

AMENDMENT OF SOLICITATION <i>(Negotiated Procurements)</i>	PAGE 1	OF	PAGES 24
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NOTICE: Offerors must acknowledge receipt of this amendment in writing, by the date and time specified for proposal submissions or the date and time specified in Block 6, whichever is later. IF YOUR ACKNOWLEDGEMENT IS NOT RECEIVED AT THE DESIGNATED LOCATION BY THE SPECIFIED DATE AND TIME, YOUR OFFER MAY BE REJECTED. If, by virtue of this amendment, you wish to change your offer, such change must make reference to the solicitation and this amendment and be received prior to the date and time specified in Block 6.

I. AMENDMENT

1. SOLICITATION NUMBER DE-RP07-03ID14516	2. SOLICITATION DATE July 21, 2004	3. AMENDMENT NUMBER <u>001</u>	4. AMENDMENT DATE September 1, 2004
5. ISSUED BY U. S. Department of Energy Idaho Operations Office Procurement Services Division 1955 N. Fremont, MS 1221 Idaho Falls, ID 83401-1221		6. DUE DATE THIS AMENDMENT DOES NOT CHANGE THE DATE BY WHICH OFFERS ARE DUE UNLESS A DATE AND TIME IS INSERTED BELOW.	
		A. DATE	B. TIME
7. FOR MORE INFORMATION CALL <i>(No collect calls)</i>			
A. NAME Elaine M. Richardson, Contracting Officer	B. TELEPHONE		C. E-MAIL ADDRESS
	AREA CODE (208)	PHONE NUMBER 525-3903	<u>richarem@id.doe.gov</u>
8. DESCRIPTION OF AMENDMENT			

The purpose of this amendment is to revise Section B, Section C, Section H (including the Table of Contents), Section I, Section J, and Section L to amend RFP No. DE-RP07-03ID14516 for the Idaho Cleanup Project.

This amendment includes pages 1 through 24.

The offeror must acknowledge receipt of this Amendment No. 001 with their offer by completing Blocks 9 and 10 below and submitting this Optional Form 309 with its offer, or by completing Block 14 of the Standard Form 33.

Except as provided herein, all terms and conditions of the solicitation remain unchanged and in full force and effect.

II. ACKNOWLEDGMENT OF AMENDMENT

In lieu of other written methods of acknowledgment, the offeror may complete Blocks 9 and 10 and return this amendment to the address in Block 5.

9. NAME AND ADDRESS OF OFFEROR	10A. OFFEROR <i>(Signature of person authorized to sign)</i>
	10B. NAME OF SIGNER
	10C. TITLE OF SIGNER
	10D. DATE

Request for Proposal No. DE-RP07-03ID14516 is amended as follows:

Section B

1. Section B.2, *CONTRACT FUNDING PROFILE*, is amended as follows:

Delete Section B.2 in its entirety and **replace** with the following:

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 costs incurred and fee for the indicated fiscal year. Funds obligated to the contract are available until expended (i.e., uncosted funds carry forward to subsequent years). It is anticipated that annual contract funding will be provided quarterly for an annual total in the amounts stated below. Total first quarter funding will be available by December 31, each fiscal year. The funding profile is based on a contract takeover of May 1, 2005, and contract completion at September 30, 2012.

Cleanup Funding – As identified in the table below, Cleanup Funding represents funding available for all allowable and allocable costs and fee each fiscal year. These costs do not include the cost of the ICP contract share of the current BBWI Defined Benefit Pension Plan for incumbent (grandfathered) employees and retirees sponsored by the INL contractor. (See explanation and cost sharing provisions in H.21(b) clause entitled Pay and Benefits)

Defined Benefit Pension Plan Funding – As identified in the table below, Defined Benefit Pension Plan Funding represents estimated funding the contractor shall use to reimburse the INL contractor for the ICP share of the current BBWI Defined Benefit Pension Plan for incumbent (grandfathered) employees and retirees. Actual costs for the current BBWI Defined Benefit Pension Plan for incumbent (grandfathered) employees and retirees shall be on a cost-reimbursement basis outside of the Target Cost and Target Fee of the contract. All other pension and welfare benefits costs pertaining to incumbent (grandfathered) employees, non-incumbent employees (new hires after contract takeover) and retirees, including costs of the defined contribution (investment) plan, post retirement medical benefits, and other pensions and benefits costs (including contractor administrative costs) shall be within the Cleanup Funding and within Target Cost and Target Fee.

(\$M)	FY 2005 (5 mos.)	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	Total
Cleanup Funding*	\$227	\$427	\$414	\$321	\$307	\$285	\$287	\$285	\$2,553
Defined Benefit Pension Plan Funding	\$10	\$50	\$50	\$50	\$50	\$50	\$50	\$50	\$360
Total Contract Funding	\$237	\$477	\$464	\$371	\$357	\$335	\$337	\$335	\$2,913

* *In light of the legal uncertainty, all work under paragraph C.2.4.3 and the stabilization and disposal of residual solids and the in-place closure of the tank farm per Section C.2.8.1 shall require specific authorization by DOE.*

Variations in Defined Benefit Pension Plan Funding Balances - To the extent that actual costs for the incumbent (grandfathered) employees and retirees of the current BBWI Defined Benefit Pension Plan exceed the funding earmarked above, for a given year, the contractor may pursue a Request for Equitable Adjustment. Similarly, to the extent that such costs are less than the funding earmarked above, for a given year, DOE and the contractor will enter into good faith negotiations to accelerate the scope of work or add additional work as per B.4(d) with any available funding. To facilitate analysis and development of options, the contractor shall provide timely forecasts of current and future years' Defined Benefit Pension Plan cost estimates.

