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Request for Proposal – Idaho National Laboratory
February, 2004

PART I SECTION H
SPECIAL CONTRACT REQUIREMENTS

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Part I Section H
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Part I Section H

Special Contract Requirements

H.1 Definitions

"The United States Department of Energy (DOE)" means the same as "United States (U.S.)," "Government," and "NE-ID".

H.2 Defining The Federal/Contractor Relationship

The Government is committed to improving the effectiveness and efficiency of the INL research and development mission. This Clause sets forth the Government's intent to achieve that commitment. Additional clauses in this section set forth specific contract requirements and authorities to permit the Contractor to exercise flexibility in managing INL operations.

The Government shall provide program and performance direction regarding what is expected in each program area. The Contractor shall determine how the program requirements are to be executed and shall be accountable for performance in accordance with the terms and conditions of this contract. The Contractor shall use the flexibilities granted under this contract to exercise its expertise and ingenuity in determining the optimal approach to accomplish assigned work in the most effective and efficient manner. As detailed in Section G, the Government shall issue program and performance direction only through a warranted Contracting Officer or a designated Contracting Officer's Representative (COR). All other Federal staff and oversight components are specifically precluded from tasking contractor personnel.

H.3 Reserved

H.4 Contractor Assurance System

- (a) The Contractor shall develop a Contractor Assurance System that is approved and monitored by the Contractor's Board of Directors or similar body established to provide oversight of the business entity created pursuant to section H.40. This Contractor Assurance System, at a minimum, shall have the following key attributes:
- (1) A comprehensive description of the Contractor Assurance System with risks, key activities and accountabilities clearly identified.
 - (2) A method for validating processes. Third party audits, peer reviews, independent assessments and external certification (such as VPP and ISO 9001 or ISO 14001) may be used in validating the Contractor's assurance system.
 - (3) A process for notifying the Contracting Officer of significant assurance system changes.

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- (4) Rigorous, risk based credible self-assessments, feedback and improvement activities, including utilization of nationally recognized experts, and other independent reviews to assess and improve its work process and to carry out independent risk and vulnerability studies.
 - (5) Identification and correction of negative performance/compliance trends before they become significant issues.
 - (6) Integration of the assurance system with other management systems including Integrated Safety Management.
 - (7) A process for defining performance metrics and performance targets to assess performance, including benchmarking of key functional areas with other DOE contractors and industry and research institutions to enhance processes and to assure development of performance metrics and performance targets that shall result in achievement of best in class/industry performance where efficient and cost effective.
 - (8) Continuous feedback and performance improvement.
 - (9) An implementation plan for the Contractor Assurance System.
 - (10) A process for timely and appropriate communication to the Contracting Officer, including electronic access, of assurance related information.
- (b) The Government shall revise its level of oversight of this Contract only when the Contracting Officer determines that the Contractor Assurance System is operating effectively.

H.5 Application Of DOE Directives And Alternatives

- (a) **Performance** The Contractor shall perform the work of this Contract in accordance with each of the DOE directives appended to this Contract as Section J, Attachment G until such time as the Contracting Officer approves the substitution of an alternative procedure, standard, system of oversight, or assessment mechanism resulting from the process described below.
- (b) **Laws and Regulations Excepted** This clause supplements the requirements of DEAR 970.5204-2 and DOE M 251.1-1A for purposes of addressing alternatives to DOE directives. The process described in this clause does not affect the application of applicable laws and regulations.
- (c) **Deviation Processes in Existing Orders** This clause does not preclude the use of deviation processes provided for in existing DOE directives.
- (d) **Proposal of Alternative** The Laboratory Director may, at any time during performance of this Contract, propose an alternative procedure, standard, system of oversight, or assessment mechanism to the requirements in a listed

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directive by submitting to the Contracting Officer a signed proposal describing the nature and scope of the alternative procedure, standard, system of oversight, or assessment mechanism (alternative), the anticipated benefits, including any cost benefits, to be realized in performance under the Contract, and a schedule for implementation of the alternate. The Contractor shall include an assurance signed by the Laboratory Director that the revised alternative is an adequate and efficient means to meet the objectives underlying the directive. Upon request, the Contractor shall promptly provide the Contracting Officer any additional information that will aid in evaluating the proposal.

