Southwest Research and Information Center (Don Hancock)

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June 22, 2026

Megan McLean, WIPP Program Manager
Hazardous Waste Bureau – NMED
2905 Rodeo Park Drive East, Building 1
Santa Fe, NM 87505-6303

via Public Comment Portal:
https://nmed.commentinput.com/?id=x2V7G3HrWN

RE: Request for Hearing and AIM Comments

Dear Megan,

Southwest Research and Information Center ("SRIC"), which has been extensively involved in the WIPP Permitting process for more than 30 years, provides these comments on the agency-initiated modification ("AIM") draft Permit [Public Notice AR 260420]. The comments provide a basis for SRIC's **request for a hearing** and to facilitate the negotiation process. 20.4.1.901. A.4 NMAC. SRIC notes that the Administrative Record (AR) for this action identified in the Fact Sheet [AR 260421] includes some previous SRIC submissions [AR 240404, 250103, 251209, and 260303], which must be considered as part of these SRIC comments. In addition, SRIC specifically incorporates its April 19, 2023 Comments on the WIPP Renewal Permit [AR 230425.245] because the comments provide several pages of Relevant Background and some of the specific Permit language that is being addressed in the draft Permit.

SRIC strongly agrees that "there is sufficient basis for the development of this agency-initiated modification that clarifies the priority to emplace legacy waste and reduces the risk of Los Alamos National Laboratory legacy waste during the current permit term." [AR 260418]. SRIC supports some provisions of the draft Permit and opposes others, and provides improvements.

I. Brief Relevant Background

SRIC was very appreciative of the participants, especially including the Permittees, in the negotiations in June 2023 on the Renewal Permit coming to agreement and said so publicly on numerous occasions. SRIC also consistently stated the importance of the Permittees complying with the key provisions and for NMED to enforce those provisions. However, as the AR submissions above reiterate, the Permittees have not adequately complied with the provisions related to waste prioritization (Section 4.2.1.4), legacy waste (Section 4.2.1.5), and the need for a repository in another state (Section 2.14.3). Thus, SRIC has repeatedly urged NMED to take enforcement or other action. While the AIM draft Permit is not specifically what SRIC has suggested, it is consistent with what SRIC and many others have requested. The Permittees are well aware of those suggestions, as they have received the submissions, as well as others made directly to them.

II. Draft Permit Provisions

1. "Rebuttable Presumption" Permit Section 1.5
SRIC does not object to the draft Permit language.

2. Definitions of "Projected Waste" and "Legacy Waste" Permit Sections 1.5.23 and 24
SRIC previously provided a specific definition of legacy waste, which we still support:

> Legacy TRU and Legacy TRU mixed waste is defense-related TRU waste generated from defense activities and managed as TRU waste as of 1999, when WIPP opened. Any waste or material that does not meet that definition is "non-legacy" waste. [AR 250103]

SRIC continues to believe that its definition is technically based, clear, and enforceable, and supports that language to be included in the Permit. If more specificity is desired, "opened" and can be deleted and "operations began" added. Permit Attachment A-1.

The draft Permit definitions in 1.5.23 and 1.5.24 are not so clear to the public, as they use language similar to that in the Annual Transuranic Waste Inventory Report ("ATWIR"), which is not familiar to many members of the public, though SRIC has closely reviewed the document each year.

The definition in 1.5.23 closely follows that in the 2025 ATWIR [AR 260105],[1] which the Department of Energy ("DOE") Carlsbad Field Office ("CBFO") created and approved.[2] However, that definition is not necessary if the SRIC legacy waste definition is adopted.

The definition in 1.5.24 is not precise as it could be and could be subject to perpetual change, which is not appropriate, desirable, nor adequately enforceable. The first sentence contains undefined terms, is unduly broad, and could allow for waste that is not and should not be considered legacy waste. For example, the definition does not exclude "potential" waste in the 2025 ATWIR, Appendix B, which DOE does not currently consider to meet WIPP eligibility requirements. Appendix B includes waste streams with no "projected waste," which would be allowed under the proposed "legacy waste" definition. Appendix B also includes nine waste streams at the West Valley, NY site, which should not be approved for shipment to, or emplacement at WIPP.[3,4] The

[1] at 48.
[2] Id. at 3.
[3] This matter was extensively discussed in 2003 West Valley Demonstration Project ("WVDP") Final Waste Management Environmental Impact Statement and in the 2004 comments by SRIC (https://archives.sric.org/nuclear/docs/DOE012304.php) and letter from then-Senator Jeff Bingaman. (https://sric.org/wp-content/uploads/2025/05/Bingaman020604.pdf). In the DOE's 2005 Record of Decision, citing SRIC's comments, DOE deferred a decision regarding TRU waste disposal at WIPP. (https://www.energy.gov/nepa/articles/eis-0337-record-decision at 35076).
[4] SRIC appreciates the NYSERDA comments of June 8, 2026 and fully supports public discussion about the status of transuranic waste at the WVDP. ATWIR-2025, Appendix B includes 565.5 m^3 of "Potential" waste at WVDP, while the NYSERDA letter states that there are "approximately 609 cubic meters of TRU waste." SRIC also notes

second sentence provides no time constraint on the "state agency adopted definition," so it could be adopted or changed at later date(s) by such a state agency. In addition, there should be a clear definition of non-legacy waste, especially since the term "non-legacy waste" is included in Part 4.

If SRIC's legacy waste definition is not adopted, SRIC would support the following revision (deletion in green):

> 1.5.24 Legacy Waste
> "Legacy Waste" means waste ~~placed in retrievable storage~~ that is part of a TRU or TRU mixed waste stream without a projected waste component in Appendix A of the 2025 ATWIR report. This definition applies to all generator/storage sites except those with state agency adopted site specific 'legacy waste' definition as of December 31, 2026, in which case the respective state agency adopted definition applies. Any waste or material that is not "legacy waste" is "non-legacy" waste.

3. Prioritization and Risk Reduction of New Mexico Waste Permit Section 4.2.1.4
A. Additional Prioritization language is needed.
SRIC agrees that the WIPP Permit is an appropriate location for the prioritization requirements and all parties, including the Permittees, supported the existing Part 4.2.1.4 in the 2023 Renewal Permit. Because the Permittees have not complied with the letter and spirit of the prioritization requirement, it is necessary to include specific requirements, such as those in the draft Permit.

The documented shipments and amounts of LANL waste shipped to and emplaced at WIPP since the June 2023 Settlement Agreement in comparison with the amounts from other sites, especially the Idaho National Lab ("INL"), demonstrate that the Permittees have not prioritized LANL legacy waste shipments and emplacement. Additionally, the annual Performance Evaluation and Measurement Plan ("PEMP") that provide bonus funding to SIMCO to accomplish specifically enumerated activities demonstrate a lack of priority for LANL shipments.[5] The FY 2023 PEMP, Performance Based Incentive ("PBI") 1.2.B. provided:

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that WVDP contains significant amounts of high-level waste which are prohibited at WIPP by the WIPP Land Withdrawal Act, the Consultation and Cooperation Agreement, and the WIPP Permit.

[5] The PEMPs should be posted on the WIPP website at: https://wipp.energy.gov/foia-simco-contract-89303322DEM000077-documents.asp. The FY 2023 PEMP is Modification 12, which is one of two of the first 95 modifications that have been deleted. That Modification is Attachment 1 to these comments. The FY 2024 PEMP is Modification 24 - https://wipp.energy.gov/Library/foia/SIMCO/Modifications/Modification_024-AddFY24PEMPtoSectionJReviseSectionsBF.pdf. The FY 2025 PEMP is Modification 49, which has also been deleted. The revised FY 2025 PEMP is Modification 65 - https://wipp.energy.gov/Library/foia/SIMCO/Modifications/Modification_065-RevisiontoFY25PEMP.pdf. The FY 2026 PEMP is Modification 80 - https://wipp.energy.gov/Library/foia/SIMCO/Modifications/Modification_080-FY2026PEMPJ-3.pdf.

> LANL Shipments ($200,000) – Due to the priority and importance of shipping LANL-EM waste, the Contractor will earn an additional $5,000.00 per shipment of LANL-EM TRU Waste for the first 40 shipments.

The FY 2024 PEMP, PBI 1.2.A.ii. provided:

> Due to the priority of receiving shipments from LANL-EM, an additional $7,000 will be earned for each of the first forty (40) shipments received from LANL-EM.

The FY 2025 PEMP, PBI 1.1.iii provided:

> Due to the priority of receiving shipments from LANL, an additional $11,527.50 will be earned for each of the first 40 shipments received from LANL. ($461,100).

The FY 2026 PEMP, PBI 1.1.H provided:

> Due to the priority of receiving waste from LANL, an additional $12,500 will be earned for each of the first 40 shipments from LANL, by September 30, 2026. ($500,000).