2. Section B.3, *TOTAL CONTRACT TARGET COST, FEE, AND COMPLETION DATE*, is amended as follows:

Delete the last sentence (in parentheses) of B.3(a) in its entirety and **replace** with the following:

(The total proposed contract Target Cost and Target Fee shall not exceed the funding limits specified in Section B.2 – Cleanup Funding, on either an annual or total basis)

Add the following paragraph to the end of Section B.3:

- (c) The costs of the current BBWI Defined Benefit Pension Plan for incumbent (grandfathered) employees and retirees are \$360,000,000.00. These costs, as identified in Section B.2, are excluded from the total contract target cost and target fee. There will be no fee paid on these costs.

3. Section B.5, *ITEMS NOT INCLUDED IN TARGET COST*, is amended as follows:

Delete Paragraph B.5(h) in its entirety and **replace** with the following:

The Federal portion of any claim paid under Part B of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA).

Workers Compensation costs and EEOICPA administrative costs, including tracking, reporting, processing, and reviewing claims, are included in Target Cost.

4. Section B.6, *FEE PAYMENT SCHEDULE AND ADJUSTMENTS*, is amended as follows:

Delete Section B.6(c), *Earned Fee*, narrative in its entirety and **replace** with the following:

Earned Fee is a conversion from Provisional Fee to Earned Fee and will be included in the final fee determination. Earned Fee will be recognized for physical completion of the Statement of Work (SOW) elements identified in the table below, less any adjustments stemming from Conditional Payment of Fee B.6(d). The total of all Earned Fee payments will not exceed 35% of the total Target Fee established at the time of contract award.

5. Section B.6(d) *Conditional Payment of Fee* is amended as follows:

Delete the first paragraph of Section B.6(d) in its entirety and **replace** with the following:

Based on the importance DOE places on the contractor's or contractor employees' compliance with the terms and conditions of this contract relating to environment, safety and health (ES&H) (which includes worker safety and health and performance under an approved Integrated Safety Management System (ISMS)) and the safeguarding of restricted data and other classified information, fee determinations are subject to unilateral reductions. See DEAR 952.223-76 *Conditional Payment of Fee or Profit – Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health* included as Section I.141.

6. Section B.7, *FINAL FEE DETERMINATION*, is amended as follows:

Add a new paragraph (b) and **change** the existing paragraph (b) to paragraph (c). The new paragraph (b) reads as follows:

- (b) When calculating the total actual cost for the final fee determination, the total allowable costs will exclude the actual costs of the current BBWI Defined Benefit Pension Plan for incumbent (grandfathered) employees and retirees and the costs for transition activities.

7. Section B.10, *SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK (CHANGES TO TARGET COST AND TARGET FEE)*, is amended as follows:

Delete the words “site conditions” from the first sentence in the second paragraph of Section B.10(a). The sentence now reads:

The contractor shall have a one-time opportunity to identify any material differences in the actual status of completed work compared to the projected status established in the RFP, and notify the Contracting Officer of such differences within 30 days after contact takeover. ...

8. Section B.10, Table B.1, *Changes Beyond Contractor Control*, is amended as follows:

Delete the second entry in Table B.1 in its entirety and **replace** with the following:

DOE or regulator-initiated changes to an approved Record of Decision (ROD) resulting in a 20% or more increase to the contractor’s original baseline estimate for the ROD’s implementation.

9. Section B.10, Table B.2, *Changes for Which the Contractor is Accountable*, is amended as follows:

Delete the second entry in Table B.2 in its entirety and **replace** with the following:

Fines and penalties imposed by DOE, or any other regulatory agency, if the behavior for which the contractor is being penalized occurred during the course of the contract, including ongoing harm resulting from the contractor’s inaction regarding known pre-existing conditions identified according to DEAR 970.5231-4.
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10. Section B.10, Table B.2, *Changes for Which the Contractor is Accountable*, is amended as follows:

Delete the sixth entry in Table B.2 in its entirety and **replace** with the following:

All other pension and welfare benefits costs pertaining to incumbent (grandfathered) employees, non-incumbent employees (new hires after contract takeover) and retirees, including costs of the defined contribution (investment) plan, post-retirement medical benefits, and other pensions and benefits costs (including contractor administrative costs), except for the actual costs of the current BBWI Defined Benefit Pension Plan for incumbent (grandfathered) employees and retirees.

