and systems for organizational operations and for activities involving general purpose programming, data collection, data processing, report generation, general in-house software development, telecommunication systems, and computer security. Telecommunications systems include such elements as telephones and cellular phones, data networks, video multimedia, microwave, satellite, radio, pagers, and other spectrum-dependent systems.

5.5 Audits and Assessments

The Contractor shall conduct internal audits and audits of subcontractor work and costs. The Contractor shall ensure NNSA has access to all audit working papers, including working papers, of subcontractors performing audits for the prime contractor. The Contractor shall support external audits, reviews, appraisals, and other reviews conducted by NNSA or its contractors of other NNSA/DOE M&O Contractors. The Contractor shall provide assets, expertise, and capabilities to conduct assessments against all operating requirements, up to and including nuclear facilities. The Contractor shall conduct an ongoing self-assessment process to assess performance in programmatic missions, science and technology programs, ISM, quality assurance, and supporting operations and administration.

5.6 Communications and Public Affairs

The Contractor shall conduct communications, information, and public affairs programs, including internal and external communications; community involvement and outreach; interactions with the media, businesses, and the scientific and technical community; and liaison with Congressional offices and local, state, and Federal agencies. Furthermore, the Contractor shall provide public affairs functions necessary to support the national emergency programs supported by NNSA/NSO.

5.7 Community Relations

The Contractor shall develop and foster relationships and support with state, county, and local community organizations. In particular, the Contractor shall initiate a technical cooperative program with the Nevada state university system that builds technical capability in the universities based on programmatic funding and deliverables and fosters a resource pool for next generation staff to support the national security missions.

5.8 Human Resources Management

The Contractor shall provide a human resources management system that includes staffing and recruiting, compensation and benefits administration, and other related personnel services to attract and retain a highly qualified work force that promotes work force diversity.

**5.9 Labor Relations**

The Contractor shall provide labor relations management support services for all matters relating to bargaining unit employees and collective bargaining agreements, including such activities as hiring and terminations; work rules development and administration; dispute resolution; wage and fringe benefits; and labor agreement negotiations and compliance.

**5.10 Legal**

The Contractor shall maintain a legal program to support contract activities such as those related to patents, licenses, and other intellectual property rights; subcontracts; technology transfer; cooperative research and development agreements; environmental compliance and protection; labor relations; and litigation and claims.

**5.11 Real Property Management**

The Contractor shall manage Government-owned and Contractor-leased real property to further national interests and to perform NNSA statutory missions. The Contractor shall perform overall integrated planning, acquisition support, maintenance, operation, management, and disposition of Government-owned real property and Contractor-leased facilities and infrastructure.

**5.12 Strategic Planning**

The Contractor shall conduct a strategic planning process and develop appropriate plans in consideration of NNSA/NSO-provided guidance and strategic planning material to assure consistency with NNSA missions and goals.

**5.13 Training**

The Contractor shall provide training and education services in support of the activities performed under this Contract.

**5.14 Other Administrative Services**

The Contractor shall provide and maintain other administrative services, such as communications systems; diversity management program; employee assistance program; transportation and traffic management; a records management system; and a system of records for individuals, including those related to personnel radiation exposure information, medical, safety, and health.

**6.0 Potential Mission Expansion Areas**

**The Contractor shall provide and manage technical and other services as necessary in support of future expansion of NTS and satellite facilities' services to current and future customers at various locations as directed by the Contracting Officer.**

**7.0 Reports and Other Deliverables**

**The Contractor shall prepare, submit, disseminate, or otherwise publish financial, schedule, scientific, technical plans and reports, and other information and deliverables consistent with the needs of the various programmatic sponsors and other customers or as required elsewhere in the contract or as specifically required by the Contracting Officer.**

**SECTION D - PACKAGING AND MARKING**

**D-1 PACKAGING AND MARKING**

Packaging and marking of items to be delivered shall be in accordance with work authorization requirements or other written directions of the Contracting Officer or the Contracting Officer's Representative (COR).

**SECTION E - INSPECTION AND ACCEPTANCE****E-1 FAR 52.246-5 INSPECTION OF SERVICES – COST REIMBURSEMENT  
(APR 1984)**

- (a) *Definition.* “Services,” as used in this clause, includes services performed, workmanship, and material furnished or used in performing services.
- (b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.
- (c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable, at all places and times during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If any of the services performed do not conform with contract requirements, the Government may require the Contractor to perform the services again, in conformity with contract requirements, for no additional fee. When the defects in services cannot be corrected by reperformance, the Government may:
  - (1) Require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and
  - (2) Reduce any fee payable under the contract to reflect the reduced value of the services performed.
- (e) If the Contractor fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with contract requirements, the Government may:
  - (1) By contract or otherwise perform the services and reduce any fee payable by an amount that is equitable under the circumstances or
  - (2) Terminate the contract for default.

**E-2 INSPECTION AND ACCEPTANCE**

The Contracting Officer or any other duly authorized representative shall accomplish inspection of all activities and acceptance for all work and effort under this Contract.

**SECTION F - DELIVERIES OR PERFORMANCE****F-1 PLACE OF PERFORMANCE**

The work under this Contract is to be carried out at a variety of locations, but the principal place of performance will be at the Nevada Test Site in Nye County, Nevada. Work is also conducted at satellite facilities located in North Las Vegas (NLV), Nevada (80 acres); the Remote Sensing Laboratory (RSL) at Nellis Air Force Base (RSL-West) (35 acres); RSL at Andrews Air Force Base (RSL-East) in Washington, D.C. (2 acres); the Special Technologies Laboratory (STL) in Santa Barbara, California; support offices for Lawrence Livermore National Laboratory in Livermore, California (Livermore Operations), and Los Alamos National Laboratory in Los Alamos, New Mexico (Los Alamos Operations); and other locations as required.

**F-2 PERIOD OF PERFORMANCE**

The term of this Contract shall be for the period of July 1, 2006, through September 30, 2011, unless sooner reduced, terminated, or extended in accordance with the provisions of this Contract. The period from April 1, 2006, through June 30, 2006, shall be for the transition activities identified in the Contract Section J, Appendix G, entitled "Contractor's Transition Plan." The Contractor's responsibility for management and operation of the Nevada Test Site and satellite facilities against the Statement of Work shall start on July 1, 2006.

**F-3 FAR 52.242-15 STOP-WORK ORDER (AUG 1989) ALTERNATE I (APR 1984)**

- (a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this Contract for a period of 90 days after the order is delivered to the Contractor and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either:
- (1) Cancel the stop-work order or
  - (2) Terminate the work covered by the order as provided in the termination clause of this Contract.

- (b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof and in any other terms of the contract that may be affected; and the contract shall be modified, in writing, accordingly, if:
- (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Contract and
  - (2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage provided that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal submitted at any time before final payment under this Contract.
- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

**SECTION G - CONTRACT ADMINISTRATION DATA**

**G-1 GOVERNMENT CONTACTS**

- (a) The NNSA Nevada Site Office (NNSA/NSO) Manager is the Administrative Contracting Officer (ACO) responsible for this Contract. The NNSA/NSO Manager is the Contractor's primary point of contact for all matters, except as identified in (b) below, regarding this Contract. The NNSA/NSO Manager can be reached at:

Manager, Nevada Site Office  
U.S. Department of Energy  
National Nuclear Security Administration  
232 Energy Way  
North Las Vegas, NV 89030

Telephone: (702) 295-3211

- (b) The Patent Counsel, Office of Chief Counsel, NNSA Service Center, is the Contractor's focal point for items concerning patent, intellectual property, technology transfer, copyright, open source, licenses, and technical data issues. The Patent Counsel can be reached at DOE/NNSA Service Center, Office of Chief Counsel, P.O. Box 5400, Albuquerque, New Mexico, 87185-5400. Telephone (505) 845-5172.

- (c) To promote timely and effective administration, correspondence submitted under this Contract shall contain a subject line commencing with the Contract Number, as illustrated below:

"SUBJECT: Contract DE-AC52-06NA25946, Request for Subcontract Placement Approval."

**G-2 CONTRACTOR CONTACT**

The Contractor's General Manager is responsible for all matters regarding this Contract.

