

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT 1. CONTRACT ID CODE PAGE 1 OF 1 PAGES

2. AMENDMENT/MODIFICATION NO. **M037** 3. EFFECTIVE DATE **See Block 16C** 4. REQUISITION/PURCHASE REQ. NO. 5. PROJECT NO. (If applicable)

6. ISSUED BY CODE U.S. Department of Energy National Nuclear Security Administration Service Center M & O Contract Support Division P.O. Box 5400 Albuquerque, NM 87185-5400
 7. ADMINISTERED BY (If other than Item 6) CODE U.S. Department of Energy National Nuclear Security Administration Los Alamos Site Office 528 35th Street Los Alamos, NM 87544

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, state, ZIP Code) Los Alamos National Security, LLC 4200 West Jemez Road Suite 400 Los Alamos, NM 87544
 9A. AMENDMENT OF SOLICITATION NO.
 9B. DATED (SEE ITEM 11)
 X 10A. MODIFICATION OF CONTRACT/ORDER NO. **DE-AC52-06NA25396**
 10B. DATED (SEE ITEM 13) December 21, 2005
 CODE FACILITY CODE

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

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

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

12. ACCOUNTING AND APPROPRIATION DATA (If required)

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

- A. THIS CHANGE ORDER IS ISSUED PURSUANT TO (Specify authority): THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
- B. THE ABOVE-NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (Such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
- C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
- X D. OTHER (Specify type of modification and authority): **Clause No. I-103 DEAR 970.5243-1 CHANGES (DEC 2000)**

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

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

The purpose of this modification is to replace Clause I-116 FAR 52.250-1 INDEMNIFICATION UNDER PUBLIC LAW 85-804 (APR1984) (DEVIATION) with the attached Clause I-116 FAR 52.250-1 INDEMNIFICATION UNDER PUBLIC LAW 85-804 (APR1984) (DEVIATION).

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

15A. NAME AND TITLE OF SIGNER (Type or print) <i>Rueben M. Rafferty</i> <i>Prime Contract Manager</i>		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Martha L. Youngblood, Contracting Officer M&O Support Department, NNSA Service Center	
15B. CONTRACTOR/OFFEROR BY <i>RMR</i> (Signature of person authorized to sign)	15C. DATE SIGNED <i>3/3/08</i>	16B. UNITED STATES OF AMERICA BY <i>Martha L. Youngblood</i> (Signature of Contracting Officer)	16C. DATE SIGNED <i>3/13/08</i>

**FAR 52.250-1 INDEMNIFICATION UNDER PUBLIC LAW 85-804 (APR 1984)
ALTERNATE I (APR 1984) (DEVIATION)**

- (a) "Contractor's principal officials," as used in this clause, means directors, officers, managers, superintendents, or other representatives supervising or directing--
 - (1) All or substantially all of the Contractor's business;
 - (2) All or substantially all of the Contractor's operations at any one plant or separate location at which this contract is being performed; or
 - (3) A separate and complete major industrial operation in connection with the performance of this contract.

- (b) Under Public Law 85-804 (50 U.S.C. 1431-1435) and Executive Order 10789, as amended, and regardless of any other provisions of this contract, the Government shall, subject to the limitations contained in the other paragraphs of this clause, indemnify the Contractor against--
 - (1) Claims (including reasonable expenses of litigation or settlement) by third persons (including employees of the Contractor) for death; personal injury; or loss of, damage to, or loss of use of property;
 - (2) Loss of, damage to, or loss of use of Contractor property, excluding loss of profit; and
 - (3) Loss of, damage to, or loss of use of Government property, excluding loss of profit.

- (c) This indemnification applies only to the extent that the claim, loss, or damage (1) arises out of or results from a risk defined in this contract as unusually hazardous or nuclear and (2) is not compensated for by insurance or otherwise. Any such claim, loss, or damage, to the extent that it is within the deductible amounts of the Contractor's insurance, is not covered under this clause. If insurance coverage or other financial protection in effect on the date the approving official authorizes use of this clause is reduced, the Government's liability under this clause shall not increase as a result.