Section C

1. Section C.1.10, *Utility/Infrastructure Services*, is amended to remove the reference to Exhibit C.4-1.

Change the second sentence in the fourth paragraph of C.1.10 to read as follows:

“...Prior to the contract takeover date, the ICP contractor shall have a formal interface agreement in place with the INL contractor describing how the services listed in Exhibit C.4-2, will be managed...”

2. Section C.2.6, Table C.2, *Inventory of INTEC Nuclear Materials*, is amended as follows:

Change the amount in Item No. 5, in Table C.2, under the column entitled “Amount (kg U)” **from 15 to 15.369**.

Change the amount in Item No. 6, in Table C.2, under the column entitled “Amount (kg U)” **from 4.39 to 4.394**.

3. Section C.4.1.2, *High Risk Facility Disposition*, is amended as follows:

Delete the first sentence in the second paragraph of C.4.1.2 and **replace** with the following:

The contractor shall achieve specific end states as described in Section C.1.6.4 for these two high-risk facilities and as a minimum shall include removal or immobilization of all water, sludge and debris from the TAN-607 wet storage pool, disposition of the TAN-607 pool, and demolition of the remaining TAN-607 complex and TAN-650 LOFT Reactor Containment Complex.

4. Section C.5.6, Table C.7, *SNF at TRA to be transferred to INTEC*, is amended as follows:

Delete Table C.7 in its entirety and **replace** with the revised Table C.7 below:

Table C.7 SNF at TRA to be Transferred to INTEC

Item No.	Fuel Description	Amount (Total Uranium)*	Current Storage Configuration
1	PCM - HEU, primarily UO ₂ clad in Zr. Remnants from NRC testing at PBF	113 g	Dry in Cask XMTR-11
2	OPTRAN – LEU, primarily UO ₂ clad in Zr. Remnants from NRC testing at PBF	55 g	Dry in Cask XMTR-11
3	PBF – HEU UO ₂ +ZrO ₂ +CaO fuel pellets in Zr sleeves in SS cladding. Remnants from NRC testing at PBF	282 g	Various
4	LOFT – LEU, 4% to 9% enriched, UO ₂ in Zr cladding. SNF from LOFT reactor.	2,153 g	Various
5	H B Robinson – LEU, primarily UO ₂ fuel clad in Zr, Uranium oxide pellets. Materials from NRC experiments in PBF reactor.	1,108 g	Dry in 306 Cask in service area between Cells 2 & 3
6	H B Robinson – Plutonium, primarily UO ₂ fuel clad in Zr, Uranium oxide pellets. Materials from NRC experiments in PBF reactor.	7 g*	Dry in 306 Cask in service area between Cells 2 & 3
7	TMI-2 – LEU, 2.5% enriched UO ₂ in Zircalloy-4 cladding	1 g	Dry in Cask 701
8	PCM – HEU, primarily UO ₂ fuel clad in Zr. Materials from NRC experiments in PBF reactor.	86 g	Dry in Cask 701
9	PBF – HEU, primarily UO ₂ fuel clad in Zr. Materials from NRC experiments in PBF reactor.	257 g	Dry in Cask 701
10	PCM – HEU, primarily UO ₂ fuel clad in Zr. Materials from NRC experiments in PBF reactor.	20 g	Dry in Cask 701
11	RIA – LEU, primarily UO ₂ fuel clad in Zr. Materials from NRC experiments in PBF reactor.	215 g	Dry in Cask 701
12	OPTRAN – LEU, primarily UO ₂ fuel clad in Zr. Materials from NRC experiments in PBF reactor.	23 g	Dry in Cask 701
13	PBF – LEU, primarily UO ₂ fuel clad in Zr. Materials from NRC experiments in PBF reactor.	157 g	Dry in Cask 701
	TOTAL	4,477 g	

* For Item No. 6 only, the gram amount is total plutonium rather than total uranium.

5. Section C.11, *Potential Work Outside of Target Cost*, is amended as follows:

Delete the first paragraph of Section C.11 and **replace** with the following:

The contractor shall provide services to EM and non-EM entities as directed by the CO. Example services include, but are not limited to: disposing of waste (hazardous; low level after SDA closure; and mixed low level) off site, on a cost reimbursable basis; performing chemical analysis of TRU waste samples; managing and operating the NRC-licensed Three Mile Island-2 ISFSI at INTEC and the NRC-licensed Fort St. Vrain ISFSI in Colorado; transfers of SNF to a future repackaging facility; receipts/transfers of non-

EM SNF; receipt and unloading of Foreign Research Reactor and Domestic Research Reactor SNF; and resolution of litigation, either existing or assigned to the contractor, under Section H.11.

6. Section C, Exhibit C.1, *Description of Remedial Action Work Remaining at Release Sites Under the Federal Facility Agreement and Consent Order (FFA/CO)* is amended as follows:

Change the *Remaining Enforceable Milestones* column in Exhibit C.1, for WAG 7 OU 7-13/14 (pg. 3 of 8) as follows:

- **Change** RI/BRA **from** 12/31/05 **to** 8/31/06
- **Change** Draft Proposed Plan **from** 3/31/06 **to** 3/31/07
- **Change** Draft ROD **from** 12/31/06 **to** 12/31/07

Add the following to this list:

- Draft Feasibility Study by 12/31/06

7. Section C, Exhibit C.4-1, *Mandatory Site Services Provided by the INL Contractor*, Table 1, ICP Share of Mandatory Site Services, is amended as follows:

Change the *EM Funded Share for FY2006* for Information Technology Infrastructure **from** \$3,097.8 **to** \$3,166.6.

