

2. AMENDMENT/MODIFICATION <b>M022</b>	3. EFFECTIVE DATE See Block 16.C	4. REQUISITION/PURCHASE REQ. NO. <b>NOPR</b>	5. PROJECT NO. (If applicable)
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6. ISSUED BY U. S. Department of Energy National Nuclear Security Administration P. O. Box 2001 Oak Ridge, TN 37831	7. ADMINISTERED BY (If other than Item 6)
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8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)  BWXT Y-12, L.L.C. 1055 Commerce Park Drive Suite 300 Oak Ridge, TN 37830	(X)	9A. AMENDMENT OF SOLICITATION NO.
		9B. DATED (SEE ITEM 11)
		10A. MODIFICATION OF CONTRACT/ORDER DE-AC05-00OR22800
		10B. DATED (SEE ITEM 13) August 31, 2000

**11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATION**

\_\_\_\_ The above numbered solicitation is amended as set forth in item 14. The hour and date specified for receipt of offers \_\_\_\_ is extended. \_\_\_\_ is not extended.  
 Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:  
 (a) By completing Items 8 and 15, and returning \_\_\_\_ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOU 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 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 data, 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:
<b>X</b>	D. OTHER (Specify type of modification and authority) <b>Public Law 95-91 and Mutual Agreement</b>

E. IMPORTANT: Contractor \_\_\_\_ is not, **X** is required to sign this document and return **2** copies to the issuing office.

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

**See Page 2**

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

15A. NAME AND TITLE OF SIGNER (Type or print) Ron Wessel Contracts Manager	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) William W. Wistrom Contracting Officer
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15B. CONTRACTOR/OFFEROR  (Signature of person authorized to sign)	15C. DATE SIGNED 9/25/01	16B. UNITED STATES OF AMERICA BY  (Signature of Contracting Officer)	16C. DATE SIGNED 9/25/01
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The purpose of this modification is to make the following changes:

1. Clause B.2 is deleted and replaced with the following in order to reflect fee amount for FY 2002:

**B.2 TRANSITION COST, ESTIMATED COST, MAXIMUM AVAILABLE FEE,  
AND AVAILABLE FEE**

(a) Estimated Cost:

- (1) The term of the transition period is from September 1, 2000 through October 31, 2000. The transition period will be on a cost reimbursement basis and the estimated cost will be negotiated after contract award.
- (2) The Estimated Cost of the Fiscal Year (FY) 2001 period of performance is \$567,376,000 (including fee).
- (3) The Estimated Cost of the Fiscal Year (FY) 2002 period of performance is \$634,411,000 (including fee).

(b) Fee:

- (1) The Estimated Fee Base as defined in Department of Energy Acquisition Regulations (DEAR) 970.15 for FY 2001 is \$484,177,068. The proposed Maximum Available Fee for FY 2001 is **\$22,000,000**.

The Estimated Fee Base for FY 2002 is \$527,634,396. The Maximum Available Fee for FY 2002 is **\$22,000,000**.

- (2) The Maximum Available Fee as proposed and set forth in (b)(1) above for FY 2001 shall also serve as the Maximum Available Fee for FY 2002 – FY 2005 and Option Years FY 2006 - FY 2010 unless the Estimated Fee Base for a given fiscal year deviates by more than plus or minus 15% from the Estimated Fee Base set forth above for FY 2001. The proposed Maximum Available Fee shall be applicable to the prime contractor and its members in a joint venture or limited liability company, teaming partners, and subcontractors identified and considered as part of the selection and award of this contract, if any.
- (3) In the event the Estimated Fee Base deviates for any fiscal year more than plus or minus 15% from the Estimated Fee Base set forth in (b)(1) above, the Contractor agrees to negotiate with the U.S. Department of Energy (DOE) an equitable adjustment to the Maximum Available Fee amount to reflect the impact of such deviation. The new Maximum Available Fee for that fiscal year will be the amount calculated by DOE in accordance with DEAR 970.15 (consistent with the FY 2001 fee computation methodology), multiplied by the ratio of the proposed FY

2001 Maximum Available Fee in (b)(1) above and \$23,198,932. In the event the parties are unable to reach agreement on the Maximum Available Fee amount, the Government reserves the right to unilaterally establish the Maximum Available Fee amount.

