



Pantex, LLC

▶ p.o. box 30020 ▶ amarillo, tx 79120
▶ phone 806-477-3000 ▶ www.pantex.com

Contract / Lease No. 64464

October 1, 2008

DEFINITIONS – BABCOCK & WILCOX TECHNICAL SERVICES PANTEX, LLC

As a result of a recent name change from B&W Pantex, LLC to Babcock & Wilcox Technical Services Pantex, LLC, the following terms, as used throughout this contract, shall have the meaning set forth below:

- (a) The term “B&W Pantex, LLC” means Babcock & Wilcox Technical Services Pantex, LLC.
- (b) The term “Babcock & Wilcox Technical Services Pantex, LLC” means B&W Pantex.
- (c) The term “B&W Pantex” means B&W Pantex.

DESCRIPTION OF SERVICES

This is a **fixed-unit price type contract (lease)** valued at **\$2,765,644.00** that establishes a new, consolidated lease agreement with Turnkey Leasing for purposes of making available suitable office space to B&W Pantex employees within the existing five (5) modular buildings. All work requirements governing this project shall be in accordance with the document entitled, **Statement of Work for the Continued Rental & Maintenance of Temporary Buildings (T9-059, T9-060, T9-061, T9-129, T9-130)**, dated July 30, 2008.

I. CONTRACT TERMS AND CONDITIONS

The following PX forms and documents are incorporated by reference. All clauses have the same force and effect as if they were incorporated in full text.

- **PX-4062(Issue 8)** Terms & Conditions for Fixed Price Contracts (Other Than Construction)
- **PX-200STC-1B (Issue 2)** Additional Terms & Conditions for Access to Pantex Plant for 10 CFR 851 Applicability
- Document entitled, **Statement of Work for the Continued Rental & Maintenance of Temporary Buildings (T9-059, T9-060, T9-061, T9-129, T9-130)**, dated July 30, 2008.
- **Appendix A “Price Schedule”**

All referenced PX Forms can be found at <http://www.pantex.com/procurement/forms.shtml>.)

II. SCHEDULE ARTICLES / SPECIAL CLAUSES

A. PERIOD OF PERFORMANCE

B&W Pantex anticipates a performance period of five (5) years (60 months) beginning **October 1, 2008** through **September 30, 2013**.

B. CORRESPONDENCE INSTRUCTIONS

All contractual correspondence shall be addressed to:

B&W Pantex, LLC
Brad W. Brack, Contract Representative
P.O. Box 30020
Mail Drop 16-12F
Amarillo, TX 79120-0020
Telephone No. (806) 477-6192

All technical correspondence shall be addressed to:

B&W Pantex, LLC
Robert Tevebaugh, Subcontract Technical Representative
P.O. Box 30020
Mail Drop 12-5G
Amarillo, TX 79120-0020
Telephone No. (806) 477- 3317



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Invoices / supporting documentation shall be prepared in two (2) copies and submitted to:

B&W Pantex, LLC
Accounts Payable
P.O. Box 30020
Mail Drop 12-138 UP
Amarillo, TX 79120-0020

C. EXCAVATION REQUIREMENTS

1. The Contractor shall hand dig to locate utilities prior to excavation by mechanical means close to the utility. Utilities shall be exposed two feet (2') on all sides for natural gas lines and one foot (1') on all sides for electrical and other utilities. Once in view they shall be protected with a non-conductive physical barrier and a spotter shall be used to guide the mechanical excavation activities.
2. The Contractor shall provide notification to the utility locator personnel to verify any repair of existing damaged tracewires and for the installation of new tracewires.
3. The Contractor shall insert provisions in all subcontracts and purchase orders under this contract to include submittal of marked up, as located, utility maps with excavation permits.

D. INSTALLATION/REPAIRS

Installation/repairs are to be performed by U.S. citizens. Installation/repairs by naturalized U.S. citizens from communist bloc, or former communist bloc countries, will not be permitted.