Thus, the bonus incentive funding for SIMCO for 40 LANL shipments per year has remained the same. The FY 2023 PEMP, which was revised on 5/10/23, was before the WIPP Permit Renewal Settlement Agreement in June 2023. But no increased priority was given in the three subsequent PEMPs after that Agreement. In addition to not increasing the numbers of annual shipments from LANL, the FY 2025 and FY 2026 PEMPs no longer specify that those 40 shipments are EM waste, thereby allowing non-legacy NNSA shipments to receive the bonus funding.

Those PBI milestones were surpassed by SIMCO. In FY 2023 there were 68 shipments from LANL, in FY 2024 there were 49 shipments from LANL, in FY 2025 there were 76 shipments from LANL, and in FY 2026 there were 40 shipments from LANL by March 12, 2026.[6]

If the Permittees were prioritizing LANL EM or legacy waste, among other things, they would have increased the number of shipments each year for which SIMCO received bonus incentive funding. If the draft Permit is approved, the FY 2027 PEMP and those in subsequent years should include PBIs to at least meet the required volumes of waste.

SRIC agrees with the deletion of the first sentence of Part 4.2.1.4 as not being needed with the revisions that follow. In addition, that sentence has not resulted in meaningful prioritization by the Permittees.

B. LANL legacy waste based on the AIM Part 1, Section 1.5.24 definition
In the 2025 ATWIR, the LANL waste without a projected waste component total 3,932.4 m^3 of CH LWA waste and 80.1 m^3 of RH LWA waste that would meet the legacy waste definition in Section 1.5.24.[7] In their "2025 TRU Mixed Waste Volume Capacity Certification" [AR 260107], the Permittees use a 1.4 conversion factor to calculate TMW volume. Using that conversion

[6] https://wipp.energy.gov/WDSPA/ShipCal
[7] Attachment 2.

factor, the LANL TMW volume in the 2025 ATWIR is 5,505.36 m^3 of CH waste and 112.14 m^3 of RH waste.

In Permit Table 4.1.1, the amount of CH waste emplaced in Panel 8 in an average year is 5,357 m^3 of TMW.[8] If 55 percent of that volume is LANL legacy waste, 3,045 m^3 would be LANL legacy waste per year, and the total LANL legacy waste could be emplaced in less than two years.

In Permit Table 4.1.1, Panel 11 would operate for three years (August 2025 through July 2028), an average volume of waste emplaced of 6,250 m^3 per year. Panel 12 would operate for three years (July 2028 through June 2031), an average volume of waste emplaced of 6,250 m^3 per year. At 55 percent of the volume being LANL legacy waste, 3,437.5 m^3 annually would be such LANL waste.

However, in the DOE Fiscal Year 2027 Budget Request to Congress, the estimated volume of waste to be shipped WIPP is reduced to 2,200 m^3. At 55 percent of that volume, LANL legacy waste would amount to 1,210 m^3. At that reduced rate, it would take less than five years to emplace the total volume of LANL legacy waste.

Thus, at either the current rate in the Permit or at the planned reduced rate, the total amount of LANL legacy waste could be emplaced to meet the requirement of Part 4.2.1.4.i. In addition, in both FY 2012 and FY 2013 LANL emplaced more than 1,210 m^3 of TMW waste in WIPP.[9] So the rates required in the AIM have been achieved in the past and are reasonable. The Permittees comments in opposition to the draft Permit did not include any evidence that such emplacement rates are not achievable.

However, the Permittees apparently have plans to even further reduce the future annual shipments to WIPP to substantially prolong the duration of WIPP's operations. In the Class 1* permit modification request submitted on March 4, 2026 regarding changes to the Closure Dates in Table G-1 [AR 260305], emplacement in Panel 12 would take place for ten years, or an average of 1,875 m^3 of CH waste per year. SRIC strongly advocates that the Permittees be required to provide detailed information about those future planned emplacement rates and operational safety of Panels 8, 11, and 12. [AR 260309].

Such information about DOE's plans to reduce waste emplacement and greatly prolong WIPP's operations should also address the misinformation being spread to encourage comments from the United Steelworkers Union and others that the AIM threatens "good-paying union jobs" and could slow down shipments from other sites. In fact, the Permittees were planning substantial reductions in waste shipments and emplacement before the AIM was noticed. The

[8] Permit Table 4.1.1 has a CH capacity limit of 18,750 m^3 and a RH capacity limit of 650 m^3 for Panel 8. Permit Table G-1 shows that Panel 8 would be emplacing waste from 11/22 through 4/26, a total of 42 months. [18,750/42X12 =5,357.16].

[9] In FY 2012, LANL TMW volume emplaced totaled 1,514 m^3 and 1,463 m^3 was emplaced in FY 2013. https://www.energy.gov/documents/volume-5-empdf-1 at 90.

Permittees have provided no evidence that the AIM would further reduce those planned emplacement rates.

C. Comments on subsections i to vi.
SRIC supports subsections i and ii as providing significant, measurable volume requirements for LANL legacy waste to be shipped to and emplaced at WIPP. Insofar as the DOE wants to send legacy or non-legacy waste from other generator/storage sites to WIPP, those subsections provide an incentive to prioritize emplacement of all LANL legacy waste. Once all LANL legacy waste is emplaced, legacy shipments from other sites could be substantially increased, as is further discussed below.

SRIC generally supports subsection iii, which is clearly within NMED's authority to require relevant information. But we suggest a change to include TRU Mixed Waste volumes. TRU Mixed Waste volumes emplaced must be tracked pursuant to Table 4.1.1. Both TRU Mixed Waste volumes and LWA volumes are included in the Weekly Status Reports.[10] Thus, both volumes can and should be included in the monthly reports. SRIC supports the following 4.2.1.4.iii:

> Within 15 days of the last day of each month, the Permittees shall provide a written report and certification documenting all waste emplaced at WIPP on ~~a~~ TRU Mixed Waste and LWA TRU waste volume bas~~e~~is. The report shall distinguish between legacy and non-legacy waste and include the percent of waste emplaced from each generator/storage site during the previous month.

SRIC supports the intent of subsection iv to prioritize removal of waste stored above-ground in LANL MDA-G. That waste is especially exposed to surface conditions, including possible wildfires, which is a significant risk of great public concern, as various AR documents indicate. However, SRIC supports some clarifying language because there is substantial buried legacy TRU waste in Area G. It may not be possible to retrieve, repackage as necessary, characterize, and ship all of that buried legacy waste by July 1, 2028. Such repackaging and characterization will likely require some of the buried waste to be on the surface, once it is retrieved, after July 1, 2028. The provision should not preclude such necessary storage. Thus, SRIC supports the following subsection 4.2.1.4.iv:

> All ~~L~~legacy waste stored above-ground at LANL Material Disposal Area-G as of December 1, 2026 shall be shipped and emplaced by July 1, 2028. By January 4, 2027, the Permittees shall provide an inventory of all the stored above-ground waste.

Additionally, SRIC is concerned that the total amount of buried LANL TRU waste has not been identified in the ATWIR-2025. On June, 5, 2024, the Permittees submitted "Supplemental Information to Support the Sufficient TRU Mixed Waste Volume Capacity Certification" that was based on the ATWIR-2023 [AR 240602]. That information is out of date. As one example, the waste stream with the largest volume of buried waste was LA-CIN04.001, which consists of

[10] https://www.wipp.energy.gov/general/GenerateWippStatusReport.pdf

the corrugated metal pipes that have now been exhumed. Furthermore, neither the ATWIR-2023 nor the ATWIR-2025 include waste identified as being from Pit 9 in Area G.[11] Consequently, SRIC supports an additional provision, which is clearly within NMED's authority to require relevant information, so that NMED and the public have an accurate inventory of all buried TRU waste at LANL. The new Section 4.2.1.4.vii:

> By no later than January 1, 2029, the Permittees shall submit a comprehensive inventory of all buried TRU waste streams at LANL, including TMW and LWA volumes and final waste forms.

SRIC supports subsection v, which is clearly within NMED's authority to require relevant information, with one concern and one clarification. The concern is that four months after the end of the year to submit the annual report is too long a timeframe. The information is readily available to the Permittees and thus should be made available promptly, in no more than 60 days, to NMED and to the public. The clarification is to ensure that the volumes are trackable in the public WWIS database, which currently does not provide easy determination of the waste volumes being emplaced. Thus, SRIC supports revised subsection 4.2.1.4.v:

> The Permittees shall submit an annual report by March 1~~April 30~~ of each year. For each generator/storage site and for both legacy and non-legacy waste, the report shall detail, at a minimum, waste shipments, volumes of waste emplaced, volumes of waste remaining in retrievable storage, as well as any other information needed to demonstrate prioritization of LANL legacy waste and compliance with the requirements of this Permit section. The information shall be provided for the prior calendar year. Volumes shall be reported in LWA TRU Waste and TRU Mixed Waste volumes. Volumes shall be trackable in WWIS, pursuant to Permit Section 2.3.1.7.