- (d) When the claim, loss, or damage is caused by willful misconduct or lack of good faith on the part of any of the Contractor's principal officials, the Contractor shall not be indemnified for -
 - (1) Government claims against the Contractor (other than those arising through subrogation); or
 - (2) Loss or damage affecting the Contractor's property.
- (e) With the Contracting Officer's prior written approval, the Contractor may, in any subcontract under the contract, indemnify the subcontractor against any risk defined in this contract as unusually hazardous or nuclear. This indemnification shall provide, between the Contractor and the subcontractor, the same rights and duties, and the same provisions for notice, furnishing of evidence or proof, and Government settlement or defense of claims as this clause provides. The Contracting Officer may also approve indemnification of subcontractors at any lower tier, under the same terms and conditions. The Government shall indemnify the Contractor against liability to subcontractors incurred under subcontract provisions approved by the Contracting Officer.
- (f) The rights and obligations of the parties under this clause shall survive this contract's termination, expiration, or completion. The Government shall make no payment under this clause unless the agency head determines that the amount is just and reasonable. The Government may pay the Contractor or subcontractors, or may directly pay parties to whom the Contractor or subcontractors may be liable.
- (g) The Contractor shall -
 - (1) Promptly notify the Contracting Officer of any claim or action against, or any loss by, the Contractor or any subcontractors that may reasonably be expected to involve indemnification under this clause;
 - (2) Immediately furnish to the Government copies of all pertinent papers the Contractor receives;
 - (3) Furnish evidence or proof of any claim, loss, or damage covered by this clause in the manner and form the Government requires; and

- (4) Comply with the Government's directions and execute any authorizations required in connection with settlement or defense of claims or actions.
- (h) The Government may direct, control, or assist in settling or defending any claim or action that may involve indemnification under this clause.
- (i) The cost of insurance (including self-insurance programs) covering a risk defined in this contract as unusually hazardous or nuclear shall not be reimbursed except to the extent that the Contracting Officer has required or approved this insurance.

The Government's obligations under this clause are -

- (1) Excepted from the release required under this contract's clause relating to allowable cost; and
 - (2) Not affected by this contract's Availability of Funds or Obligation of Funds clause.
- (j) The term "a risk defined in this contract as unusually hazardous or nuclear" means the risk of legal liability to third parties (including legal costs as defined in paragraph (jj) of section 11 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2014(jj), notwithstanding the fact that the claim or suit may not arise under section 170 of said Act, 42 U.S.C. §2210) arising from actions or inactions in the course of the following work performed by the Contractor under the Contract:

(1) Participation in --

(i) DOE's Nuclear Emergency Search Team ("NEST") outside the United States,

(ii) DOE's Accident Response Group ("ARG") outside the United States, or

(iii) DOE's Joint Technical Operations Team ("JTOT") outside the United States,

to the extent participation in activities described in subparagraphs (i), (ii) or (iii) above involves nuclear activities involving real or suspected nuclear weapons, nuclear weapons components, or nuclear materials which can be readily utilized either (A) for the production or the fabrication of nuclear weapons without substantial

further effort; or (B) for intentional widespread contamination or dispersal of harmful nuclear materials, whether or not such real or suspected weapons, components, or harmful nuclear materials are owned by the United States; and

(2) (i) Repairs and maintenance of United States-owned nuclear weapons, requested by the Department of Defense under DOE's Stewardship role for the United States nuclear weapons stockpile.

(ii) Repairs and maintenance of United Kingdom-owned nuclear weapons requested by the Ministry of Defense of the United Kingdom, as directed or approved by the President of the United States, the Secretary of Energy, the Deputy Secretary of Energy, or the Under Secretary of Energy.