**SECTION G - CONTRACT ADMINISTRATION DATA**

**G-1 GOVERNMENT CONTACTS**

- (a) The NNSA Nevada Site Office (NNSA/NSO) Manager is the Administrative Contracting Officer (ACO) responsible for this Contract. The NNSA/NSO Manager is the Contractor's primary point of contact for all matters, except as identified in (b) below, regarding this Contract. The NNSA/NSO Manager can be reached at:

Manager, Nevada Site Office  
U.S. Department of Energy  
National Nuclear Security Administration  
232 Energy Way  
North Las Vegas, NV 89030

Telephone: (702) 295-3211

- (b) The Patent Counsel, Office of Chief Counsel, NNSA Service Center, is the Contractor's focal point for items concerning patent, intellectual property, technology transfer, copyright, open source, licenses, and technical data issues. The Patent Counsel can be reached at DOE/NNSA Service Center, Office of Chief Counsel, P.O. Box 5400, Albuquerque, New Mexico, 87185-5400. Telephone (505) 845-5172.

- (c) To promote timely and effective administration, correspondence submitted under this Contract shall contain a subject line commencing with the Contract Number, as illustrated below:

"SUBJECT: Contract DE-AC52-06NA25946, Request for Subcontract Placement Approval."

**G-2 CONTRACTOR CONTACT**

The Contractor's General Manager is responsible for all matters regarding this Contract.

**SECTION H - SPECIAL CONTRACT REQUIREMENTS**

**H-1 PERFORMANCE DIRECTION**

- (a) The Contractor is responsible for the management and operation of the Nevada Test Site (NTS) and satellite facilities in accordance with the Terms and Conditions of the Contract, duly issued Work Authorizations (WAs), and written direction and guidance provided by the Contracting Officer and the Contracting Officer's Representatives (CORs). NNSA/NSO is responsible for establishing the work to be accomplished, the applicable standards and requirements to be met, and overseeing the work of the Contractor. The Contractor shall use its expertise and ingenuity in contract performance to most effectively, efficiently, and safely accomplish the work called for by this Contract.
- (b) Only the Contracting Officer may issue, modify, and priority rank WAs.
- (c)
  - (1) The Contracting Officer and the NNSA Administrator will appoint, in writing, specific NNSA employees as CORs with the authority to issue Performance Direction to the Contractor. CORs are authorized to act within the limits of their delegation letter. A copy of each letter will be provided to the Contractor. COR functions include technical monitoring, inspection, and other functions of a technical nature not involving a change in the scope, cost, or Terms and Conditions of the contract. The COR is authorized to review and approve technical reports, drawings, specifications, and technical information delivered by the Contractor.
  - (2) The Contractor must comply with written Performance Directions that are signed by the COR and—
    - (i) Redirect the contract effort, shift work emphasis within a work area or a WA, further define or otherwise serve to accomplish the Statement of Work (SOW) or
    - (ii) Provide information that assists in the interpretation of drawings, specifications, or technical portions of the work description.
  - (3) Performance direction does not—
    - (i) Authorize the Contractor to exceed the funds obligated on the contract
    - (ii) Authorize any increased cost or delay in delivery in a WA

- (iii) Entitle the Contractor to an increase in fee or
  - (iv) Change any of the terms or conditions of the contract.
- (d) The Contractor shall accept only Performance Direction provided in writing by a COR and that is within the SOW and a WA.
- (e) (1) The Contractor shall promptly comply with each duly issued Performance Direction unless the Contractor reasonably believes that the Performance Direction violates this clause. If the Contractor believes the Performance Direction violates this clause, the Contractor shall suspend implementation of the Performance Direction and promptly notify the Contracting Officer of its reasons for believing that the Performance Direction violates this clause. Oral notifications to the Contracting Officer shall be confirmed in writing within ten days of the oral notification.
- (2) The Contracting Officer will determine if the Performance Direction is within the SOW and WA. This determination will be issued in writing and the Contractor shall promptly comply with the Contracting Officer's direction. If it is not within the SOW or WA, the Contracting Officer may issue a change order pursuant to the Contract's Section I clause entitled "Changes."
- (f) The Contracting Officer and the Contractor agree to maintain full and open communication at all times, and on all issues affecting contract performance, during the term of this Contract.

## **H-2 CONTRACTOR ASSURANCE SYSTEM**

The Contractor shall develop a Contractor Assurance System that is approved and monitored by the Contractor's Parent Organization(s). The Contractor's Assurance System, at a minimum, shall have the following key attributes:

- (a) A comprehensive description of the Contractor Assurance System with risks, key activities and accountabilities clearly identified.
- (b) A process for notifying the Contracting Officer of significant assurance system changes.
- (c) Rigorous, risk based credible self-assessments, feedback and improvement activities, including utilization of nationally recognized experts, and other independent reviews to assess and improve work processes and independent risk and vulnerability studies. The Contractor is encouraged to seek third party certifications (such as Voluntary Protection Program and ISO 9001 or ISO 14001), audits, peer reviews, and independent assessments with external certification or validation.

- (d) Identification and correction of negative performance, compliance, Integrated Safety Management (ISM), or Integrated Safeguards and Security Management (ISSM) trends before they become significant issues.
- (e) A method for validating assurance processes.
- (f) Integration of the assurance system with Contractor management systems including ISM and ISSM. The current Contractor's management systems that exist on the date of award will continue until the successor Contractor addresses the applicable contract requirements. For changes that do require NNSA/NSO approval, the Contractor will not implement a change until it is formally approved by NNSA and communicated to the Contractor by the Contracting Officer.
- (g) A process for defining performance metrics and targets that will lead to best in class industry performance, where efficient and cost-effective, without compromising ISM or ISSM.
- (h) Continuous feedback, including ISM and ISSM feedback, and performance improvement.
- (i) An implementation plan that defines a transition period for the Contractor Assurance System.
- (j) A process for timely and appropriate communication to the Contracting Officer, including electronic access of assurance related information.

### **H-3 NNSA/NSO OVERSIGHT**

- (a) The Contractor shall cooperate with NNSA oversight personnel, NNSA Facility Representatives, and subject matter experts in the performance of their assigned functions. NNSA reserves the right to inspect and oversee all activities of the Contractor at any time.
- (b) Oversight of Nuclear Safety, Nuclear Facility Operations, Nuclear Projects, Training and Qualifications, Safeguards & Security, High Hazard Activities, and Support Functions - For nuclear facility operations and other high hazard activities identified by the Contracting Officer, NNSA oversight shall be performed at the transaction level.
- (c) Oversight of Nonnuclear Facilities - Once the Contracting Officer is satisfied that the Contractor Assurance System is operating effectively, NNSA will conduct oversight of the Contractor's Nonnuclear Facilities operations at the systems level. NNSA, with Contractor input, shall develop performance metrics and performance targets as the means of defining NNSA's performance level expectations of the Contractor.

- (d) **Oversight of Programs, Projects, and Business Systems** – In accordance with the Contract’s Section H clause entitled “Performance Based Management” the Parties will identify key end products and services that the Contractor provides to the Nuclear Weapons Complex. Oversight of the Contractor shall focus on whether the Contractor meets the performance objectives, measures and targets in the Performance Evaluation Plan (PEP), and the performance metrics and targets in the Contractor Assurance System.
- (e) With respect to paragraphs (c) and (d) above, if NNSA determines that the Contractor is not fully complying with applicable laws and regulations or that program performance or ISM/ISSM has degraded and that the Contractor is not taking appropriate and timely corrective action, NNSA may increase its oversight of these areas until performance is corrected.

#### **H-4 ACCOUNTABILITY**

The Contractor is responsible for the quality of its products and services and for ensuring that ISM and ISSM are integrated into its operations. The Contractor is also responsible for assessing its operations, programs, projects and business systems, identifying deficiencies, and implementing needed improvements in accordance with the contract’s terms and conditions. Where NNSA oversight has evaluated the Contractor’s performance in meeting its obligations under this Contract, the Contractor shall not rely upon NNSA’s assessment but is accountable for performing its own assessment of these areas.

