

PART I - THE SCHEDULE

SECTION B - SUPPLIES OR SERVICES AND PRICES/COSTS

B.1 TYPE OF CONTRACT - ITEMS BEING ACQUIRED

This is a Cost-Plus-Incentive-Fee (CPIF) closure contract that includes cost and schedule performance incentives. Performance incentives provide the motivation to achieve accelerated closure at the lowest cost to the Department of Energy (DOE). The transition period is a cost reimbursement-no fee arrangement, with a Not-to-Exceed Estimated Cost of \$1,000,000 (See Clause B.4). The DOE is committed to achieve accelerated closure that does not jeopardize safety and protection of the workers, the public or the environment. The Contractor shall be responsible for planning, managing, integrating, and executing the work as described in Section C, Statement of Work (SOW). The Contractor shall furnish all personnel, facilities, equipment, supplies, and services (except as furnished by the DOE) and otherwise do all the things necessary for performing in a safe, efficient, and effective manner.

B.2 OBLIGATION OF FUNDS

- a. Pursuant to FAR 52.232-22, entitled "Limitation of Funds," total funds in the amount of \$735,803,740.34 (this represents funding obligated to date on this Contract) are obligated herewith and made available for payment of allowable costs, fee and other incentives earned from the effective date of this contract through contract closure.
- b. **Financial Plans: Cost and Commitment Limitations.** In addition to the limitations specified above or elsewhere in this contract, the DOE will issue Financial Plans to the Contractor to establish controls on the costs and commitments to be made in the performance of this contract.

B.3 AVAILABILITY OF APPROPRIATED FUNDS

The duties and obligations of the Government hereunder calling for the expenditure of appropriated funds shall be subject to the availability of funds appropriated by the Congress which the Department of Energy may legally spend for such purposes.

B.4 ESTIMATED COST - TRANSITION PERIOD (Award Date through November 30, 2000)

Estimated Cost: NOT-TO-EXCEED (NTE) \$1,000,000.

Transition costs are authorized for reimbursement under this contract, subject to the limitation (NTE Amount) set forth above. These costs are limited to costs incurred by the Contractor related to the proposed Key Personnel and other employees of its own organization, including Teaming Partners if applicable, for the transition period. It is recognized that such costs may be incurred after December 1, 2000. Cost incurred for normal business activity under Contract No. DE-AC24-92OR21972 shall not be charged as transition costs. No transition costs above the limitation will be authorized. There will be no fee earned or paid during the transition period.

B.5 CONTRACT FUNDING PROFILE

Subject to the availability of funds, the contract will be funded in accordance with the schedule provided below. Such funds shall provide for all allowable and allocable billings for cost and fee for the indicated fiscal year. It is anticipated that annual contract funding for FY04 and beyond will be provided on or before November 30 of each year in the amounts stated below. Funding for FY03 is anticipated to be provided by March 31.

| 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | Total |
|--------|--------|--------|--------|--------|--------|--------|----------|
| \$310M | \$301M | \$324M | \$324M | \$324M | \$324M | \$324M | \$2,231M |

Note: Funding includes DOE costs (actuals through March 31, 2003 and \$4M per year FY03 through FY07) and fee and is divided between closeout activities on Contract DE-AC24-92OR21972 and this contract.

B.6 TARGET COST AND TARGET FEE

The Contractor shall remain within the annual funding limitations detailed in Clause B.5.

The Target Cost is \$1,911,000,000
 The Target Fee is \$215,000,000
 The Maximum Fee is \$288,000,000

The Target Cost and Target Fee are set at a Site Closure date of December 31, 2006 (Target Schedule Date).

The Contractor shall provide Baseline Change Proposals incorporating changes in scope within 60 days of award. Following Contracting Officer approval of the Baseline, the Contractor shall submit certified cost and pricing data within 45 days covering the original Revised Baseline and all Change Proposals submitted. The revised baseline shall reflect the scope and fee set forth in this contract.

B.7 INCENTIVE STRUCTURE

The cost incentive and schedule incentive will be cumulative and in no case shall the total maximum fee exceed \$288,000,000. The minimum fee shall not be below \$63,000,000.

B.7.1 Cost Incentive Structure

The following cost incentive structure is established:

| | |
|--------------|----------------------|
| Target Fee: | <u>\$215,000,000</u> |
| Maximum Fee: | <u>\$288,000,000</u> |
| Minimum Fee: | <u>\$ 63,000,000</u> |

For a total actual cost greater than target cost, costs exceeding the target cost shall be shared as follows:

| | |
|---------------------|-----|
| Government's share: | 70% |
| Contractor's share: | 30% |

For a total actual cost less than target cost, costs less than the target cost shall be shared as follows:

| | |
|---------------------|-----|
| Government's share: | 70% |
| Contractor's share: | 30% |

B.7.2 Schedule Incentive

Any fee earned pursuant to the Cost Incentive Structure set forth in B.7.1 above shall be adjusted for the Schedule Incentive as defined below.