SRIC strongly supports subsection vi. Such a clear enforcement mechanism has been shown to be necessary to ensure compliance with these important provisions. The Permittees object to that suspension of waste shipments from sites other than LANL because: "The Permittees oppose this condition. The condition is not practicable and cannot be achieved."[12]

To the contrary, the provision not only can be achieved, it has been achieved. Waste emplacement at WIPP has been suspended since May 7, 2026[13] because (unplanned) the air intake shaft has been out of service since April 15, 2026 and (unplanned) the salt shaft hoist has been out of service since April 28, 2026.[14] Shipments have been suspended since May 14, except for one shipment from LANL on May 26.[15] Thus, the Permittees can suspend shipments from sites other than LANL to prevent violation of this provision.

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[11] https://www.energy.gov/sites/default/files/2023-09/TA-54%20Area%20G%20Fact%20Sheet.pdf
[12] https://scs-public.s3-us-gov-west-1.amazonaws.com/env_production/oid349/did200065/pid_213666/assets/merged/6q0si5cra46_document.pdf?v=12527 at 8.
[13] https://wipp.energy.gov/WDSPA/EmplaceCal
[14] https://www.dnfsb.gov/sites/default/files/2026-06/WIPP%20Monthly%20for%20April%202026.pdf
[15] https://wipp.energy.gov/WDSPA/ShipCal

SRIC further notes that the Permittees can and do suspend shipments from other sites and emplacement of waste in the underground for planned and unplanned reasons. Waste shipments and emplacement were suspended for approximately three years from the time of the unplanned February 5, 2014 fire and the unplanned February 14, 2014 waste release. Waste shipments are suspended for the annual planned maintenance outage.

4. Legacy TRU Waste Disposal Plan Permit Section 4.2.1.5
SRIC agrees that Permit Section 4.2.1.5 should be given more measurable, enforceable requirements to ensure that legacy waste from all sites should be prioritized, since disposal of that Cold War waste was the principal reason that WIPP was created. SRIC has discussed that issue in numerous occasions, including in AR 230425.245. SRIC is concerned about the significant amount of non-legacy waste that already has been emplaced at WIPP and the significant amount of "Projected Waste" that the Permittees intend to dispose in WIPP and the large amount of "Potential Waste" that the Permittees could also designate as "WIPP Bound".

However, SRIC opposes the revisions to Section 4.2.1.5 that do not require any of the additional waste volumes to be legacy waste. Because there are substantial amounts of legacy waste, especially at the Hanford site, prioritization should include substantial and specified amounts of legacy waste from other generator/storage sites, just as is being done for LANL.

Since Permit Subsection 4.2.1.4.i requires as of January 1, 2027 that 55 percent of all waste emplaced is LANL legacy waste, a significant amount of the additional 45 percent of the waste volume should also be legacy waste from other generator/storage sites. Since Permit Subsection 4.2.1.4.ii as of January 1, 2032 requires 75 percent of all waste to be LANL legacy waste, a significant amount of the additional 25 percent of the waste volume should also be legacy waste from other generator/storage sites.

Therefore, SRIC supports the following revision (changes in green):

> Legacy TRU Waste Disposal Plan
> The Legacy TRU Waste Disposal Plan previously developed by the Permittees, in consultation with the generator/storage sites and stakeholders, shall be publicly posted on the WIPP website. ~~To the extent practicable as articulated in the final Plan, Panel 12 will be reserved for t~~The disposal of legacy ~~TRU mixed~~ waste, as defined in Part 1, Section 1.5.24, will be prioritized in all currently permitted HWDUs; the portion of all waste emplaced shall be at least ~~55~~85% legacy waste, as demonstrated by reporting requirements in Permit Section 4.2.1.4. Beginning January 1, 2032, and until all legacy waste has been emplaced at WIPP, the Permittees shall emplace legacy waste such that emplaced legacy waste is at least ~~75~~95% of the total volume of waste emplaced, as demonstrated by reporting requirements in Permit Section 4.2.1.4.

III. Additional comments

1. In objecting to the AIM, the Permittees[16] and LANL Permittees[17] make various remarkably identical or similar and unsupportable assertions. For example,

> NMED's proposed definition is not consistent with the foundational requirements of the LWA, which does not contemplate a definition or prioritization of "legacy" waste….In the LWA, Congress did not anticipate or require additional differentiation of waste categories.[18]

As SRIC has pointed out [AR 250103], when the LWA was passed in 1992, there was only Cold War legacy TRU waste. The Rocky Flats Plant had been shut down in 1989 and Congress had not appropriated funding for any new plutonium pit production facility to generate more TRU waste. The Permittees have also not pointed out any provision of the LWA that prohibits definition of legacy and non-legacy waste, and there is no such prohibition in the law.

Furthermore, among the foundational requirements of the LWA is recognition of the unique authority of the State of New Mexico in the Consultation and Cooperation Agreement (§§ 2(2) and 21) and the reiteration of the state's RCRA authority (§§ 9(a)(1)(C), 9(d), and 14(b)). Such authority includes allowing the state to revoke a permit or require closure for cause, thereby allowing the end of waste operations before the capacity volume limit is reached.

2. In their June 16, 2026 comments, the Permittees also state:

> Shipping is the responsibility of generator/storage sites under RCRA and not of the receiving disposal facility. Specifying shipment of any waste in the Permit, regardless of site, is outside the purview of NMED and outside the control of the Permittees.[19]

To the contrary, the WIPP Permit can and always does impose conditions pertaining to waste management. The Permit specifies what wastes are permitted and prohibited. The Permit specifies personnel training required to manage the waste. The Permit specifies what containers may be used to store and dispose of waste. The Permit specifies how waste is characterized. The New Mexico Hazardous Waste Act requires "regulations for the management of hazardous waste as may be necessary to protect public health and the environment." NMSA 1978, §74-4-4.A. Consequently, the WIPP Permit has always provided conditions pertaining to waste management as the law requires.

As was pointed out above regarding Permit Section 4.2.1.4.vi, the Permittees have historically and currently suspended shipments and waste emplacement from generator/storage sites. They

[16] Footnote 12
[17] https://scs-public.s3-us-gov-west-1.amazonaws.com/env_production/oid349/did200065/pid_213666/assets/merged/yh06ilaan2h_document.pdf?v=37066
[18] Footnote 17 at 10; footnote 12 at 4.
[19] Id. at 7-8.

prioritized shipments from the Rocky Flats Plant in the early years of WIPP's operations and have since prioritized shipments from INL. They do such prioritization on an ongoing basis in setting the shipping schedules for the generator/storage sites and providing all of the shipping containers that are used to transport all waste to WIPP.

DOE exclusively provides (or does not provide) the required shipping containers for the generator/storage sites (TRUPACT-IIs, HalfPACTs, TRUPACT-IIIs, RH-TRU 72-B cask, or CNS 10-160B). DOE decides which site(s) have shipping containers available to ship to WIPP.

Clearly, the Permittees do not want NMED to impose further conditions related to priorities for shipping and emplacing waste at WIPP. The Permittees want NMED to consider such conditions as being beyond its purview.

But also clearly, many New Mexicans, including SRIC, have repeatedly demanded that NMED impose further conditions to prioritize LANL legacy waste shipments and waste emplacement in order to reduce risk. The Governor has recognized those demands and so informed the Secretary of Energy more than four years ago. [AR 220403]. The demand is because the Permittees have demonstrably not carried out such prioritization. NMED is appropriately using its authority to respond to the actual reality and to the public's demands.

Furthermore, WIPP is a unique facility for defense TRU waste, for which DOE has control of and responsibility for. All the generator/storage sites are DOE sites and are the responsibility of and are under the control of Permittee DOE.

Additionally, Permittee DOE decides whether Co-Permittee SIMCO receives incentive funding in the PEMP for shipments from LANL or INL or other sites. Also,

> The Manager of the U.S. Department of Energy (DOE) Carlsbad Field Office has the authority to suspend a generator's Permit certification to ship TRU mixed waste to the WIPP facility should the generator fail to meet this requirement. Permit Attachment A1-1b.

Permittees state that DOE has to comply with other states' requirements, including those of Idaho and South Carolina.[20] Those prioritization decisions were made with no input from the State of New Mexico and its citizens. Thus, there is no legitimate basis to state that DOE does not have to comply with State of New Mexico requirements for LANL and WIPP, which are subject to public notice and comment in which the Permittees, other states, and other members of the public can and do participate.

[20] SRIC has refuted, without contradiction from the Permittees, the claim that the South Carolina Settlement Agreement applies to WIPP. [AR 250103 at 5; AR 251209 at 2.]