#### **H-5 PARENT ORGANIZATION’S OVERSIGHT PLAN**

- (a) The Contractor shall provide an annual Parent Organization’s Oversight Plan that details the Parent Organization’s planned activities to monitor the Contractor’s programmatic ISM and ISSM performance and to assist the Contractor in meeting its mission and operational requirements. Elements of the Oversight Plan may be incorporated into the Contractor’s PEP. The annual Parent Organization’s Oversight Plan is set forth as an appendix to the Contract’s Section J. The Oversight Plan shall identify the Parent Organization’s responsible official for administration of the plan.
- (b) The annual Parent Organization’s Oversight Plan update shall be submitted to the Contracting Officer six months prior to the forthcoming fiscal year for Contracting Officer review and approval.
- (c) The estimated budget for the FY 2006 Parent Organization’s Oversight Plan is \$ - 0 -. Costs associated with the annual Plan updates for FY 2007 and thereafter will be incorporated into this clause via supplemental agreement modification. Pursuant to the Contract’s Section I clause entitled “Payments and Advances,” such costs will be charged and accounted for as follows; however, in no event shall they be inconsistent with the cost principles in FAR Part 31. Costs

may include travel, per diem, and other out-of-pocket costs, plus the actual salaries of the persons performing such services plus a percentage factor of salaries to cover fringe benefits and payroll taxes. The percentage factor will be applied in accordance with the Parent's Cost Accounting Standards Disclosure Statement. The amount reimbursable under this Contract shall be subject to Government audit.

- (d) The Contractor shall provide periodic reports of Parent activities and costs incurred as required by the Contracting Officer.
- (e) Budget limitations set forth in paragraph (c) above shall not be exceeded without prior Contracting Officer approval. The parties agree that the budgeted amounts for costs may be reviewed further for appropriateness and scope. In addition, the parties agree that a tracking process, acceptable to the Contracting Officer, providing sufficient detail for reasonable accountability, shall be implemented. The NNSA and Contractor agree to negotiate in good faith any adjustments to these budgeted amounts as a result of empirical information from any such tracking system or reviews.

#### **H-6 UTILIZATION OF PARENT ORGANIZATION SYSTEMS**

- (a) The costs of applying parent systems to site operations for the purpose of streamlining the Contractor's administrative, business or other systems, and parent services provided for that purpose are allowable if incurred in accordance with this clause. The use of parent systems is encouraged provided that such systems are more efficient and represent an overall cost savings to NNSA versus existing site systems and data is readily transferable to a successor contractor. The Contracting Officer must approve the Contractor's plan to use its parent corporate systems. Such system and related support services are not considered procurements as contemplated by the Contract clause entitled "Subcontracts."
- (b) The Contractor shall charge to the account of the DOE as provided in the Contract's Section I clause entitled "Payments and Advances," or as otherwise directed by the Contracting Officer, the amounts incurred for the above systems and related support services. Such amounts will be charged and accounted for as follows; however, in no event shall they be inconsistent with the cost principles in FAR Part 31 and DEAR Part 970.31. Costs may include travel, per diem, and other out-of-pocket costs, plus the actual salaries of the persons performing such services plus a percentage factor of salaries to cover fringe benefits and payroll taxes. The percentage factor will be applied in accordance with the Contractor's Cost Accounting Standards Disclosure Statement.
- (c) The Contractor shall provide periodic reports of activities and costs incurred as required by the Contracting Officer. The amount reimbursable under this Contract shall be subject to DOE/NNSA audit.

- (d) The total FY 2006 estimated budget for these systems and related support services is \$ - 0 -. Budget limitations shall not be exceeded without prior Contracting Officer approval. The Parties agree that the budgeted amounts for costs may be reviewed further for appropriateness and scope. In addition, the Parties agree that a tracking process, acceptable to the Contracting Officer, providing sufficient detail for reasonable accountability, shall be implemented. The Parties agree to negotiate in good faith any adjustments to these budgeted amounts as a result of empirical information from any such tracking system or reviews.

## **H-7 STANDARDS MANAGEMENT**

- (a) **Benchmark with Industry.** The Contractor shall regularly benchmark with industry to identify best commercial standards and best business practices that will improve site operations with the goal of improving performance where effective and efficient without compromising ISM and ISSM.
- (b) **Proposal of Alternative.** Where best commercial standards or best business practices are identified which may warrant a change to a procedure, standard, system of oversight or assessment mechanism (collectively referred to herein as "alternative") in a DOE/NNSA Directive, the Contractor may develop a proposal(s) that describes (1) the nature and scope of the alternative; (2) the anticipated benefits, including any cost benefits, to be realized in performance under the contract; (3) a schedule for implementation of the alternative; (4) a detailed evaluation and a statement that the revised alternative is an effective, efficient means to meet the Directive without compromising ISM and ISSM; and (5) any additional information required by NNSA. The Contractor's proposal(s) shall be submitted to the Contracting Officer. NNSA will evaluate the Contractor's proposal and the Contractor will not implement a proposed change until it is formally approved by NNSA and communicated to the Contractor by the Contracting Officer.
- (c) **Deficiency and Remedial Action.** If, during performance of this Contract, NNSA determines that a previously approved alternative is not satisfactory, NNSA will require the Contractor to prepare a corrective action plan for NNSA approval. If NNSA is not satisfied with the corrective action taken, NNSA may direct corrective action to remedy the deficiency, including, if appropriate, the reinstatement of the Directive.
- (d) **Laws and Regulations Excepted.** The process described in this clause shall not affect the application of otherwise applicable laws and regulations of the United States, including DOE regulations.

**H-8 AWARD TERM**

- (a) Commencing in the second year of contract performance, the contract's term as set forth in the Contract's Section F clause entitled "Period of Performance" may be extended if the Contractor meets all its commitments in support of Stockpile Stewardship Levels 1 and 2 milestones identified in the Milestone Reporting Tool database, earns greater than 95 percent of the total available NNSA/NSO Incentive Fee performance measures in the PEP, has an overall Award Fee rating greater than 85 percent of the performance objectives in the PEP, and meets or exceeds the Award Term incentives identified in the PEP. If the Contractor does not meet all of these requirements, this Award Term clause becomes inoperable for the associated evaluation period.
- (b) The Contractor's performance in the areas identified in paragraph (a) of this clause will be evaluated by NNSA/NSO as stated in the PEP. The Manager, NNSA Nevada Site Office, will make an Award Term recommendation to the NNSA Fee Determining Official (FDO) as to whether or not to award additional term. The decision whether to award additional term will be made by the FDO in conjunction with the annual performance incentive fee determination.
- (c) The award term decision is a unilateral determination of the FDO.
- (d) If the FDO's determination is to award additional term, the Contract shall be modified unilaterally by the Contracting Officer to extend the term of the contract by one year.
- (e) The contract term, including all earned award terms, shall not exceed a total maximum of 10 years.
- (f) If the Contractor fails two times to earn award term, the operation of the Award Term provision of this clause will cease.
- (g) A significant failure, as defined by the Contracting Officer, of the Contractor's management controls (Section I clause entitled "Management Controls") or a performance failure (Section I clause entitled "Conditional Payment of Fee, Profit, and Incentives – Facility Management Contracts") by the Contractor, may result in the forfeiture of up to three years of previously earned award term in addition to other remedies provided for in the contract. Such reduction in contract term, if exercised by the NNSA, does not constitute a termination action pursuant to the Contract's Section I clause entitled "Termination (Cost Reimbursement) as modified by DEAR 970.4905-1(b)."

- (h) The rights and remedies of NNSA specified herein in this Award Term Clause are not exclusive and are in addition to any other rights and remedies provided by law, regulation, or under the contract. This Award Term Clause does not confer any other rights or remedies to the Contractor other than those specified in this Award Term Clause.

## **H-9 PERFORMANCE BASED MANAGEMENT**

- (a) Performance-Based Management System. This Contract is a management and operating contract, which holds the Contractor accountable for performance. This Contract uses clearly defined standards of performance consisting of performance objectives and performance incentives as described in the Contract's Section H entitled "Performance Incentives" and award term incentives as described in Contract's Section H clause entitled "Award Term" with measures and targets for each area on a fiscal year basis and incorporated into the PEP.
- (b) Performance Appraisal Process.
  - (1) Performance Evaluation Plan. A Performance Evaluation Plan shall be developed and finalized by the Contracting Officer, with Contractor input, prior to the scheduled start date of the appraisal period. The PEP shall document the process and associated performance objectives, performance incentives, award term incentives, and associated measures and targets by which the Contractor's performance will be evaluated. The Parties will attempt to reach mutual agreement on performance objectives, performance incentives, award term incentives, and associated measures and targets that reflect expected business, operational, and technical performance tied to key end products and DOE/NNSA strategic goals and objectives. The Contracting Officer has the unilateral right to make the final decision on all performance objectives and performance incentives (including the associated measures and targets) used to evaluate Contractor performance. The NNSA Administrator has the unilateral right to make the final decision on all award term incentives (including the associated measures and targets) used to evaluate Contractor performance.

