



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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**THIS OPINION WAS INITIALLY ISSUED UNDER PROTECTIVE ORDER  
AND IS BEING PUBLICLY RELEASED IN REDACTED FORM ON  
JULY 19, 2023**

GRANTED IN PART: June 28, 2023

CBCA 7056

WASHINGTON RIVER PROTECTION SOLUTIONS LLC,

Appellant,

v.

DEPARTMENT OF ENERGY,

Respondent.

Scott Arnold, Luke W. Meier, Robyn N. Burrows, and Amanda C. DeLaPerriere of Blank Rome LLP, Washington, DC; and Michael J. Montalbano of Blank Rome LLP, Philadelphia, PA, counsel for Appellant.

Andrew J. Unsicker and Paul R. Davis, Office of Chief Counsel, Department of Energy, Richland, WA, counsel for Respondent.

Before Board Judges **KULLBERG**, **ZISCHKAU**, and **SULLIVAN**.

**SULLIVAN**, Board Judge.

Washington River Protection Solutions LLC (WRPS) appealed the decision of the Department of Energy (DOE) contracting officer that asserted a demand for repayment of purported unreasonable staff augmentation expenses incurred between 2009 and 2018. We find most of the challenged costs reasonable and grant the appeal in part.

Findings of Fact

In May 2008, DOE Office of River Protection awarded to WRPS the Tank Operations Contract (TOC). Exhibit 1 at 1.<sup>1</sup> Located at DOE's Hanford Site, there are 177 tanks containing approximately fifty-three million gallons of radioactive and chemical hazardous waste. *Id.* at 27. Pursuant to the TOC, WRPS was to conduct "operations and construction activities necessary to store, retrieve and treat Hanford tank waste, store and dispose of treated waste, and begin to close the Tank Farm waste management areas to protect the Columbia River." *Id.* at 28. This cleanup of the Hanford Site was part of what DOE described as "the world's largest environmental cleanup project." *Id.* at 27. The contract was a cost-plus-award-fee contract, and the expected contract price was more than \$7 billion over ten years of performance, which included a base period of five years and a total of five additional option years. *Id.* at 5, 10. WRPS was obligated to "provide the personnel, equipment, materials, supplies, and services, and do all things necessary for, or incident to, providing its best efforts to perform all requirements of" the contract. *Id.* at 5.

The focus of this dispute is WRPS's use of contracted labor resources (CLRs) in its performance of the contract. CLRs are individuals hired through staff augmentation subcontractors to perform a specific scope of work or to fill in for missing personnel on a temporary basis under the direct supervision of a WRPS employee. Transcript, Vol. 1 at 30. WRPS competes different labor categories among staff augmentation contractors and enters into blanket master agreements (BMAs) that contain labor categories and rates.<sup>2</sup> *Id.* at 79-80. Once BMAs are established, CLRs can be hired quickly, and WRPS does not incur the training or separation costs that it would for a full-time employee, costs estimated to be between \$28,000 and \$38,000. *Id.* at 78, 80, 188. CLRs also allow WRPS to accomplish tasks when budget funds are available and to downsize quickly without additional cost when budget funds are not available. *Id.* at 186. It also allowed WRPS to obtain the services of contractors who would not take a full-time position. Exhibit 37 at 20; *see also* Transcript, Vol. 1 at 189-90. WRPS hired 1224 CLRs in the first ten years of the contract, as compared to the average 4300 full-time WRPS employees. Exhibit 37 at 19; Transcript, Vol. 1 at 183. Very few of these CLRs worked full-time during any given year, and few worked more than five years as a CLR. Exhibit 37 at 16. WRPS spent nine percent of its staffing dollars paying for CLRs. Transcript, Vol. 1 at 183-84. WRPS planned on an annual basis its use of full-time WRPS employees versus CLRs—plans that were shared with DOE. *Id.* at 186.

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<sup>1</sup> All exhibits are found in the appeal file, unless otherwise noted.

<sup>2</sup> WRPS also used blanket ordering agreements (BOAs), in which individual CLR positions were competed. Transcript, Vol 1 at 256-57.

Chronology of Dispute

In February 2020, DOE issued a notice of intent to disallow costs “related to subcontractor backlog audits” through fiscal year 2018. Exhibit 32. DOE intended to disallow \$6 million for “contracted labor time recording (CLTR)” resources. *Id.* at 2. DOE was “particularly concerned about the contractual compliance issues and cost impact due to WRPS’s use of preferred candidates to acquire staff augmentation resources” because “WRPS did not perform thorough technical reviews on preferred candidates or incumbents and it has been found that some of these candidates were paid at inappropriately high rates.” *Id.* at 4. The amount to be disallowed for these issues was based upon an audit report prepared by the DOE Richland Finance organization (DOE Finance). *Id.*

In the audit, DOE Finance examined the compensation records for forty-one individuals hired as CLRs by WRPS that it had “judgmentally selected,” seeking CLRs that had worked for WRPS for three or more years consecutively. Exhibit 32 at 17; Transcript, Vol. 3 at 37-38. DOE Finance identified numerous concerns with the employment and compensation for thirteen of these individuals, including concerns that WRPS did not have effective controls to ensure that CLRs met minimum qualifications and that several CLRs were paid rates higher than the rates agreed to on the subcontract through which they were hired. Exhibit 32 at 32-33. DOE Finance was also concerned that none of the forty-one CLRs had been subject to a “make versus buy” analysis to determine whether it was less expensive to hire a new WRPS employee rather than filling the requirement with a CLR. *Id.* DOE Finance did not provide a dollar figure that matched the \$6 million amount in the notice of disallowance; instead, DOE Finance recommended a settlement range between \$5.75 million and \$8 million. *Id.* at 8.

In August 2020, WRPS provided a response to both the audit report and an explanation of the reasonableness of the dollars expended for the thirteen individuals that were the focus of the DOE audit. Exhibit 37.

On December 10, 2020, DOE issued a contracting officer’s decision in which DOE disallowed \$6,025,069 because the costs were unreasonable. Exhibit 45.<sup>3</sup> DOE calculated this amount by identifying specific costs to be disallowed for thirteen individuals for four different reasons. *Id.* For five individuals, DOE identified a “high” and “low” amount that were disallowed and averaged the figures. *Id.* at 8. The sum of the amounts calculated for

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<sup>3</sup> DOE demanded payment within thirty days from the date of the December 10 letter. The contract incorporated by reference the Interest clause, 48 CFR 52.232-17 (2020) (Federal Acquisition Regulation (FAR) 52.232-17). Exhibits 1 at 158, 46 at 196.

the thirteen individuals was \$3,012,534. *Id.* DOE multiplied this figure by two to derive the final amount disallowed. DOE applied this so-called “2x” factor because DOE, in its review, found other instances of the same issues identified for the thirteen individuals, and the factor would account for what DOE believed was “excessive pass-through” of subcontracting costs related to CLRs. *Id.* at 7.

#### Costs That DOE Sought to Disallow

DOE brought challenges to specific costs that can be grouped into four categories:

1. The hourly rates paid to seven individuals exceeded the hourly rates that they would have received purportedly as WRPS full-time equivalents (FTE).
2. The hourly rates paid to three individuals exceeded the rates set forth in the BMAs competed among the staff augmentation subcontractors.
3. Seven individuals purportedly did not meet the qualification requirements set forth in the BMA for their positions.
4. The hourly rate paid to two individuals was increased “overnight” with purportedly no reason for the increase.

The Board’s specific findings regarding the reasonableness of the dollars paid to each of these individuals are detailed in appendix A to this opinion. The Board sets forth below its findings regarding these categories of deductions and some pertinent findings regarding individuals.<sup>4</sup>

#### CLR Rates Above WRPS FTE Rates

In 2019, the WRPS internal audit (WRPS-IA) organization performed an audit in which the hourly rates of CLRs were compared to the hourly rates they would have been paid as WRPS employees based upon their years of experience. The auditor did not compare the rates of specific positions or job classifications; instead, the auditor used the seniority-based WRPS pay bands. Transcript, Vol. 1 at 132. While the rates paid to CLRs were both greater and less than the rates paid to WRPS employees for years of experience, the auditor found that, on average, the rates paid to CLRs were approximately three percent higher than the

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<sup>4</sup> The Board expects that appendix A will require extensive redaction before this decision is released to the public. Individuals are identified below by a “sample” number assigned by DOE Finance. The sample numbers are matched with the individual’s name in appendix A.

rates paid to WRPS employees. *Id.* at 134. The auditor examined only rates paid in 2018. *Id.* at 139.

