

**PART I – THE SCHEDULE**  
**SECTION B.2 - SUPPLIES OR SERVICES AND PRICES/COSTS**

**B.2.1 TYPE OF CONTRACT - ITEMS BEING ACQUIRED**

This is a Cost-Plus-Incentive-Fee (CPIF) contract for the environmental remediation of the site where the Portsmouth Gaseous Diffusion Plant is located. The contractor shall be responsible for planning, managing, integrating, and executing the work as described in Section C, Statement of Work (SOW). The contractor shall furnish all personnel, facilities, equipment, supplies, and services (except as furnished by the Government) and otherwise do all the things necessary for, or incident to, performing all of the requirements of the SOW (C.2) and in a safe, efficient, and effective manner.

**B.2.2 CONTRACT FUNDING PROFILE**

Performance under this contract shall be subject to the availability of funds from which payment for contract purposes can be made. The Obligation of Funds clause of this contract identifies the amount of appropriated funds presently obligated and available for payment by the Government under this contract. It is anticipated that the contract will be funded in accordance with the schedule provided below. Such funds will be provided for all allowable and allocable billings for cost and fee for the indicated fiscal year. It is anticipated that annual contract funding will be provided on or before December 31 of each fiscal year in the amounts as stated below:

Anticipated Funding Profile (\$M) for Portsmouth:

<b>FY04</b>	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>	<b>Total</b>
\$14	\$85	\$74	\$65	\$26	\$9	\$273

The contractor shall comply with the funding restrictions for each Project Baseline Summary (PBS) within each fiscal year as set forth in Section J, Attachment 5.2. Estimated funding for FY04 is subject to change based on actual award date of contract. This is the anticipated funding profile and does not reflect the Government's estimate or the contractor's baseline.

**B.2.3 OBLIGATION OF FUNDS**

- (a) Total funds in the amount of \$ TBD are obligated herewith and made available for payment of allowable costs, and fee earned from the effective date of this contract through contract completion pursuant to the FAR Clause 52.232-22, entitled "Limitation of Funds."
- (b) Financial Plans: Cost and Commitment Limitations. The contractor shall comply with DOE issued Financial Plans which establish appropriation obligational control points (i.e., specific types of funding) in the performance of this contract.

**B.2.4 INCENTIVE STRUCTURE**

The following cost incentive structure is established in association with a contract completion date of **September 30, 2009 for all work activities identified in Section C.2:**

Target Cost: \$ \_\_\_\_\_  
 Target Fee: \$ \_\_\_\_\_  
 Maximum Fee: \$ \_\_\_\_\_  
 Minimum Fee: \$ \_\_\_\_\_

**In addition to any other rights DOE has pursuant to the terms and conditions of this contract, if the contractor does not complete all work activities identified in Section C.2, the Contracting Officer (CO) may unilaterally decrease the Target Cost amount by the value of the work not performed. The Minimum, Maximum, and Target Fee amounts will be adjusted based on the Revised Target Cost amount.**

The Maximum Fee shall not exceed 12% of the Target Cost. The Minimum Fee shall not be below 2% of the Target Cost.

Share Ratio:

For a total allowable cost greater than Target Cost, costs exceeding the Target Cost shall be shared as follows:

Government's share: \_\_\_\_\_ %  
 Contractor's share: \_\_\_\_\_ %

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

Government's share: \_\_\_\_\_ %  
 Contractor's share: \_\_\_\_\_ %

**B.2.5 COST EXCLUDED FROM THE INCENTIVE FEE CALCULATION**

The following items shall not be included in the "total allowable cost" for the purposes of fee calculation under the clause entitled "Incentive Fee":

Energy Employees Occupational Injury Compensation Program Act funded by the Office of Environment, Safety and Health (EH).

The contractor shall segregate these charges and report as part of the Semi-Annual Critical Analysis Report (SACAR).

**B.2.6 PROVISIONAL FEE PAYMENT SCHEDULE AND ADJUSTMENTS**

**B.2.6.1 Scheduled Provisional Fee Payments**

Scheduled provisional fee payments will be made quarterly and will be calculated as follows:

$$\text{Provisional Fee Payment} = \frac{\text{Target Fee}}{\text{Number of Quarters}} \times .75$$

The first two quarterly provisional fee payments will not be adjusted. Subsequent quarterly fee payments may be adjusted based on the criteria identified below.

#### **B.2.6.2 Provisional Quarterly Fee Adjustments and Reductions**

- (a) The CO may adjust the provisional quarterly fee payment based on the validated cost and schedule variance and may reduce fee as a result of a missed regulatory milestone. In determining the appropriate adjustments to the provisional fee payment, the CO will use the following earned value definitions:
  - (i) Cost Variance (%) is equal to the Budgeted Cost of Work Performed (BCWP) minus the Actual Cost of Work Performed (ACWP) divided by BCWP times 100%.
  - (ii) Schedule Variance (%) is equal to the BCWP minus the Budgeted Cost of Work Scheduled (BCWS) divided by BCWP times 100%.
- (b) The CO may make adjustments to fee as a result of cost and schedule variance. These adjustments may be released by the CO when the contractor demonstrates that the condition leading to the adjustment has been corrected.
- (c) The CO may also reduce fee pursuant to this clause and Section B.1.7 below. Reduction of fee cannot be recovered.
- (d) If actual costs for the services provided in Section H.17, Table paragraphs d, e, or f, increase or decrease as a direct result of contractor actions or inactions (i.e., usage changes), the CO may share such savings or overruns with the Contractor in terms of additional fee or reduction of earned fee.