Only the Contracting Officer may revise the PEP, consistent with the Contract SOW, during the appraisal period of performance. The Contracting Officer shall notify the Contractor of changes prior to commencement of prospective work at least 30 calendar days prior to the end of the affected appraisal period.

- (2) **Contractor Self-Assessment.** An annual self-assessment shall be prepared by the Contractor of its performance against each of the performance objectives and incentives contained in the PEP. The annual self-assessment shall be submitted within five-working days after the end of the appraisal period. The Contracting Officer will identify the structure and medium to be used by the Contractor in delivering its annual self-assessment.

(c) **Schedule for Performance Incentive Fee Earned Determination.**

The Contracting Officer will issue the FDO's final total performance incentive fee amount earned determination in accordance with the schedule set forth in the PEP or as otherwise set forth in this Contract. However, a determination must be made within 60 calendar days after the receipt by the Contracting Officer of the Contractor's self-assessment report or a longer period if the Contractor and Contracting Officer agree. If the determination is delayed beyond that date, the Contractor shall be entitled to interest on the determined total available fee amount earned at the rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the payment date. This rate is referred to as the "Renegotiation Board Interest Rate" and is published in the Federal Register semiannually on or about January 1 and July 1. The interest on any late total available fee amount earned determination will accrue daily and be compounded in 30-day increments inclusive from the first day after the schedule determination date through the actual date the determination is issued. That is, interest accrued at the end of any 30-day period will be added to the determined amount of fee earned and be subject to interest if not paid in the succeeding 30-day period.

## **H-10 PERFORMANCE INCENTIVES**

(a) **Performance Incentive Fee Determination.**

- (1) NNSA/NSO will, at the conclusion of each specified appraisal period, evaluate the Contractor's performance for all Performance Incentive requirements identified for that appraisal period.
- (2) The Performance Incentive fee determination will be made in accordance with the PEP. The determination as to the amount of Performance Incentive fee earned is a unilateral determination made by the FDO.
- (3) The Contracting Officer will notify the Contractor in writing of the Performance Incentive fee determination and the basis of the Performance Incentive fee determination.

(4) Performance Incentive fee not earned during the evaluation period shall not be allocated to future evaluation periods.

(b) Fee.

(1) The maximum fees allocated for payments to the Contractor for the performance of the work under this Contract are set forth in Part I, Section B, of the Schedule. Maximum potential available fee on DOE work assigned under this Contract shall not exceed 7 percent of the total budget listed in the "Laboratory Table" section of the annual DOE budget request for the site Contractor, reduced by the budget for contracts that are not part of the site M&O Contract, and adjusted to ensure that fee is not paid on the available fee pool.

(2) The actual available fee for DOE work will be within a range 50 percent to 100 percent of the maximum potential available fee and will be established by NA-1 as the FDO based on the importance to NNSA of the desired outcomes for which incentives are provided in the PEP and the difficulty involved in achieving those outcomes and earning the fee.

(3) Fee on work for non-DOE customers, i.e., Work for Others, will be a fixed fee of 85 percent of the calculated fee percentage for DOE work in (2) above.

(c) Special Considerations. Fee Limitations

If objective performance incentives are of unusual difficulty or if successful completion of the performance incentives would provide extraordinary value to NNSA, fees in excess of those allowed under 48 CFR 970.1504-1-3 DEVIATION may be permitted with the approval of the Senior Procurement Executive. In no case can the total available fees exceed the statutory limitations imposed by 10 U.S.C. 2306(d) and 41 U.S.C. 254(b).

## H-11 ENVIRONMENTAL, SAFETY, AND HEALTH COMPLIANCE DATA

Data required ensuring environmental, safety, and health compliance by the Contractor in its activities on behalf of NNSA shall not be considered proprietary data in the context of Section I Clause entitled "Rights in Technical Data-Technology Transfer." NNSA retains unlimited rights in all records, data, and audits involving compliance with applicable Federal, state and local environmental, safety, and health laws and regulations.

**H-12 APPLICATION OF DOE/NNSA DIRECTIVES**

- (a) **Proposal of Alternative.** The Contractor may, at any time during performance of this Contract, propose an alternative procedure, standard, system of oversight, or assessment mechanism (collectively referred to herein as "alternative") to the requirements in a Directive by submitting to the Contracting Officer a signed proposal describing (1) the nature and scope of the alternative; (2) the anticipated benefits, including any cost benefits; (3) a schedule for implementation of the alternative; and (4) a statement that the revised alternative is an adequate and efficient means to meet the Directive. Upon request, the Contractor shall promptly provide the Contracting Officer any additional information that will aid in evaluating the Contractor's proposal.
- (b) **Action of the Contracting Officer.** Within sixty (60) days after receipt of the Contractor's proposal, the Contracting Officer will—
- (1) Deny application of the proposed alternative
  - (2) Approve the proposed alternative with conditions or revisions
  - (3) Approve the proposed alternative or
  - (4) Provide a date by which a decision will be made (not to exceed an additional 60 days)

Until such time as the Contracting Officer approves the proposed alternative resulting from the process described herein, the Contractor shall adhere to the Directive's requirements.

- (c) **Implementation and Evaluation of Performance.** Upon approval in accordance with (b)(2) or (b)(3) above, the Contractor shall implement the alternative. In the case of a conditional approval under (b)(2) above, the Contractor shall provide the Contracting Officer with an assurance statement that the revised alternative is an adequate and efficient means to meet the Directive. Additionally, the assurance statement shall describe any changes to the schedule for implementation. The Contractor shall then implement the revised alternative. NNSA/NSO will evaluate Contractor performance against the approved alternative from the Contractor's scheduled implementation date.

- (d) **Deficiency and Remedial Action.** If, during performance of this Contract, the Contracting Officer determines that an alternative adopted through the operation of this clause is not satisfactory, the Contracting Officer may determine that corrective action is necessary and require the Contractor to prepare a corrective action plan for the Contracting Officer's approval. If the Contracting Officer is not satisfied with the corrective action taken, the Contracting Officer may direct corrective action to remedy the deficiency, including, if appropriate, the reinstatement of the Directive.
- (e) **Laws and Regulations Excepted.** The process described in this clause shall not affect the application of otherwise applicable laws and regulations of the United States, including DOE regulations.
- (f) **Directive System Deviation Process.** This clause does not preclude the use of deviation processes provided for in the DOE/NNSA directives system.

### **H-13 SECURITY**

In addition to the requirements of the Contract's Section I clause entitled "Security (MAY 2002)," the Contractor shall comply with additional security regulations of other Government agencies, when applicable, as authorized by the Contracting Officer.

### **H-14 ENTERPRISE PURCHASING**

- (a) Enterprise purchasing involves the NNSA complex-wide assessment of commodity and service requirements and formulation of enterprise-wide contract mechanisms used by members of the enterprise to acquire those commodities and services.
- (b) The Contractor shall cooperate with NNSA and other NNSA contractors in identifying requirements under this Contract that are suitable for enterprise purchasing and shall facilitate the identification of work to be directly acquired by NNSA to support the objectives discussed below. The Contractor shall use the contracting mechanisms identified by NNSA as enterprise purchases and those awarded by the Integrated Contractor Purchasing Team to meet all suitable requirements under this Contract unless the cost of using such contracting mechanisms is shown to be excessive, does not provide the best value, or impacts the Contractor's schedule. The Contractor may propose alternative acquisition strategies to the Contracting Officer for approval.