- (e) **Action of the Contracting Officer** The Contracting Officer shall within sixty (60) calendar days:
- (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 shall be made (not to exceed an additional sixty (60) calendar days).
- (f) **Implementation and Evaluation of Performance** Upon approval in accordance with (e)(2) or (e)(3) above, the Contractor shall implement the alternative. In the case of a conditional approval under (e)(2) above, the Contractor shall provide the Contracting Officer with an assurance statement, signed by the Laboratory Director, that the revised alternative is an adequate and efficient means to meet the objectives underlying the directive. This statement shall describe any changes to the schedule for implementation. The Contractor shall then implement the revised alternative. The Government shall evaluate performance of the approved alternative from the Contractor's scheduled date for implementation.
- (g) **Application of Additional or Modified Directives** During performance of the Contract, the Contracting Officer may notify the Contractor that s/he intends to unilaterally add directives not then listed in Section J Attachment G or modifications to listed directives. Within thirty (30) calendar days of receipt of that notice, the Contractor may, in accordance with paragraph (d) of this clause, propose an alternative procedure, standard, system of oversight, or assessment mechanism. The resolution of such a proposal shall be in accordance with the process set out in paragraphs (e) and (f) of this clause. If an alternative proposal is not submitted within the thirty (30) calendar-day period, or, if made, is denied by the Contracting Officer under paragraph (e), the Contracting Officer may unilaterally add the directive or modification to Section J Attachment G. The Contractor and the Contracting Officer shall identify and, if appropriate, agree to any changes to other Contract terms and conditions, including cost and schedule, resulting from the addition of the directive or modification.
- (h) **Deficiency and Remedial Action** If, during performance of this Contract, the

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Contracting Officer determines that an alternative procedure, standard, system of oversight, or assessment mechanism adopted through the operation of this clause is not satisfactory, the Contracting Officer may, in his or her sole discretion, 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.

H.6 Reserved

H.7 Reserved

H.8 Reserved

H.9 Third Party Rights

This contract is not enforceable by, or for the benefit of, and shall create no obligation to, any person or entity other than the Parties.

H.10 Option To Take Title To Facilities

If the Contractor and the Government agree that the Contractor retains title to a facility it builds during contract performance, the Government reserves an option to take title to the facility (including fixtures and other equipment used in the facility) if the Contractor does not complete contract performance for any reason. If this option is exercised, the Government shall, consistent with this contract and any supplemental agreements describing how facility construction costs will be shared, negotiate a fair settlement on reimbursement of unrecovered facility capital expenses.

H.11 Public Communications

- (a) The Contractor shall develop a communications strategy that supports two goals:
 - (a) communicating with stakeholders how the INL's work supports the government's missions in energy, national security, science and the environment;
 - and (b) build informed consent that will allow the laboratory to move forward with new, but potentially controversial projects that contribute to these missions.
- (b) The Contractor shall be responsible for developing, planning and coordinating proactive approaches to dissemination of timely information regarding DOE unclassified activities. This shall be accomplished through coordination with DOE and non-DOE work sponsors. Proactive communications and public affairs programs shall include or make use of a variety of tools, among them open houses, newsletters, press releases and/or conferences, audio/visual presentations, speeches, forums, and tours. This responsibility shall be carried out in such a manner that the public has a clear understanding of activities at the INL.

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- (c) The contractor for the Idaho Cleanup Project will be responsible for developing and implementing a communications program for Environmental Management related work conducted on the INL. However, the INL Contractor shall coordinate as needed with the Idaho Cleanup Project contractor communications program to ensure consistent information is presented to the public.

H.12 Privacy Act Systems Of Records (SOR)

The Contractor shall design, develop, and operate the following systems of records on individuals to accomplish an agency function pursuant to the Section I clause entitled PRIVACY ACT.

<u>DOE System Number</u>	<u>Title</u>
DOE-05	Personnel Records of Former Contractor Employees (This SOR shall include the records of all former employees who have worked for any predecessor contractors at the INL, including those who worked at Argonne National Laboratory – West)
DOE-33	Personnel Medical Records
DOE-35	Personnel Radiation Exposure Records
DOE-38	Occupational and Industrial Accident Records
DOE-43	Personnel Security Clearance Files
DOE-51	Employee Visitor Access Control Records
DOE-10	Worker Advocacy Records
DOE-52	Access Control Records of International Visits, Assignments and Employment at DOE Facilities and Contractor Sites
DOE-75	Call Detail Records
DOE-48	Security Education and/or Infraction Records
DOE-84	Counterintelligence Investigative Records

This list may be revised from time to time by written direction from the Contracting Officer. Direction from the Contracting Officer is effective immediately and satisfies the listing requirement contained in paragraph (a)(1) of the clause entitled PRIVACY ACT.

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H.13 Stop Work And Shutdown Authority

FAR 52.242-15, Stop Work Order – Alternate 1, allows only the Contracting Officer to stop work or shutdown facilities for reasons other than harm or imminent danger to the environment or health and safety of employees and the public.

Due to the immediate need to stop work due to situations where the Contractor's acts or failures to act cause substantial harm or present an imminent danger to the environment or health and safety of employees or the public, any DOE employee may exercise the stop work authority contemplated in DEAR 970.5223-1, Integration of Environment, Safety, and Health Into Work Planning and Execution.