Ten of the rates paid to CLRs exceeded the WRPS rates because the WRPS rates were capped at twelve years of experience, and some CLRs had more than thirty years of experience. Transcript, Vol. 1 at 132. The auditor compared these rates to comparable rates, determined by years of experience and job title, in a database maintained by the General Services Administration (GSA) and found the rates to be very similar and, therefore, reasonable. *Id.* at 136-37; Exhibit 721.

For seven individuals, DOE Finance purportedly used WRPS-IA's analysis to calculate the "excess" that these six individuals were paid between 2009 and 2018 on their contracts. However, the percentages that DOE-Finance used are not found on the WRPS-IA auditor's worksheet. *Compare* Exhibit 45 *with* Exhibit 721. The percentages used by DOE Finance are lower in four instances and higher in two. *Id.* The seventh individual does not appear on the WRPS-IA worksheet (sample 27). *Id.* In addition, DOE Finance used the percentages across the eleven years of the contract, although WRPS-IA only examined the rates in 2018. *Id.* Using these percentages purportedly derived by WRPS-IA, DOE Finance totaled the costs paid to these individuals in the period 2009-2018 and then multiplied the percentage "excess" to derive the difference between what the individual was paid and the amount that supposedly would have been paid to a full-time WRPS employee.

DOE's challenge to these costs appears to be rooted in the overarching concern that WRPS was not conducting a "make versus buy" analysis for CLRs, meaning that it was not looking at whether it was more cost effective to hire these individuals as full-time WRPS employees or to contract with them as CLRs. The DOE auditor conceded that he could not quantify that concern directly. Transcript, Vol. 3 at 249-50. This calculation of the "excess" cost does not compare the number of hours worked by the individuals to the number of hours that a full-time employee would work. None of these individuals worked more than 2000 hours per year consistently across the years. Exhibit 45 at 10-21.

WRPS put forth evidence to demonstrate how the rates paid to each of the seven individuals was reasonable. Six of the seven individuals possessed specific technical skills and experience with the tank farm operations that WRPS needed for performance of the contract. For example, two of the seven were work planners, a skill that was in short supply and necessary for the planning of all work conducted on the contract. *See, e.g.*, Exhibit 627; Transcript, Vol. 1 at 142. Five of the seven were paid at the BMA rates, which are rates that are determined by competition (samples 5, 6, 13, 24, and 29).

Rates That Exceeded BMA Caps

For three individuals, DOE seeks repayment of amounts paid at labor rates that exceeded the contract rates in the negotiated BMAs on which the individuals were hired. DOE Finance did not consider the roles these individuals were hired to fill when challenging these rates.

All three individuals were preferred candidates, requested by name by the WRPS personnel performing the contract work (“the field”) because the individuals possessed needed experience or skills to accomplish the scope of work. Sample 4 was a subject matter expert in computer applications needed for tank farm operations. Transcript, Vol. 1 at 177-78. Sample 27 was hired to assist WRPS because of his knowledge of the waste treatment facility and its construction. *Id.*, Vol. 2 at 32; Exhibit 707. Sample 30 had more than thirty years of experience and specific Hanford experience sought by WRPS. Exhibits 123, 125.

WRPS established that the rates paid to these individuals were reasonable through comparison to historical prices or comparison to list prices, such as the GSA rates. The rate paid to sample 4 initially was compared to GSA rates for electrical engineers with both a bachelors and masters degree in engineering and ten-to-fifteen years of experience. The subsequent rates were deemed reasonable because they were in line with the rates paid on previous contracts. The rates paid to sample 27 were determined to be reasonable because they were in line with rates paid to the individual on prior contracts. The rate on the first contract with sample 27 was determined through competition and found to be reasonable through comparison to other similar positions at Hanford. The rates paid to sample 30 were deemed reasonable based upon a comparison of his rate to two different GSA rates for comparable engineers and another contract at WRPS. Exhibit 693. A WRPS executive testified that WRPS could not have obtained the services of these individuals at the BMA rates. Transcript, Vol. 1 at 246, Vol. 2 at 47.

Purportedly Unqualified CLRs

DOE deemed amounts paid to seven individuals to be unreasonable because the individual did not meet the degree requirements set forth in the BMA statement of work on which they were hired. DOE reasoned that, if the individual is not qualified for a position with a corresponding rate, he or she is not worth that rate. *See* Transcript, Vol. 3 at 17.

Several of the individuals were “preferred candidates,” sought by WRPS managers doing the work in the field because of their specific expertise or knowledge of the scope of work. Transcript, Vol. 1 at 199-200. Four of these individuals were subject matter experts

in their respective fields with numerous years of experience at Hanford or dealing with DOE-specific procedures or issues (samples 4, 5, 12, and 23). Sample 4 wrote the DOE guidance on safety system software reports, and sample 5 developed DOE nuclear waste surveillance programs. *Id.* at 237-38, 253. Sample 12 was an expert in safety analysis, and sample 23 had extensive experience in instrument and control engineering and was qualified to work in the area where the tanks were located. *Id.* at 14, 284-85. Samples 6 and 18 were work planners, a specialty that was in short supply and critical to the safe execution of the contract work. *Id.* at 236. Both of these individuals had extensive experience, including specific experience at Hanford. *Id.* at 326, 330; Exhibit 467. While the BMA statement of work may have required a college degree, in most cases the specific position description against which the individuals were hired either stated that no degree was required or provided an equivalent number of years of experience to satisfy the degree requirement. *See, e.g.*, Exhibit 519 (sample 12).

One individual challenged by DOE does not fit this mold. DOE challenged the qualifications of sample 29, an individual who was hired to work as a computer-aided design (CAD) drafter. The first contract required one year of experience and a technical school certificate or degree. The second contract did not specify required years of experience but required a certificate or degree. The third contract required certifications in AutoCAD and 3-D modeling packages and five to nine years of related experience. A WRPS executive testified that WRPS determined that sample 29 did have a technical degree after his qualifications were challenged by DOE, Transcript, Vol. 2 at 50, but it is not clear when that degree was awarded or that he was qualified at the time he was given the three contracts.

#### Overnight Rate Increases

DOE deemed costs for two individuals unreasonable because the hourly rates for the individuals increased from one contract to another without an explanation as to why the rates increased.

WRPS explained the reasons for the rate increases. For sample 4, the rate increase was \$8.51 per hour in fiscal year 2018. Exhibit 45 at 9. The individual's job responsibilities increased in fiscal year 2018 and included management duties, thereby justifying the increase. Exhibit 365; Transcript, Vol. 1 at 248-49. The rate for sample 21 increased by \$61.50 in fiscal year 2018, from \$101.47 to \$162.97 per hour, although the individual was performing the same function and responsibilities. Exhibit 45 at 15. Sample 21 had been the owner of her own company and was able to provide her services with very little overhead. Transcript, Vol. 2 at 8; Exhibit 37 at 99. In fiscal year 2018, the individual disbanded her company, and WRPS hired her through another staff augmentation subcontractor.

Transcript, Vol. 2 at 8; Exhibit 685. Both individuals were paid at the BMA rates that were established through competition during the periods challenged by DOE. Exhibits 363, 685.

DOE's 2x Factor

The specific amounts that DOE challenged for the thirteen individuals totaled \$3 million. Because DOE had identified other individuals with qualifications or other issues, DOE doubled the amount sought to capture them. DOE sought to be conservative in applying this 2x factor. Exhibit 45 at 7. As the DOE auditor explained, it was not proper to extrapolate because DOE had selected the original forty-one individuals to be audited based upon tenure rather than sampling the entire pool. Transcript, Vol. 3 at 74, 248. DOE sought to capture other issues, like excessive pass-through, which the DOE auditor acknowledged had not been quantified. *Id.* at 247.

Discussion

DOE challenges WRPS's staff augmentation costs as unreasonable. Regulation assigns the burden to WRPS to prove the reasonableness of the costs. "If an initial review of the facts results in a challenge to the specific cost by the contracting officer or the contracting officer's representative, the burden of proof shall be upon the contractor to establish that such cost is reasonable." FAR 31.201-3(a). "Cost reasonableness is a question of fact." *Kellogg Brown & Root Services, Inc. v. United States*, 742 F.3d 967, 970 (Fed. Cir. 2014). Costs must be reasonable to be allowable. FAR 31.201-2(a)(1).