Change the *EM Funded Share for FY2007* for Information Technology Infrastructure **from** \$1,047.8 **to** \$1,071.1.

8. Section C, Exhibit C.5a, *INTEC Facilities – Demolition by 2012*, and Section C, Exhibit C.5c, *INTEC Facilities – Operational*, are amended as follows:

Move entry for CPP-1617 and its data **from** Exhibit C.5a **to** Exhibit C.5c

Move entry for CPP-1619 and its data **from** Exhibit C.5c **to** Exhibit C.5a

Section H

1. Section H is amended to add a new clause as follows:

Replace Clause H.9 RESERVED in the Table of Contents with:

EXTRAORDINARY CONTRACTUAL RELIEF IN LIEU OF PRICE-ANDERSON AMENDMENTS ACT (PAAA) COVERAGE

Replace Clause H.9 RESERVED with the following clause:

CLAUSE H.9 WOULD BE INCLUDED IN THE CONTRACT ONLY IF THIS CONTRACT IS AWARDED AFTER DECEMBER 31, 2004 AND NUCLEAR HAZARDS INDEMNIFICATION PROVIDED BY 42 USC §2210(d) HAS NOT BEEN AUTHORIZED.

H.9 EXTRAORDINARY CONTRACTUAL RELIEF IN LIEU OF PRICE-ANDERSON AMENDMENTS ACT (PAAA) COVERAGE

- (a) This contract contains clause I.117, DEAR 952.250-70, NUCLEAR HAZARDS INDEMNITY AGREEMENT (JUN 1996). Nuclear hazards indemnification under the Price-Anderson Amendments Act of 1988 (PAAA), 42 USC §2210(d), upon which that clause is based, expired on December 31, 2004. Therefore, the clause is not in effect unless and until Congress reauthorizes coverage and the clause is activated in accordance with this Article H.9.
- (b) In lieu of PAAA indemnification the contractor may, not later than 30 days after contract award, submit a request for indemnification under Public Law 85-804. The contractor represents in its proposal that it has read and understands the requirements for obtaining Public Law 85-804 indemnification contained in FAR 50.403 and DOE Acquisition Letter 2002-04. The contractor further agrees to fully cooperate with DOE in its processing of the indemnification request, and DOE agrees to use its best efforts to process the request expeditiously.
- (c) If during the contract term PAAA indemnification or similar statutory indemnification is authorized by the Congress, then that statutory indemnity shall apply in lieu of any approved Public Law 85-804 indemnification. To the extent that the enacted nuclear hazards indemnification merely extends the effective date of the PAAA, the Contracting Officer shall issue a unilateral modification to this contract making clause I.117 effective in accordance with the statute. To the extent that in enacting the replacement nuclear hazards indemnification, Congress makes substantive changes to the PAAA, the Contracting

Officer shall issue a unilateral modification to this contract activating clause I.117 and altering the clause to reflect the changes necessary to comply with the statute.

2. Section H.14, *Quality Assurance Program*, is amended as follows:

Replace DOE Order 414.1A with DOE Order 414.1B in the first sentence of H.14.

3. Section H.21, *WORKFORCE TRANSITION AND HUMAN RESOURCES MANAGEMENT*, is amended as follows:

Add the following paragraph immediately after the first paragraph of Section H.21(b)(4):

All INL and ICP employee and retiree (excluding ANL-W employees) benefits costs, i.e., BBWI Retirement Plan (Defined Benefit Pension Plan and Defined Contribution Investment Plan) and Medical and Welfare benefits shall be shared at 58% to the ICP contract and 42% to the INL contract through contract duration. Employee benefits costs included within the amounts reimbursed or funded by the ICP contract for mandatory services (per Exhibit C.4-1) count towards ICP's 58% share. The ICP and INL contractors shall establish understandings to implement this 58%/42% cost sharing requirement.

Delete Section H.21(b)(4)(i)b in its entirety and **replace** with the following:

- b. Incumbent (grandfathered) employees who transfer between the INL and ICP contractors shall retain full service credit in the current BBWI Defined Benefit Pension Plan.

Section I

Section I is amended as follows:

1. **Delete I.122 970.5215-3 CONDITIONAL PAYMENT OF FEE, PROFIT, AND OTHER INCENTIVES - FACILITY MANAGEMENT CONTRACTS (JAN 2004) AND ALTERNATE II (JAN 2004)** in its entirety and **replace** with **RESERVED**.
2. **Add** DEAR 952.223-76 in full text to Section I as I.141 as follows:

I.141 952.223-76 CONDITIONAL PAYMENT OF FEE OR PROFIT – SAFEGUARDING RESTRICTED DATA AND OTHER CLASSIFIED INFORMATION AND PROTECTION OF WORKER SAFETY AND HEALTH [JAN 2004]

(a) General.