H.14 Work Force Transition And Human Resources Management

- (a) The Government intends that the Contractor have the flexibility to organize its work force as it believes necessary to effectively and efficiently perform the scope of work covered in this contract, using the appropriate number of employees with the required skills. The Government shall, consistent with budget realities, support the Contractor's long-term efforts to establish and administer wage and employee benefit programs that attract and motivate the highly skilled work force needed to accomplish the work. During transition, the Contractor shall establish the management structures necessary to conduct employee relations and develop a comprehensive plan describing the Contractor's employee management program. This plan must demonstrate-how the Contractor will -
- (1) Ensure realignment of INL resources while ensuring an orderly transition from Bechtel, BWXT, LLC (BBWI) and the University of Chicago (collectively referred to as the "incumbent contractors");
 - (2) Be fair to employees while maintaining a productive and flexible work force;
 - (3) Promote the stability of collective bargaining relationships;
 - (4) Minimize the cost of transition and its impact on DOE programs; and
 - (5) Assure access to a sufficient work force with the skills necessary to meet contract requirements and specifically addressing --
 - (i) The Contractor's approach for assessing the skills of incumbent contractor employees and filling vacancies with employees who were on the payroll of incumbent contractors.
 - (ii) The Contractor's approach for establishing appropriate incentives that encourage highly skilled, motivated, and experienced workers to accept an employment offer and motivates these workers to remain at the INL on a long-term basis.

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This plan shall be incorporated into the contract in Section J, Attachment L.

(b) **Hiring Preferences.**

- (1) One essential transition activity is deciding on the hiring of a work force. In establishing an initial work force and through the first six months after contract takeover, the Contractor shall give a first preference in hiring for vacancies in non-managerial positions (i.e., those employees who are below first line supervisors) and in non-construction activities performed under this Contract to qualified employees who were employees in good standing with the incumbent contractors on the date the Contractor begins contract performance. This hiring preference takes priority over the hiring preference provided in H.19. The Contractor is not responsible for the employment (or termination of employment) of the incumbent contractor employees not hired during this period.
- (2) The Contractor shall provide the Contracting Officer with a list of incumbent contractor employees hired during transition and during the first six months after contract takeover, including each hired employee's position and salary. The Contractor shall also provide the Contracting Officer with a list of incumbent contractor employees hired by the Contractor at any other facility or hired by the Contractor's parents, affiliates, or subsidiaries. This list shall also include each hired employee's position and salary.

(c) **Pay and Benefits.**

- (1) **Base Salary/Pay Rates:** For employees employed by the incumbent contractors on the date the Contractor begins contract performance and who are offered and accept employment under subparagraph (b) above -
 - (i) The Contractor shall pay them for the first year of employment base salary/pay rates that are at least equivalent to the base salary/pay rates they are being paid at the time the Contractor offers them employment if the position for which they are hired entails duties and responsibilities substantially equivalent to their last positions with the incumbent contractors.
 - (ii) If the base salary/pay rates that employees were paid in their last position with the incumbent contractors fall above the maximum rate of the new base salary/pay rates, in such circumstances, they shall continue to receive for the first year of employment the salary/pay rate paid by the incumbent contractors, and for the first year shall receive no base salary/pay adjustments unless the salary/pay rate structure the Contractor implements increases to exceed their base salary/pay rates. They shall then be eligible for increases consistent with the Contractor's policies.

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(iii) If the base salary/pay rates these employees were paid in their last position with the incumbent contractors fall below the minimum rate of the new base salary/pay rates in such circumstances, they shall have their salaries/pay rate increased to reflect the new rates.

(2) **Service Credit Dates** – The Contractor shall maintain the length of service credit and leave benefits as accrued at the time of contract takeover for employees hired from incumbent contractors during contract transition and during the first six months after contract takeover.

(3) **Pensions and Other Employee Benefits** --

(i) The Contractor shall sponsor and manage pension and other employee benefit plans in accordance with law. The Contractor shall have responsibility for funding, administering, and maintaining the qualified status of all pension and investment plans. The Contractor's efforts in this area include resolution of pension and other employee benefits issues associated with transitioning a work force employed by two incumbent contractors administering separate and distinct benefits plans. The Contractor is encouraged to explore ways to modernize and consolidate pension and other benefits plans. Resolution of these issues must be done in a manner that -

- a. Is fair to hired incumbent contractor employees participating in plans maintained by the incumbent contractors;
- b. Is cost-effective;
- c. Attracts outstanding people to work at the INL; and
- d. Provides the best fit for the long-term vision of the INL.

(ii) The Contractor shall, for the benefit of employees hired by the Contractor during transition who were participants in defined contribution plan(s), either -

- a. Establish defined contribution pension plan(s) that accept existing employee account assets and obligations from incumbent contractor defined contribution plan(s); or
- b. Become a sponsor of those plan(s).