Cost reasonableness is determined by considering "if, in its nature and amount, [a cost] does not exceed that which would be incurred by a prudent person in the conduct of competitive business." FAR 31.201-3(a). Whether a cost "is reasonable depends upon a variety of considerations and circumstances." FAR 31.201-3 (b); *see Kellogg Brown & Root Services, Inc. v. United States*, 728 F.3d 1348, 1360 (Fed. Cir. 2013), *opinion corrected on denial of reh'g*, 563 F. App'x 769 (Fed. Cir. 2014) ("The standard for assessing reasonableness is flexible, allowing [consideration of] . . . many fact-intensive and context-specific factors."). The regulation identifies four factors to be considered:

- (1) Whether it is the type of cost generally recognized as ordinary and necessary for the conduct of the contractor's business or the contract performance;
- (2) Generally accepted sound business practices, arm's-length bargaining, and Federal and State laws and regulations;



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- (3) The contractor's responsibilities to the Government, other customers, the owners of the business, employees, and the public at large; and
- (4) Any significant deviations from the contractor's established practices.

FAR 31.201-3(b).

When reviewing for reasonableness, the Board is not "limited to considering the audit findings on which [the government] based its . . . claim . . . . A contractor may bolster its case at the Board with 'evidence to show that it acted reasonably' in incurring costs, even if such evidence is adduced only in or for the litigation." *Mission Support Alliance, LLC v. Department of Energy*, CBCA 6477, 22-1 BCA ¶ 38,181, at 185,432 (citing *Fluor Intercontinental Inc.*, ASBCA 62550, 22-1 BCA ¶ 38,105, at 185,101), *clarified and motion for reconsideration denied*, 22-1 BCA ¶ 38,210. However, because it bears the burden of proof for reasonableness, the contractor must provide something in the record about the reasonableness of the challenged costs. *Mission Support Alliance, LLC*, 22-1 BCA at 185,432. Weak or circumstantial evidence that a contractor acted reasonably will not be enough for the contractor to meet its burden of proof. *Mission Support Alliance, LLC*, 22-1 BCA at 185,561.

The parties agree that the standard in FAR 15.404-1, which prescribes the proposal analysis techniques for contracting officers to evaluate the reasonableness of offered price proposals in negotiated procurements, also provides guidance for assessing the reasonableness of the challenged costs. Pursuant to FAR 15.404-1(b)(2), "[t]he Government may use various price analysis techniques and procedures to ensure a fair and reasonable price," including: (i) price competition; (ii) historical prices; (iii) parametric estimating methods; (iv) competitive published price lists; (v) independent Government cost estimates; (vi) prices obtained through market research of same or similar items; and (vii) other data other than certified cost or pricing data provided by the offeror. According to regulation, the first two methods at FAR 15.404-1(b)(2) are the "preferred techniques. However, . . . the contracting officer may use any of the remaining techniques appropriate to the circumstances applicable to the acquisition." FAR 15.404-1(b)(3). The designation of "preferred techniques" has been interpreted to be "a suggestion, not a strict hierarchy." *DynCorp International, LLC v. United States*, 10 F.4th 1300, 1311 (Fed. Cir. 2021). "The yardstick by which sufficiency is measured here is not some specific rule, formula, calculation, or detailed fact-finding. Rather, it is the reasonable-discretion-informed appropriateness of the technique under the circumstances." *Id.* at 1312.

WRPS has established that the costs challenged by DOE were reasonable. WRPS sought to fill specialized requirements with individuals with extensive experience in the

difficult world of nuclear waste management. In the periods challenged by DOE, WRPS paid ten of the thirteen individuals at the rates set in the BMAs, rates that are established through competition, a proper method to determine reasonable prices. *See* FAR 15.404-1(b)(2)(i). For the three individuals that were paid above the BMA rate, those costs were incurred to obtain experts in areas that WRPS needed to perform the contract, a cost that would be incurred by a prudent person in the conduct of this challenging contract. FAR 31.201-3(a). WRPS established that the higher rates that it incurred were reasonable through comparison to historical pricing and competitive price lists (GSA rates), again accepted methods to prove reasonableness. FAR 15.404-1(b)(2)(ii), (iv).

We find no merit in DOE's challenge based upon what the individuals would have been paid if hired as full-time WRPS employees. The problems with DOE's analysis on this point are myriad—the analysis fails to account for the hours these individuals worked, is based upon an analysis of 2018 rates, but applied across all years of the contract, and fails to account for the years of experience that many of these individuals possessed. To address DOE's larger concern about the need for a “make versus buy” analysis, WRPS has established that these individuals were hired on an as-needed basis and that it would have incurred additional costs if these individuals had been hired as full-time employees.

We find the overnight rate increases reasonable. For one, the rate increase was tied to an increase in responsibility. For the other, although the functions were the same, the rate paid was the BMA rate obtained through competition.

We find that all but one of the individuals was qualified for the position and rates at which they were paid based upon the years of experience that they possessed. The exception is sample 29. We agree that the costs identified by DOE based upon sample 29's lack of qualifications were unreasonable. While we found that sample 29 did earn a degree, the record is silent as to when that degree was earned, so we do not know whether sample 29 was qualified at the time of his first contract. Also, the third contract required five-to-nine years of experience and a more specialized degree. WRPS has not shown that sample 29 met these qualifications. Accordingly, WRPS has not shown that the costs incurred for sample 29 in the amount of \$80,275, are reasonable.

Although we find that WRPS has failed to establish the reasonableness for the costs of sample 29 due to a lack of qualifications, we decline to apply DOE's “2x factor” to this amount. While we appreciate that DOE was attempting to approximate the costs of other problems it identified with its application of the “2x factor,” this approach does not comport with the FAR requirement that the contracting officer identify a “specific cost” that was challenged on reasonableness. FAR 31.201-3.

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Decision

The appeal is **GRANTED IN PART**. WRPS shall repay DOE \$80,275, plus interest calculated in accordance with FAR 52.232-17.

*Marian E. Sullivan*  
MARIAN E. SULLIVAN  
Board Judge

We concur:

*H. Chuck Kullberg*  
H. CHUCK KULLBERG  
Board Judge

*Jonathan D. Zischkau*  
JONATHAN D. ZISCHKAU  
Board Judge

Appendix A - Findings Regarding Thirteen Individuals

DOE’s challenge to reasonableness of the contract labor resource (CLR) costs for thirteen individuals is grouped into four categories: (1) CLR rate that exceeded the blanket master agreement (BMA) rate; (2) CLR rate which exceeded the full-time-equivalent (FTE) rate of a WRPS employee; (3) CLRs who lacked the qualifications for the contracted rate; and (4) overnight rate increases, two instances in which a CLR’s rate increased from one contract to the next. Exhibit 45 at 6-21. Set forth below are the Board’s findings regarding the thirteen individuals.

1. [REDACTED] (Sample 4)

DOE disallowed \$213,325.79 paid to [REDACTED] in fiscal years 2013–2018; \$177,438.52 in fiscal years 2013–2015 because [REDACTED] rate exceeded the rate on the BMA on which he was hired; \$19,103 in fiscal years 2016 and 2017 because [REDACTED] did not have a computer science degree and purportedly did not meet the qualification requirements for the BMA; and \$16,784.27 in fiscal year 2018 because [REDACTED] rate increased purportedly without a change in responsibilities. Exhibit 45 at 9.

[REDACTED] was an electrical engineer with a Bachelor of Science (B.S.) and a Master of Science (M.S.) degree in electrical engineering. Exhibit 167 at 3. [REDACTED] had over twenty years of experience as an electrical engineer, including Hanford-specific experience. Exhibit 167 at 3-6. Doug Siron, who worked for WRPS as the assistant business manager to the CFO and business manager, testified that [REDACTED] was someone with “extensive experience and was regarded [as] a subject matter expert as it related to computer applications for the tank farms and for the DOE complex for the tank farm operations.” Transcript, Vol. 1 at 177-78. [REDACTED] also held several patents in techniques for monitoring tank farms and was a participating author of DOE guidance on safety system software reports. *Id.* at 237-38. During the period at issue, [REDACTED] was hired on four CLR subcontract releases: 49910-15, 49909-55, 59057, and 61834-6.<sup>5</sup>

The first release (49910-15) had a period of performance from November 26, 2012, to May 31, 2013. Exhibit 343. DOE disallowed costs because [REDACTED] rate exceeded the BMA rates. Under the statement of work, [REDACTED] was to revise, enhance, and support software used in plant safety. Exhibit 333. [REDACTED] was noncompetitively

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<sup>5</sup> CLRs were hired on “releases” issued under the BMAs. Transcript, Vol. 1 at 38.

procured as the “preferred candidate”<sup>6</sup> for a principal electrical engineer position. *Id.* [REDACTED] was subcontracted through [REDACTED]. Exhibit 342. [REDACTED] BMA rate for a principal engineer in fiscal year 2013 was [REDACTED]. Exhibit 315 at 121, while the rates for the other BMA contract holders were [REDACTED]. Exhibits 84 at 12, 85 at 1. For [REDACTED], [REDACTED] proposed a rate of [REDACTED]. Exhibit 342.