3. Permittees and LANL Permittees cite 10 U.S.C. § 6128 and in identical language state:

> Mandatory quotas for LANL "Legacy Waste" would force storage saturation and halt pit-production (TRU waste disposition), conflicting with production requirements in 10 U.S.C. § 6128 and impairing DOE's mission.[21]

But that statute does not mention WIPP or waste disposal. The statute does not condition the pit production requirements on storage or disposal of the waste. Thus, the AIM does not conflict with that statute. However, DOE has not complied with the § 6128(a)(2) requirement to produce not less than 10 war reserve plutonium pits in 2024 and the § 6128(a)(3) requirement to produce not less than 20 war reserve plutonium pits in 2025.

4. Finally, SRIC recognizes its rights and reminds NMED and the Permittees that it could bring a Citizen Suit for violations at WIPP. 42 U.S.C. § 6972.

Thank you very much for your careful consideration of, and your response to, these comments.

Sincerely,

Don Hancock

[21] Footnote 12 at Attachment A at 6; Footnote 16 at 6.

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. CONTRACT ID CODE	PAGE OF PAGES
	1 2

2. AMENDMENT/MODIFICATION NO.	3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. *(If applicable)*
P00012	See Block 16C		

6. ISSUED BY CODE 893032

EM-Carlsbad
EMCBC
U.S. Department of Energy
Carlsbad Project Office
P.O. Box 3090
Carlsbad NM 88221

7. ADMINISTERED BY *(If other than Item 6)* CODE 03003

EMCBC - Carlsbad
U.S. Department of Energy
Carlsbad Project Office
P.O. Box 3090
Carlsbad NM 88221

8. NAME AND ADDRESS OF CONTRACTOR *(No., street, county, State and ZIP Code)*

SALADO ISOLATION MINING CONTRACTORS, LLC
Attn: Renee Tucker
12011 SUNSET HILLS RD STE 110
Reston VA 201905919

CODE MHKNRXGKKTS6 FACILITY CODE

(x) 9A. AMENDMENT OF SOLICITATION NO.

9B. DATED *(SEE ITEM 11)*

x 10A. MODIFICATION OF CONTRACT/ORDER NO. 89303322DEM000077

10B. DATED *(SEE ITEM 13)* 07/11/2022

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 electronic communication which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT 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 letter or electronic communication, provided each letter or electronic communication 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)*
See Schedule

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

CHECK ONE	
	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: *(Specify authority)* THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES *(such as changes in paying office, appropriation data, etc.)* SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
X	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: H.23 DOE-H-7014 Standards of Contractor Performance Evaluation (SEP 2017) and mutual agreement
	D. OTHER *(Specify type of modification and authority)*

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

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

UEI: MHKNRXGKKTS6
see page 2.
Payment:
Period of Performance: 02/04/2023 to 11/07/2026

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

15A. NAME AND TITLE OF SIGNER *(Type or print)*	16A. NAME AND TITLE OF CONTRACTING OFFICER *(Type or print)*
Ken Harrawood, Program Manager	Daniel D. Burke
15B. CONTRACTOR/OFFEROR *(Signature of person authorized to sign)*	15C. DATE SIGNED 5/18/2023
16B. UNITED STATES OF AMERICA *(Signature of Contracting Officer)*	16C. DATE SIGNED 05/16/2023

Previous edition unusable

STANDARD FORM 30 (REV. 11/2016)
Prescribed by GSA FAR (48 CFR) 53.243

In accordance with contract clause H.23 DOE-H-7014 Standards of Contractor Performance Evaluation (SEP 2017) and mutual agreement of the parties, the purpose of this modification is to incorporate the Fiscal Year 2023 (FY23) Performance Evaluation and Measurement Plan (PEMP) at contract section J, J-3 (see modification attachment 1).

All other terms and conditions remain unchanged.

PERFORMANCE EVALUATION AND MEASUREMENT PLAN
CONTRACT 89303322DEM000077
February 4, 2023 through September 30, 2023
Revision 3, dated 5/10/2023

I. INTRODUCTION

This Performance Evaluation and Measurement Plan (PEMP) contains a standard process for development, administration, and coordination of all phases of the fee determination process consistent with Section B.3 Transition Cost, Anticipated Funding, and Total Available Performance Fee. This PEMP will provide the expectations for the evaluation period. Criteria are provided on how fee will be earned for evaluation period. The Contractor must manage the funds allotted so that the work executed and fee earned is within their authorized spending levels per year.

II. ORGANIZATIONAL STRUCTURE AND DUTIES

The following organizational structure is established for administering the fee provisions of the contract.

A. Roles and Responsibilities

1. Fee Determination Official (FDO)/Carlsbad Field Office (CBFO) Manager

   a. The Head of Contracting Activity (HCA) has appointed the CBFO Manager as the FDO. The FDO determines the final performance fee amount earned for the evaluation period based upon all the information furnished.

   b. The FDO will coordinate with the Contracting Officer's Representative (COR) and the Contracting Officer (CO) in the development of the PEMP; performance monitoring; performance validation; approval of minor changes to the PEMP; and performance reporting.

2. Management and Operating (M&O) CO

   a. The CO is an advisor in the development and establishment of the PEMP.

   b. The CO will ensure appropriate coordination of performance expectations and the evaluation criteria with Headquarters (HQ) program and policy organizations. The CO will coordinate with the Environmental Management Consolidated Business Center (EMCBC) to submit the PEMP and/or the evaluation criteria for necessary HCA approval and headquarters reviews.

   c. The CO, if required, in conjunction with the COR and Capital Asset Projects (CAP) Federal Project Director (FPD), will coordinate major changes to performance expectations and the evaluation criteria with the HCA through the EMCBC.

d. The CO will forward the approved PEMP, including the evaluation criteria and available fee amounts to the Contractor through a contract modification.

e. The CO will prepare a letter for the FDO's signature notifying the Contractor of the amount of performance fee earned by the Contractor for the evaluation period. This notification will identify specific areas of strengths and areas for improvement in the Contractor's performance.

f. The CO will unilaterally modify the contract to reflect the FDO's final determination of the amount of performance fee earned by the Contractor for the evaluation period. The modification, which will reflect earned and unearned fee for the evaluation period, will be issued to the Contractor within 14 calendar days after the CO receives the FDO's decision.

3. COR and CAP FPD

a. The COR and CAP FPD monitor, evaluate, assess and validate the Contractor's performance against subjective evaluation criteria.

b. The COR and CAP FPD perform periodic reviews of the Contractor to evaluate progress towards completion of requirements for Performance Based Incentives (PBIs).

c. The COR and CAP FPD support the CO and FDO by ensuring that all technical components of the work are closely monitored and that they have the information required to effectively accomplish their duties as defined by this plan.

d. The COR focuses on all non-CAP related work scope in its entirety. The CAP FPD focuses on CAP related work scope. The COR functions as the technical interface with the Contractor regarding performance on non-CAP related work scope. The CAP FPD supports the COR in interfacing with the Contractor regarding performance on CAP related work scope, as needed.

e. The COR is responsible for preparing the annual performance evaluation report and associated scorecard based on the recommendations of the Award Fee Evaluation Board.

4. Technical Monitors (TM)

a. Monitor, evaluate, assess and validate the Contractor's performance against the criteria in the PEMP for their respective sections.

b. The TMs will provide input to the COR to support his/her overall evaluation of the Contractor's performance.

c. TMs will include, but are not limited to, from the following organizations:

Technical Monitors
National Transuranic Program (NTP) Certification Division
NTP Operations Division
Safety Programs Division
Safety Systems Oversight Division
Quality Assurance Division
Facility Oversight Division
Environmental Regulatory Compliance
Budgets and Contracts Division

III. PEMP DEVELOPMENT PROCESS

While PEMP incentives may be unilaterally developed by the U.S. Department of Energy (DOE), a teaming approach between the DOE and the Contractor provides significant benefits. When incentives are developed jointly, performance expectations are better understood by the parties and tend to focus more on substantive outcomes. A teaming approach enhances communication and partnering between and among the parties, which results in greater trust, openness, alignment, and cooperation for achieving the DOE's goals and objectives. However, DOE reserves the right to issue the PEMP, unilaterally consistent with the contract.

Approval by the CBFO Manager, with concurrence from the COR and CO will be required for any changes to the evaluation criteria and fee allocation. If the change results in an increase in the fee amount(s) (other than balancing total available fee based on annual budget increases/decreases so long as no new incentives are added/deleted), HCA approval is required. Changes to the allocation of fee during the performance period should not be made to benefit or penalize the Contractor and the fee amounts should not be modified unless there are budget modifications (in accordance with Section B.3, Transition Cost, Anticipated Funding, and Total Available Performance Fee, of the contract). This includes when actions fall out of the control of the Contractor and DOE cannot provide sufficient alternatives by allocating the fee to another PBI. At the discretion of DOE in consultation with the Contractor, if a PBI is cancelled or modified, any fee associated with that PBI may be allocated to another PBI(s). This does not obligate DOE to compensate the Contractor for partially completed PBI's, but will encourage the FDO to consider events outside the control of the contractor when making fee determinations.