- (1) The payment of fee or profit (i.e., award fee, fixed fee, and incentive fee or profit) under this contract is dependent upon the contractor's compliance with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information (i.e., Formerly Restricted Data and National Security Information) and relating to the protection of worker safety and health (WS&H), including compliance with applicable law, regulation, and DOE directives. The term “contractor” as used in this clause to address failure to comply shall mean “contractor or contractor employee.”
- (2) In addition to other remedies available to the Federal Government, if the contractor fails to comply with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information or relating to the protection of worker safety and health, the contracting officer may unilaterally reduce the amount of fee or profit that is otherwise payable to the contractor in accordance with the terms and conditions of this clause.
- (3) Any reduction in the amount of fee or profit earned by the contractor will be determined by the severity of the contractor's failure to comply with contract terms and conditions relating to the safeguarding of Restricted Data or other classified information or relating to worker safety and health pursuant to the degrees specified in paragraphs (c) and (d) of this clause.

(b) Reduction Amount.

- (1) If in any period (see 48 CFR 952.223-76 (b)(2)) it is found that the contractor has failed to comply with contract terms and conditions relating

to the safeguarding of Restricted Data or other classified information or relating to the protection of worker safety and health, the contractor's fee or profit of the period may be reduced. Such reduction shall not be less than 26% nor greater than 100% of the total fee or profit earned for a first degree performance failure, not less than 11% nor greater than 25% for a second degree performance failure, and up to 10% for a third degree performance failure. The contracting officer must consider mitigating factors that may warrant a reduction below the specified range (see 48 CFR 904.402(c) and 48 CFR 923.7001(b)). The mitigating factors include, but are not limited to, the following ((v), (vi), (vii), and (viii) apply to WS&H only):

- (i) Degree of control the contractor had over the event or incident.
- (ii) Efforts the contractor had made to anticipate and mitigate the possibility of the event in advance.
- (iii) Contractor self-identification and response to the event to mitigate impacts and recurrence.
- (iv) General status (trend and absolute performance) of: safeguarding Restricted Data and other classified information and compliance in related security areas; or of protecting WS&H and compliance in related areas.
- (v) Contractor demonstration to the Contracting Officer's satisfaction that the principles of industrial WS&H standards are routinely practiced (e.g., Voluntary Protection Program Star Status).
- (vi) Event caused by "Good Samaritan" act by the contractor (e.g., offsite emergency response).
- (vii) Contractor demonstration that a performance measurement system is routinely used to improve and maintain WS&H performance (including effective resource allocation) and to support DOE corporate decision-making (e.g., policy, WS&H programs).
- (viii) Contractor demonstration that an Operating Experience and Feedback Program is functioning that demonstrably affects continuous improvement in WS&H by use of lessons-learned and best practices inter- and intra-DOE sites.

- (2)
- (i) Except in the case of performance-based, firm-fixed-price contracts (see paragraph (b)(3) of this clause), the contracting officer, for purposes of this clause, will at the time of contract award, or as soon as practicable thereafter, allocate the total amount of fee or profit that is available under this contract to equal periods of three months to run sequentially for the entire term of the contract (i.e., from the effective date of the contract to the expiration date of the contract, including all options). The amount of fee or profit to be allocated to each period shall be equal to the average quarterly fee or profit that is available or otherwise payable during the entire term of the contract, multiplied by the number of months established above for each period.
 - (ii) Under this clause, the total amount of fee or profit that is subject to reduction in a period in which a performance failure occurs, in combination with any reduction made under any other clause in the contract that provides for a reduction to the fee or profit, shall not exceed the amount of fee or profit that is earned by the contractor in the period established pursuant to paragraph (b)(2)(i) of this clause.
- (3) For performance-based firm-fixed-price contracts, the contracting officer will at the time of contract award include negative monetary incentives in the contract for contractor violations relating to the safeguarding of Restricted Data and other classified information and relating to protection of worker safety and health.
- (c) **Safeguarding Restricted Data and Other Classified Information.** Performance failures occur if the contractor does not comply with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information. The degrees of performance failures relating to the contractor's obligations under this contract for safeguarding of Restricted Data and other classified information are as follows:
- (1) First Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have resulted in, or that can reasonably be expected to result in, exceptionally grave damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered first degree:
 - (i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating a risk of,

- loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, or any classification level of information in a Special Access Program (SAP), information identified as sensitive compartmented information (SCI), or high risk nuclear weapons-related data.
- (ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, or any classification level of information in a Special Access SAP, Program (SAP), identified as sensitive compartmented information (SCI), or weapons data information identified as SCI, or high risk nuclear weapons-related data.
 - (iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.
 - (iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other classified information classified as Top Secret, or any classification level of information in a Special Access Program (SAP), identified as sensitive compartmented information SAP, information identified as SCI, or high risk nuclear weapons-related data.
- (2) Second Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, serious damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered second degree:
- (i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.
 - (ii) Contractor actions that result in a breakdown of the safeguards and security management system that can

reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Secret Restricted Data, or other information classified as Secret.