(iii) The Contractor shall become a sponsor of existing site defined benefit plan(s) for employees hired by the Contractor and the ICP Contractor during transition who were participants in the plan(s), with responsibility for management and administration of the plan(s). For a period of five years after contract takeover, the

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Contractor shall allow such employees to accrue credit under the plan(s) for service under this contract or under the ICP contract. The plan(s) shall accept rollovers of the interests of incumbent contractor employee participants who initially become employees of the ICP Contractor and who thereafter become employees of the Contractor without treating their employment with the ICP Contractor as a break in service. In a timely manner prior to the end of this five-year period, the Contractor shall provide a written recommendation for Contracting Officer approval for either terminating the plan(s) and transitioning the covered employees to new plan(s) established under this contract or continuing the plan(s) until completion of the contract term.

- (iv) The Contractor shall meet with plan co-sponsors and identify required funding amounts to be paid by each co-sponsor.
- (v) The Contractor shall maintain and administer the defined benefit pension plan maintained and administered by BBWI for employees who retired from employment with site contractors prior to contract takeover.
- (vi) The Contractor shall maintain and administer the post retirement medical benefit plan maintained and administered by BBWI for employees who have retired from employment with site contractors prior to contract takeover.
- (vii) Subject to DOE approval, the Contractor shall establish pension and investment plan(s) for new employees hired during the term of this contract. These plans should encourage the voluntary transfer of assets of hired incumbent contractor employees where consistent with legal requirements and with the principles identified above.
- (viii) During this contract, the Contractor may change any of the pension and welfare benefit plans, including any of the retirement medical benefits, administered by the incumbent contractors subject to legal requirements and to the requirements and conditions set forth in this contract. The Contractor shall obtain the written approval of the Contracting Officer before it initially implements any pension or welfare benefit plans and before it makes effective any changes in such plans or in any underlying trust documents. Changes to any pension and welfare benefit plans, including any of the retirement medical benefits, shall be consistent with applicable law, terms of the respective plans with respect to the procedures for amending such plans, and the terms of this contract.
- (ix) Because the Contractor is responsible for administering and maintaining the qualified status of all pension and investment

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plans, the Contractor shall, as directed by the Contracting Officer, submit to the Contracting Officer annual actuarial and employer certifications as the sponsoring employer and participating employer in the plans demonstrating full compliance with Internal Revenue Code and Employee Retirement Income Security Act (ERISA) requirements including, but not limited to, any applicable non-discrimination testing.

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

- (i) If the contract is terminated or expires without a follow-on contract, the Contractor shall continue as plan sponsor of all existing and follow-on pension and welfare benefit plans covering site personnel with responsibility for management and administration of the plans, as directed by DOE, at DOE's sole discretion.
- (ii) In accordance with DOE-approved Contractor welfare benefit plans, the Contractor shall provide benefit continuation on a funding basis acceptable to DOE.
- (iii) During the final 12 months of this contract, the Contracting Officer shall provide written direction regarding post-contract responsibilities for pension and welfare benefit plans.

(5) **Compensation Paid to Senior Executives**

Allowable costs for compensation paid to senior executives is subject to the limitations published in 65 Federal Register 30640 (May 12, 2000) and any updates published in the Federal Register or in written direction from the Contracting Officer. While this clause establishes the level of compensation that is an allowable cost under this contract, it should not be construed as a limit on the level of compensation the Contractor may pay its senior executives. The Contractor is encouraged to seek out the most highly qualified candidates for senior level executives.

(d) **Labor Relations**

- (1) The Contractor shall respect the right of employees to self-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) Consistent with applicable labor law and regulations, the Contractor shall recognize and bargain in good faith with the Paper, Allied-Industrial, Chemical and Energy Workers (PACE) as the collective-bargaining representative of employees performing work that has historically and traditionally has been performed by PACE members and is covered in the scopes of these contracts, and negotiate collective bargaining

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agreements. 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 other welfare benefit plans.

H.15 Severance Pay

- (a) Severance pay benefits are not payable to an employee under this contract when the employee:
 - (1) Voluntarily separates from employment,
 - (2) Is offered employment with a successor/replacement contractor,
 - (3) Is offered employment with a parent or affiliated company,
 - (4) Resigns, or
 - (5) Is discharged for cause.
- (b) In determining the Years of Service Credit to be used in calculating severance pay for Key Personnel, only the years of service on this contract, plus the years of service worked on this or other DOE sites for other DOE Contractors shall be used in calculating severance pay.

H.16 Labor Standards

The Government shall determine the appropriate labor standards that apply to work activities in accordance with the Davis-Bacon Act or other applicable labor law. When requested by the Government, the Contractor shall timely provide information necessary for the Government to make the determination. Once a determination is made, the Contractor is responsible for complying with the determination and incorporating appropriate labor standards requirements into subcontracts.

H.17 Strikes Or Labor Stoppages

The Contractor shall promptly notify the Government of any planned or actual strike or work stoppage involving its employees or employees of a subcontractor.