The amount of fee earned by the Contractor is within the sole discretion of the FDO. The Contractor may express disagreement with the fee determination; however, the final amount of fee earned is the FDO's unilateral decision. If the Contractor does not agree with the final decision of the FDO, the Contractor may dispute the assessment under the Disputes clause of this contract.

IV. EVALUATION CRITERIA

The performance fee amount will consist of 1) a subjective fee component and 2) an objective fee component. All available fee is at risk. Performance evaluation will be

conducted in accordance with H.23 of the contract.

A. Subjective Criteria: Award Fee Criteria

Subjective criteria have been established that include Quality, Schedule, Cost Control, Management, and Regulatory Compliance. DOE may consider other related performance information and data when evaluating the Contractor's performance for the subjective portion of the fee. Safety is inherent to performance of work at all DOE facilities and adherence to safe and compliant execution of work scope is a key component under the evaluation of all the subjective criteria.

Areas for consideration within an evaluation criterion are not sub-criteria and will not be individually rated but considered in the overall evaluation for that particular evaluation criterion.

The total fee available for the Subjective Criteria is ~30% of the Total Available Fee. The maximum fee available for each of the following five subjective criteria is specified below next to each criterion as a percentage of the total fee available for the award fee (subjective) criteria.

Attachment 1 provides the adjectival ratings and their definitions used in the evaluation of the award fee (subjective) criteria. Attachment 2, Subjective Criteria, provides the factors that will be taken into consideration for evaluation.

1. Quality (15%)
2. Schedule (15%)
3. Cost Control (15%)
4. Management (40%)
5. Regulatory Compliance (15%)

These five award fee (subjective) criteria are aligned with the evaluation categories in the Contractor Performance Assessment and Reporting System (CPARS).

B. Objective Criteria: Performance Based Incentives (PBIs):

PBIs are an objectively measurable evaluation of Contractor performance. Such incentives reflect specified criteria against which actual performance will be evaluated. In most cases, PBIs will be evaluated based on quantifiable measurements in the form of a metric (e.g., a unit processing rate) or a milestone (e.g., completion of a task on or before a scheduled date).

PBIs have specified fee allocated and payable upon completion of identified levels of work accomplished. PBIs will be measured and evaluated at the end of each fiscal year (in the same timeframe as the subjective criteria). The Contractor may request early evaluation of PBIs upon completion; however, early evaluations are not final until the end of year evaluation is complete. Some PBIs may remain provisional as noted within Attachment 3, Performance Based Incentives. Attachment 3 contains the PBIs for this PEMP. The total fee available for the PBIs is targeted at ~70% of the Total Available Fee.

C. Fee Pool Distribution:

	Total Fee Available (Section B)	Award Fee (~30%) Allocation	PBI (~70%) Allocation
Base Work (Operations and Maintenance)	8,117,351		5,682,146
Safety Significant Confinement Ventilation System (SSCVS) CAP	3,045,918		2,132,142
Utility Shaft (US) CAP	1,161,783		813,248
Hoisting CAP	635,833		635,833
Total	12,960,885	3,697,516	9,263,369

PBI	PBI (70%) Allocation ($)	PBI Roll-up	PBI title	Incentive Fee ($)
1	$3,700,000	1.1	Mining	2,300,000
		1.2	Waste Emplacement	1,400,000
2	$3,581,224	2.1	SSCVS	2,132,142
		2.2	US	813,248
		2.3	HC	635,833
3	$1,150,000		Infrastructure	1,150,000
4	$832,146	4.1	Manufacturing	250,000
		4.2	Permit mods	432,146
		4.3	Robotic	75,000
		4.4	Cyber	75,000

V. PERFORMANCE EVALUATION

Monitoring and Evaluation of Performance

DOE will monitor Contractor performance against the established subjective evaluation criteria throughout the evaluation period (typically aligned with the fiscal year). Attachment 1 provides the adjectival ratings used by DOE. Attachment 2 contains the five subjective evaluation categories and the types of performance related information that the TMs are to consider as part of their evaluation.
Performance feedback to the Contractor will be provided periodically throughout the year.

The Contractor may submit a self-assessment within seven calendar days after the end of each quarter throughout the evaluation period for consideration by the TMs.

VI. FEE DETERMINATION

A. Notification of Completing PBI Milestones

The Contractor shall notify the CO and the COR upon completion of a PBI in writing and shall make available sufficient information for DOE to confirm the successful completion of the PBI. Notification of completions (including demonstration of completion – e.g., documentation or physical verification, photos, etc.) by e-mail or delivery of physical documents must be submitted no later than October 7th of each year to be considered in that year's fee determination. DOE's fee determination regarding PBIs throughout the evaluation period (typically the fiscal year) remains provisional until the final fee determination at the end of the evaluation period. The fee determination for subjective (award fee) and objective (PBI) criteria becomes final at the end of the rating period, unless noted otherwise (e.g., see PBI 2).

B. Circumstances Outside of the Contractor's Control

For any of the PBIs described in Attachment 3, the Contractor may request payment of fee for missed metric/milestone(s) due to actions by DOE impacting Contractor performance or due to circumstances that are not reasonably the responsibility of the Contractor for consideration by the FDO. Failure to properly plan for, notify CBFO in a timely manner of issues, and manage project risks is not a circumstance outside of the Contractor's control. As an alternative to payment of fee within an annual performance period, the FDO may extend the completion dates and defer decision until the PBI is complete.

C. Award Fee Evaluation Board

The evaluation board will consist of the following voting members:

CBFO Deputy Manager – Chairperson
Office of Environment, Safety, Health, & Quality Assurance (QA) Assistant Manager
Office of NTP Waste & Certification & Disposal Assistant Manager
Office of Business Operations Director
Capital Asset Projects Federal Project Director

The following individuals will serve in an advisory capacity:

M&O Contracting Officer
Legal Counsel
COR

The COR will be responsible for the following:

1. Writing Quarterly performance evaluations in coordination with TMs and FPD;
2. Gathering summary sheet of quarterly performance ratings and an overall score in each subjective category from TMs;
3. Summary sheet of quarterly FPD ratings (Ops/General Plant Projects (GPP)

and CAPs);
4. Providing a short presentation to the board, if requested.

The Contractor is required to submit a status briefing at mid-year and at year end. The mid-year status briefing may be informal (i.e., no written assessment). Year end status briefing is a formal written assessment of contractor's annual performance evaluation against the PEMP evaluation criteria. This evaluation is not to exceed two pages per evaluation criterion (10 pages total) and must be provided to the COR within five business days of the end of the annual performance evaluation period. Additionally, the Contractor, may provide a presentation to the Evaluation Board. The evaluation board reserves the right to ask questions to the Contractor's management team to complete its performance evaluation.

Additionally, the Contractor may submit a summary of its evaluation against the PBIs for which the Contractor expects payment. This summary shall not exceed five pages and shall focus on those PBIs that were not completed as required, including the reason the PBI was not completed. The Evaluation Board reserves the right to ask questions to the Contractor's management team to complete its work.

D. Minimal Performance Expectation

If the Contractor receives a rating of "Unsatisfactory" for any of the five subjective fee criteria, then the maximum fee the Contractor can earn is 50% of available award (subjective) fee.

E. FDO Determination

The FDO, with input from the Award Fee Evaluation Board, will determine the amount of overall fee earned (subjective and objective). This determination is purely discretionary, and is based solely on the judgment of the FDO. If a PBI is not 100% complete, then no fee (0%) will have been earned unless the PBI specifies payment based on a percentage of progress. However, it is within the FDO's sole discretion to award some, or partial fee for PBIs that are not 100% complete. If the FDO decides to award partial fee for incomplete progress on a particular PBI, there is no obligation to act similarly for other PBI's. There is no minimum or partial PBI fee that must be granted.

F. Unearned Fee

Fee that is not earned due to nonperformance of the PBI requirements or under the subjective criteria, as set forth in the PEMP, shall not be returned to the fee pool, and shall be forfeited. DOE will re-distribute unearned fee to specified projects work as cost dollars and the contractor will not be able to earn fee on that additional scope.

At the discretion of DOE, if an evaluation criterion is cancelled or modified, any unearned fee may be reallocated to another evaluation criterion or criteria.