E. KEY PERSONNEL

The individual(s) listed in the table below have been identified by the Contractor as individual(s) necessary for the successful performance of this contract. The Contractor agrees to assign these individual(s) to the performance of work under this Contract. The Contractor further agrees not to reassign/remove such individual(s) from the contract without prior written approval from the B&W Pantex Contract Representative. If the individual(s) listed become unavailable, the Contractor, upon prior written approval from the B&W Pantex Contract Representative, shall replace such individual(s) with an individual of substantially equal abilities and qualifications.

Contractor Personnel	Title / Position	Clearance Level
Michael Borger	President – General Manager	DOE “L”
Anthony Hill	Business Specialist	DOE “L”
Robert Sheets	Business Specialist	DOE “L” Clearance (In Process)

F. LIMITATIONS OF LIABILITY

The financial liability of Babcock & Wilcox Technical Services Pantex, LLC will be limited to the value of goods or services actually ordered and received or performed against this purchase order. The financial liability of B&W Pantex will not exceed **\$2,765,644.00** unless specific written approval to exceed this figure is granted by B&W Pantex Procurement Department.



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G PECUNIARY LIABILITY

Contractor accepts pecuniary liability for loss or damage of Government property while in the possession of its agents.

H. PRICES AND PAYMENT SCHEDULE

Price(s), as quoted in **Appendix A "Price Schedule"** and as outlined in the table below, remain firm through September 30, 2013. The Contractor shall submit a monthly invoice for **\$46,094.40** for the lease of the five subject modular buildings.

Modular Bldg.	Sq. Feet	Fixed Rate	Mo. Lease	Annual Lease	5-Year Term Lease
9-059	10,320	\$0.68	\$7,017.60	\$84,211.20	\$421,056.00
9-060	12,000	\$0.68	\$8,160.00	\$97,920.00	\$489,600.00
9-061	10,320	\$0.68	\$7,017.60	\$84,211.20	\$421,056.00
9-129	1,440	\$0.68	\$979.20	\$11,750.04	\$58,750.20
9-130	19,100	\$1.20	\$22,920.00	\$275,040.00	\$1,375,200.00
			\$46,094.40	\$553,132.80	\$2,765,664.00

I. OFFICIAL USE ONLY INFORMATION (OUO)

1. Documents and electronic media (hereinafter in this clause the words "documents" or "documentation" shall mean both paper and electronic media) furnished by B&W Pantex to the Contractor in connection with this project may contain Official Use Only Information (OUO) as defined by U.S. Department of Energy regulations, order or policy, as amended. The Contractor will be responsible for protecting such information from unauthorized dissemination in accordance with the applicable DOE regulations, orders, and policy. Copies of the applicable regulations, orders or policies are available upon Contractor request. In accordance with the applicable regulations and policy, OUO may only be made available to authorized individuals, which, for purposes of this contract, means only to U.S. Citizens who have a need to know in the performance of official duties or DOE authorized activities and who are employees of the Government, employees of a Government contractor or subcontractor, or employees of a prospective Government contractor or subcontractor for the purpose of bidding on a Government contract. Any authorized person granted access to OUO by Contractor shall be informed of the requirement for control and protection of such information.

2. All parties receiving OUO are and shall be obligated to protect such information from unauthorized dissemination, such responsibility including, but not being limited to, the following:

a. Protection from unauthorized dissemination, which shall include without limitation establishment and maintenance of a system for protecting OUO from unauthorized dissemination. The requirement for protection extends to each authorized individual or person granted access to OUO and to any OUO that is reproduced or created in the course of this project.

b. Reproduction. A document or material containing OUO may be reproduced to the minimum extent necessary consistent with the need to carry out the official duties without permission of the originator provided the reproduced document or material is protected in the same manner as the original document.



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Any person under the Contractor's control in connection with work under this contract who violates applicable regulation, order or policy with regard to OUO material may subject the Contractor, its agents, employees, or subcontractors to criminal and civil Liability under the applicable laws of the United States.