**H-15 NNSA DIRECT CONTRACTS**

- (a) In accordance with the Contract Section I clause entitled "Changes," the Contracting Officer may identify any of the work contemplated by Section C, SOW, of this Contract to be performed either by another contractor directly contracted by NNSA or by Government employees. The Contractor agrees to fully cooperate with such other contractors and Government employees, carefully fit its own work to such other work as may be directed by the Contracting Officer, and provide reasonable support as required. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Government employees. For work identified for performance by another contractor directly contracted by the NNSA—
- (1) The Government and the Contractor will confer in advance on the strategy for changing responsibility for the work and will do so with the objective of minimum disruption to the site operations.
  - (2) The Government may designate the Contractor as the Technical Monitor for such contracts that are directly related to the scope of this Contract. The Contractor agrees to perform such monitoring duties as shall be further described in the designation for each such contract. No designation shall include and the Contractor shall not perform any function determined to be inherently governmental.
  - (3) The Technical Monitor shall report to the Contracting Officer, or the Contracting Officer's Representative, any performance of a designated contract that may not be in compliance with its terms and conditions but is not authorized to take any other action regarding such noncompliance.
  - (4) NNSA will insert a clause in such contracts substantially as follows—

*H-\_\_\_\_. TECHNICAL MONITOR*

*The Government may designate the Nevada Test Site Management and Operating Contractor as Technical Monitor for any right, duty or interest in this contract. In that event, the contractor shall fully cooperate with the Nevada Test Site Management and Operating Contractor for all matters under the terms of the designation.*

- (b) Appropriate adjustments may be made to the Contractor's Subcontracting Plan to recognize the changes to the subcontracting base and goals.

**H-16 CONTRACTOR EMPLOYEES**

In carrying out the work under this Contract, the Contractor shall be responsible for the employment of all personnel 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 NNSA 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 the work hereunder.

**H-17 ADVANCE UNDERSTANDINGS REGARDING ADDITIONAL ITEMS OF ALLOWABLE AND UNALLOWABLE COSTS AND OTHER MATTERS**

Allowable costs under this Contract shall be determined according to the requirements of Contract's Section I clause entitled, "Payments and Advances," FAR 31 and DEAR 970.31. For purposes of effective contract implementation, certain items of cost are being specifically identified below as allowable or unallowable under this Contract to the extent indicated:

**(a) ITEMS OF ALLOWABLE COSTS:**

- (1) Personnel costs in accordance with Section J, Appendix A, attached to this Contract.
- (2) Costs incurred or expenditures made by the Contractor, as directed, approved or ratified by the Contracting Officer and not unallowable under any other provisions of this Contract.

**(b) ITEMS OF UNALLOWABLE COSTS:**

- (1) Premium Pay for wearing radiation-measuring devices for Contractor and all-tier cost-type subcontract employees.
- (2) Home office expenses, whether direct or indirect, relating to activities of the Contractor, except as otherwise specifically agreed to in writing by the Contracting Officer.
- (3) Facilities capital cost of money.

**H-18 WORKFORCE TRANSITION, CONTRACTOR COMPENSATION, BENEFITS, PENSION, AND LABOR RELATIONS****(a) Workforce Transition**

Clauses in this Section and Section J, Appendix A, are adopted for the exclusive benefit and convenience of the parties hereto; nothing contained therein shall be construed as 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.

**(b) Employee Retention**

Subject to the availability of funds, the Contractor shall offer employment to all employees of the predecessor contractor who have successfully completed their probationary period as of the date of contract award, except the predecessor contractor's Key Personnel and other Senior Managers who reported directly to the predecessor contractor's General Manager. Employment offers to the predecessor contractor's Key Personnel and other Senior Managers who reported directly to the predecessor contractor's General Manager are at the discretion of the Contractor. Nothing in this paragraph shall preclude the Contractor from separating employees when in its judgment there is just cause to do so based on the employee's performance or conduct.

**(c) Labor Relations**

- (1) The Contractor shall respect the right of employees to organize and to form, join, or assist labor organizations, to bargain collectively through their chosen labor representatives, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of these activities.
- (2) The Contractor is authorized to enter into labor agreements and administer such agreements in accordance with their negotiated terms subject to the following requirements:
  - (i) The Contractor shall seek to maintain harmonious bargaining relationships that reflect a judicious expenditure of public funds; equitable resolution of disputes; and effective and efficient bargaining relationships consistent with the requirements of FAR, Subpart 22.1, and DEAR, Subpart 970.2201, and all applicable Federal and State Labor Relations Statutes.

- (ii) The Contractor shall meet with the Contracting Officer or designee(s) for the purpose of reviewing the Contractor's bargaining objectives prior to negotiations of any collective bargaining agreement or revision thereto. During the collective bargaining process, the Contractor shall notify the Contracting Officer before submitting or agreeing to any collective bargaining proposal that could affect allowable costs under this Contract or that could involve other items of special interest to the Government. During the collective bargaining process, the Contractor shall obtain the approval of the Contracting Officer before proposing or agreeing to changes in any pension or retirement income plans or to any welfare benefit plans.
  - (iii) The Contractor shall notify the Contracting Officer in a timely fashion of all labor relations issues and matters of local interest, including organizing initiatives, unfair labor practice, work stoppages, picketing and labor arbitrations and settlement agreements, and will discuss economic parameters before the start of any labor negotiations.
  - (iv) The Contractor will furnish reports as may be required from time to time by the Contracting Officer.
- (3) Open Competition and Labor Relations Under Management and Operating and Other Major Facilities Contracts

"Labor organization," as used in this clause, shall have the same meaning it has in 42 U.S.C. 2000e(d).

- (i) Unless acting in the capacity of a constructor on a particular project, the Contractor shall not—
  - (A) Require bidders, Offerors, Contractors, or subcontractors to enter into or adhere to nor prohibit those parties from entering into or adhering to agreements with one or more labor organizations, i.e., project labor agreements that apply to construction project(s) relating to this Contract or
  - (B) Otherwise discriminate against bidders, Offerors, Contractors, or subcontractors for refusing to become or to remain signatories or to otherwise adhere to project labor agreements for construction project(s) relating to this Contract.

- (ii) When the Contractor is acting in the capacity of a constructor, i.e., performing a substantial portion of the construction with its own forces, it may use its discretion to require bidders, Offerors, Contractors, or subcontractors to enter into a project labor agreement that the Contractor has negotiated for that individual project.
  - (iii) Nothing in this clause shall limit the right of bidders, Offerors, Contractors, or subcontractors to voluntarily enter into project labor agreements.
- (4) **Labor Standards-Davis Bacon Act**
  - (i) The Contractor shall, with approval of the Contracting Officer, develop a procedure whereby NNSA will determine if the Davis Bacon Act is applicable to particular subcontracts. The Contractor shall conduct payroll and job-site audits and conduct investigations of complaints as authorized by NNSA on all Davis Bacon activity, including any subcontracts, as may be necessary to determine compliance with the Davis-Bacon Act. Where violations are found, the Contractor shall report them to the Contracting Officer. The Contracting Officer may require that the Contractor assist in the determination of the amount of restitution and withholding of funds from a subcontractor so that sufficient funds are withheld to provide restitution for back wages due for workers inappropriately classified and paid, fringe benefits owed, overtime payments due, and liquidated damages assessed.
  - (ii) The Contractor shall notify the Contracting Officer of any complaints and significant labor standards violations whether caused by the Contractor or subcontractors. The Contractor shall assist NNSA and or/the Department of Labor in the investigation of any alleged violations or disputes involving labor standards. The Contractor shall furnish a Davis-Bacon Semiannual Enforcement Report to NNSA/NSO by April 21 and October 21 each year.
- (5) **Work Allocation**
  - (i) The Contractor shall foster positive labor relations and manage work allocation to perform work expeditiously and efficiently by trained employees. Occasionally, work must be performed that does not clearly fall within the jurisdiction of any single labor or collective bargaining agreement to which the Contractor is a party (such work is hereinafter referred to as "Unassigned Work").

- (ii) The Contractor shall establish a process to allocate Unassigned Work that is acceptable to the affected unions and consistent with the requirements of applicable law and the terms of this Contract.

(d) **Salary and Benefits**

The Contractor shall provide a total compensation package for all employees transferring from the predecessor contractor to this Contract with respect to salaries, health/welfare benefits, and pensions comparable to that provided by the predecessor contractor as of the date the Contractor assumes responsibility for management and operation of this Contract. The Contractor shall maintain the base salaries of the transferring workforce. Comparability shall be determined by the Contracting Officer in his/her sole discretion.