Attachment 1 – ADJECTIVAL RATINGS

For evaluating each subjective criterion (i.e. Quality, Schedule, Cost Control, Management, and Regulatory Compliance), the following adjectival ratings will be used:

EXCELLENT	Contractor has exceeded almost all of the performance requirements of the applicable criterion for the award-fee evaluation period.
VERY GOOD	Contractor has exceeded many of the performance requirements of the applicable criterion for the award-fee evaluation period. All unsatisfactory performance identified for the criterion during the period was considered minor in nature and has been addressed appropriately.
GOOD	Contractor has exceeded some of the performance requirements of the applicable criterion for the award-fee evaluation period. Some unsatisfactory performance may have been identified for the criterion during the award fee evaluation period, but it had limited impact and has been addressed.
SATISFACTORY	Contractor has generally met the performance requirements of the applicable criterion for the award-fee evaluation period. Any unsatisfactory performance has been or is in the process of being addressed.
UNSATISFACTORY	Contractor has failed to meet the performance requirements of the applicable criterion for the award-fee evaluation period.

The following is applied to the final adjectival rating(s) for the subjective evaluation criteria:

Adjective Rating	**Percentage of Subjective Component Fee Earned**
EXCELLENT	91 to 100%
VERY GOOD	76 to 90%
GOOD	51 to 75%
SATISFACTORY	No greater than 50%
UNSATISFACTORY	0%

Attachment 2 - SUBJECTIVE CRITERIA

Quality

Assess the Contractor's conformance to contract requirements, specifications and standards of good workmanship. Assess how successfully the Contractor meets program/project quality objectives such as producibility, reliability, maintainability, and inspectability. Assess the Contractor's management of the quality control programs, as well as the work itself. Assess the Contractor's ability to maintain quality control, address and review comments, identification and correction of deficient work, and overall quality related performance. The following items will be considered for evaluation:

- Performance in maintaining and implementing an effective Quality Assurance program, with emphasis on Nuclear Quality Assurance (NQA)-1.

- Compliance with and implementation of the prime contract requirements, and the quality and effectiveness of the Contractor's implementing policies, plans, and procedures. The implementation of a DOE-approved Contractor Assurance System (CAS) in accordance with DOE policies and requirements as specified in the contract to ensure work is being performed safely, securely, and in compliance with all requirements; risks are being identified and managed; CAS requirements are flowed down to subcontractors; and systems of control are effective and efficient. The evaluation will include whether the CAS provides sufficient information for DOE to perform oversight verification of Contractor performance and to provide DOE a feedback process.

- The quality of the issues management process is defined as: effective and timely identification, management, correction, reporting and resolution of items/issues/deficiencies. The effective use of the electronic issues management systems (e.g., Waste Isolation Pilot Plant (WIPP) Forms, Issue Collection & Evaluation (ICE) issues, Corrective Action Reports, Devonway issues, etc.) for all open items/issues/deficiencies. The thoroughness of the response to items/issues/deficiencies to prevent recurrence, including the manner and adequacy of tracking, trending, and root cause/lessons learned analyses, reporting, and formal closure process. Other factors to evaluate the program include corrective actions or condition reports (or equivalent) are not open for longer than 1.5 years (unless a compelling reason for longer term actions exists) and 75% of corrective actions or condition reports are corrected within nine months. For CBFO identified issues that require more than nine months to adequately correct, CBFO COR written approval is required. Canceling or closing corrective actions or condition reports without the necessary evidence and back up to support the closure of the corrective action or condition report may result in DOE counting the item as open.

- The quality, completeness, and effectiveness of all contractual deliverables, including, but not limited to, regulatory submittals (e.g., reports, permit modification requests, planned change requests/notices, etc.), Safety Basis Documents, human resources deliverables, optimization plans, Security Plans, Baseline documents and associated risk management plans, etc.

Schedule

Assess the timeliness of the Contractor against the completion of task orders, milestones, delivery schedules, and administrative requirements (e.g., efforts that contribute to or affect the schedule variance). This evaluation of the Contractor's adherence to the required delivery schedule should include the Contractor's efforts during the evaluation period that contribute to or affect the schedule variance. Also, address significance of scheduled events (e.g., design reviews), discuss causes, and assess the effectiveness of Contractor corrective actions to recover schedule variance. The following items will be considered for evaluation:

- Performance in coordinating and managing eight week rolling schedules for waste shipment.

- The status of overall and specific program/project performance against the approved baseline; the management and recovery of schedule variance; and the effectiveness of schedule variance mitigation strategies.

- The timeliness of all submittals to DOE including Regulatory documents; contract documents such as Notifications of Contract Changed Conditions; and project documents such as Baseline Change Proposals and Program Change Requests, to provide sufficient time for review, comment resolution, and revision in advance of document due dates or impacts to work. Submitted documents shall be of sufficient quality to not require significant re-work by DOE. 100% of deliverables must be provided on time to achieve at least a satisfactory rating.

- The timeliness of the Contractor's response following DOE requests for in-scope support or for information/reports.

- Complete an assessment of the equipment on the deferred maintenance list and Out of Service (OOS) list to define what equipment is related to safety and needed for routine operations. Determine the priority and path forward for replacement or completion of maintenance on equipment related to safety and needed for routine operations.

- The Contractor will be evaluated on the timeliness for completing Technical Safety Requirement (TSR) surveillances. 100% of all TSR surveillances must be completed prior to the end of the grace period AND 80% of all TSR surveillances must be completed prior to entering the grace period.

- The timeliness of completing scheduled Preventative Maintenance (PM) actions, as specified in the Contractor's computerized maintenance management system (e.g CHAMPS) will be balanced with emergent corrective maintenance that is impactful to the mission of emplacing waste or safety equipment. PM's delay/deferral will be minimized and completed in accordance with the process.

- Subcontract Awards.

    - 95% of products or services are on-site and available for use to ensure mission completion without delay.

- It is the Contactor's responsibility to ensure that all orders for supplies or containers through the centralized procurement programs are met and that sufficient vendors are available to produce the items required to meet the generator site's needs. Orders submitted at least 60 days prior to the need date shall be considered timely.

- The timeliness of review and closure of current and future SSCVS construction work packages. Timeliness is defined as a minimum of 95% of construction work packages closed within 30 days of the required subcontract commitment closure time period, and no work package closures shall exceed 60 days total overdue.

Cost Control

Assess the Contractor's effectiveness in forecasting, managing, and controlling contract/order cost. If the Contractor is experiencing cost growth or underrun, discuss the causes and Contractor-proposed solutions for the cost overruns or underruns. In addition, the extent to which the Contractor demonstrates a sense of cost responsibility, through the efficient use of resources, in each work effort should be assessed. The following items will be considered for evaluation:

- Reduce prior FY uncommitted (definition to be agreed between CBFO and SIMCO) Carryover (in Project Baseline Summary (PBS) CB-0020, CB-0080, CB-0081 and CB-0090 to no more than 8 weeks of average operational costs to account for funding allocation issues associated with Continuing Resolution. DOE expects the Contractor to manage its authorized and obligated funds across multiple fiscal years to maximize performance and accelerate schedule.
- The management of all obligated funds to preclude anti-deficiency.
- Accurate project controls, cost estimating, budgeting and cost monitoring that allow for long range planning to control costs.
- Ability to accurately project the Estimates at Completion (EACs).
- Effectiveness/accuracy of the Earned Value Management System (EVMS) and operations activities cost reporting as well as the development and implementation of cost mitigation strategies to recover cost variances.
- The overall cost performance on a semi-annual basis as measured against the final contract value and Contract Performance Baseline (CPB). DOE may use any relevant information in this evaluation, (for example CPB, EVMS, use of Management Reserve [MR], etc.). The actual costs for this performance period shall be within the baseline (CPB as of the end of the performance period) and the final contract value as of the end of the performance period.
- The ability to stay within the approved Integrated Project Management Baseline (IPMB) for the work completed, as applicable.

Management

The following factors will be considered for evaluation:

- Timely and Effective communication (e.g., appropriate information, identification of issues) to DOE.
- Effective Key Personnel management.
- Effective integration and coordination of all activities to comply with the contract (e.g, timeliness, completeness and quality of problem identification and corrective action implementation, identification and application of resources, etc.).
- Effective problem resolution (e.g., reasonable and cooperative behavior to include timely identification of issues and responsiveness to customers)
- Effective risk management practices.
- The effectiveness and timeliness to corrective action implementation of business office programs, including but not limited to Human Resources (e.g., developing the workforce), Accounting (e.g., accounting and billing system), Property (e.g, Government Property management) and Procurement (e.g., Contractor Purchasing System and subcontract management, performance in meeting Strategic Sourcing goals, Small Business Subcontracting goals).
- Timely resolution and closeout of subcontractor Requests for Equitable Adjustments (REAs) and Engineering Change Notices (ECNs) within 60 days of initial receipt. If REAs and ECNs cannot be dispositioned within 60 days, Contractor shall notify DOE with a plan of action for anticipated completion.
- Performance in managing the Centralized Procurement Program for Department of Transportation (DOT) Type A transportation assets - Delivering consumable commodities to generator sites in timely fashion meeting all program requirements.
- Information Resource Management that provides a secure, reliable, and efficient Information Technology infrastructure along with timely software application development and deployment.
    - Performance against implementing and maintaining a compliant Cyber Security Program.
- Positive public relations are maintained to ensure the continued overall program improvement initiatives are communicated effectively to stakeholders and stakeholder support outreach and interaction (i.e., communication with states/tribes, first responder training, and roadshows).
- The responsiveness to reviews, assessments, and inquiries from external organizations (e.g., CAP Peer Reviews, Defense Nuclear Facility Safety Board Inquiries, Office of Enterprise Assessment reviews, etc.).
- The Contractor has an effective safety and health program appropriately tailored for the uniqueness of nuclear and underground operations, including maintaining safe underground ground control conditions above a safety factor of 1.5.
    - The safety programs reflect a mature and effective safety culture that fosters an environment where workers are free to express concerns related to safety.
    - The implementation of Integrated Safety Management System (ISMS) and Environmental Management Systems (EMS). DOE's verification of the Contractor's ISMS/EMS must result in no Significant Conditions Adverse to Quality (SCAQ).
    - The ability to achieve and maintain Days Away, Restricted or Transferred (DART) and Total Recordable Cases (TRC) rates below the EM DART and TRC goals.