#### **B.2.6.3 Performance Evaluation Period**

The performance evaluation period(s) for this contract includes a semi-annual evaluation resulting from review of the semi-annual critical analysis report (reference SACAR in Section H.1.3) and the final evaluation at the end of the contract.

#### **B.2.7 DEAR 970.5215-3 CONDITIONAL PAYMENT OF FEE, PROFIT, AND OTHER INCENTIVES – FACILITY MANAGEMENT CONTRACTS AND ALTERNATE II (JAN 2004) [DEVIATION]**

- (a) General.
  - (1) The payment of earned fee, fixed fee, profit, or share of cost savings under this contract is dependent upon:
    - (i) 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 (WS&H), including performance under an approved Integrated Safety

Management System (ISMS); and

(ii) The contractor's or contractor employees' compliance with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information.

- (2) The ES&H performance requirements of this contract are set forth in its ES&H terms and conditions, including the DOE approved contractor ISMS or similar document. Financial incentives for timely mission accomplishment or cost effectiveness shall never compromise or impede full and effective implementation of the ISMS and full ES&H compliance.
- (3) The performance requirements of this contract relating to the safeguarding of Restricted Data and other classified information are set forth in the clauses of this contract entitled, "Security" and "Laws, Regulations, and DOE Directives," as well as in other terms and conditions.
- (4) If the contractor does not meet the performance requirements of this contract relating to ES&H or to the safeguarding of Restricted Data and other classified information during any performance evaluation period established under the contract, otherwise earned fee, fixed fee, profit or share of cost savings may be unilaterally reduced by the CO.

(b) Reduction Amount.

- (1) The amount of earned fee, fixed fee, profit, or share of cost savings that may be unilaterally reduced will be determined by the severity of the performance failure pursuant to the degrees specified in paragraphs (c) and (d) of this clause.
- (2) If a reduction of earned fee, fixed fee, profit, or share of cost savings is warranted, unless mitigating factors apply, such reduction shall not be less than 26% nor greater than 100% of the amount of earned fee, fixed fee, profit, or the contractor's share of cost savings 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.
- (3) In determining the amount of the reduction and the applicability of mitigating factors, the CO must consider the contractor's overall performance in meeting the ES&H or security requirements of the contract. Such consideration must include performance against any site specific performance criteria/requirements that provide additional definition, guidance for the amount of reduction, or guidance for the applicability of mitigating factors. In all cases, the CO must consider mitigating factors that may warrant a reduction below the applicable range (see 48 CFR 970.1504-1-2). The mitigating factors include, but are not limited to, the following ((v), (vi), (vii) and (viii) apply to ES&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: ES&H and compliance in related areas; or of safeguarding Restricted Data and other classified information and compliance in related areas.
  - (v) Contractor demonstration to the CO's satisfaction that the principles of industrial ES&H standards are routinely practiced (e.g., Voluntary Protection Program, ISO 14000).
  - (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 ES&H performance (including effective resource allocation) and to support DOE corporate decision-making (e.g., policy, ES&H programs).
  - (viii) Contractor demonstration that an Operating Experience and Feedback Program is functioning that demonstrably affects continuous improvement in ES&H by use of lessons-learned and best practices inter- and intra-DOE sites.
- (4) (i) The amount of fee, fixed fee, profit, or share of cost savings that is otherwise earned by a contractor during an evaluation period may be reduced in accordance with this clause if it is determined that a performance failure warranting a reduction under this clause occurs within the evaluation period.
- (ii) The amount of reduction under this clause, in combination with any reduction made under any other clause in the contract, shall not exceed the amount of fee, fixed fee, profit, or the contractor's share of cost savings that is otherwise earned during the evaluation period.
- (iii) For the purposes of this clause, earned fee, fixed fee, profit, or share of cost savings for the evaluation period shall mean the amount determined by the CO or fee determination official as otherwise payable based on the contractor's performance during the evaluation period. Where the contract provides for financial incentives that extend beyond a single evaluation period, this amount shall also include: any provisional amounts determined otherwise payable in the evaluation period; and, if provisional payments are not provided for, the allocable amount of any incentive determined otherwise payable at the conclusion of a subsequent evaluation period. The allocable amount shall be the total amount of the earned incentive divided by the number of evaluation periods over which it was earned.