To determine the reasonableness of the proposed rate, WRPS examined two published price lists through GSA Advantage, which is an online shopping and ordering system with numerous GSA schedule contracts. Exhibit 342. Contract GS-23F-0345K listed a rate of \$137.95/hour for an Electrical Engineer IV, which had qualifications of a B.S. and M.S. in electrical engineering and 10–15 years of minimum experience. Exhibit 340. Contract GS-10F-0281K listed a rate of \$133.16/hour for a Principal Engineer. Exhibit 341. Based upon [REDACTED] resume, experience, and comparative price lists, WRPS found [REDACTED] labor rate to be fair and reasonable at the time of award. Exhibit 342. After receiving DOE’s notice of disallowance, WRPS’s further analysis confirmed that [REDACTED] was a fair and reasonable rate. Exhibit 37 at 47.<sup>7</sup>

For the second release (49909-55),<sup>8</sup> covering October 1 to December 31, 2015, DOE disallowed costs because, in addition to his rate exceeding the BMA rate, [REDACTED] did not meet the BMA requirement that the hired individual possess a computer-related degree. [REDACTED] was contracted through [REDACTED] at a rate of [REDACTED] to be a principal electrical engineer. Exhibit 37 at 47. The labor rates for fiscal year 2016 are not included in the rate sheet that is in the record, but the [REDACTED] rate for a

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<sup>6</sup> Preferred candidates were individuals who were requested by “the field,” or the WRPS personnel who were working to clear the tanks. Transcript, Vol. 1 at 13, 89-90, 199-200.

<sup>7</sup> Exhibit 37 is WRPS’s response to the notice to disallow costs and was created on August 6, 2020, after all of the contested CLR releases. Throughout this appendix, Exhibit 37 is often cited because either there is no contemporaneous documentation, or Exhibit 37 contains information that is not in the contemporaneous documentation.

<sup>8</sup> The procurement files for this release (49909-55) were not included in the appeal file. According to WRPS, the procurement files for this release and other releases (38979-001, 38979-026, 38794-114, 49583-17, 37650-3, 39682-37, 39665-15, 49909-56, and 58818-23) were not included in the appeal file because DOE did not challenge them in the final decision. Demonstrative 2 at 1 n.1. The information regarding these releases is gleaned from WRPS’s August 6, 2020, letter to the contracting officer. *See* Exhibit 37.

standard principal electrical engineer in fiscal year 2015 under the BMA was [REDACTED]. Exhibit 92. Although the rate of [REDACTED] was above the BMA rate for a standard principal electrical engineer, WRPS concluded that it was fair and reasonable because it was consistent with [REDACTED] historical rates. Exhibit 37 at 47.

For the third release (59057), covering a period of performance from February 1, 2016, through the end of fiscal year 2016, DOE disallowed costs because [REDACTED] did not possess a computer-related degree. Exhibit 45 at 9. [REDACTED] was noncompetitively procured to be a Program Support, Project Lead, and Computer System Analyst to provide project lead and software quality services to support the software engineering process at a rate of [REDACTED]. Exhibits 349, 356. [REDACTED] was procured through [REDACTED]. Exhibit 356. [REDACTED], although that fact was not known to WRPS until DOE pointed it out to WRPS. Exhibit 32 at 24. At the time of procurement, WRPS did not request a conflict of interest disclosure statement because “[REDACTED] is providing software-related services only.” Exhibit 356 at 4. WRPS determined at the time of award that [REDACTED] rate was fair and reasonable because it was consistent with the rate paid for [REDACTED] work historically. *Id.* at 3.

For the fourth release (61834-6), covering fiscal year 2017, DOE disallowed costs because [REDACTED] received an overnight labor rate increase from [REDACTED] to [REDACTED]. Exhibit 45 at 9. [REDACTED] was hired to serve as senior software project manager with responsibility for oversight and manager responsibilities to reduce the backlog of required software change requests, an increase in responsibility from his previous position. Exhibit 365 at 1; Transcript, Vol. 1 at 248-49; Exhibits 37 at 48, 364. [REDACTED] was the preferred candidate on a request that required four years or greater in “Computer Science, Computer Engineering, Software Engineering, Electrical Engineering, or related technical field or discipline.” Exhibit 362. The request also required software and nuclear safety skills and that the individual be qualified as “engineering technical staff for [the] tank farms” and as a “software technical support analyst.” *Id.* Because [REDACTED] was paid at the BMA rate ([REDACTED]), WRPS determined at the time of award that his rate was fair and reasonable. Exhibit 363.

**2. [REDACTED] (Sample 5)**

For five CLRs, DOE calculated two different estimated disallowance amounts based upon different challenges and averaged those estimates to determine the amount to be disallowed. *See, e.g.*, Exhibit 45 at 8 (contracting officer disallowance of [REDACTED] costs). For [REDACTED], DOE calculated the low amount to be \$179,625.05 for fiscal years 2013–2018, and the high amount to be \$284,796.06 for fiscal years 2009–2018, which

averaged to \$232,210.50. *Id.*<sup>9</sup> DOE disallowed the low amount because it believed [REDACTED] was not qualified for the rates he received. *Id.* DOE calculated the high amount based upon its interpretation of WRPS's rate testing, which DOE believed showed that [REDACTED] was procured at a cost seventeen percent greater than an equivalent WRPS FTE employee. *Id.*; *contra see* Exhibit 721 (spreadsheet of WRPS's rate testing results).

[REDACTED] began working as an engineer in quality assurance and quality control in 1973, and had worked as both a consultant and an engineer in quality assurance and quality control from 1988–2016, with most of that time at Hanford for different contractors. Exhibit 433 at 3-7; *see* Exhibit 37 at 52. [REDACTED] resume did not indicate he held a degree, but WRPS reported that he had a Bachelor of Arts (B.A.) in education. *Compare* Exhibit 433 at 3-7 ([REDACTED] resume) *with* Exhibit 37 at 52 (WRPS's response). Mr. Siron called [REDACTED] a "subject-matter expert" because [REDACTED] was used by DOE as a consultant for the development of DOE nuclear waste surveillance programs. Transcript, Vol. 1 at 253. [REDACTED] had four CLR subcontract releases for the period at issue: 38979-001, 38979-026, 49908-6, and 58819-3.

Release 38979-001, for the period of performance from "date of award" through the end of fiscal year 2010, was for a quality assurance engineer.<sup>10</sup> Exhibit 37 at 51. WRPS contracted for [REDACTED] services through [REDACTED], which held a basic ordering agreement (BOA) for staff augmentation services. WRPS competed the requirement for six quality assurance engineers among three BOA holders. Exhibit 37 at 51. [REDACTED] was procured at a rate of [REDACTED], which was "the second lowest overall cost." *Id.* The position required a B.S. or B.A. in engineering or a related field, five or more years of related experience, or an equivalent combination of experience and education. *Id.* WRPS determined [REDACTED] met the technical qualifications based on his over thirty years of experience in quality assurance. *Id.* WRPS determined the rate was fair and reasonable because [REDACTED] rate was established through adequate price competition. *Id.*

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<sup>9</sup> DOE did not calculate average disallowance amounts for individuals. Across the five contested CLRs with two different amounts of costs disallowed, DOE produced a low and high disallowance amount for the entire group, added these amounts together, and divided by two to obtain an average. The math is the same whether the average is applied at the group or individual level.

<sup>10</sup> It is unclear when this release was awarded, but it could not have been earlier than fiscal year 2009, because DOE only challenged costs from fiscal years 2009–2018. *See* Exhibit 45 at 8.

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The first release was extended another year, through the end of fiscal year 2012, at a rate of [REDACTED], which is a 2.8% increase from the prior year's labor rate. *Id.* The second release (38979-026) was originally a two-week extension of [REDACTED] first release from October 1 to October 16, 2011, at a rate of [REDACTED].<sup>11</sup> *Id.* This release was extended to September 30, 2012, at a rate of [REDACTED], which is a 1.8% increase. Exhibit 37 at 51.

DOE argues [REDACTED] was not qualified was for the positions he held from fiscal years 2013–2018. With release 49908-6, covering fiscal years 2013–2015, [REDACTED] was procured as a principal quality assistance engineer. The solicitation was confusing; on it was checked the box for principal engineer, which is a BMA labor and rate category that the solicitation corresponded to a “BS Plus 15 Yrs Nuclear Exp.” Exhibits 97, 428; *see* Exhibit 37 at 51.<sup>12</sup> However, the release also stated the skills required were “10 years [quality assistance] experience, 5 years [quality assistance] experience within tank farms. Must have welding and project management experience.”<sup>13</sup> Although [REDACTED] did not have the B.S. component for the general position, [REDACTED] was requested as the preferred candidate. Exhibit 97. At the time of procurement, WRPS believed [REDACTED] rate was fair and reasonable because [REDACTED] was procured through [REDACTED], a BMA holder, at the BMA rate ([REDACTED]). Exhibit 428.