H.18 Advance Understandings On Labor Costs

- (a) During transition, the parties shall negotiate an advance understanding on the costs of wages and other employee benefit programs. This advance understanding shall be incorporated into the Employee Management Program in Section J, Attachment L. Changes to the advance understanding shall receive the written approval of the Contracting Officer.
- (b) Examples of costs that shall be addressed in the advance understanding include salaries and wages; bonuses and incentive compensation; fringe benefits; premium pay; overtime; paid time off; travel; subsistence and relocation to the INL; training; workers compensation and other employee insurance; and other employee benefits (such as employee and retiree medical and short and long-term disability).

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- (c) Contract deliverables necessary for administration of requirements imposed in the advance understanding shall be described in the Contract Data Requirements List (CDRL) in Section J, Attachment I.

H.19 Displaced Employee Hiring Preference

- (a) Consistent with Department of Energy guidance as supplemented by the Idaho Operations Office Workforce Restructuring Plan, the Contractor shall provide to the extent practicable and to the extent the Contractor supplements its existing work force to perform the work, a preference in hiring to any eligible employee for work to be performed under this contract.
- (b) Eligible employee means a former or current employee of a contractor or subcontractor (a) who was employed at a Department of Energy Defense Nuclear Facility (“Facility”) on or before September 27, 1991, as defined in the interim Planning Guidance for Contractor Work Force Restructuring (Dec 1998) or other applicable Department of Energy guidance for contractor work force restructuring, (“Guidance”), (b) who worked full-time or regular part-time at a Facility from that date through the date of the restructuring notification, (c) whose employment at a Facility has been involuntarily terminated (other than for cause) or who has been notified that they are facing termination other than for cause, (d) who is qualified for a particular position or, with retraining, can become qualified within the time and cost limits set forth in the Guidance.
- (c) The Contractor shall assess the skills needed for the work to be performed under this contract and will provide to the DOE Job Opportunity Bulletin Board System (JOBBS) all information relevant to the qualifications for all of the positions for which it has vacancies.
- (d) To the extent practicable, the Contractor shall develop training programs designed to improve the qualifications of eligible employees to fill vacancies and shall take these training programs into account in assessing the qualifications of eligible employees.
- (e) This preference is in addition to other hiring preferences described in clause H.14 and in clause DEAR 952.226-74.
- (f) The Contractor shall include the requirements of this clause in subcontracts at any tier (except subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed \$500,000.

H.20 Subcontract Labor Law Application

- (a) For all subcontracts for the manufacture or furnishing of supplies subject to the Walsh-Healey Public Contracts Act (41 U.S.C. 35-45), the Contractor shall follow those provisions, requirements, and stipulations required by the Act.

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- (b) For all subcontracts, the principal purpose of which is to furnish services through the use of service employees, in excess of \$2,500.00, and which are subject to the Service Contract Act of 1965, as amended (41 U.S.C. 351, et seq.), the Contractor shall follow those provisions, requirements, and stipulations required by the Act.
- (c) For Subcontracts relating to construction, refer to the clause in Section I entitled “Government Facility Subcontract Approval.”

H.21 Financial Management System

- (a) In addition to those clauses listed elsewhere in this contract, the Contractor shall operate and maintain a timely, useful and reliable financial management system that –
 - (1) Complies with laws, regulations and DOE directives/financial reporting requirements, including prescribed accounting formats.
 - (2) Conforms with the US Government Standard General Ledger (SGL), Generally Accepted Accounting Principles, Federal Financial Accounting Standards, and Cost Accounting Standards, except as modified by this contract.
 - (3) Integrates and reports the financial information for subcontractors.
 - (4) Plans, develops, monitors, and reports indirect costs by major work activity/service area as concurred by DOE. Provides financial analysis capabilities sufficient to model indirect cost rates for planning purposes (budget submissions) and execution year actual rates with minimal changes that impact program performance and fiscal effectiveness. (Impact statements shall be prepared for all proposed rate changes impacting the programs.)
 - (5) Allows for NE-ID read only electronic access to accounting records and other pertinent systems and databases.
 - (6) Employs charging practices, policies, and procedures to collect and report forecasted and incurred cost. This proposed work breakdown structure, chart of accounts and charging practices and policies shall be approved by the Government before implementation. Changes to charging practices, including cost accounting changes or any other change affecting historical records of projects require a modification of the contract.
 - (7) Assures funding as provided in the Financial Plan is directly aligned to Task Plan activities within the approved baselines. (Funds will not be provided until the baselines are approved by NE-ID).

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- (8) Supports periodic requests, to provide detail cost element information at the institutional level using standard definitions and applications.
- (b) These systems shall be reviewed during transition for adequacy and compliance with the above standards. These systems include: general electronic data processing, budget & planning, purchasing, material, compensation, labor/payroll, indirect & other direct cost, billing and estimating. The Department of Energy, "Guiding Principles for Financial Management" will be followed.