- (4) The Available Fee for FY 2001 – FY 2005 and Option Years FY 2006 - FY 2010 will be negotiated annually (or any other period as may be mutually agreed to between the parties) between the Contractor and the Government. The Available Fee will be equal to or less than the Maximum Available Fee defined in (b)(1) above. The Available Fee shall be established considering the level of complexity, difficulty, cost effectiveness, and risk associated with specific objectives/incentives defined in the Performance Evaluation and Measurement Plan (PEMP), including work involving multiple-site taskings/ objectives. Higher or lower levels of complexity, difficulty, cost effectiveness, and risk will correspondingly allow a higher or lower available fee. The portion of this Available Fee defined as award fee versus performance-based incentives will be determined for each period during the negotiation of the requirements in the PEMP. In the event the parties are unable to reach agreement on the Available Fee amount, the Government reserves the right to unilaterally establish the Available Fee amount. The Contract will be modified to reflect the Available Fee for each period.
- (5) RESERVED
- (6) The Available Fees for the specified Contract Periods are set forth

below:

<u>Contract Periods</u>	<u>Available Fee</u>
November 1, 2000, through September 30, 2001	
Award Fee	\$ 7,058,334
Performance-Based Incentives	<u>\$13,108,332</u>
Total	\$20,166,666
October 1, 2001, through September 30, 2002	
Award Fee	\$ 5,500,000
Performance-Based Incentives	<u>\$16,500,000</u>
Total	\$22,000,000

Fee for the above periods will be earned by the contractor based on performance related to both the award fee performance objectives and performance based incentives which are contained in the Performance Evaluation and Measurement Plan.

- (7) There will be no fee paid for the transition period.
2. Clause I.106 is deleted and replaced with the following in order to reflect the change in FDO in paragraph (c) (2):

**I.106 DEAR 970.5204-54 TOTAL AVAILABLE FEE: BASE FEE AMOUNT AND PERFORMANCE FEE AMOUNT (APR 1999)**

- (a) **Total available fee.** Total available fee, consisting of a base fee amount(which may be zero) and a performance fee amount (consisting of an incentive fee component for objective performance requirements, an award fee component for subjective performance requirements, or both) determined in accordance with the provisions of this clause, is available for payment in accordance with the clause of this contract entitled "Payments and advances."
- (b) **Fee Negotiations.** Prior to the beginning of each fiscal year under this contract, or other appropriate period as mutually agreed upon and, if exceeding one year, approved by the Procurement Executive, or designee, the Contracting Officer and Contractor shall enter into negotiation of the requirements for the year or appropriate period, including the evaluation areas and individual requirements subject to incentives, the total available fee, and the allocation of fee. The Contracting Officer shall modify this contract at the conclusion of each negotiation to reflect the negotiated requirements, evaluation areas and individual requirements subject to incentives, the total available fee, and the allocation of fee. In the event the parties fail to agree on the requirements, the evaluation areas and individual requirements subject to incentives, the total available fee, or the allocation of fee, a unilateral determination will be made by the Contracting Officer. The total available fee amount shall be allocated to a twelve month cycle composed of one or more evaluation periods, or such longer period as may be mutually agreed to between the parties and approved by the Procurement Executive, or designee.
- (c) **Determination of Total Available Fee Amount Earned.**
- (1) The Government shall, at the conclusion of each specified evaluation period, evaluate the contractor's performance of all requirements, including performance based incentives completed during the period, and determine the total available fee amount earned. At the Contracting Officer's discretion, evaluation of incentivized performance may occur at the scheduled completion of specific incentivized requirements.
- (2) The DOE Fee Determination Official (FDO) will be the Deputy Administrator for Defense Programs at Headquarters NNSA or

designee. The contractor agrees that the determination as to the total available fee earned is a unilateral determination made by the Deputy Administrator for Defense Programs or designee.