For all employees transferring from the predecessor contractor to this Contract up to the first six (6) months after the Contractor assumes responsibility for management and operation of this Contract, the Contractor shall carry over the length-of-service credit and leave balances accrued as of the date of hire by the Contractor.

(1) **Policies, Practices, and Procedures**

- (i) The Contractor shall develop, implement, and maintain formal policies, practices, and procedures to be used in the administration of its compensation system, including a compensation system self-assessment plan consistent with 48 CFR 31.205-6 and DEAR 970.3102-05-6, "Compensation for Personal Services," as applied to the NNSA-approved standards in the Personnel Appendix. The Contractor's compensation system and methods shall be in accordance with 48 CFR 31.205-6 and DEAR 970.3102-05-6 fully documented, consistently applied, and acceptable to the Contracting Officer.
- (ii) The Contractor shall submit the following to the Contracting Officer for a determination of cost reimbursement under the Contract:
  - (A) Any additional compensation system self-assessment data requested by the Contracting Officer that may be needed to validate and approve the compensation system.
  - (B) Any proposed major compensation program design changes prior to implementation.
  - (C) Annual Compensation Increase Plan.

- (D) Individual compensation actions for the General Manager, Deputy General Manager (if any), and Senior Managers that report directly to the General Manager/Deputy General Managers including initial and proposed changes to base salary.
  - (E) Any proposed establishment of an incentive compensation plan (variable pay plan/pay-at-risk).
- (iii) Notwithstanding any other term or condition set forth in the Contract, the compensation for each of the Contractor's Key Personnel shall not exceed (i) \$473,318 benchmark in effect at the time of Contract award (i.e., the Contract's effective date) or (ii) the revised benchmark amount, in any subsequent government fiscal year, as determined by the applicable Determination of Executive Compensation Benchmark Amount Pursuant to Section 39 of the Office of Federal Procurement Policy Act (41 U.S.C. 435), as Amended, as required in FAR Subpart 31.205-6, Compensation for Personal Services; paragraph (p), Limitation on allowability of compensation for certain contractor personnel. The annual salary portion of Key Personnel compensation is subject to the Contracting Officer's approval."
- (2) **Severance Pay**
- (i) Severance pay benefits are not payable to an employee under this Contract if the employee:
    - (A) Voluntarily separates, resigns, or retires from employment
    - (B) Is offered employment with a successor/replacement Contractor
    - (C) Is offered employment with a parent or affiliated company
    - (D) Is discharged for cause
  - (ii) Service Credit for purposes of determining severance pay does not include any period of prior service at a DOE/NNSA facility for which severance pay has been previously paid.

(3) Reporting Requirements

The Contractor shall provide the following reports with respect to salary and benefits to the Contracting Officer:

- (i) Annual Contractor Salary-Wage Increase Expenditure Report to include, at a minimum, breakouts for merit, promotion, variable pay, special adjustments, and structure movements for each pay structure showing actual against approved amounts.
- (ii) Annual Report of Contractor Expenditures for Employee Supplemental Compensation through the DOE Department Workforce Information System, compensation, and benefits module.
- (iii) A self-assessment of the total compensation program shall be submitted to the Contracting Officer annually.

(4) Periodic Appraisals

NNSA will conduct periodic appraisals of Contractor performance with respect to compensation system implementation. Such appraisals, when approved by the Contracting Officer, may be conducted by either NNSA validation of Contractor self assessments of compensation system performance or third party expert.

(e) Pension and Non-Pension Benefit Programs

The program of employee pensions and other benefits employed by the Contractor shall support at a reasonable cost the effective recruitment and retention of a highly skilled workforce at the NTS and satellite facilities. Cost reimbursement of benefits plans will be based on Contracting Officer approval of Contractor actions pursuant to an approved "Employee Benefits Value Study" and an "Employee Benefits Cost Survey Comparison." No presumption of allowability will exist when the Contractor implements a new benefits plan or makes changes to existing employee benefits plans until the Contracting Officer makes a determination of cost reimbursement for reasonable changes to the program. Unless required by state or Federal statute, funding in advance for post retirement benefits (PRB), other than pensions, is not allowable. Unless stated otherwise, or as directed by the Contracting Officer, within 30 days of award or extension, and annually thereafter, and prior to implementation of any benefit change, the Contractor shall submit the following materials to the Contracting Officer in advance for approval of application of the changes under the contract and for a determination as to whether the costs incurred are consistent with the Contractor's documented program plan and are deemed allowable pursuant to 48 CFR 31.205-6 as supplemented by DEAR 970.3102-05-6.

- (1) An evaluation of the Contractor's Employee Benefits Program based on two professionally recognized performance measures:
  - (i) An Employee Benefits Value Study (ben-val) Measure, every two years, which is an actuarial study of the relative value (RV) of the benefits programs offered by the Contractor measured against the RV of benefit programs offered by comparator companies approved by the Contracting Officer. To the extent that the value study does not address PRB, other than pension, the Contractor shall provide separate PRB cost and plan design data comparison with external benchmarks for nationally recognized and Contracting Officer approved survey sources and
  - (ii) An Employee Benefits Cost Survey Comparison (cost survey) Method every year that analyzes the Contractor's employee benefits cost on a per capita basis per full time equivalent employee and compares it with the cost reported by the U.S. Chamber of Commerce Annual Employee Benefits Cost Survey or other Contracting Officer approved broad-based national survey.
- (2) When net benefit value and/or per capita cost exceed the comparator group by more than 5 percent, submit corrective action plans, when requested by the Contracting Officer, to achieve a net benefit value and per capita cost not to exceed the comparator group by more than 5 percent.
- (3) As required by the Contracting Officer, submit an analysis of the specific plan costs that are above the per capita cost range and a corrective action plan to achieve conformance with a Contracting Officer directed per capita cost range.
- (4) Implement corrective action plans determined to be reimbursable by the Contracting Officer to align employee benefit programs with the target in subparagraph (e)(2).

(f) **Pension Plan**

The Contractor shall establish or maintain a separate pension plan, distinct from any corporate pension plan, meeting the requirements of the Internal Revenue Code and Employee Retirement Income Security Act of 1974 (ERISA), as applicable, that preserves accrued benefits and recognizes service credit earned under the predecessor contractor's retirement plan.

- (1) Contractor policies, practices, and procedures used in the administration of the pension plan shall be consistent with laws and regulation.

- (2) The pension plan shall cover only Contractor employees working under this Contract and shall stand alone as a separate pension plan distinct from a Contractor's corporate pension plan. The plan shall preserve accrued benefits and vested status and shall retain all DOE/NNSA-reimbursed assets.
- (3) If the Contractor has any existing commingled pension plans that apply to employees covered by this Contract, it shall convert such commingled plans to a separate plan as soon as is practicable and, until a separate plan is achieved, shall maintain and provide separate annual accounting of DOE/NNSA liabilities and assets as if for a separate plan.
- (4) The Contractor shall obtain a full-scope, independent audit annually on the pension plan, which provides the accounting details specified by ERISA Sections 103 and 104.
- (5) The Contractor shall submit the information required under (i) and (ii) below, as applicable, prior to the adoption of any such changes to the pension plan, to the Contracting Officer for approval or disapproval, and a determination as to whether the costs to be incurred are consistent with the Contractor's documented plan and are deemed allowable pursuant to 48 CFR 31.205-6 as supplemented by DEAR 970.3102-05-6.
  - (i) For proposed changes to the pension plan and pension plan funding, an analysis of the impact of any proposed changes on actuarial accrued liabilities and an analysis of relative benefit value must be provided and
  - (ii) The Contractor shall obtain the advance written approval of the Contracting Officer for any proposed special programs (including, but not limited to, early retirement programs, window benefit programs, disability programs, plan-loan features, employee contribution refunds, asset reversions, or ancillary benefits) and shall provide the Contracting Officer with an analysis of the impact of special programs on the actuarial accrued liability of the pension plan and, on relative benefit value, if applicable.
- (6) The Contractor shall provide the Contracting Officer with the following within nine months of the last day of the current pension plan year:
  - (i) The actuarial valuation. Until any commingled pension plan is converted to a separate plan under (f)(3) above, the Contractor shall submit separate reports for DOE's portion and for the whole plan.
  - (ii) Two Copies of IRS Forms 5500 with schedules.