(iii) Participation in DOE's Materials Protection Control and Accountability (MPC&A) program including cooperative work outside the United States on the design and implementation of MPC&A systems for facilities processing, handling, and storing nuclear materials, and the transportation of nuclear materials; provision of U.S.-manufactured equipment, and procurement of equipment for installation in facilities in order to implement the above systems; and training in the design, use and assessment of MPC&A systems.

(iv) Participation in the U.S.-Russian Plutonium Disposition Program including cooperative work outside the United States on the demonstrations of alternative technologies for converting weapons-origin plutonium into forms unsuitable for direct weapons applications, and subsequently into forms suitable for ultimate disposition; technical support for the construction and demonstration of a pilot line for Russian plutonium conversion/disposition of weapons-origin plutonium; and technical support for the construction of a Russian production line for conversion and/or disposition of Russian weapons-origin plutonium.

(3) Other activities relating to non-proliferation, emergency response, anti-terrorism activities, or critical national security activities that involve the use, detection, identification, assessment, control, containment, dismantlement, characterization, packaging, transportation, movement, storage, or disposal of nuclear, radiological, chemical, biological, or explosive materials, facilities or devices, provided such activities are specifically requested or approved, in writing, by the President of the United States, the Secretary of Energy, the Deputy Secretary of Energy, or the Under

Secretary for Nuclear Security, and further provided that the request or approval specifically identifies the particular requested or approved activity and makes the indemnity provided by this clause applicable to that particular activity because it involves extraordinary risks.

(k) This clause provides indemnification for the unusually hazardous or nuclear risks defined herein which are not covered by the Price Anderson Act (section 170d of the Atomic Energy Act of 1954, as amended 42 U.S.C. § 2210(d) or where the indemnification provided by the Price Anderson Act is limited by the restriction on public liability imposed by section 170e of the Atomic Energy Act of 1954, as amended, (42 U.S.C. § 2210(e)) to an amount which is not sufficient to provide complete indemnification for the legal liability to which the Contractor is exposed.

(l) Additional definitions applicable to this clause.

(1) the term "Contractor" except as used in paragraphs (a) and (e) means

(i) Los Alamos National Security LLC, and

(ii) Los Alamos National Security LLC's members: the University of California, Bechtel National, Inc., Washington Group International, and BWX Technologies, Inc., including, if applicable, the ultimate parent companies and the affiliates of each, and

(iii) employees, officers, and directors or any of the foregoing named or threatened to be named as defendants in lawsuits or litigation threatened or initiated by third parties which seek to impose or establish, or which could result in, a risk which is defined in this contract as unusually hazardous or nuclear, on account of actions or inactions of Los Alamos National Security LLC, or on account of the actions or inactions undertaken by the corporations or individuals identified in subparagraphs (a), (b), or (c) for, and on behalf of, or with respect to, Los Alamos National Security LLC, under this contract;

(2) the term "Contractor" as used in paragraphs (a), and (e) means Los Alamos National Security LLC;

- (3) the term "Contractor's business" as used in this clause means the management and operation of the Government's facilities at Los Alamos, New Mexico, for the Department of Energy under this contract;
- (4) the terms "Contractor's operations at any one plant or separate location in which this contract is being performed" and "a separate and complete major industrial operation in connection with the performance of this contract" as used in this clause means the Government's facilities located at Los Alamos, New Mexico;
- (5) the term "nuclear materials" as used in this clause means source, special nuclear, or byproduct materials as those terms are defined in Section 11 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2014;
- (6) the term "agency head" as used in this clause means the Secretary of Energy; and
- (7) the term "affiliate" as used in this clause means the member companies of Los Alamos National Security LLC (the University of California, Bechtel National, Inc., Washington Group International, and BWX Technologies, Inc., and, if applicable, the parent companies of each including the ultimate parent company of each) as well as companies, other than Los Alamos National Security LLC, that directly or indirectly, are owned or otherwise controlled by the member companies of Los Alamos National Security LLC.