Under release 58819-3, which covered January 1, 2016, through March 19, 2018, [REDACTED] was procured as a “subject matter expert” quality assistance engineer.<sup>14</sup> Exhibit

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<sup>11</sup> Even though the first release had previously been extended, a second release was created because “the prior Release was funded by the Recovery Act and separate accounting was needed for reporting purposes.” Exhibit 37 at 51.

<sup>12</sup> Although the staff augmentation and file summary memorandum show the period of performance ending in fiscal year 2013, WRPS's response indicates this release was extended through fiscal year 2015. *Compare* Exhibit 97 (staff augmentation document) *and* Exhibit 428 (file summary memorandum) *with* Exhibit 37 at 51 (WRPS's response).

<sup>13</sup> This method of checking a box that corresponded to a BMA rate and generalized degree and experience requirements but then further writing requirements in the comments, some of which contradicted the generalized degree and experience requirements, was how WRPS would write specialized job requirements for specific releases.

<sup>14</sup> The subcontract release and file summary memorandum, which WRPS failed to document at the time of contract agreement and was documented two months after the beginning of performance, puts [REDACTED] period of performance through the end of



434. [REDACTED] services were procured through [REDACTED], a BMA holder, at the BMA rate of [REDACTED] in fiscal year 2016, [REDACTED] in fiscal year 2017, and [REDACTED] in fiscal year 2018. Exhibits 37 at 52, 434. WRPS believed [REDACTED] rate to be fair and reasonable at the time of award because he was paid at the BMA rate. Exhibit 434.

DOE calculated a deduction for the amount DOE believed [REDACTED] was paid above the FTE rate for fiscal years 2009–2018. This amount was based upon DOE’s interpretation of WRPS’s rate analysis, which was done to determine if CLR rates were substantially higher than equivalent WRPS FTE rates. *See* Exhibit 721 (WRPS-IA rate analysis). DOE believes this rate analysis showed [REDACTED] rate was seventeen percent greater than an equivalent WRPS FTE. Exhibit 45 at 10. [REDACTED] rate for fiscal year 2018 was [REDACTED]. *Id.* According to DOE’s reasoning, [REDACTED] should have been paid no more than [REDACTED] that year. [REDACTED] also worked more than 2000 hours in only two of those ten years. *Id.*

**3. [REDACTED] (Sample 6)**

For [REDACTED], DOE disallowed \$78,565.81, which was the average of the low amount of \$76,222.71, based on a challenge of amounts paid to [REDACTED] in fiscal years 2010–2018 in excess of an equivalent WRPS FTE, and the high amount of \$80,908.81, based on a challenge of amounts paid to [REDACTED] in fiscal years 2010–2012, during which DOE argues he was not qualified for the rate he received. Exhibit 45 at 8.

[REDACTED] was a work planner with more than seventeen years of experience and had worked at the Hanford site since 1999. Exhibit 467. [REDACTED] possessed a B.A. in criminal law and justice. *Id.* As a work planner, [REDACTED] was responsible for planning how the projects to clean up the tank farm would proceed and was “instrumental” in ensuring work would actually be performed. Transcript, Vol. 1 at 267; Exhibit 467. Five subcontract releases are at issue: 38794-87, 38794-129, 49583-16, 49583-125, and 62218-09.

Release one (38794-87), for a performance period of June 7, 2010, through the end of fiscal year 2010, was for a senior production control and work planner. Exhibits 69, 442. An option to extend the release for an additional year, through fiscal year 2011 at a three percent escalation, was exercised. Exhibits 69, 442. [REDACTED] was paid at a rate of [REDACTED] in fiscal year 2010 and [REDACTED] in fiscal year 2011. Exhibit 45 at 11. The

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fiscal year 2016. Exhibits 434, 435. WRPS’s response indicates the contract was extended into fiscal years 2017 and 2018. Exhibit 37 at 52.

position required a “Bachelors Degree in Engineering, Business, or related field, and ten or more years of experience Hanford Project work planning.” Exhibit 436 at 3. WRPS solicited candidates from five BOA holders, Exhibit 442 at 2-3, and [REDACTED] was procured through a BOA with [REDACTED]. Exhibit 37 at 65. [REDACTED] rate was lower than his previous rate of [REDACTED] on a release as a senior work planner with [REDACTED].<sup>15</sup> Exhibits 68, 442. WRPS determined at the time of award that [REDACTED] rate was fair and reasonable because the BOA was competed among five BOA holders and his labor rate was comparable to his previous labor rate. Exhibit 442 at 2.

Release two (37894-129), for performance in fiscal year 2012, was issued under the same BOA with [REDACTED] for a senior mechanical production control and work planner. Exhibits 37 at 66, 450. This procurement was not competed; instead, [REDACTED] was preferred by the project. Exhibit 450. [REDACTED] labor rate was [REDACTED], which was a 1.7% increase from his labor rate in fiscal year 2011 under the first release. *Id.* at 2. This release had the same education and experience requirements. Exhibit 72; *see also* Exhibit 37. Based on his historical prices, WRPS determined at the time of award that [REDACTED] rate was fair and reasonable. Exhibit 450 at 2.

Release three (49583-16), for performance in fiscal year 2013, was for a senior production control and work planner. Exhibit 454. [REDACTED] was paid [REDACTED], the rate agreed upon in the BMA between [REDACTED] and WRPS on which [REDACTED] was hired. *Id.* This release was extended through fiscal year 2014 at the BMA rate ([REDACTED]), Exhibit 117, and again through fiscal year 2015 at the BMA rate ([REDACTED]). Exhibits 131, 132. WRPS determined at the time of award that [REDACTED] rates were fair and reasonable because he was paid at the BMA rates. Exhibits 117, 131, 454.

Release four (49583-125), for performance from November 30, 2015, through the end of fiscal year 2016, was for a senior mechanical production control and work planner. Exhibits 457, 459. WRPS requested [REDACTED] as a preferred candidate for the position of preparing, coordinating, and facilitating work packages to support the tank farms and supporting structures. Exhibit 457 at 2. As “Minimum Qualifications,” the position listed “[a] Bachelor’s Degree in Engineering, Business or related field and eight or more years related experience or a combination of education and experience.” *Id.* [REDACTED] was paid the BMA rate ([REDACTED]). Exhibit 459. Because [REDACTED] was paid at the BMA rate, WRPS concluded at the time of award that his rate was fair and reasonable. *Id.*

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[REDACTED] was the contractor before WRPS.

Release five (62218-9), with a period of performance of April 1, 2017, through the end of fiscal year 2017, was for a senior work control planner. Exhibit 182. [REDACTED] was paid the BMA rate ([REDACTED]). Exhibits 483, 484. The release was extended through fiscal year 2018, and [REDACTED] was paid the BMA rate ([REDACTED]). Exhibits 37 at 66, 176 at 4. Because [REDACTED] was paid at the BMA rate, WRPS concluded at the time of award that his rate was fair and reasonable. Exhibit 483.

DOE calculated a deduction for the amount [REDACTED] was paid above the FTE rate for fiscal years 2010–2018. This amount was based upon DOE’s interpretation of WRPS’s rate analysis, which was done to determine if CLR rates were substantially higher than equivalent WRPS FTE rates. *See* Exhibit 721 (WRPS-IA rate analysis). DOE believes this analysis shows [REDACTED] was paid six percent in excess of an equivalent WRPS FTE. Exhibit 45 at 8. [REDACTED] rate for 2018 was [REDACTED]. *Id.* According to DOE’s reasoning, [REDACTED] should have been paid no more than [REDACTED] that year. In addition, [REDACTED] never worked more than 2000 hours in any of those nine years. *Id.*

**4. [REDACTED] (Sample 12)**

DOE disallowed \$59,829 paid to [REDACTED] because he did not meet the qualifications on three of his releases (39681-92, 49910-02, and 49909-59) for fiscal years 2012–2016. Exhibit 45 at 12.

[REDACTED] worked as a principal engineer, with thirty years of experience that included Hanford-specific experience. Exhibit 76. [REDACTED] did not possess a B.S. or B.A. Exhibit 37 at 69. Mr. Siron described [REDACTED] as “an expert” in safety analysis and deemed [REDACTED] to be “integral” to the project by ensuring “the workers, the public and the environment are protected.” Transcript, Vol. 1 at 284-85.