H.22 Internal Audit

This clause defines the approach the Contractor shall follow in meeting DEAR 970.5232-3 (h)(3)(i). The Contractor shall conduct an internal audit and examination program in accordance with the DOE Cooperative Audit Strategy as outlined in Department of Energy Acquisition Guide, Chapter 70, Part 5; Government Auditing Standards (yellow book, dated May, 2002) and Internal Auditing Standards (red book, dated January 2002) of records, operations, expenses, and transactions with respect to costs claimed to be allowable and allocable under this contract. The requirements of this clause may be satisfied by the Contractor Assurance System if the referenced standards are included or used in the validation process of that system.

H.23 Project Management System

The Contractor shall establish and maintain a Project Management System containing the policies, procedures, and tools that assure projects are completed on time and within budget. The Contractor shall apply this system to all work scope, using a graded approach based upon the nature, complexity, risk, size, and sensitivity of the work being performed. Attributes of this system shall include the following:

- (a) Definition and organization of the work scope.
- (b) Planning and scheduling.
- (c) Work authorization.
- (d) Performance assessment.
- (e) Change management.
- (f) Reporting.
- (g) Closeout.

H.24 Advance Understanding On Certain Costs

- (a) This advance understanding identifies categories of costs (see (1) and (2) below) that are expressly unallowable.

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- (1) The Contractor is responsible for the cost of all unauthorized or improper purchases made by its employees.
- (2) The Contractor is responsible for all cost overruns where approved change control or funds control processes were not followed or the Contractor did not obtain prior approval from the Contracting Officer.
- (b) Costs made unallowable under this clause shall be subject to the penalty described in clause I.52, PENALTIES FOR UNALLOWABLE COSTS (DEAR 970.5242-1) if the Contractor includes those costs in a submission for settlement of cost incurred.
- (c) FAR 31.2 shall determine the allowability of all other costs not addressed by this or other clauses.

H.25 Timely Notification of Preexisting Conditions

For the purpose of the Clause entitled DEAR 970.5231-4, ALTERNATE II, PREEXISTING CONDITIONS, “timely notification” means twelve months from the date the Contractor assumes actual management and operation of the INL.

H.26 Withdrawal Of Work

- (a) The Contracting Officer reserves the right to have any of the work contemplated by Section C of the contract performed by either another contractor or to have the work performed by government employees.
- (b) Work may be withdrawn: (1) in order for the government to conduct pilot programs; (2) if the contractor’s estimated cost of the work is considered unreasonable; (3) for less than satisfactory performance by the contractor; or (4) for any other reason deemed by the Contracting Officer to be in the best interest of the Government.
- (c) If any work is withdrawn by the Contracting Officer, the Contractor agrees to fully cooperate with the new performing entity and to provide whatever support is required.

H.27 Corporate Home Office Expenses

No corporate home office expenses of the Contractor are allowable under this contract without the prior approval of the Contracting Officer.

H.28 Unearned Fee

Except as allowed in the Section I clause entitled TOTAL AVAILABLE FEE: BASE FEE AMOUNT AND PERFORMANCE FEE AMOUNT or as may be expressly stated within the text of a specific fee incentive, unearned fee cannot be carried over or used to fund other incentive arrangements of this contract.

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H.29 Open Competition and Labor Relations Under Management and Operating and Other Major Facilities Contracts (DEC 2002)¹

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

- (a) Unless acting in the capacity of a constructor on a particular project, the Contractor shall not –
 - (1) 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
 - (2) Otherwise discriminate against bidder, 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.
- (b) 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.
- (c) Nothing in this clause shall limit the right of bidders offerors, contractors, or subcontractors to voluntarily enter into project labor agreements.

¹ This draft RFP includes the clause “Open Competition and Labor Relations under Management and Operating and Other Major Facilities Contracts (DEC 2002),” as set forth in Acquisition Letter 2002-08. Consistent with Executive Order 13202, this clause neither requires nor prohibits the use of project labor agreements for construction work under this contract, unless the contractor is acting in the capacity of a construction manager, in which case the contractor is prohibited from requiring bidders, offerors, contractors or subcontractors to enter into a project labor agreement or prohibiting them from doing so. The current management and operating contractor for the Idaho National Laboratory is a signatory to a long-standing project labor agreement, the Site Stabilization Agreement, which governs all construction work at the Idaho Site. Under section 5(c) of Executive Order 13202, the agency head may grant an exemption to the Executive Order where the agency has issued bid specifications or other controlling documents containing a requirement to abide by a project labor agreement and one or more construction contracts subject to such requirement have been awarded as of the date of the Executive Order. The Department is considering whether an exemption from the Executive Order’s requirements is permissible and appropriate for the contract awarded under this RFP. The Department’s decision on this matter will be reflected in the final RFP.

H.30 Employee Separations

Employee separations shall be consistent with approved Work Force Restructuring Plans for the INL and with DOE policy.