The Cost Incentive Fee shall be reduced by \$8.11M for each month after December 31, 2006 the project is not completed, so long as the total fee earned is not less than \$63,000,000. The Cost Incentive Fee shall be increased by \$8.11M of the target cost for each month the project is completed earlier than December 31, 2006, so long as the total fee earned is not more than \$288,000,000. For periods less than a full month, the amount of fee lost or additional fee earned will be determined using straight-line interpolation.

B.8 FEE PAYMENT SCHEDULE AND FEE PAYMENT WITHHOLDING

- a. This clause establishes the method for provisional payments of incentive fee. Unless the Contracting Officer elects to do otherwise, as set forth below or elsewhere in this contract, provisional fee payments will be made not more than 3 business days after the Contractor submits an acceptable invoice, as authorized by the Contracting Officer pursuant to Clause G.5(b), subject to the availability of funds. Upon receipt of an acceptable invoice for provisional payment of Fee, the Contracting Officer will assess the need for further adjustments based upon factors discussed later in this provision or elsewhere in this contract and pay the amount authorized within three (3) business days.
- b. Prior to receipt, evaluation and negotiation of a revised Baseline which incorporates the Contractor's due diligence review, approved Baseline Improvements and incorporation of new DOE funding guidance, the Contractor may invoice for 50% of the Cost Incentive on a quarterly basis, the specified Target Cost and Target Fee, pro-rated over the life of the contract (i.e. to the specified Target Schedule Date).
- c. After negotiation and implementation of the Revised Baseline, the Contracting Officer may increase the provisional incentive fee payment up to 75% on a quarterly basis, at the negotiated Target Cost, Target Fee, and Target Schedule subject to availability of appropriated funds. This is to incentivize the Contractor to submit the Baseline Revision/Cost Proposal and negotiate in an expeditious manner.
- d. Beginning the 3rd quarter of FY03, the Contracting Officer will pay provisional incentive fee up to 50% on a quarterly basis, based on DOE evaluation of the Quarterly Critical Analysis Report (QCAR) at up to an 80% confidence level.
- e. At least yearly, at the conclusion of each Government fiscal year, DOE will review Contractor's performance, and adjust the provisional payments up or down accordingly. The Contracting Officer has the unilateral right to adjust the provisional payments upward or downward at anytime at his/her sole discretion, using information from the monthly Cost Performance Reports (CPR), the QCAR, and other information available to the

Contracting Officer. If a significant overpayment occurs, the Contracting Officer will issue a demand letter requesting an immediate refund or advise of an offset against future fee payments.

- f. All fee paid provisionally remains provisional until audit and final closeout of this contract. After final DOE review and acceptance of the Contractor's Final Declaration of Site Closure as required by Clause F.6, the Contracting Officer will release up to 90% of the cost and schedule fee anticipated to be earned subject to availability of appropriated funds, retaining an amount determined to be necessary for settlement of the incurred costs and/or completion of performance, unless the retainage determined necessary is above 10%.
- g. In order to assure the Contractor's ability to repay any provisional fees that are determined to be in excess of the actual fee earned at the conclusion of the contract, the Contracting Officer may utilize the performance guarantee executed pursuant to the clause entitled "Guarantee of Performance Agreement" in Section H as a basis for a demand to collect monies owed.
- h. In the manner explained in this clause and clause B.9 entitled "Conditional Payment of Fee, Profit, or Incentives," the Contracting Officer may decide to reduce or withhold any provisional fee payment. The right of the Contracting Officer to reduce or withhold fee payments is in addition to other rights and remedies available under this contract. Such reductions may take either of two forms. First, the Contracting Officer may elect to defer a provisional fee payment. A deferral results in a reduction of the immediate provisional fee payment, but does not result in a revision to the maximum incentive fee at the conclusion of the contract. Second, the Contracting Officer may elect to deduct fee pursuant to clause B.9 entitled "Conditional Payment of Fee, Profit, or Incentives". A deduction results in a reduction of the immediate fee payment, and also in a reduction to the maximum incentive fee at the conclusion of the contract.
- i. Other information available to the Contracting Officer includes, but is not limited to:
 - 1. As a part of the routine project performance analysis required by H.9.03.a, the Contractor shall report the Estimate at Completion (EAC) for the total project on a quarterly basis. The Contracting Officer will compare this estimate against the negotiated Target Cost in Section B and the cost/schedule incentives in Section B.
 - 2. Cost Variance. The cost variance index (CVI) (%) is the Budgeted Cost of Work Performed (BCWP) minus the Actual Cost of Work Performed (ACWP) divided by the Budgeted Cost of Work Performed (BCWP), [CVI = (BCWP - ACWP)/BCWP].
 - 3. As part of the routine project performance analysis required by H.9.03.a, the Contractor shall include a projection of Site Closure based on the validated schedule variance analysis against the approved Baseline. The Contracting Officer will compare this projection against the cost/schedule incentives in Section B.