[REDACTED] first release (39681-92), for the performance period of February 1 to June 6, 2012, required him to work as a principal engineer with the skills to independently solve engineering problems and lead other engineers. Exhibits 66 at 15, 509. [REDACTED] was specifically requested as a preferred candidate because of his “extensive experience.” Exhibit 507 at 3. The position required a “minimum [of a] BS degree in Engineering discipline PLUS 15 or more years engineering experience at a nuclear facility of Navy Nuclear power.” Exhibit 66 at 15. According to WRPS, there is no record of [REDACTED] release-specific statement of work (SOW) or requirements. Exhibit 37 at 69. The WRPS file summary memorandum documenting [REDACTED] hire does not indicate that [REDACTED] lacked a degree or that the degree requirement had been waived. Exhibit 509. [REDACTED] was paid the BMA rate of [REDACTED], and based upon this fact, WRPS concluded, at the time of award, that his rate was fair and reasonable. *Id.*

██████████ second release (49910-02), for fiscal year 2013, also had ██████████ working as a principal engineer. Exhibit 100. ██████████ was the preferred candidate and the release had the box for principal engineer checked, which required a B.S. and fifteen years of experience. Exhibit 519. However, the release also specified that “[t]he successful candidate need not have a BS degree, but should have applicable work experience to function as a Principal Engineer. . . . [and] should have demonstrated Hanford work experience.” *Id.* at 1. ██████████ was procured through ██████████ and paid at a rate of ██████████, which was above the BMA rate of ██████████ with ██████████ and higher than any of the other BMA rates.<sup>16</sup> Exhibits 86, 100. At the time of award, WRPS determined that ██████████ rate was fair and reasonable because ██████████ rate was lower than his historical rate. Exhibit 525 at 2. The release was extended through fiscal years 2014 and 2015 at rates of ██████████ and ██████████, respectively.

██████████ third release (49909-59), from October 1 to December 31, 2015, was for a principal engineer. Exhibit 515. ██████████ was procured as a preferred candidate on a BMA with ██████████. *Id.* ██████████ was paid at a rate of ██████████, which WRPS determined, at the time of award, to be fair and reasonable based on his historical rates because the rate was only a two percent increase from the rate from fiscal year 2015. Exhibits 144, 515.

**5. ██████████ (Sample 13)**

DOE disallowed \$477,968.04 paid to ██████████ in fiscal years 2010–2018 because DOE believed WRPS’s rate testing showed that ██████████ rate was twenty-nine percent greater than an equivalent WRPS employee. Exhibit 45 at 13 (contracting officer disallowance of ██████████ cost); *contra see* Exhibit 721 (spreadsheet of WRPS’s rate testing results).

██████████ was a chemical engineer who had worked at the Hanford site since 1962. Exhibit 557 at 6-9. ██████████ possessed a B.S. in chemical engineering. Exhibit 557 at 6; *see also* Exhibit 37 at 87. Mr. Siron testified that “██████████ was known for his experience, 40 years of experience, of identifying the construction of waste tanks located out at Hanford, and he had intimate knowledge about the formal leak assessment process.” Transcript, Vol. 1 at 314. Because of his experience and WRPS’s need, ██████████ rates were consistently high and ranged from ██████████. Exhibit 37 at 87-88. These rates were higher than comparable BMA rates. For example, in fiscal year 2013, the

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<sup>16</sup> The other two BMA holders had rates at ██████████ for a principal electrical engineer. Exhibits 84 at 12, 85 at 1.

BMA rates for a principal engineer were [REDACTED], Exhibits 84 at 12, 85 at 1, 96 at 1, while [REDACTED] was paid at the rate of [REDACTED]. Exhibit 37 at 87.

DOE calculated a deduction for the amount [REDACTED] was paid above the FTE rate for fiscal years 2010–2015 and 2017–2018. This amount was based upon DOE’s interpretation of WRPS’s rate analysis, which was done to determine if CLR rates were substantially higher than equivalent WRPS FTE rates. See Exhibit 721 (WRPS-IA rate analysis). DOE believes this analysis shows [REDACTED] rate in 2018 was twenty-nine percent greater than an equivalent WRPS FTE. Exhibit 45 at 13. [REDACTED] rate for fiscal year 2018 was [REDACTED]. *Id.* According to DOE’s reasoning, [REDACTED] should have been paid no more than [REDACTED] that year. [REDACTED] never worked more than 2000 hours in a fiscal year. *Id.*

**6. [REDACTED] (Sample 18)**

DOE sought to disallow \$71,338, paid to [REDACTED] in fiscal years 2010 and 2011, because [REDACTED] did not possess the B.S. degree required in the position description. Exhibit 45 at 14.

[REDACTED] had “substantial work experience” as a senior work control planner, a position that develops the work packages that other employees follow to ensure that the work is accomplished safely and efficiently. Transcript, Vol. 1 at 326, 330. [REDACTED] was “the only electrical work control planner for the [Tank] Farm.” *Id.* at 326.

[REDACTED] was the incumbent senior work control planner prior to fiscal year 2010. Exhibit 641 at 1. Due to his past performance and the fact that he was “the only individual qualified to perform the required electrical planning services,” [REDACTED] was noncompetitively procured for fiscal year 2010 to maintain his current position at a rate of [REDACTED]. Exhibits 637 at 1, 641, 642. WRPS extended the release for fiscal year 2011 at a rate of [REDACTED]. Exhibit 37 at 96. WRPS compared [REDACTED] proposed rate to other rates for work package planners and found that the lowest of the historical rates was [REDACTED]. Exhibit 641 at 2. Based upon this analysis, WRPS concluded, at the time of award, that [REDACTED] rate was fair and reasonable. *Id.*

**7. [REDACTED] (Sample 21)**

DOE sought to disallow \$84,470 paid to [REDACTED] in fiscal year 2018 because of what DOE perceived to be an “overnight rate increase.” Exhibit 45 at 15. DOE asserted that

it was unreasonable that [REDACTED] rate went from [REDACTED] on one contract(56825) to [REDACTED] on the next contract (61834-05), without any change in scope of work.

In fiscal year 2015, [REDACTED] was contracted (56825) through her own firm, [REDACTED], on a non-competitive basis to work as a principal software quality consulting engineer at the rate of [REDACTED]. Exhibits 37 at 99, 680. The BMA rates for a principal quality assurance engineer in fiscal year 2015 were [REDACTED]. Exhibits 84 at 12, 85 at 1, 96 at 1. [REDACTED] was described by Mr. Siron as “pretty much a one-man operation, so less overhead, less rate of charge,” so she was able to price herself below the market rate. Transcript, Vol. 2 at 8. [REDACTED] contract was extended for fiscal years 2016 and 2017 at a rate of [REDACTED]. Exhibit 37 at 99. For fiscal year 2018, [REDACTED] decided against contracting herself through her own business and, instead, contracted through [REDACTED]. Exhibit 685. She was hired as a software quality assurance specialist at a rate of [REDACTED], which was the BMA rate. *Id.* at 2. Because the rate was in line with the BMA rate, WRPS determined, at the time of award, that [REDACTED] labor rate was fair and reasonable. Exhibit 685.

**8. [REDACTED] (Sample 23)**

DOE sought to disallow \$76,515 paid to [REDACTED] in fiscal years 2011–2016 across three releases. DOE calculated the amount based upon the difference in rates between a principal electrical engineer, a position for which DOE believed [REDACTED] was not qualified, and an operations engineer, a difference of \$8.25/hour. Exhibit 45 at 16.

[REDACTED] worked as a principal electrical engineer. [REDACTED] did not possess a B.S. or B.A. degree. Exhibit 37 at 102; *see also* Exhibit 650 at 5-6. [REDACTED] possessed significant work experience in instrument and control engineering, including Hanford-specific experience. Exhibit 650 at 5-6. Mr. Siron described [REDACTED] as “a very experienced and knowledgeable individual that has worked out on the site for over 25 years and has immense knowledge as it relates to instrument and control engineering.” Transcript, Vol. 2 at 13. In particular, [REDACTED] was trained and capable of entering the restricted zones of the tank farms, which allowed him to “go in and troubleshoot areas that most engineers that are not trained cannot.” *Id.* at 14; Exhibit 37 at 102.

[REDACTED] first release (39682-24), for work performed from January 3 to August 1, 2011, was as a principal electrical engineer tasked with monitoring the tank farm and upgrading the control system. Exhibits 644 at 1, 647 at 1; *see* Exhibit 646. [REDACTED] was the preferred candidate for the position. Exhibit 644 at 1. The release checked the box for a principal engineer that required a B.S. and fifteen years of nuclear experience, but the written description of the minimum qualifications stated “[e]lectrical, mechanical, or

chemical engineer with an accredited degree and 2–5 years relative experience (15 years relative without degree).” Exhibit 644 at 1. [REDACTED] was paid at the BMA rate ([REDACTED]). Exhibit 646 at 2. At the time of award, WRPS determined that [REDACTED] rate was fair and reasonable because he was a preferred candidate who was paid at the BMA rate. Exhibit 646.