- Overall effective management of the facility operations.
  - Maintain scheduled WIPP Plant availability (systems and equipment are operable) to support TRU waste disposal operations and ability to overcome unplanned impacts to plant availability. Maintain Central Characterization Program waste characterization capability (e.g., Non-Destructive Examination, Non-Destructive Assay, Flammable Gas Analysis, etc.) and availability (systems and equipment are operable) at assigned sites. Performance in managing and implementing continuous process improvement in TRU waste emplacement procedures.
  - Maintain availability (maintenance current and available for use) of Nuclear Regulatory Commission (NRC) Type B transportation assets to support TRU waste shipments.
  - The ability to achieve at least 85% of the DOE approved Performance Objectives, Measures, and Commitments (POMCs).
  - Performance in providing adequate monitoring service for in route shipments.
- Effectiveness of the Emergency Management Program including the development and implementation of a long-range plan to ensure that adequate numbers of emergency response equipment (e.g., fire engines, ambulances, etc.) with the capability to respond to on-site emergencies are available (maintained and operable) at all times.
- Implement effective partnering relationships with regulators and stakeholders to include DOE generator sites.

Regulatory Compliance

Assess compliance with all terms and conditions in the contract relating to applicable regulations and codes. Consider aspects of performance such as compliance with financial, environmental, safety, and labor regulations, as well as any other reporting requirements in the contract terms and conditions. The following items should be considered for evaluation:

- Performance against Compliance Recertification Application requirements.
- Performance against WIPP Hazardous Waste Facility Permit (HWFP) requirements; Notices of violation (NOVs) are not acceptable.
- Performance against DOE Hazard Category II Nuclear Facility requirements.
- Contractor's Environmental Management System fosters continuous improvement.
- Performance against TRU waste transportation requirements.
- Performance against implementing and maintaining a compliant Safeguards and Security Program.
- Performance against 10 CFR 851 (Worker Safety and Health) requirements, which includes compliance with Mine Safety and Health Administration (MSHA) requirements.
- Business/Accounting system/practices comply with all applicable regulations (DOE Polices, Orders, Standards, Federal Acquisition Regulations, etc.).
- Performance against all other DOE and regulatory requirements (e.g., Executive Orders, DOE Policies, DOE Orders, DOE Standards, Federal regulations, applicable State and Local regulations/statutes, permits, etc.).

Attachment 3 - PERFORMANCE BASED INCENTIVES (PBIs)[1]

PBI 1: Operations and Maintenance

PBI 1.1: Mining

A. Access Drift Mining to W-2300 ($1,300,000) – Complete initial cut mining of S-700, S-850, and S-1000 drifts from W-1300 to W-2300, including crosscuts at W-1640 and W-1970 by September 30, 2023.

B. Panel 7 Closure ($500,000) – Complete closure of Panel 7 in accordance with regulatory requirements within 180 days of PEMP initiation/post transition. Completion for this purpose is defined as the physical installation of the Substantial Barrier, complying with HWFP requirements (closure/in-bye bulkhead) and the physical placement of run-of-mine salt, per the 2014 Environmental Protection Agency (EPA) rule regarding Run-of-Mine Panel Closure requirements (i.e. completion of regulatory paperwork requirements after installation are not part of this PBI).

C. HWF Temporary Authorization (TA) for Panel 11 and Draft Project Management Review for Panel 10 ($500,000) – Develop a submittal-ready TA request by 9/30/2023 to start mining Panel 11 should issuance of the 10-year Renewal Application be delayed. In addition, by 9/30/2023 develop a draft PMR for utilization of Panel 10 should Panel 10 need to be used as an operational contingency (i.e., in the event emplacement activities in a subsequent Panel are suspended).

PBI 1.2: Waste Emplacement

A. General Shipments ($1,200,000) - The Contractor will support the National TRU Program to schedule shipment of certified TRU waste based on the priorities of Los Alamos National Laboratory-Enivronmental Management (LANL-EM) waste and then to achieve Idaho National Laboratory (INL) shipments at a level of 60% or more of the total TRU waste shipments for this evaluation period. The Contractor will earn $5000.00/shipment for receipt and emplacement of the first 240 shipments. Any factors outside of Contractor control shall be approved by the FDO.

B. LANL Shipments ($200,000) – Due to the priority and importance of shipping LANL-EM waste, the Contractor will earn an additional $5,000.00 per shipment of LANL-EM TRU Waste for the first 40 shipments.

PBI 2: Capital Asset Projects

The Contractor is required to achieve full EVMS certification compliant with EIA-748 and consistent with DOE Order 413.1B Change 6. Completion is demonstrated through the successful completion of a DOE Office of Project Management Certification Review, and completion of all applicable corrective actions. Contractor readiness must be declared no later than July 31, 2023. No fee may be invoiced for PBI 2.1 and PBI 2.2 until DOE concurs that all corrective actions have been satisfactorily addressed (e.g., receipt of a DOE Certification letter)

[1] The FDO has the sole discretionary authority to pay partial fee for incomplete work. Additionally, the FDO has the sole discretionary authority to accept deviations in performance that achieve the overall intent/goal of the government as intended from the performance of the stated PBIs.

or the work is completed in accordance with PBI 2.1 A and B. For each month delay after September 30, 2023 based on DOE availability to support the certification process, a $250,000 (total, per month) reduction in fee will be applied to the available fee for PBI 2.1 and 2.2.

PBI 2.1: Safety Significant Confinement Ventilation System (SSCVS) Project

A. New Filter Building (NFB) Interior Ductwork ($1,421,428) - Complete installation of all interior ductwork for the SSCVS NFB (Activity ID MS.CN.540, Interior Ductwork Complete – NFB, and all associated predecessors from the construction subcontractor schedule dated 22 January 2023) by September 30, 2023, to include fabrication and delivery of all NFB interior ductwork sections; receipt inspection and acceptance of all NFB interior ductwork; and installation of all interior ductwork segments in the NFB in accordance with applicable construction and quality specifications. All appropriate quality assurance records must be complete in accordance with the M&O applicable quality assurance program for this PBI to be satisfied, including pre-start punchlist items. As-built drawings are not required for this PBI.

B. Salt Reduction Building (SRB) Construction Complete ($710,714) - Complete all construction activities for the SSCVS SRB(Activity ID MS.CN.630, SRB Complete – SRB, from the construction subcontractor schedule dated 22 January 2023), including pre-start punchlist items, not later than September 30, 2023. This includes completion of: installation of all SRB equipment (MS.CN.600), setting and aligning all scrubbers, demisters and dedusters; installation of all platform and mezzanine steel (MS.CN.580, MS.CN.250); installation of all SRB interior ductwork (MS.CN.650); installation of all SRB interior piping, including piping insulation (SRB.SUB.80); and completion of all major SRB interior electrical construction, including conduit (MS.CN.510), cable pulling (MS.CN.570) and cable terminations (MS.CN.480).

PBI 2.2: Utility Shaft Project

A. Shaft Sinking ($813,248) – Complete shaft sinking to the station depth of 2125 ft, including mapping and shaft lining installed; complete drilling and blasting of the invert catwalk and station and east and west inverts out to 32 feet; and complete slinging down and commissioning of the station excavation load/haul/dump equipment required for station excavation (Activity ID 18.0007, Sling Down and Commission LHD) no later than September 30, 2023. The date indicated assumes there are no delays to the continuation of mining from the implementation of a grouting program to mitigate the inflow of water into the shaft or from realization of other risk events owned by the CBFO (that would be funded from DOE contingency). Realization of risks owned by the M&O contractor (that would be funded from Management Reserve) shall not be considered for relief from the indicated date for this PBI. Activity ID 18.0007 must be completed for achievement of this PBI; there is no proration considered.