- (3) The evaluation of contractor performance shall be in accordance with the Performance Evaluation and Measurement Plan(s) described in subparagraph (d) of this clause unless otherwise set forth in the contract. The Contractor shall be promptly advised in writing of the fee determination, and the basis of the fee determination. In the event that the contractor's performance is considered to be less than the level of performance set forth in the Statement of Work, as amended to include the current Work Authorization Directive or similar document, for any contract requirement, it will be considered by the DOE Operations/Field Office Manager, or designee, who may at his/her discretion adjust the fee determination to reflect such performance. Any such adjustment shall be in accordance with the clause entitled "Conditional Payment of Fee, Profit, or Incentives" if contained in the contract.
  - (4) When the award fee cycle consists of one evaluation period, add the following as paragraph (c)(4): Award fee not earned during the evaluation period shall not be allocated to future evaluation periods.
- (b) Performance Evaluation and Measurement Plan(s). To the extent not set forth elsewhere in the contract:
- (1) The Government shall establish a Performance Evaluation and Measurement Plan(s) upon which the determination of the total available fee amount earned shall be based. The Performance Evaluation and Measurement Plan(s) will address all of the requirements of contract performance specified in the contract directly or by reference. A copy of the Performance Evaluation and Measurement Plan(s) shall be provided to the Contractor:
    - (i) Prior to the start of an evaluation period if the requirements, evaluation areas, specific incentives, amount of fee, and allocation of fee to such evaluation areas and specific incentives have been mutually agreed to by the parties; or
    - (ii) Not later than thirty days prior to the scheduled start date of the evaluation period, if the requirements, evaluation areas, specific incentives, amount of fee, and allocation of fee to such evaluation areas and specific incentives have been unilaterally established by the Contracting Officer.
  - (2) The Performance Evaluation and Measurement Plan(s) will set forth the criteria upon which the Contractor will be evaluated relating to any

technical, schedule, management, and/or cost objectives selected for evaluation. Such criteria should be objective, but may also include subjective criteria. The Plan(s) shall also set forth the method by which the total available fee amount will be allocated and the amount earned determined.

- (3) The Performance Evaluation and Measurement Plan(s) may, consistent with the contract statement of work, be revised during the period of performance. The Contracting Officer shall notify the contractor:
- (i) Of such unilateral changes at least ninety calendar days prior to the end of the affected evaluation period and at least thirty calendar days prior to the effective date of the change;
  - (ii) Of such bilateral changes at least sixty calendar days prior to the end of the affected evaluation period; or
  - (iii) If such change, whether unilateral or bilateral, is urgent and high priority, at least thirty calendar days prior to the end of the evaluation period.
- (e) Schedule for total available fee amount earned determinations. The DOE Operations/Field Office Manager, or designee, shall issue the final total available fee amount earned determination in accordance with the schedule set forth in the Performance Evaluation and Measurement Plan(s). However, a determination must be made within sixty calendar days after the receipt by the Contracting Officer of the Contractor's self-assessment, if one is required or permitted by paragraph (f) of this clause, or seventy calendar days after the end of the evaluation period, whichever is later. If the Contracting Officer evaluates the Contractor's performance of specific requirements on their completion, the payment of any earned fee amount must be made within seventy calendar days (or such other time period as mutually agreed to between the Contracting Officer and the Contractor) after such completion. If the determination is delayed beyond that date, the Contractor shall be entitled to interest on the determined total available fee amount earned at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the payment date. This rate is referred to as the "Renegotiation Board Interest Rate," and is published in the Federal Register semiannually on or about January 1 and July 1. The interest on any late total available fee amount earned determination will accrue daily and be compounded in 30-day increments inclusive from the first day after the schedule determination date through the actual date the determination is issued. That is, interest accrued at the end of any 30-day period will be added to

the determined amount of fee earned and be subject to interest if not paid in the succeeding 30-day period.

- (f) **Contractor self-assessment.** Following each evaluation period, the Contractor may submit a self-assessment, provided such assessment is submitted within 5 calendar days after the end of the period. This self-assessment shall address both the strengths and weaknesses of the Contractor's performance during the evaluation period. Where deficiencies in performance are noted, the Contractor shall describe the actions planned or taken to correct such deficiencies and avoid their recurrence. The DOE Operations/Field Office Manager, or designee, will review the Contractor's self-assessment, if submitted, as part of its independent evaluation of the Contractor's management during the period. A self-assessment, in and of itself may not be the only basis for the award fee determination.