- (iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Restricted Data or other classified information regardless of classification (except for information covered by paragraph (c)(1)(iii) of this clause).
 - (iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.
- (3) Third Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, undue risk to the common defense and security. In addition, this category includes performance failures that result from a lack of contractor management and/or employee attention to the proper safeguarding of Restricted Data and other classified information. These performance failures may be indicators of future, more severe performance failures and/or conditions, and if identified and corrected early would prevent serious incidents. The following are examples of performance failures or performance failures of similar import will be considered third degree:
- (i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Restricted Data or other information classified as Confidential.
 - (ii) Failure to promptly report alleged or suspected violations of laws, regulations, or directives pertaining to the safeguarding of Restricted Data or other classified information.
 - (iii) Failure to identify or timely execute corrective actions to mitigate or eliminate identified vulnerabilities and reduce residual risk relating to the protection of Restricted Data or other classified information in accordance with the contractor's Safeguards and Security Plan or other security plan, as applicable.

- (iv) Contractor actions that result in performance failures which unto themselves pose minor risk, but when viewed in the aggregate indicate degradation in the integrity of the contractor's safeguards and security management system relating to the protection of Restricted Data and other classified information.
- (d) Protection of Worker Safety and Health. Performance failures occur if the contractor does not comply with the contract's WS&H terms and conditions, which may be included in the DOE approved contractor Integrated Safety Management System (ISMS). The degrees of performance failure under which reductions of fee or profit will be determined are:
- (1) First Degree: Performance failures that are most adverse to WS&H or could threaten the successful completion of a program or project. For contracts including ISMS requirements, failure to develop and obtain required DOE approval of WS&H aspects of an ISMS is considered first degree. The Government will perform necessary review of the ISMS in a timely manner and will not unreasonably withhold approval of the WS&H aspects of the contractor's ISMS. The following performance failures or performance failures of similar import will be deemed first degree:
 - (i) Type A accident (defined in DOE Order 225.1A).
 - (ii) Two Second Degree performance failures during an evaluation period.
 - (2) Second Degree: Performance failures that are significantly adverse to WS&H. They include failures to comply with approved WS&H aspects of an ISMS that result in an actual injury, exposure, or exceedence that occurred or nearly occurred but had minor practical long-term health consequences. The following performance failures or performance failures of similar import will be considered second degree:
 - (i) Type B accident (defined in DOE Order 225.1A).
 - (ii) Non-compliance with approved WS&H aspects of an ISMS that results in a near miss of a Type A or B accident. A near miss is a situation in which an inappropriate action occurs, or a necessary action is omitted, but does not result in an adverse effect.
 - (iii) Failure to mitigate or notify DOE of an imminent danger situation after discovery, where such notification is a requirement of the contract.

- (3) Third Degree: Performance failures that reflect a lack of focus on improving WS&H. They include failures to comply with approved WS&H aspects of an ISMS that result in potential breakdown of the contractor's WS&H system. The following performance failures or performance failures of similar import will be considered third degree:
- (i) Failure to implement effective corrective actions to address deficiencies/non-compliance documented through external (e.g., Federal) oversight and/or reported per DOE Order 232.1A requirements, or internal oversight of DOE O 440.1A requirements.
 - (ii) Multiple similar non-compliances identified by external (e.g., Federal) oversight that in aggregate indicate a significant WS&H system breakdown.
 - (iii) Non-compliances that either have, or may have, significant negative impacts to workers that indicate a significant WS&H system breakdown.
 - (iv) Failure to notify DOE upon discovery of events or conditions where notification is required by the terms and conditions of the contract.

(End of Clause)

Section J

Section J, Attachment B (List B) is amended as follows:

Add DOE Order 142.3, *Unclassified Foreign Visits and Assignments Program*, approved on 6-18-04

Add DOE Order 430.1B, *Real Property Asset Management*, approved on 9-24-03

Delete DOE Notice 142.1, *Unclassified Foreign Visits and Assignments*

Section L

1. Section L.1, *PROPOSAL CONTENT/SUBMITAL DATA*, regarding the number of copies required for a Disclosure of Foreign Ownership, Control, or Influence submittal, is amended as follows:

Add the following paragraph to the end of Section L.1(a):

An exception to the requirement above is the submission of a Disclosure of Foreign Ownership, Control or Influence (FOCI). The offeror shall provide three (3) signed copies of the FOCI submittal package. In addition, all supporting documentation for the offeror's FOCI package will be provided on two CD-ROMs with key word search capability.

2. Section L.2, *PROPOSAL PREPARATION INSTRUCTIONS, COVER LETTER AND VOLUME I, OFFER AND OTHER DOCUMENTS* is amended as follows:

Add the following new paragraph to L.2(c)(1):

- (vi) A complete List of Key Personnel in the format shown in Section J, Attachment F, that satisfies Section I.139 of the RFP.