H.31 Unallowability of Cost Associated With Any Corporate Provided Resource

Any costs incurred by the Contractor in providing any resource incorporated into the INL under Clause H.34 is expressly unallowable under this contract.

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H.32 Allocation Of Responsibilities For Contractor Environmental Compliance Activities

This clause allocates the responsibilities of the Department of Energy (DOE or the Government) and the Contractor, referred to collectively as ‘the Parties’ for implementing the environmental requirements at facilities within the scope of the Contract. In this clause, the term ‘environmental requirements’ means requirements imposed by applicable Federal, state and local environmental laws and regulations, including, without limitation, statutes, ordinances, regulations, court orders, consent decrees, administrative orders or compliance agreements, consent orders, permits, and licenses.

(a) Purpose and Scope.

The central purpose of this section is to implement the intent of the Parties that liability and responsibility for civil fines or penalties arising from or related to violations of environmental requirements be borne by the Party that caused the violation. This clause resolves liability for fines and penalties though the cognizant regulatory authority may assess such fine or penalty upon either Party or both Parties without regard to the allocation of responsibility or liability under this Contract. The allocation of liability for such fine or penalty is effective regardless of which Party signs permit applications, manifests, reports or other required documents, is a permittee, or is the named subject of an enforcement action or assessment of a fine or penalty.

(b) Enforcement Actions and Liability for Fines and Penalties.

Regardless of which Party to this Contract is the named subject of an enforcement action for noncompliance with environmental requirements by the cognizant regulatory authority, liability for payment of any fine or penalty will be governed by provisions of this Contract related to allowable costs. If the named subject of an enforcement action or assessment of a fine or penalty is the Contractor, the Contractor may seek reimbursement from the Government; and the Government shall determine whether the cost of the fine or penalty is reimbursable pursuant to the provisions of this Contract and reimburse the Contractor when appropriate. If the named subject of an enforcement action or assessment of a fine or penalty is DOE and the fine or penalty would not otherwise be reimbursable under the allowable cost and preexisting conditions provisions of this Contract if the Contractor was the named subject of the enforcement action, the Contractor shall either pay the fine or penalty or reimburse the Government (if it pays the fine or penalty). The governing provisions of the Contract include, without limitation, paragraph (e)(12) of Section I clause entitled ALLOWABLE COSTS PAYMENT (FAR 52.216-7) and Section I Clause entitled PREEXISTING CONDITIONS (DEAR 970.5231-4).

(c) Signature of Permit Applications and other Regulatory Documents

- (1) Consistent with the Section I Clause entitled “LAWS, REGULATIONS, AND DOE DIRECTIVES” (DEAR 970.5204-2), the Contractor shall obtain any licenses, permits, other approvals or authorizations for conducting activities on the INL. The Contractor is responsible for complying with all

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permits, licenses, certifications, authorizations and approvals from federal, state, and local regulatory agencies that are necessary for operations under this Contract (hereinafter referred to collectively as “permits”). Except as specifically provided in the section and to the extent not prohibited by law or cognizant regulatory authority, the Contractor (or, if applicable, its subcontractors) shall be the sole applicant for any such permits required for its activities. The Contractor shall take all appropriate actions to obtain transfer of existing permits, and the Government shall use all reasonable means to facilitate transfer of existing permits. If the Government determines it is appropriate or if the Government is required by cognizant regulatory authority to sign permit applications, the Government may elect to sign as owner or similar designation, but the Contractor (or, if applicable, its subcontractors) must also sign as operator or similar designation reflecting their responsibility under the permit unless the Government waives this requirement in writing.

- (2) The Contractor shall submit to the Government for review and comment all permit applications, reports or other documents required to be submitted to cognizant regulatory authorities. Such draft documents shall be provided to the Government, within a time frame identified by the Government, sufficient to allow substantive review and comment; and the Government shall perform such substantive review and comment within such time frame. When providing the Government with documents that are to be signed or co-signed by the Government, the Contractor shall accompany such document with a certification statement, signed by an appropriate company officer, attesting to the Government that the document has been prepared in accordance with all applicable requirements and the information is, to the best of their knowledge and belief, true, accurate, and complete.
- (3) Except as specifically provided in this clause and to the extent not prohibited by law or cognizant regulator authority, the Contractor (or, if applicable, its subcontractors) shall be the signatory for reports, hazardous waste manifests, and other similar documents required under environmental permits or applicable environmental laws and regulations.
- (d) The Contractor shall maintain clear lines of authority and accountability regarding compliance with environmental requirements. At a minimum, the Contractor shall have a single point of accountability at the site-area level, (e.g., Test Reactor Area, Argonne National Laboratory-West, Central Facilities Area, Idaho Falls Facilities) for all activities at those facilities. The Contractor may further delegate responsibility for individual buildings, permitted facilities, or similar discrete units provided there is adherence to the principle of single point of accountability.