PBI 2.3: Hoisting Capabilities Project[2]

A. CD-1 ($635,833 –PBS CB-0080 funded) Complete all actions necessary to gain approval of

[2] Note: The available fee for the Post CD-1 Hoisting Capabilities Project PBI will be determined based on the fee allocated in the Total Project cost, the M&O Contract (e.g., Section B and the work scheduled during the base performance period. The available fee will be split 30/70 award fee/PBIs.

CD-1 no later than September 30, 2023 or formulate and document an alternate strategy to make use of the US infrastructure and Hoisting project funding to maximize value to WIPP. The Contractor shall utilize the existing alternatives analysis to support the CD-1 submittal or recommend an update to the existing alternatives analysis, if deemed necessary based on the formulation of an alternate strategy using US infrastructure. The Contractor shall provide a "CD-3 level" cost estimate for the two leading alternatives to ensure the required CD-1 cost estimate is realistic, reasonable and bounding. All requirements specified in DOE Order 413.3B Appendix A 'Table 2.1 CD-1 Requirements' shall be met, to include Project Management Executive approval of CD-1. Furthermore, the conceptual design maturity shall be at least 15% and have an estimated cost range of at least Association for the Advancement of Cost Engineering International (AACEI) Class 3. Conceptual design deliverables shall be consistent with degree of completion specified in Attachment 2 of the Policy Memorandum: Conceptual and Preliminary Design Implementation Guidance for National Nuclear Security Administration (NNSA) Capital Line Item Projects https://community.max.gov/download/attachments/1488978772/Conceptual_and_Preliminary_Design_Memo_2018-05-21.pdf).

PBI 3: Site Infrastructure

Completion is defined as (but not limited to) completion of all procurement, design, permitting, approvals, field work, demobilization of any subcontractor/site work crew, disposal of all generated wastes, completion of all as-built drawings, verification of performance parameters/functionality against original project performance specifications, completion of pre-operational testing and commissioning activities, submittal and approval of applicable regulatory documents (e.g., HWFP permit modification requests), and turn-over to operations and placement of the system into unrestricted use. Adherence to DOE Order 425.1D is required. If the Contractor wishes to use a graded approach, prior concurrence from DOE is required. These projects have not been fully funded and work on these assumes funding to be provided.

A. Solar Power Array 30% Design ($230,000) – Have a 30% design for a solar power array by September 30, 2023. DOE shall provide the Contractor an National Renewable Energy Laboratory Study and Sandia National Laboratory evaluation for applicable planning. The design and construction of the solar panel array shall be such that the site power systems do not become part of the grid and, therefore, subject to North American Electric Reliability Council (NERC)/Federal Energy Regulatory Commission (FERC) regulations, that site power demands can be fully met either through a continuation of on-site solar power (baseload) and offsite power (e.g., XCEL), fully by offsite power, or by diesel generator in the event of loss of both onsite solar panels and offsite power. Transfer of loads shall occur in less than 1 second. Uninterruptible Power Supply (UPS) power shall be in place to protect critical loads. DOE approval of the 30% design and all associated plans shall be received by September 30, 2023. DOE approval of all (30%, 60%, 90%, Certified for Construction) design packages is required. The Contractor shall assume 60 days for DOE review and comment/approval of submitted design packages.
B. Salt Pocket Refurbishment ($230,000) – Perform re-design and baseline development, award contract, procure long-lead items, and all preparation (i.e., fixing leaks, hoist controller upgrade) prior to demolition by September 30, 2023.
C. Electrical Substation #3, ($230,000)– Procure long-lead items and install alternate power in support of Substation #3 replacement by September 30, 2023.
D. Modular Small Arms Training Facility ($230,000) - Complete "Design Site" and

"Mobilization" work packages by September 30, 2023. ($160,000); Additional $70,000 upon completion of "Clear and Grub Site" and "Strip, Haul and Stockpile" tasks by September 30, 2023.

E. Master Site and Power Capacity Plan ($230,000) – Develop a Master Site Plan including expansion of power capability delivering power to existing and new buildings, optimization to site facilities supporting operations, leveraging renewable energy technologies, and demonstrating adequate power redundancy/load capability to support WIPP Site in the 2, 5, 10, and 20-year timeframe by September 30, 2023.

PBI 4: Critical Activities

PBI 4.1: Manufacturing

A. HalfPacts ($150,000) – Completion of testing on first HalfPact by September 30, 2023. Partial payment will be allowed for percent effort complete.

B. Shielded Container Assemblies (SCAs) ($100,000) – Contract awarded and purchase order placed for 77 SC-55G1 and 46 SC-55G2 SCAs by September 30, 2023

PBI 4.2: Permit Improvements[3]

A. Permit Realignment ($340,000) – In an effort to align the permit with the increased future volumes of newly generated waste, the Contractor shall develop a scope and strategy to simplify the Waste Analysis Plan (WAP) waste characterization process for certain newly generated waste by September 30, 2023.
    a. The evaluation shall include any optimization to the current waste certification process which may be completed with, and without, permit modifications.
    b. Permit realignment will include the necessary actions to transition certified programs to a national certification versus site certifications.

B. Permit Modifications Five-Year Strategy ($92,146) – The Contractor shall provide a Five-Year Strategy for the development and submittal of permit modifications required to support waste emplacement activities through 2033 no later than September 30, 2023.
    a. Strategy shall identify DOE Mission, cost, schedule, and operational impacts.
    b. A list of potential permit modifications with schedule will be transmitted to CBFO by June 30, 2023 for concurrence and comments.

PBI 4.3: Robotic/Technology Advancements

A. Unmanned/Robotic Monitoring of the Underground During Off-Normal Conditions Plan ($75,000) – Re-establish and test the XO network, so as to form a communications backbone that is capable of supporting robotics, or other technology, for monitoring and communicating data such as Volatile Organic Compound (VOC), radionuclides, particulates, air quality and other parameters. Investigate and propose a suitable back up power system for the network to facilitate data collection and transmission with no underground power for two weeks.

[3] These permit modifications do not preclude the need to submit other Class 1, Class 1*, Class 2, or Class 3 modifications to support ongoing or routine operation of WIPP. It is the Contractor's responsibility to plan and manage all of the required or planned permit modifications.

PBI 4.4: Other Improvements

A. Cyber Security ($75,000) – Complete the defined 2023 phases per the CBFO Zero Trust Architecture Plan as required by the OMB M-22-09 by September 30, 2023.

ATWIR-2025 LANL Waste Streams

ATTACHMENT 2

	Volumes (m3) -------	
	Stored	Projected
LA-CIN01.001	189.9	94.5
LA-CIN02.001	114.6	0
LA-CIN03.001	4.2	0
LA-CIN04.001	1489.4	0
LA-LA225D	6.3	0
LA-LANHD01	29.8	0
LA-MHD01.001	361.1	2766.5
LA-MHD01-Pits	0	1144.6
LA-MHD03.001	297.8	28.4
LA-MHD04.001	2.3	0
LA-MHD05-ITRI.001	4.6	0
LA-MHD08.001	1.9	0
LA-MHD09.001	13.4	0
LA-MIN02-V.001	11.1	0
LA-MIN03-NC.001	64	0
LA-MIN04-S.001	1.3	0
LA-MIN05-V.001	2.7	0
LA-MIN06-NS.001	0.7	0
LA-MSG04.001	28.7	0
LA-OS-00-01.001	0.2	3.2
LA-TA-00-01	81.7	0
LA-TA-03-29	4	0
LA-TA-03-30	0.2	0
LA-TA-21-05	0.4	0
LA-TA-21-06	329.3	0
LA-TA-21-07	636	0
LA-TA-21-08	4.2	0
LA-TA-21-09	14.3	0
LA-TA-21-12	346.3	0
LA-TA-21-13	15.1	0
LA-TA-21-15	3.4	0
LA-TA-21-16	54.8	0
LA-TA-21-17	0.6	0
LA-TA-50-01	0.6	0
LA-TA-50-18	0.4	0
LA-TA-50-19	63	0
LA-TA-50-69	1.1	0
LA-TA-55-04	237.3	0
LA-TA-55-19	56.6	0
LA-TA-55-21	2.3	0
LA-TA-55-30	199.8	0
LA-TA-55-38	0.8	0
LA-TA-55-400	1.7	0
LA-TRU-Empty-110	1.9	0
LA-TRU-Empty-55	1.9	0
LA-TRU-Empty-85	88.4	0
LA-TRU-Empty-SWB	11.3	0
Total	4781.4	4037.2
with projected	849	
Total "legacy" CH	3932.4	
LA-TA-03-27	77.4	0
LA-TA-35-02	2.7	0
Total "legacy" RH	80.1	0

Source: ATWIR-2025, Appendix A, Pages 117-167