3. In the event new documentation is created under this Contract that contains or potentially contains OUO, a proper review of the documentation and, if necessary, marking as OUO, is required. Contractor shall either obtain the required expertise to conduct the OUO review or shall notify the Contract Representative (or in their absence the B&W Pantex Classification Office) immediately upon creation or discovery of any new or unmarked OUO or potential OUO document. B&W Pantex shall then assist Contractor in reviewing the documentation and designating the material for appropriate handling. All other requirements in this Contract regarding handling of documents, including OUO, shall apply to the new or unmarked documentation.

Any authorized person (including lower-tier subcontractors) granted access to OUO by Contractor shall be informed of the requirement for control and protection of such information. Any person (including lower-tier subcontractors) under Contractor's control in connection with work under this contract, who violates Section 148 of the Atomic Energy Act or any applicable regulation, order, or law with regard to OUO, may subject the Contractor, its agents, employees, or subcontractors to criminal and civil liability under the laws of the United States.

4. If this solicitation or any resulting contract contains OUO documents, Contractor shall be required to complete and return to the B&W Pantex Contract Representative, an OUO Non-Disclosure Agreement (PX-4873) prior to receipt of OUO documents. Should Contractor be awarded a contract under this solicitation, Contractor shall return all OUO documents to the B&W Contract Representative upon request following completion or termination of the Contract. Should Contractor not be awarded a contract under this solicitation, Contractor shall return all OUO documents to the B&W Pantex Contract Representative immediately, upon request.

5. The Contractor shall include this clause in all subcontracts that may require dissemination of OUO documents to the lower-tier subcontractor.

J. UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION (UCNI)

1. Documents and electronic media (hereinafter in this clause the words "documents" or "documentation" shall mean both paper and electronic media) furnished by B&W Pantex to the Contractor in connection with this project may contain Unclassified Controlled Nuclear Information (UCNI) as defined in Section 148 of the Atomic Energy Act of 1954, as amended. The Contractor will be responsible for protecting such information from unauthorized dissemination in accordance with DOE regulation, requirements, and other applicable law, including without limitation DOE Order 471.1A and DOE Manual 471.1-1.

2. In accordance with the applicable regulations, orders, and laws, UCNI may be made available only to authorized individuals, which, for purposes of this contract, means only to U. S. citizens who have a need to know in the performance of official duties or DOE authorized activities, and who are employees of the Government, employees of a Government contractor or subcontractor, or employees of a prospective Government contractor or subcontractor, for the purpose of bidding on a Government contract.



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3. Any authorized person (including lower-tier subcontractors) granted access to UCNI by Contractor shall be informed of the requirement for control and protection of such information. Any person (including lower-tier subcontractors) under Contractor's control in connection with work under this contract, who violates Section 148 of the Atomic Energy Act or any applicable regulation, order, or law with regard to UCNI, may subject the Contractor, its agents, employees, or subcontractors to criminal and civil liability under the laws of the United States.

4. In the event new documentation is created under this Contract from UCNI, a proper review of the documentation, and if necessary marking as UCNI, is required under the applicable regulations, orders, and laws. Contractor shall notify the Contract Representative (or in their absence the B&W Pantex Classification Office) immediately upon creation or discovery of any new or unmarked UCNI or other document that potentially contains UCNI. B&W Pantex shall then assist Contractor in reviewing the documentation and designating the material for appropriate handling. All other requirements in this Contract regarding handling of documents, including UCNI, shall apply to the new or unmarked documentation.

5. If this solicitation or any resulting contract contains UCNI documents, Contractor shall be required to complete and return to the B&W Pantex Contract Representative, an UCNI Non-Disclosure Agreement (PX-4862) prior to receipt of UCNI documents. Should Contractor be awarded a contract under this solicitation, Contractor shall return all UCNI documents to the B&W Contract Representative upon request following completion or termination of the Contract. Should Contractor not be awarded a contract under this solicitation, Contractor shall return all UCNI documents to the B&W Pantex Contract Representative immediately, upon request.

6. The Contractor shall include this clause in all subcontracts that may require dissemination of UCNI documents to the lower-tier subcontractor.

