



Department of Energy

Carlsbad Area Office
P. O. Box 3090
Carlsbad, New Mexico 88221



DEC 30 1996

Jennifer Salisbury, Chair
Radioactive Waste Consultation Task Force
State of New Mexico, Energy, Minerals
and Natural Resources Department
2040 Pacheco
Santa Fe, NM 87505

Dear Ms. Salisbury:

On November 29, 1996, the Carlsbad Area Office submitted Price-Anderson indemnification clauses pertaining to WIPP related contracts as required by the supplemental stipulated agreement.

Since then, our Management and Operating contract annual renegotiation modification M154 (with Westinghouse Waste Isolation Division) has been received with a revision to that clause. Attached please find a copy of the following clause:

DEAR 952.250-70 NUCLEAR HAZARDS INDEMNITY AGREEMENT (JUNE 1996)

If you have any questions, please contact Ann Blackstone, at (505) 234-7331.

Sincerely,

George E. Dials
George E. Dials
Manager

Received

Enclosure

cc:

- C. Wayman, CAO
- R. Smith, CAO
- K. Hunter, CAO
- A. Miner, CAO
- L. Eaton, WID
- C. Wentz, State of New Mexico

JAN 07 1997

Energy, Minerals & Natural Resources
Office of the Secretary

CAO:PSA:AB 96-2817



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2. AMENDMENT/MODIFICATION NO. M154	3. EFFECTIVE DATE October 1, 1996	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. <i>(if applicable)</i>
6. ISSUED BY U.S. Department of Energy Albuquerque Operations Office Contracts and Procurement Division P.O. Box 5400 Albuquerque, NM 87185-5400	CODE	7. ADMINISTERED BY <i>(if other than item 6)</i> U.S. Department of Energy Carlsbad Area Office P.O. Box 3090 Carlsbad, NM 88221	CODE

8. NAME AND ADDRESS OF CONTRACTOR <i>(No., street, country, State, and ZIP Code)</i> Westinghouse Electric Corporation Waste Isolation Division P.O. Box 2078 Carlsbad, NM 88221	<input checked="" type="checkbox"/>	9A. AMENDMENT OF SOLICITATION NO.
		9B. DATED <i>(SEE ITEM 11)</i>
	<input checked="" type="checkbox"/>	10A. MODIFICATION OF CONTRACT/ORD. NO. DE-AC04-86AL31950
CODE	FACILITY CODE	10B. DATED <i>(SEE ITEM 13)</i> October 1, 1985

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in item 14. The hour and date specified for receipt of Offers _____ is extended, _____ is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA *(if required)*

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

<input checked="" type="checkbox"/>	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: <i>(Specify authority)</i> THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES <i>(such as changes in paying office, appropriation date, etc.)</i> SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
<input checked="" type="checkbox"/>	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO THE AUTHORITY OF: Public Law 95-91 and Other Applicable Law
	D. OTHER <i>(Specify type of modification and authority)</i>

E. IMPORTANT: Contractor _____ is not, is required to sign this document and return 3 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION *(Organized by UCF section headings, including solicitation/contract subject matter where feasible.)*

The purpose of this modification is to agree upon the following areas for the period of October 1, 1996 through September 30, 1997.

- | | |
|---------------------------------|---------------------------|
| 1. Estimated Cost | 5. Performance Incentives |
| 2. Basic Fee | 6. Statements of Work |
| 3. Maximum Available Award Fee | 7. Terms and Conditions |
| 4. Fixed Price Line Item Values | |

THIS IS A COPY OF THE EXECUTED DOCUMENT
CONTRACTS AND PROCUREMENT DIVISION

Except as provided herein, all terms and conditions of the document referenced in item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

9A. NAME AND TITLE OF SIGNER <i>(Type or print)</i> CL DAVIS MANAGER, GOVERNMENT CONTRACTS	10A. NAME AND TITLE OF CONTRACTING OFFICER <i>(Type or print)</i> William C. Meyers, Director Contracts and Procurement Division
15B. CONTRACTOR/OFFEROR Chavis <i>(Signature of person authorized to sign)</i>	15C. DATE SIGNED 9/27/96
16B. UNITED STATES OF AMERICA BY William C. Meyers <i>(Signature of Contracting Officer)</i>	16C. DATE 10/4/96

from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353); and

- (4) Shipments of classified supplies when the classification prohibits the use of non-Government vessels.
 - (f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590, Phone: 202-426-4610.
- O. I.66 DEAR 952.250-70 NUCLEAR HAZARDS INDEMNITY AGREEMENT (JUNE 1996)
- (a) *Authority.* This clause is incorporated into this contract pursuant to the authority contained in subsection 170d. of the Atomic Energy Act of 1954, as amended (hereinafter called the Act.)
 - (b) *Definitions.* The definitions set out in the Act shall apply to this clause.
 - (c) *Financial Protection.* Except as hereafter permitted or required in writing by DOE, the Contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability, as described in paragraph (d)(2) below. DOE may, however, at any time require in writing that the Contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the Contractor by DOE.
 - (d) *Indemnification.*
 - (1) To the extent that the Contractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE, DOE will indemnify the Contractor and other persons indemnified against (i) claims for public liability as described in subparagraph (d)(2) of this clause; and (ii) such legal costs of the Contractor and other persons indemnified as are approved by DOE, provided that DOE's liability, including such legal costs, shall not exceed the amount set forth in section 170e.(1)(B) of the Act in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or \$100 million in the aggregate for each nuclear incident

occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.

- (2) The public liability referred to in subparagraph (d)(1) of this clause is public liability as defined in the Act which (i) arises out of or in connection with the activities under this contract, including transportation; and (ii) arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.