[REDACTED] second release (39682-39), for performance from October 11, 2011, through the end of fiscal year 2012, was as a principal electrical engineer.<sup>17</sup> Exhibits 652, 653. [REDACTED] was paid at the BMA rate ([REDACTED]). Exhibit 652 at 2. Because of [REDACTED] support on the previous release and his payment at the BMA rate, WRPS determined at the time of award that [REDACTED] rate was fair and reasonable. Exhibit 652.

[REDACTED] third release (49910-3), for performance during fiscal year 2013, was as a principal electrical engineer. Again, the qualifications for the position were confusing. While the box that required a B.S. degree and fifteen years of nuclear experience was checked, the position description also stated that [REDACTED] was the preferred candidate requested and that the position “[r]equires knowledge of WRPS Engineering procedures including software quality assurance requirements for document preparation and change control,” which [REDACTED] possessed. Exhibit 658 at 1. [REDACTED] was paid at a rate of [REDACTED], which was higher than the established BMA but less than [REDACTED] was paid on his previous release. Exhibit 662. WRPS obtained [REDACTED] services through [REDACTED], which had a BMA with WRPS at a rate of [REDACTED] for a principal electrical engineer. Exhibit 96. The other two BMA holders had rates of [REDACTED] for a principal electrical engineer. Exhibits 84 at 12, 85 at 1. WRPS determined [REDACTED] rate was fair and reasonable, at the time of award, because the rate was less than his historical rates on the previous BMA. Exhibit 662 at 2.

**9. [REDACTED] (Sample 24)**

DOE disallowed \$356,435, paid to [REDACTED] in fiscal years 2014–2018, because DOE believed WRPS’s rate testing showed that [REDACTED] rate was thirty-two percent greater than an equivalent WRPS employee. Exhibit 45 at 17 (contracting officer disallowance of [REDACTED] costs); *contra see* Exhibit 721 (spreadsheet of WRPS’s rate testing results).

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<sup>17</sup> This release was awarded non-competitively because it continued [REDACTED] services from the prior fiscal year but required a new release due to a different funding mechanism. Exhibit 652 at 1.

██████████ was a radiation control health physicist who provided independent internal audits of the Radiological Control Program (RadCon program) as prescribed under 10 CFR 835.102. The RadCon program tracked and monitored the amount of radiation at the site to ensure the safety of the people working out in the field. Transcript, Vol. 2 at 27. ██████████ had a M.S. in environmental sciences (risk assessment/toxicology) and a B.S. in nuclear engineering. Exhibit 37 at 114; *also* Exhibit 369. ██████████ was “uniquely qualified” for the position because he had extensive experience at Hanford, other DOE nuclear sites, and ten years of experience at the waste treatment plant. Exhibit 369. ██████████ services were procured on two releases (54719 and 60173), on which he was paid rates of ██████████ and ██████████. Exhibit 381, 419. WRPS did not compete ██████████ releases; instead, his rates were deemed reasonable based upon comparisons to a GSA schedule contract and the prices he previously charged to another contractor. Exhibits 381, 419.

DOE calculated a deduction for the amount ██████████ was paid above the FTE rate for fiscal years 2014–2018. This amount was based upon DOE’s interpretation of WRPS’s rate analysis, which was done to determine if CLR rates were substantially higher than equivalent WRPS FTE rates. *See* Exhibit 721 (WRPS rate analysis). DOE believes this analysis showed ██████████ rate in fiscal year 2018 was thirty-two percent greater than an equivalent WRPS FTE. Exhibit 45 at 17. ██████████ rate for fiscal year 2018 was ██████████. *Id.* According to DOE’s reasoning, ██████████ rate should have been ██████████ that fiscal year. ██████████ never worked more than 1700 hours in a fiscal year. *Id.*

**10. ██████████ (Sample 27)**

For ██████████, DOE calculated the low amount to be disallowed as \$454,244.89 paid in fiscal years 2013–2015, and the high amount to be disallowed as \$595,457.40, paid in fiscal years 2009–2018, which averaged to \$524,851.15. Exhibit 45 at 18. DOE sought to disallow the low amount because ██████████ was paid a rate above the BMA rate. *Id.* DOE calculated the high amount based upon DOE’s belief that WRPS’s rate testing showed that ██████████ was procured at a rate twenty-two percent higher than an equivalent WRPS FTE. *Id.*; *contra see* Exhibit 721 (spreadsheet of WRPS’s rate testing results).

██████████ had four releases (37650-3, 39682-1, 39682-37, and 49910-1) over fiscal years 2009–2015, and an additional subcontract (58995) from fiscal years 2016–2018. Exhibit 37 at 120-21. DOE sought to disallow \$454,244.89 from one of these releases (49910-1) because the rate paid to ██████████ exceeded the BMA rate.

On release 49910-1, WRPS contracted with ██████████ for ██████████ services for fiscal year 2013 as a principal process/chemical engineer at a rate of ██████████. Exhibit 102.



██████████ was the preferred candidate for the position. Exhibit 706 at 1. The position was to assist in the process of moving tank waste materials to the waste treatment facility and “provide[] management, technical, and administrative functions only. No hands-on field work activities will be performed.” *Id.* at 2. Knowledge of the testing, commissioning, and pre-operations activities involved was required. Exhibit 707 at 1. Mr. Siron testified that ██████████ “was very knowledgeable of the waste treatment plant facility and construction that has to be integrated with the tank farms.” Transcript, Vol. 2 at 32.

██████████ rates on the previous releases were ██████████ (first release), ██████████ (second release), and ██████████ (third release). Exhibit 37 at 120-21. The rates for the second and third releases were deemed reasonable based upon ██████████ rate for the first release. Exhibits 37 at 121, 65 at 2. WRPS also compared ██████████ rate to the rate of a different subcontractor who worked as a “senior technical specialist” at a rate of ██████████. Exhibits 37 at 121, 65 at 2. ██████████ first release was placed under a BOA with ██████████. Exhibit 730. WRPS conducted two price analyses to determine if ██████████ rate was reasonable prior to issuing the BOA: (1) WRPS found GSA rates for similar labor categories; and (2) WRPS examined and found ██████████ price data to be reasonable. Exhibit 731 at 2; *see also* Exhibit 37 at 125. Mr. Siron testified that this price data analysis was an example of “analyzing data other than certified cost or pricing data provided by the offeror for FAR [15.404-1(b)(2)(vii)].” Transcript, Vol. 2 at 42. Based on these price analyses, WRPS found ██████████ rate fair and reasonable at the time of award.

For fiscal year 2013, the year for which ██████████ rate was challenged, ██████████ BMA rate for a principal process engineer was ██████████. Exhibit 96. The other two BMA holders had rates of ██████████. Exhibits 84 at 12, 85 at 1. Although ██████████ rate was more than ██████████ BMA rate, WRPS concluded, at the time of award, that the rate was fair and reasonable because the rate was less than ██████████ was paid under his third release (39682-37). Exhibit 103 at 2.

DOE calculated a deduction for the amount DOE believed ██████████ was paid above the FTE rate for fiscal years 2009–2018. This amount was based upon DOE’s interpretation of WRPS’s price analysis, which was done to determine if CLR rates were substantially higher than equivalent WRPS FTE rates. *See* Exhibit 721 (WRPS-IA rate analysis). DOE believed this rate analysis showed ██████████ rate in fiscal year 2018 was twenty-two percent greater than an equivalent WRPS FTE. Exhibit 45 at 18. ██████████ rate for fiscal year 2018 was ██████████. *Id.* According to DOE’s reasoning, ██████████ should have been paid no more than ██████████. ██████████ also never worked more than 2000 hours in a fiscal year. *Id.*

**11. [REDACTED] (Sample 29)**

DOE sought to disallow \$204,401.66 in costs paid to [REDACTED], which was an average of a low amount of \$80,275.99 that DOE calculated because [REDACTED] was not qualified for the rates that he was paid in fiscal years 2012–2018, and a high amount of \$328,527.32 that DOE calculated based upon DOE’s belief that WRPS’s rate testing showed that [REDACTED] rate was thirty-two percent greater than an equivalent WRPS FTE for fiscal years 2010–2018. Exhibit 45 at 19; *contra see* Exhibit 721 (spreadsheet of WRPS’s rate testing results).