H.33 Preservation Of Antiquities, Wildlife, And Land Areas

- (a) Federal law provides for the protection of antiquities located on land owned or controlled by the U.S. Government. Antiquities include Indian graves or campsites, relics, and artifacts. The Contractor shall control the movements of

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its personnel and subcontractor personnel to ensure that any existing antiquities discovered thereon are not be disturbed or destroyed by such personnel. The Contractor shall report the existence of any antiquities so discovered to the Contracting Officer or appropriate Contracting Officer Representative.

- (b) The Contractor shall exercise due diligence in the preservation of native vegetation except where such vegetation must be removed for programmatic, survey or construction purposes, in which case the disturbed soils shall be re-vegetated or stabilized, as appropriate. In addition, the Contractor shall maintain an effective invasive plant species management program.
- (c) The Contractor shall exercise due diligence in the protection of wildlife on the INL site.

H.34 Agreements and Commitments

The following section(s) of the Contractor's proposal submitted in response to Solicitation No. DE-RP07-03ID14517 are incorporated into this contract in Section J, Attachment R, and are considered to be material to contract performance:

- (a) Resources incorporated into the INL from Section L.7 (the Government reserves the right to reject for incorporation into the contract, some or all of the resources identified);
- (b) The Contractor's organizational structure from L.8(d)(3), which remains a part of the contract for two years from the date the Contractor assumes management and operation responsibilities for the INL; and
- (c) The Contractor's transition plan that is submitted and approved by the Contracting Officer.

H.35 Small Business Subcontracting Plan

The Small Business Subcontracting Plan submitted and approved by the Contracting Officer at the time of contract award is incorporated into this contract as Section J, Attachment J. Required annual plans and any revisions to plans shall be approved by the Contracting Officer and incorporated into the contract by a separate contract modification. Plans shall provide consideration for local and Idaho businesses.

H.36 Litigation Management Plan

The Contractor shall prepare a Litigation Management Plan and submit the Plan for approval of the Contracting Officer. The purpose of the Plan is to control the cost of litigation and implement the DOE policy favoring the use of Alternative Dispute Resolution (ADR) techniques where appropriate and beneficial to the Government. The Plan shall be revised from time to time to conform to litigation management and ADR policies established by the Government.

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H.37 Responsibility For Existing Contractual And Other Agreements

The Contractor shall accept transfer of and assume responsibility and accountability for assignment of existing commercial and regulatory obligations of incumbent contractors.

H.38 Business Cooperation

The Government's objective is to better integrate various program activities as they are implemented through major contracts. Accordingly, the Contractor acknowledges the importance of fostering a working environment where scientific, technical, and business innovation and lessons learned are shared among other DOE sites operated by the Contractor or its parents and affiliates, and except where proprietary information is involved, among other sites in the DOE complex. The Contractor further recognizes that the exchange of ideas and systems solutions among scientists, engineers, and administrators at and among the sites and with colleagues of its parents and affiliates, is vital to the success of the scientific, engineering, and administrative work performed. Finally, the Contractor recognizes its role in ensuring that the overall costs of operating DOE site management contracts are minimized by reducing duplication of activities among the DOE sites, sharing resources and applications of business solutions, and resolving common problems in a collaborative manner. Accordingly, the Contractor shall work collaboratively with DOE and other DOE contractors to achieve these objectives.

H.39 Community Commitment

It is the policy of the DOE to be a constructive partner in the geographic region in which DOE conducts its business. The basic elements of this policy include: (1) recognizing the diverse interests of the region and its stakeholders (including the Shoshone-Bannock Tribes), (2) engaging regional stakeholders in issues and concerns of mutual interest, and (3) recognizing that giving back to the community is a worthwhile business practice. Accordingly, the Contractor is encouraged to conduct business and engage in community involvement consistent with the same policy.

H.40 Business Unit

The work performed under this contract shall be conducted by a separate business unit (separate corporation, division, segment, joint venture, etc.); that shall be totally responsible for all contract activities and shall present one face to the Government.

H.41 Performance Guarantee

If the Contractor is a joint venture, limited liability company, or other similar entity, the Contractor's parent organization(s) or all member organizations, shall guarantee performance as evidenced by the Performance Guarantee incorporated in the contract in Section J, Attachment L. If the Contractor is a joint venture, limited liability company, or other similar entity where more than one organization is involved, the parent or all member organizations shall assume joint and several liability for the performance of the contract. In the event any of the signatories to the Performance Guarantee enters into proceedings related to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer.

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H.42 Representations, Certifications And Other Statements Of The Offeror

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

H.43 Responsible Corporate Official

The Government may contact, as necessary, the single responsible official identified below (who is at a level above the Contractor). That official is accountable for the Contractor's performance and is the person the Government will look to on performance issues. Should the responsible official change during the contract, the Contractor shall promptly notify the Government of the change.

Name: _____

Position: _____

Company: _____

Address: _____

Telephone: _____

Fax: _____

E-mail: _____