3. Section L.3, *PROPOSAL PREPARATION INSTRUCTIONS – VOLUME II – TECHNICAL AND MANAGEMENT PROPOSAL*, is amended as follows:

Delete L.3(a)(1) in its entirety and **replace** with the following:

- (1) The Technical Proposal consists of written information intended to present the offeror's understanding, capabilities, and approach to satisfy the requirements of the Statement of Work (SOW). The offeror shall address all requirements in the SOW. As discussed in Section C.1.5 of the SOW, Sections C.1, C.9, C.10 and C.12 describe the general contract requirements for work activities that apply to Sections C.2 through C.7. These general requirements apply to all work activities conducted in the multiple geographic areas that will be evaluated in accordance with M.4(a)(1), as part of the offeror's performance-based technical approach to the SOW discussed in Sections C.2 through C.7. No contractual cost information is to be included in the Technical and Management Proposal.

4. Section L.3, *PROPOSAL PREPARATION INSTRUCTIONS – VOLUME II – TECHNICAL AND MANAGEMENT PROPOSAL*, is amended as follows:

Add the following new subparagraph (c) to Section L.3:

- (c) Price Anderson Amendments Act (PAAA) Indemnification
- (1) This RFP contains clause I.117, DEAR 952.250-70, NUCLEAR HAZARDS INDEMNITY AGREEMENT (JUN 1996) granting certain indemnities authorized by the Price Anderson Amendments Act of 1988 (PAAA), 42 USC §2210(d). The provisions of PAAA expire on December 31, 2004. Indemnification under PAAA will not be available if the contract is awarded after December 31, 2004, and the Congress has not reauthorized PAAA indemnification. If on the date of contract award PAAA indemnity or similar statutory indemnification has been reauthorized, then the indemnity provided in DEAR 952.250-70 will be retained.
 - (2) Clause H.9, “Extraordinary Contractual Relief in Lieu of Price-Anderson Amendments Act (PAAA) Coverage” applies only if PAAA indemnity or similar statutory indemnification is not reauthorized by the date the contract is awarded. It sets forth a procedure for the contractor to seek indemnification under Public Law 85-804 in lieu of PAAA indemnity. The clause also describes what happens if PAAA indemnity or similar statutory indemnification is reauthorized after contract award.
 - (3) If PAAA indemnity or similar statutory indemnification has not been reauthorized and selection for award is imminent, DOE will notify each Offeror still eligible for award that its offer may be withdrawn based on the unavailability of PAAA or similar statutory indemnification. If the offeror chooses to withdraw its offer, it must notify the Contracting Officer, in writing, within 24 hours of notification or by the time set in DOE’s notice to offerors, if different.

5. Section L.4, *ORAL INTERVIEW INSTRUCTIONS*, is amended as follows:

Section L.4(b) is amended to allow for the use of electronic media during the open presentation and to clarify the requirements for use of written materials during the technical interview.

Delete the introductory paragraph to Section L.4(b) in its entirety and **replace** with the following:

- (b) Oral Interview Format. The oral interviews will consist of two parts: (1) an open presentation by the Key Personnel, and (2) a technical interview with the Key

Personnel team addressing the offeror's proposed approach to a portion of the work scope. The same portion of work scope will be selected by the SEB for all offerors for the technical interview. DOE will record the oral interviews and no other recordings will be allowed.

Electronic media may be used during the open presentation, but no hardcopies or other materials are to be used, distributed, or left with the SEB.

Neither electronic media nor pre-prepared written materials will be allowed for the technical interview. However, a white board, blank flip chart pad and easel, blank overhead transparencies and an overhead projector and markers will be available for the technical interview. **None of the material used during the technical interview will be retained by the SEB nor are hardcopies or other materials to be distributed or left with the SEB.**

6. Section L.5 *PROPOSAL PREPARATION INSTRUCTIONS – VOLUME III – COST AND FEE PROPOSAL* IS AMENDED AS FOLLOWS:

Delete Section L.5 in its entirety and **replace** with the following:

All cost and fee information shall be included in Volume III of the proposal.

- (a) For evaluation purposes only, the Cost Proposal shall include a breakdown of cost correlated (at a minimum) with the WBS provided in Section L, Attachment 8 with summary roll-ups. The Cost Proposal shall include all costs associated with completing the entire SOW in Sections C.1 through C.12 (excluding Sections C.8 and C.11) for the contract period through September 30, 2012 broken out by fiscal year. Offerors may include additional WBS elements to ensure that all cost elements for the complete SOW are included in the Cost Proposal. The Cost Proposal shall describe the methodology used to determine the cost and provide a confidence level for the proposal as described in FAR Table 15-2. Cost and financial data should be fully supported and organized in a manner that facilitates review. Offerors should clearly indicate (1) what cost information supporting detail is existing and verifiable, (2) judgmental factors applied in projecting from known source data to the estimate, (3) contingencies, (4) key assumptions (not in conflict with the SOW), and (5) the rationale and basis for each cost element including allocation basis, etc. For each WBS cost element the contractor (and each major subcontractor in excess of \$10,000,000) shall include:

- (1) Labor Categories (i.e. Sr. engineer, technical, etc.)(Base rates and hours) – Labor and indirect rates and cost must be separated. Applying loaded rates to hours is not acceptable.