K. SERVICE CONTRACT ACT

1. The Department of Labor (DOL) Service Contract Act Wage Determination(s) reflect wage determination(s) as of **Wage Determination No. 2005-2517 (Revision 8)**, dated August 20, 2008.
2. The Contractor agrees to incorporate the DOL prevailing wage determination(s) in this contract, unless otherwise exempted from the Service Contract Act provisions. If such determination causes an increase or decrease in the cost of performance of work under this contract, an equitable adjustment shall be made in the contract price pursuant to the "Changes" clause included in the terms and conditions.

L. SUBCONTRACT TECHNICAL REPRESENTATIVE

1. The work to be performed under this Contract shall be authorized by the B&W Pantex Subcontract Technical Representative (STR) prior to performance. The following individual has been designated STR and is delegated authority by the B&W Pantex Contract Representative to authorize performance of Contractor's services: **ROBERT TEVEBAUGH.**
2. The Contractor shall inform, interface, and comply with the advice, guidance, and technical directions of the STR to the extent that such directions do not impact the scope, cost, schedule, or other provisions of the contract. Technical direction includes: (1) approval of work approaches; (2) interpretation of technical



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requirements; and (3) review and approval of submitted reports, data and technical information. All technical directions shall be issued in writing by the STR and shall not impose tasks or requirements upon the Contractor in addition to, or different from the general contractual requirements specifically set forth in this contract.

3. The Contractor agrees that any direction taken from the STR that does not meet the technical direction description limitations stated above will be undertaken at no cost to B&W Pantex or the Government.

M. SUBCONTRACT MANAGEMENT

Contractor is responsible for the management of its subcontractors, suppliers and vendors with visibility through the lowest tier of subcontractors. The Contractor shall ensure that each lower tier subcontract contains all applicable specifications, special requirements, and clauses needed to comply with the requirements of this contract.

N. PRELIMINARY BACKGROUND CHECK

Individuals proposed to work on the Pantex Plant must undergo a preliminary background check, to be initiated by B&W Pantex. B&W Pantex will provide the forms to the Contractor. The individuals must complete and return the forms to the B&W Pantex, Human Resources Representative.

O. SECURITY CLEARANCE REINSTATEMENT/INTERAGENCY RECIPROCITY

The successful Offeror and proposed subcontractor(s) may require access to controlled areas and/or classified information, thereby requiring personnel to possess or have the ability to obtain a DOE "L" or "Q" Access Authorization through possession of an equivalent security clearance from another agency (interagency reciprocity) or through reinstatement of a previously held DOE "L" or "Q" access authorization.

For interagency reciprocity, a background investigation equivalent to a DOE "Q" access authorization or DOE "L" access authorization must have occurred within the past five years or ten years respectively.

To obtain reinstatement of a DOE access authorization, an equivalent background investigation must have occurred within the past five years for a "Q" access authorization or within the past ten years for a "L" access authorization.

P. VACATING AND RETURNING THE BUILDING(S)

If a building is vacated, then upon B&W Pantex giving thirty (30) days notice to Contractor, the B&W Pantex Contract Specialist and Contractor's Representative shall mutually agree to a time in which the building shall be removed, not to exceed one hundred twenty (120) days from the day notice is given to the Contractor that the building is being vacated. The prompt removal of a building(s) is expressly understood to be part of the consideration of this contract/lease. B&W Pantex will be entitled to deduct **\$1,500.00** per day from any payments due the Contractor for each day that the vacated building remains on the Pantex Plant premises after the agreed upon date for removal.



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Q. ADDITIONS TO THE TERMINATION FOR CONVENIENCE CLAUSE

In the event that B&W Pantex terminates any one or more of the five modular buildings during the fixed, five-year term of this lease/contract, B&W Pantex will pay the Contractor the balance of lease payments due for that specific building, beginning with date of termination notice less a flat 25% discount on the remaining balance. This provision will apply only to the building being vacated. The lease rates as negotiated for the remaining buildings will not increase. This discounted lump sum will be payable to the Contractor within thirty (30) days after the removal of the modular building(s).