- (iii) Two Copies of all forms in the 5300 series that document the establishment, amendment, termination, spin-off, or merger of a plan.
  - (iv) Full-scope, independent audits of all Contractor pension plans.
- (7) The Contractor shall perform an annual assessment to evaluate the effectiveness of its pension plan investment management. The assessment shall include, at a minimum, a review and analysis of pension plan investment objectives, the strategies employed to achieve those objectives, the methods used to monitor execution of those strategies and the achievement of the investment objectives, and a comparable analysis of the objectives and performance of other comparable pension plans. The Contractor shall also discuss its plans, if any, for revising any aspect of its pension plan management based on the results of the review. A copy of the pension plan performance assessment identified in this paragraph shall be provided to NNSA within 30 days of the completion of the assessment.
- (8) At contract expiration or termination as a part of the transition to another entity awarded a follow-on management and operating contract, the Contractor shall transfer sponsorship of the pension plan covering employees under this Contract, as directed by the Contracting Officer.
- (9) Pension Plan Terminations.
  - (i) The Contractor shall not terminate any pension plan (commingled or site-specific) without at least 60 days notice to and the approval of the Contracting Officer prior to the scheduled date of plan termination.
  - (ii) After all liabilities of the plan are satisfied, the Contractor shall return to DOE/NNSA an amount equaling the asset reversion from the plan termination and interest as determined pursuant to the clause of this Contract entitled "Interest" that has accrued on that amount because of a delay in the payment to DOE/NNSA. The Contracting Officer and the Contractor may agree to a schedule of payments.
  - (iii) The amount of asset reversion and interest is subject to DOE/NNSA audit.

(10) **Post-Contract Responsibilities for Pension and Benefit Plans.**

If this Contract expires or terminates without a follow-on contract, notwithstanding any other obligations and requirements concerning expiration or termination under any other clause of this Contract, including but not limited to the Contract Clause entitled "Termination," the following actions shall occur:

- (i) The Contractor shall continue as plan sponsor of all existing and follow-on pension and welfare benefits plans covering site personnel with responsibility for management and administration of the plans, as directed by the Contracting Officer in his/her sole discretion.

When the contract no longer exists, contractor is required to maintain sponsorship unless otherwise directed by NNSA.

- (ii) In accordance with DOE/NNSA-approved Contractor welfare benefits plans, the Contractor shall provide benefit continuation on a funding basis acceptable to the Contracting Officer.
- (iii) During the final 12 months of this Contract, if the parties have not reached agreement on these matters, the Contracting Officer shall provide written direction regarding the provision of post-contract pension and welfare benefits.
- (iv) The contract may be extended, as appropriate, for purposes deemed necessary by the Contracting Officer, including obligating funds to pay the Contractor for costs incurred for the Contractor's existing and, if applicable, follow-on, site pension and welfare benefit plans. Such costs shall continue to be allowable in accordance with applicable laws and regulations.
- (v) Pension plan contributions, plan asset management costs, and plan administration costs will continue to be allowable and fully reimbursed under this Contract, on a funding basis acceptable to the Contracting Officer, unless other arrangements have been approved by the Contracting Officer.

**H-19 WORKERS COMPENSATION**

- (a) The Contractor shall maintain workers compensation insurance coverage pursuant to the requirements of FAR 28.307-2, FAR 28.308, and DEAR 970.2803-1. The insurance program must be approved by the Contracting Officer and cover all eligible employees of the Contractor and comply with applicable Federal and State workers' compensation and occupational disease statutes.

- (b) The Contractor shall obtain a service-type insurance policy that endorses the Department of Energy Incurred Loss Retrospective Rating Insurance Plan unless a different arrangement is approved by the Contracting Officer.
- (c) The Contractor shall submit to the Contracting Officer an annual evaluation and analysis of workers' compensation cost as a percent of payroll in comparison with the percentage of payroll cost reported by a nationally recognized Cost of Risk Survey that has been preapproved by the Contracting Officer. The Contractor's self evaluation shall discuss:
  - (1) Periodic audits of claims servicing units and
  - (2) The reasonableness of self-insurance reserves and methods and assumptions used to closeout claims or losses to present value.
- (d) The Contractor shall obtain approval from the Contracting Officer before making any significant change to its workers compensation coverage and shall furnish reports as may be required from time to time by the Contracting Officer.

#### **H-20 SERVICE CONTRACT ACT OF 1965 (41 U.S.C. 351)**

The Service Contract Act of 1965 is not applicable to this Contract. However, in accordance with Section I clause entitled "Contractor Purchasing System (DEC 2000) (DEVIATION)," subcontracts awarded by the Contractor are subject to the Act to the same extent and under the same conditions as contracts awarded by NNSA. The Contractor and the Contracting Officer shall develop a procedure whereby NNSA will determine if the Service Contract Act is applicable to particular subcontracts. In cases determined to be covered by the Service Contract Act, the Contractor shall prepare SF-98 and 98A, "Notice of Intention to Make a Service Contract," and forward it to the Contracting Officer or his designee to obtain a wage determination.

#### **H-21 WALSH HEALY PUBLIC CONTRACTS ACT**

Except as otherwise may be approved, in writing, by the Contracting Officer, the Contractor agrees to insert the following provision in noncommercial Purchase Orders and subcontracts under this Contract. "If this Contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed \$10,000 and is otherwise subject to the Walsh Healy Public Contracts Act, as amended (41 U.S.C. 35), they are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect."

**H-22 MODIFICATION AUTHORITY**

Notwithstanding any of the other provisions of this Contract, a Contracting Officer shall be the only individual on behalf of the NNSA to—

- (a) Accept nonconforming work
- (b) Waive any requirement of this Contract or
- (c) Modify any term or condition of this Contract.

In addition, the Contracting Officer shall have the authority to decrease or increase the SOW under this Contract in accordance with Section I clause entitled, “Changes.”

**H-23 PRIVACY ACT SYSTEMS OF RECORDS**

The Contractor shall design, develop, or operate the following systems of records on individuals to accomplish an agency function pursuant to the Contract’s Section I clause entitled “Privacy Act.”

<u>DOE System No.</u>	<u>Title</u>
DOE-33	Personnel Medical Records
DOE-35	Personnel Radiation Exposure Records
DOE-38	Occupational and Industrial Accident Records
DOE-80	Quality Assurance Training and Qualification Records (as it relates to the Office of Repository Development)
DOE-81	CI Administrative and Analytical Reports
DOE-84	CI Investigative Records

The above list may be revised from time to time by the Contracting Officer as necessary to keep it current. Such changes need not be formally incorporated before the annual Contract update modification, but shall have the same effect as if actually listed above for the purpose of satisfying the listing requirement contained in paragraph (a)(1) of the Contract’s Section I clause entitled “Privacy Act.”

**H-24 FLOWDOWN OF RIGHTS TO PROPOSAL DATA**

The Contractor shall include the Section I clause entitled “Rights to Proposal Data (Technical)” in any subcontract awarded, based on consideration of a technical proposal.

## **H-25 CONTINUATION OF PREDECESSOR CONTRACTOR'S OBLIGATIONS**

On October 1, 2005, the Contractor shall assume responsibility and will continue to perform any existing agreements and regulatory obligations entered into under Contract No. DE-AC08-96NV11718 by the predecessor contractor. These agreements and regulatory obligations include all (a) subcontracts and purchase orders; (b) agreements with domestic and foreign research organizations; (c) agreements with universities and colleges; (d) agreements with Federal, Tribal, and state regulatory agencies; (e) operating and environmental permits (including site-specific operating permits) and licenses; and (f) any other agreements in effect prior to October 1, 2005.

## **H-26 PERFORMANCE GUARANTEE**

In the event any of the signatories to the Performance Guarantee Agreement enters into bankruptcy proceedings, whether voluntary or involuntary, the Contractor agrees to furnish, within five days of filing, written notification of the bankruptcy filing to the Contracting Officer.

## **H-27 SEPARATE CORPORATE ENTITY**

The work performed under this Contract by the Contractor shall be conducted by a corporate entity separate from its parent company(ies). The separate corporate entity must be set up solely to perform this Contract and shall be totally responsible for all Contract activities.