4. Schedule Variance. The schedule variance index (SVI) (%) is the Budgeted Cost of Work Performed (BCWP) minus the Budgeted Cost of Work Scheduled (BCWS) divided by the Budgeted Cost of Work Scheduled (BCWS), [SVI = (BCWP - BCWS)/BCWS].
- j. The Contracting Officer will release withheld fees when the Contractor demonstrates that the condition leading to the withholding has been corrected. For example, a withheld fee resulting from one or more cost variance(s) will be paid to the Contractor when the Contractor recovers from the cost variance, meaning that there has been acceptable cost variance at the ends of two consecutive quarters.
- k. If this contract is terminated in its entirety, fee shall be payable to the Contractor consistent with the Section I clauses entitled "Termination" and "Incentive Fee".
- l. Nothing in this Clause B.8 limits the rights of the Contracting Officer set forth in the clause entitled "Incentive Fee" of this contract.

B.9 DEAR 970.5204-86, CONDITIONAL PAYMENT OF FEE, PROFIT, OR INCENTIVES AND ALTERNATE I (April 1999) (DEVIATION)

In order for the Contractor to receive all cost/schedule incentive fee under the contract, the Contractor must meet the minimum requirements in paragraphs 1 and 2 of this clause. If the Contractor does not meet the minimum requirements, the Contracting Officer may make a unilateral determination to deduct fee (or provisional fee) as described in the following paragraphs of this clause.

1. Minimum Requirements for Environment, Safety & Health (ES&H) Program. The Contractor shall develop, obtain DOE approval of, and implement a Safety Management System in accordance with the provisions of the clause entitled, "Integration of Environment, Safety, and Health into Work Planning and Execution." The minimal performance requirements of the system will be set forth in the approved Safety Management System, or similar document. If the Contractor fails to obtain approval of the Safety Management System or fails to achieve the minimum performance requirements of the system, the Contracting Officer, at his/her sole discretion, may deduct fee by an amount up to the provisional amount paid, or to be paid, in any fiscal year.
2. Minimum Requirements for Catastrophic Event. If, in the performance of this contract, there is a catastrophic event (such as a fatality, or a serious workplace-related injury or illness to one or more Federal, Contractor, or subcontractor employee or the general public, loss of control over classified or special nuclear material, or significant damage to the environment), the Contracting Officer may deduct fee by an amount up to the cost and schedule based incentive fee for the fiscal year. In determining any diminution of fee resulting from a catastrophic event, the Contracting Officer will consider whether willful misconduct and/or negligence contributed to the occurrence and will take into consideration any mitigating circumstances presented by the Contractor or other sources.

B.10 STATEMENTS OF COMMITMENT

The Government and the Contractor recognize the accelerated closure is a cooperative undertaking that requires both parties to seek innovative approaches to achieve the end objective. Streamlining processes

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and eliminating non-value-added requirements are critical to accomplishing accelerated closure. Both parties agree through the term of this contract to use their best efforts and to cooperate in seeking the reduction of non-value-added requirements and processes that impede progress.

B.11 ITEMS EXCLUDED FROM TARGET COST NUMBERS

The following items of cost are not to be included in "total allowable cost" for the purposes of fee adjustment under the clause entitled "Incentive Fee." These costs are allowable costs of the contract, subject to the requirements of FAR 31 cost principles:

- ◆ Additional work scope identified in DOE direction to the Contractor.
- ◆ Technology Development initiatives funded by Office of Science and Technology (EM-50) described in Section C.3.6.
- ◆ The cost of any lump-sum payment directed by the Contracting Officer in accordance with Clause H.7.c.5.
- ◆ Any costs associated with management of nuclear materials transferred to other DOE affiliated or sanctioned locations after transfer has occurred.
- ◆ Costs associated with contract closeout activities that occur after Site Closure.
- ◆ Contractor Fee.
- ◆ DOE support costs contained in charge number NAAAU and NDAAX.
- ◆ Costs of providing information pursuant to requests from DOE Headquarters in support of Energy Employees Occupational Illness Compensation Program Act (EEOICPA). A separate funding allocation has been identified to cover costs associated with EEOICPA and will be provided to the Contractor.
- ◆ Costs incurred for DOE GFS/I through March 31, 2003.
- ◆ Costs associated with the Columbus Closure Project, charge number PDAB1.
- ◆ Costs associated with the Fort Scott Property, charge number NDAA1.
- ◆ Costs associated with the NARA-DOE Legacy Records, charge number NDAAY.

B.12 NOTICE OF CIVIL PENALTIES FOR VIOLATION OF SECURITY OF DOE CLASSIFIED OR SENSITIVE INFORMATION OR DATA

Note: The Contractor shall be required to comply with this provision if and when it is included into the DEAR per Acquisition Letter 99-07, dated November 30, 1999.

Section 3147 of the National Defense Authorization Act for Fiscal Year 2000, Public Law 106-65, is intended to increase the accountability of DOE Contractors concerning the protection of classified

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information and materials. The Contractor agrees to include conditional fee language for safeguards and security violations when the rulemaking on those provisions is completed. The Section amends the Atomic Energy Act of 1954 to provide civil penalties for violations of DOE regulations regarding security of classified or sensitive information or data of up to \$100,000 per violation. An additional provision of Section 3147, separate from the civil penalty authority, requires appropriate reduction of fees or amounts paid to the Contractor under the contract in the event of a violation by the Contractor or Contractor employee of any rule, regulation, or order relating to the safeguarding or security of Restricted Data or other classified information.