DOE challenged [REDACTED] qualifications for three releases, asserting that [REDACTED] did not have the educational degree required for those positions. In the appeal file, there are two resumes for [REDACTED], one from 2012 and one from 2015. Exhibits 487, 496. Both show that he attended ITT Technical Institute for Computer Aided Drafting and Design in Spokane, Washington, but neither indicates whether or when he graduated. *Id.* Also, both resumes list his experience working as a CAD drafter at Hanford as his only work experience. *Id.* At the hearing, Mr. Siron testified that WRPS looked into the discrepancies in [REDACTED] resume by having their subcontractor, [REDACTED], conduct a background check on [REDACTED]. Transcript, Vol. 2 at 50. According to Mr. Siron, that background check “confirmed that [REDACTED] obtained a degree and graduated with honors.” *Id.* However, Mr. Siron did not testify as to when [REDACTED] obtained his degree. *Id.*

On release 39681-99, for performance from June 13, 2012, through the end of fiscal year 2012, [REDACTED] was hired as a senior CAD drafter to prepare CAD drawings for the radiation tanks. Exhibits 486, 488 at 1; *see* Exhibit 37 at 131. WRPS sought [REDACTED] as the preferred candidate. Exhibit 486. The position required an individual with “1+ years’ of engineering & facility drafting experience,” and that the person “must be a graduate of a recognized Jr. College or technical school with a certificate or degree in computer-aided drafting.” *Id.* [REDACTED] was paid the BMA rate ([REDACTED]), which WRPS deemed reasonable at the time of contracting. Exhibits 487 at 2, 488, 489.

On release 49909-5, for fiscal year 2013, [REDACTED] worked as a senior CAD drafter.<sup>18</sup> [REDACTED] again was procured as a preferred candidate and the position required

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<sup>18</sup> On [REDACTED] releases there is inconsistency in the documentation about his exact job titles. For example, the release specific SOW, Exhibit 495 at 1, put his job title as “Senior CAD Drafter Engineering,” but checked a box labeled “Senior Drafter” while the subcontract release, Exhibit 498, put his title as “CAD Designer,” and the file summary

“a degree or certificate in computer-aided drafting.” Exhibit 495 at 2. [REDACTED] was paid at a rate of [REDACTED], which was below the BMA rate ([REDACTED]). Exhibits 37 at 132, 498. This release was extended through fiscal year 2014 at [REDACTED], and from October 1 to December 31, 2015, at [REDACTED], rates which were below the BMA rate. Exhibit 37 at 132. At the time of award, WRPS found [REDACTED] rate to be fair and reasonable because it was lower than the BMA rate. *Id.*

On release (58817-10), for a performance period of January 1, 2016, to the end of fiscal year 2016, [REDACTED] was again hired as a CAD designer. Exhibit 506. For this release, in addition to challenging his qualifications based on his resume, DOE also asserted that [REDACTED] did not have the required number of years of experience for the position. The SOW for [REDACTED] incorporated the June 5, 2023, qualification requirements from the applicable BMA, which included “certifications in AutoCAD and a 3-D modeling package . . . and 5–9 years of related experience.” Exhibit 501 at 2. [REDACTED] was identified as the preferred candidate. *Id.* at 1. [REDACTED] was paid at a rate of [REDACTED], which was the BMA rate. Exhibits 37 at 132, 505 at 2. At the time of award, this rate was determined to be fair and reasonable because [REDACTED] was paid at the BMA rate. Exhibit 505. This release was extended for fiscal year 2017 at [REDACTED] and for fiscal year 2018 at [REDACTED],<sup>19</sup> both of which were at the BMA rate. Exhibit 37 at 122.

DOE calculated a deduction for the amount DOE believed [REDACTED] was paid above the FTE rate for fiscal years 2010–2018. This amount was based upon DOE’s interpretation of WRPS’s price analysis, which was done to determine if CLR rates were substantially higher than equivalent WRPS FTE rates. *See* Exhibit 721 (WRPS-IA rate analysis). DOE believed this rate analysis showed [REDACTED] rate in 2018 was thirty-two percent greater than an equivalent WRPS FTE. Exhibit 45 at 19. [REDACTED] rate for fiscal year 2018 was [REDACTED]. *Id.* According to DOE’s reasoning, [REDACTED] should have been paid no more than [REDACTED] for fiscal year 2018. [REDACTED] also worked more than 2000 hours during only two of those nine fiscal years. *Id.*

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memorandum, Exhibit 497, also lists the title as “CAD Designer.” [REDACTED] was paid at a rate that would indicate he was a senior CAD drafter.

<sup>19</sup> Both the BMA rate and [REDACTED] rate for 2018 were revised to [REDACTED] to accommodate a new state law requiring paid sick leave for non-exempt employees. Exhibit 37 at 132.

12. [REDACTED] (Sample 30)

DOE sought to disallow \$198,565, for amounts paid to [REDACTED] above the applicable BMA rates in fiscal years 2014 and 2015.

123. [REDACTED] earned a B.S. in chemistry and an M.S. in chemical engineering. Exhibit [REDACTED] possessed over thirty years of experience, including Hanford-specific experience, and held three separate patents relating to nuclear safety processes. *Id.* WRPS procured [REDACTED] because he had “specialized skills needed by the field . . . [and] no other candidates were determined technically acceptable.” Exhibit 125 at 2.

For release 49910-30, covering April 7, 2014, through the end of fiscal year 2014, [REDACTED] was procured through [REDACTED] as a principal process engineer at a rate of [REDACTED]. Exhibit 125. It appears that this release was extended, and [REDACTED] was paid the same rate in 2015. Exhibit 45 at 20. The qualifications for the position were a B.S. degree and fifteen years of nuclear experience. Exhibit 687. The specific statement of work required someone with experience in software design, development, and testing to support the process control system simulator model. *Id.* [REDACTED] was the preferred candidate. Exhibit 693.

At the time of [REDACTED] release, [REDACTED] BMA rate was [REDACTED]; the other two BMA holders had rates of [REDACTED]. Exhibits 84 at 12, 85 at 1, 96. When [REDACTED] proposed to provide [REDACTED] services, but at higher rates than the BMA rates, WRPS procurement requested offers from all of the engineering staff augmentation subcontractors. Exhibit 693. The field determined that none of the responding candidates would meet its requirements. *Id.* [REDACTED] was again requested as a preferred candidate because of the need for his specialized skills. *Id.* At hearing, Mr. Siron confirmed that WRPS “resorted” to [REDACTED] and his higher rate because amongst the BMA holders at the BMA rate “[t]here was [sic] no technically qualified individuals.” Transcript, Vol. 2 at 60.

Because [REDACTED] rate was above the BMA rate, WRPS conducted a price analysis in which it compared [REDACTED] rate to four different rates, two different GSA Schedule contracts, and the rates of two different WRPS subcontracts. Exhibit 693 at 2. The GSA Schedule contracts that were compared are contract GS-10F-0370T for a principal process engineer at [REDACTED] and contract GS-35F-0092U for a senior principal process engineer at [REDACTED]. *Id.* The two WRPS subcontracts are [REDACTED] 49910-1 release for his work as a principal process chemical engineer at a rate of [REDACTED] and “definitized rates” from [REDACTED] for principal process chemical engineer at [REDACTED]. *Id.* Based upon this analysis, WRPS found [REDACTED] rate to be fair and reasonable at the award of the release. Exhibit 125.

**13. [REDACTED] (Sample 32)**

DOE produced two amounts for [REDACTED], the low amount of \$336,865, the amount disallowed because [REDACTED] lacked the qualifications for the position in fiscal year 2013; the high amount of \$531,255.05, calculated based upon DOE's belief that WRPS's rate testing showed that [REDACTED] hourly rate was thirty-four percent greater than an equivalent WRPS FTE employee for fiscal years 2013–2018. Exhibit 45 at 21 (contracting officer disallowance of [REDACTED] costs); *contra see* Exhibit 721 (spreadsheet of WRPS's rate testing results). In November 2019, WRPS agreed to pay back \$336,865 because [REDACTED] did not have the qualifications to be billed at the rate of a project manager rather than a principal process engineer. Exhibits 37 at 148, 45 at 21.

DOE calculated a deduction for the amount [REDACTED] was paid above the FTE rate for fiscal years 2013–2018. Exhibit 45 at 10. This amount was based upon DOE's interpretation of WRPS's rate analysis, which was done to determine if CLR rates were substantially higher than equivalent WRPS FTE rates. *See* Exhibit 721 (WRPS's rate analysis). DOE believes this analysis showed [REDACTED] rate in 2018 was thirty-four percent greater than an equivalent WRPS FTE. Exhibit 45 at 21. [REDACTED] rate for fiscal year 2018 was [REDACTED]. *Id.* According to DOE's reasoning, [REDACTED] rate should have been [REDACTED] that year. [REDACTED] never worked more than 2000 hours in any of those six fiscal years. *Id.*