## **H-28 CONTRACTOR COMMITMENTS**

The Contractor agrees to use its best efforts to perform, or have performed, in the case of those of the Contractor's parent organization, those commitments set forth in Part III, Section J, Appendix D, entitled "Corporate Parent Promises and Commitments." All costs (direct or indirect) to be incurred by the Contractor or any other organizations in providing the Contractor's commitments are expressly unallowable and nonreimbursable under this Contract.

## **H-29 PERFORMANCE OF WORK AT DOE FACILITIES AND SITES OTHER THAN THE NEVADA TEST SITE AND SATELLITE FACILITIES**

In performance of the Contract's work at DOE or NNSA facilities and sites other than the NTS and satellite facilities, the Contractor shall comply with requirements set forth in this Contract's Section J, Appendix C, entitled "List of Applicable Laws, Regulations, and DOE Directives" and any additional directives that have been established for the DOE/NNSA Prime Contractor at that DOE/NNSA facility/site that are applicable to the Contractor's work being performed at those locations.

**H-30 ADDITIONAL TECHNICAL DATA REQUIREMENTS**

Except as otherwise authorized by the Contracting Officer, the Contractor, pursuant to 48 CFR 27.409(h), shall include the clause at 48 CFR 52.227-16 in any subcontract for research, development, or demonstration to enable the ordering of technical data as actual need and requirements therefore become known during the course of the subcontract.

**H-31 CONTRACTOR USE OF GOVERNMENT VEHICLES – WORK TO DOMICILE**

- (a) Government-owned or leased vehicles shall be used for official purposes only. Official purposes do not ordinarily include transportation of a contractor's employee between domicile and place of employment. However, contractor employees driving government-owned or leased vehicles to their personal residences will be considered to do so for official purposes if all the following conditions exist—
- (1) Unusual and special circumstances occur when contractor employees are required to work unusual hours and regular transportation is not available.
  - (2) The Contractor has defined, in writing, the special and unusual circumstances in which the driving of government-owned or leased vehicles by contractor employees to their personal residences will be considered used for official purposes and the Contracting Officer has approved them.
  - (3) The Contractor has designated, in writing, specific individuals who are authorized to approve the driving of government vehicles by contractor employees to their personal residences.
- (b) The Contractor shall maintain records necessary to clearly establish the extent that home-to-work transportation was for official purposes. The Contractor shall determine, subject to approval of the Contracting Officer, the organizational level at which the records should be maintained and kept. The records shall be available for audit and shall contain information required by the Contracting Officer.
- (c) The Contractor shall establish and enforce penalties for employees who use or authorize the use of Government vehicles for other than official purposes.

**H-32 CONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATIONS OR ALLEGED VIOLATIONS, FINES, AND PENALTIES**

- (a) The Contractor shall accept, in its own name, notices of violations or alleged violations (NOVs/NOAVs) and fines and penalties issued by Federal or State regulators resulting from the Contractor's performance or work under this Contract. The Contractor shall notify the Contracting Officer promptly when it receives service from the regulators of NOVs/NOAVs and fines and penalties. The allowability of the costs associated with fines and penalties shall be subject to other provisions of this Contract.

- (b) The Contractor shall not make any commitments or offers to regulators that would bind the Government in any form or fashion, including monetary obligations, without receiving written concurrence from the Contracting Officer or his authorized representative prior to making any such offers/commitments. Failure to obtain such advance written approval may result in otherwise allowable costs being declared unallowable and/or the Contractor being liable for any excess costs to the Government associated with or resulting from such offers/commitments.

### **H-33 CONTROL OF NUCLEAR MATERIALS**

- (a) The Contractor, in coordination with the Nuclear Weapons Laboratories, shall implement and maintain material control and accountability procedures, maintain current records, and institute appropriate control measures for Nuclear Materials in its possession commensurate with national security and DOE/NNSA policy. Nuclear Materials are defined in DOE/NNSA's Orders and Directives. The Contractor shall make such reports and permit such inspections as NNSA may require with reference to nuclear materials. The Contractor shall protect such materials against theft and misappropriations and prevent loss of such materials.
- (b) Transfer of Nuclear Materials shall only be made with the prior written approval of the Contracting Officer or authorized designee. Nuclear Materials in the Contractor's possession, custody, or control shall be used only for furtherance of the work under this Contract.
- (c) The Contractor shall make a part of each purchase order, subcontract, or other commitment involving the use of Nuclear Materials that it enters into under this Contract appropriate terms and conditions for the use of Nuclear Materials and the responsibilities of the subcontractor or vendor regarding control of Nuclear Materials. In the case of fixed-price purchase orders, subcontracts, or other commitments involving the use of Nuclear Materials for which the Contractor has accountability, the terms and conditions with respect to Nuclear Materials shall also include the financial responsibilities, if any, regarding such items as losses, scrap recovery, product recovery, and disposal.

### **H-34 AGREEMENTS TO PERFORM NON-DOE ACTIVITIES**

- (a) Subject to the prior written approval of the Contracting Officer and in compliance with applicable requirements imposed by the Contracting Officer pursuant to Section I, DEAR 970.5204-2, "Laws Regulations and DOE Directives," the Contractor may perform non-DOE activities which are consistent with and complementary to NNSA's mission involving the use of contract equipment, facilities, or personnel. Such proposed work may be for non-Federal entities or other Federal agencies. The request for such approval shall set forth in detail the nature of the outside work to be performed, the equipment, facilities or personnel required, and the financial and contractual arrangements proposed to pay for the cost of such work. The Contracting Officer shall consider such a request, being

guided, among other factors, by the current or future needs of NNSA's programs for the equipment, facilities, or personnel to be utilized in the performance of such outside work. Primary considerations in approving such work are that the proposed work will not place the Contractor in direct competition with domestic non-Federal entities, will not adversely impact execution of the Contractor's assigned programs, and will not create a potentially detrimental future burden on commitment of NNSA resources. If the Contracting Officer approves such a request, the Contractor and NNSA shall agree upon the terms and conditions which would apply to such work. This agreement may provide for receipt by the Government of all or part of such sum as represents the payment to be received by the Contractor for such outside work provided, however, that NNSA may contribute the use of certain equipment, facilities, or personnel to the Contractor for the performance of such outside work if it determines that it desires to foster the activity in some measure. Except as otherwise approved, in writing, by the Contracting Officer, all Articles of this Contract shall be deemed to be applicable to the performance of such work. This clause shall not be construed as amending or superseding the requirements of Section C, SOW.

- (b) The Contractor shall promptly advise the Contracting Officer of any advance notices of, or solicitations for, a major system acquisition requirement received from other Federal agencies pursuant to FAR Section 34.005 which would logically involve DOE facilities or resources operated or managed by the Contractor. The Contractor shall not respond to or otherwise propose to participate in the response to the requirements of such solicitation unless the Contractor has obtained written approval of the Contracting Officer.
- (c) The Contractor is permitted to provide advance payment utilizing Contractor funds for reimbursable work to be performed by the Contractor for non-Federal entities in instances where advance payment from that entity is required pursuant to DOE policy and such advance cannot be obtained. The Contractor is also permitted to advance continuation funding utilizing Contractor funds for Federal entities when the term or the funds on a Federal interagency agreement have elapsed. Any uncollectible receivables resulting from the Contractor utilizing its own funding shall be the responsibility of the Contractor and the United States Government shall not have any liability to the Contractor.

### **H-35 LIAISON SUPPORT WITH OTHER GOVERNMENT AGENCIES**

The Contractor shall support NNSA/NSO in interfacing with various Government agencies such as the Defense Nuclear Facilities Safety Board, the Air Force, and state regulatory agencies to implement appropriate environmental, safety, and health requirements at the NTS.

**H-36 THIRD PARTIES**

Nothing contained in this Contract or its modifications shall be construed to grant, vest, or create any rights in any person not a party to this Contract. This clause is not intended to limit or impair the rights that any person may have under applicable Federal Statutes.

**H-37 NNSA ON-SITE CLEANUP**

The Contracting Officer may de-scope onsite cleanup from this Contract and transfer the scope to an NNSA Cleanup Contractor. "Cleanup" is defined herein as environmental restoration, legacy waste disposition, decontamination, and decommissioning.