- (2) Material – Provide the rationale and basis for material estimates.
- (3) Other Direct Cost - ODC and other cost detail should be similar to material detail described above.
- (4) Subcontract Cost - Identify the scope of work and provide the cost and basis of each planned subcontract.
- (5) Overhead, G&A, and other indirect allocations (rates and costs) - Indirect rates shall be supported by pool and base cost detail and allocation methodologies. The contractor shall identify and include in the indirect rate pools, activities that are not directly related or included in the direct work scope as defined by the RFP WBS (Section L, Attachment 8).
- (6) Cost contingency – Provide basis and rationale.
- (7) Escalation – Provide rates and application basis and rationale by year.
- (8) Fee – see subparagraph (b) below.

Offerors shall not include estimated costs for the Defined Benefit Pension Plan for incumbent (grandfathered) employees in their cost proposals. The costs estimated for the current BBWI Defined Benefit Pension Plan for incumbent (grandfathered) employees and retirees is standardized for all offerors as identified in Section B.2, Defined Benefit Pension Plan Funding. Actual costs for the current BBWI Defined Benefit Pension Plan for incumbent (grandfathered) employees and retirees shall be on a cost-reimbursement basis outside of the Target Cost and Target Fee of the contract. All other pension and welfare benefits costs pertaining to incumbent (grandfathered) employees, non-incumbent employees (new hires after contract takeover) and retirees, including costs of the defined contribution (investment) plan, post retirement medical benefits, and other pensions and benefits costs (including contractor administrative costs) shall be within the Cleanup Funding and within Target Cost and Target Fee.

- (b) The offeror shall propose a Target Fee that is within the range that is described in Section B, Incentive Fee. The offeror must clearly define the percentage of any Target Fee relative to the Target Cost. **The total proposed contract Target Cost and Target Fee shall not exceed the Cleanup Funding limits specified in Section B.2, on either an annual or total basis.**

- (c) If the contractor proposes as a part of a consortium, joint venture, and/or other teaming arrangement, the team shall share in the contract fee structure (i.e., separate additional “subcontractor fee” for teaming partners will not be considered an allowable cost under this contract).
- (d) The cost proposal shall include the following:
 - (1) The offeror shall briefly describe the proposed accounting system and the adequacy of that system for reporting against Government cost type contracts and compliance with Cost Accounting Standards. The offeror shall submit a Cost Accounting Disclosure Statement for the proposed entity or a current company Disclosure Statement and identify the cognizant Government auditor of any Government agency that has formally approved the accounting system, and rates if applicable.
 - (2) For DOE’s use in determining responsibility under FAR 9.1, Responsible Prospective Contractors, the offeror, each teaming member must provide audited/certified financial statements for the three most recent accounting periods. Financial Statements must include a balance sheet, statement of operations (profit and loss), statement of changes in financial position, the most recent Securities and Exchange Commission (SEC) filings (10K and 10Q), and any explanatory notes for each financial statement. If the offeror is a newly formed joint venture or LLC, this data must be provided for each member of the joint venture or shareholder of the LLC. DOE reserves the right to obtain additional financial data.
 - (3) The offeror shall provide a cost estimate for the transition period. The transition period will be on a cost-reimbursement (no fee) basis, subject to the cost principles of FAR 31 and DEAR Part 931. Transition costs shall not exceed the offeror’s proposal or \$8 Million, whichever is less. The supporting information for transition costs must be commensurate with the level of detail in L.5(a).

7. Section L – Attachment 5, *INSTRUCTIONS FOR SMALL BUSINESS SUBCONTRACTING PLAN*, is amended as follows to include veteran-owned small-business concerns:

Delete paragraphs (1), (2), and (3) in their entirety from Section L, Attachment 5, and **replace** them with the following:

INSTRUCTIONS FOR SMALL BUSINESS SUBCONTRACTING PLAN

- (1) Goals, expressed in terms of percentages and estimated procurement dollars of total planned subcontracting dollars, for the use of small business, HUBZone small business, small disadvantaged business, 8(a) certified small business, women-owned small business, veteran-owned small business, and Service Disabled Veteran owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.
- (2) A statement of:
 - (a) Total dollars planned to be subcontracted;
 - (b) Total dollars planned to be subcontracted to small business concerns;
 - (c) Total dollars planned to be subcontracted to HUBZone small business concerns;
 - (d) Total dollars planned to be subcontracted to small disadvantaged business concerns;
 - (e) Total dollars planned to be subcontracted to 8(a) certified small business concerns;
 - (f) Total dollars planned to be subcontracted to women-owned small business concerns; and
 - (g) Total dollars planned to be subcontracted to veteran-owned small-business concerns;
 - (h) Total dollars planned to be subcontracted to Service Disabled Veteran owned small business concerns;
- (3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to (i) small business concerns, (ii) HUBZone small business concerns, (iii) small disadvantaged business concerns, (iv) women-owned small business concerns, and (v) veteran-owned small business, and (vi) service disabled veteran-owned small business concerns.