- (iv) The Government will effect the reduction as soon as practicable after the end of the evaluation period in which the performance failure occurs. If the Government is not aware of the failure, it will effect the reduction as soon as practical after becoming aware. For any portion of the reduction requiring an allocation the Government will effect the reduction at the end of the evaluation period in which it determines the total amount earned under the incentive. If at any time a reduction causes the sum of the payments the contractor has received for fee, fixed fee, profit, or share of cost savings to exceed the sum of fee, fixed fee, profit, or share of cost savings the contractor has earned (provisionally or otherwise), the contractor shall immediately return the excess to the Government. (What the contractor "has earned" reflects any reduction made under this or any other clause of the contract.)
- (v) At the end of the contract:
- (A) The Government will pay the contractor the amount by which the sum of fee, fixed fee, profit, or share of cost savings the contractor has earned exceeds the sum of the payments the contractor has received; or
  - (B) The contractor shall return to the Government the amount by which the sum of the payments the contractor has received exceeds the sum of fee, fixed fee, profit, or share of cost savings the contractor has earned. (What the contractor "has earned" reflects any reduction made under this or any other clause of the contract.)
- (c) Environment, Safety and Health (ES&H). Performance failures occur if the contractor does not comply with the contract's ES&H terms and conditions, including the DOE approved contractor ISMS. The degrees of performance failure under which reductions of earned or fixed fee, profit, or share of cost savings will be determined are:
- (1) First Degree: Performance failures that are most adverse to ES&H. Failure to develop and obtain required DOE approval 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 contractor's ISMS. The following performance failures or performance failures of similar import will be considered 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 ES&H. They include failures to comply with an approved ISMS that result in an actual injury, exposure, or exceedence that occurred or nearly occurred but had minor practical long-term health consequences. They also include breakdowns of the Safety Management System. 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 an approved 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 ES&H. They include failures to comply with an approved ISMS that result in potential breakdown of the 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-compliances documented through: external (e.g., Federal) oversight and/or reported per DOE Order 231.1A requirements; or internal oversight of DOE Order 440.1A requirements.
  - (ii) Multiple similar non-compliances identified by external (e.g., Federal) oversight that in aggregate indicate a significant programmatic breakdown.
  - (iii) Non-compliances that either have, or may have, significant negative impacts to the worker, the public, or the environment or that indicate a significant programmatic breakdown.
  - (iv) Failure to notify DOE upon discovery of events or conditions where notification is required by the terms and conditions of the contract.
- (d) 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 failure under which reductions of fee, profit, or share of cost savings will be determined are as follows:
- (1) First Degree: Performance failures that have been determined, in accordance with applicable law, DOE regulation, or 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, any classification level of information in a SAP, 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 information classified as Top Secret, any classification level of information in a 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, DOE regulation, or 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 (d)(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 classified 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 that 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.

(e) Minimum requirements for specified level of performance.

(1) At a minimum the contractor must perform the following:

- (i) The requirements with specific incentives which do not require the achievement of cost efficiencies in order to be performed at the level of performance set forth in the SOW, Work Authorization Directive, or similar document unless an otherwise minimum level of performance has been established in the specific incentive;
- (ii) All of the performance requirements directly related to requirements specifically incentivized which do not require the achievement of cost efficiencies in order to be performed at a level of performance such that the overall performance of these related requirements is at an acceptable level; and
- (iii) All other requirements at a level of performance such that the total performance of the contract is not jeopardized.

(2) The evaluation of the Contractor's achievement of the level of performance shall be unilaterally determined by the Government. To the extent that the Contractor fails to achieve the minimum performance levels specified in the SOW, Work Authorization Directive, or similar document, during the performance evaluation period, the DOE Operations/Field Office Manager, or designee, may reduce any otherwise earned fee, fixed fee, profit, or shared net savings for the performance evaluation period. Such

reduction shall not result in the total of earned fee, fixed fee, profit, or shared net savings being less than 25% of the total available fee amount. Such 25% shall include base fee, if any.

(f) Minimum requirements for cost performance.

- (1) Requirements incentivized by other than cost incentives must be performed within their specified cost constraint and must not adversely impact the costs of performing unrelated activities.
- (2) The performance of requirements with a specific cost incentive must not adversely impact the costs of performing unrelated requirements.
- (3) The contractor's performance within the stipulated cost performance levels for the performance evaluation period shall be determined by the Government. To the extent the contractor fails to achieve the stipulated cost performance levels, the DOE Operations/Field Office Manager, or designee, may reduce in whole or in part any otherwise earned fee, fixed fee, profit, or shared net savings for the performance evaluation period. Such reduction shall not result in the total of earned fee, fixed fee, profit or shared net savings being less than 25% of the total available fee amount. Such 25% shall include base fee, if any.

NOTE: Any reduction in earned fee includes a reduction in Minimum Fee, Target Fee, and/or Maximum Fee.

## **B.2.8 AUTHORIZATION OF TRANSITION COSTS UNDER THE CONTRACT**

The CO hereby authorizes the contractor to incur transition costs that are allowable, allocable, and reasonable.

Contract transition is the period of time between award of the contract and the date the contractor assumes full responsibility, currently anticipated to be August 16, 2004.

Contract transition costs are those costs related to moving the contract team into place at the Portsmouth Paducah Project Office (PPPO) assuming responsibility for personnel, legal, administrative, and technical functions/systems/continuing responsibilities, and performing other necessary duties to enable the contractor to assume its role seamlessly as PPPO contractor on the first day of the period of performance.

All transition costs shall be included in the target cost of this contract.