(e) *Waiver of Defenses.*

- (1) In the event of a nuclear incident, as defined in the Act, arising out of nuclear waste activities, as defined in the Act, the Contractor, on behalf of itself and other persons indemnified, agrees to waive any issue or defense as to charitable or governmental immunity.
- (2) In the event of an extraordinary nuclear occurrence which:
- (i) Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or
 - (ii) Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or
 - (iii) Arises out of or results from the possession, operation, or use by the Contractor or a subcontractor of a device utilizing special nuclear material or by-product material, during the course of the contract activity; or
 - (iv) Arises out of, results from, or occurs in the course of nuclear waste activities, the Contractor, on behalf of itself and other persons indemnified, agrees to waive:
 - (A) Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault or persons indemnified, including, but not limited to:
 - (1) Negligence;

- (2) Contributory negligence;
 - (3) Assumption of risk; or
 - (4) Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God;
- (B) Any issue or defense as to charitable or governmental immunity; and
- (C) Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or change and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.
- (v) The term extraordinary nuclear occurrence means an event which DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in 10 CFR part 840.
- (vi) For the purposes of that determination, "offsite" as that term is used in 10 CFR part 840 means away from "the contract location" which phrase means any DOE facility, installation, or site at which contractual activity under this contract is being carried on, and any Contractor-owned or controlled facility, installation, or site at which the Contractor is engaged in the performance of contractual activity under this contract.
- (3) The waivers set forth above:
- (i) Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action;

- (ii) Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;
 - (iii) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;
 - (iv) Shall not apply injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;
 - (v) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;
 - (vi) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;
 - (vii) Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection; and
 - (viii) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (A) the limit of liability provisions under subsection 170e. of the Act, and (B) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.
- (f) *Notification and litigation of claims.* The Contractor shall give immediate written notice to DOE of any known action or claim filed or made against the Contractor or other person indemnified for public liability as defined in paragraph (d)(2). Except as otherwise directed by DOE, the Contractor shall furnish promptly to DOE, copies of all pertinent papers received by the Contractor or filed with respect to such actions of claims. DOE shall have the right to, and may collaborate with, the Contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right to (1) require the prior approval of DOE for the payment of any claim that DOE may be required to indemnify hereunder; and (2) appear through the Attorney General on behalf of the Contractor or other person

indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the Contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

- (g) *Continuity of DOE obligations.* The obligations of DOE under this clause shall not be affected by any failure on the part of the Contractor to fulfill its obligation under this contract and shall be unaffected by the death, disability, or termination of existence of the contractor, or by the completion, termination or expiration of this contract.
- (h) *Effect of other clauses.* The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this contract, including the clause entitled Contract Disputes, provided, however, that this clause shall be subject to the clauses entitled Covenant Against Contingent Fees, and Audit and Records-Negotiation, and any provisions that are later added to this contract as required by applicable Federal law, including statutes, executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.
- (i) *Civil penalties.* The Contractor and its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to civil penalties, pursuant to 234A of the Act, for violations of applicable DOE nuclear-safety related rules, regulations, or orders.
- (j) *Criminal penalties.* Any individual director, officer, or employee of the Contractor or of its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to criminal penalties, pursuant to 223c. of the Act, for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.
- (k) *Inclusion in subcontracts.* The Contractor shall insert this clause in any subcontract which may involve the risk of public liability, as that term is defined in the Act and further described in paragraph (d)(2) above. However, this clause shall not be included in subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC agreements of indemnification under section 170c. or k. of the Act for the activities under the subcontract.

- (l) **Effective Date.** This indemnity agreement shall be applicable with respect to nuclear incidents occurring on or after October 1, 1990.
- (m) To the extent that the Contractor is compensated by any financial protection, or is indemnified pursuant to this clause, or is effectively relieved of public liability by an order or orders limiting same, pursuant to 170e of the Act, the provisions of the clause providing general authority indemnity shall not apply.

P. I.67 DEAR 952.251-70 CONTRACTOR EMPLOYEE TRAVEL DISCOUNTS (JUNE 1995)

Consistent with contract-authorized travel requirements, Contractor employees shall make use of the travel discounts offered to Federal travelers, through use of contract airline fares, offered hotel and motel lodging rates, and negotiated car rental rates, when use of such discounts would result in lower overall trip costs and the services are reasonably available to Contractor employees performing official Government contract business. Vendors providing these services may require that the Contractor employee traveling on Government business be furnished with a letter of identification signed by the authorized Contracting Officer.

- (a) **Contract airlines.** Airlines participating in travel discounts are listed in the Federal Travel Directory (FTD) published monthly by the General Services Administration (GSA). Regulations governing the use of contracted airlines are contained in the Federal Travel Regulation (FTR), 41 CFR Part 301-15, Travel Management Programs. It stipulates that cost-reimbursable Contractor employees may obtain discount air fares by use of a Government Transportation Request (GTR), Standard Form 1169, cash, or personal credit cards. When the GTR is used, Contracting Officers may issue a blanket GTR for a period of not less than two weeks nor more than one month. In unusual circumstances, such as prolonged or international travel, the Contracting Officer may extend the period for which a blanket GTR is effective to a maximum of three months. Contractors will ensure that their employees traveling under GTR provide the GTR number to the contracted airlines for entry on individual tickets and on month-end billings to the Contractor.
- (b) **Hotels/motels.** Participating hotels and motels which extend discounts are listed in commercial publications, which show rates and facilities and identify by code those properties which offer reduced rates to cost-reimbursable Contractor employees while traveling on official contract business.