

**AGREEMENT ON TERMS AND CONDITIONS – DOE-ID / BBWI
 FY 2002-2004 Performance Evaluation Measurement Plan
 May 23, 2002**

1. Total Fee Pool

- a. The total fee pool is established at \$108,000,000, of which \$96,490,000 will be allocated to base incentives; \$11,500,000 has been allocated to stretch incentives.
- b. Part I (The Schedule) - Section B, Supplies or Services and Prices/Costs, B.04, *Total Available Fee* is revised to read as follows:

Fees delineated in Table B.4.1 are to be established in accordance with DEAR 970.15404-4 as published in the Federal Register (month) (day), 1998, Volume 63, Number (TBD), Pages (TBD) and in accordance with the Section I clause entitled DEAR 970.5204-54 TOTAL AVAILABLE FEE: BASE FEE AMOUNT AND PERFORMANCE FEE AMOUNT.

In the event the parties fail to agree on the amount of total available fee or any appropriate adjustments thereto under the aforementioned circumstances, the Contracting Officer may make a unilateral decision on the total available fee, subject to appeal under the clause of the contract entitled Disputes.

Total available fee for the contract is as follows:

Table B.4.1

	Fiscal Year(s)	Government Specified Maximum Total Available Fee*	Fee Discount Factor	Total Available Fee (B) – [(B) X (C)] = (D)
	(A)	(B)	(C)	(D)
Basic Contract Period	FY 2000 (Oct-Mar)	\$10,000,000	5.0%	\$9,500,000
	FY 2000 (Apr-Sep)	\$18,055,400	5.0%	\$17,155,400
	FY 2001	\$35,910,000	5.0%	\$34,200,000
	FY 2002 – FY 2004	\$113,684,211	5.0%	\$108,000,000
Option Period	FY 2005	TBD	5.0%	TBD
	FY 2006	TBD	5.0%	TBD
	FY 2007	TBD	5.0%	TBD
	FY 2008	TBD	5.0%	TBD
	FY 2009	TBD	5.0%	TBD

Allocation between award fee and incentive fee shall be separately negotiated (or determined unilaterally by the Contracting Officer if good faith negotiations do not result in an agreement).

Table B.4.2, is revised as follows:

Line No.	Description	Total FY 2002 - 2004
	Available Fee Calculations:	
A	Maximum Negotiated Total Available Fee	\$113,684,211
B	Less: Fee Discount Reduction	\$5,684,210
C	Total Available Incentive Fee	\$108,000,000

D	Fee Amount For Base Incentives	\$96,490,000
E	Fee Amount Allocated To Stretch Incentives (Ceiling Amount)	\$11,510,000
F	Total Fee Pool	\$108,000,000

2. Fee Discount

The fee discount factor of 5% will not be eliminated.

3. Payment of Fee

The Multi-Year Fee clause (section 5, *Treatment of Fee*) resolves the issues of this section.

4. Unallocated Fee

The Multi-Year Fee clause (section 5, *Treatment of Fee*) resolves the issues of this section.

5. Treatment of Fee

The following clause shall be added to the contract.

H.35 MULTI-YEAR FEE

- (a) In order to employ multi-year Performance Based Incentives (PBI's), a multi-year fee pool has been established. It is the intent of the parties that the entire amount of fee will be allocated and made available for earning by the Contractor during the contract term through assignment of fee to PBI's. An "unallocated" pool of fee will be maintained to account for fee, not assigned to PBI's. The parties agree in good faith to allocate the unallocated fee pool to meaningful work efforts during the term of the contract; two thirds (2/3) of the unallocated fee pool will be allocated by September 30, 2002, and the remaining one third (1/3) will be allocated by September 30, 2003.
- (b) Fee which is unearned by the contractor as a result of cancellation or modification of a PBI will be either allocated to another PBI or placed in the unallocated fee pool for future allocation. Fee that becomes "unallocated" from base fee work must be allocated to other base fee work. Fee that becomes "unallocated" from stretch work may be allocated to other stretch fee work.
- (c) If a PBI is canceled, the fee attached to that PBI will be considered earned by the Contractor commensurate with the percentage of the measure completed. Fee from the PBIs which is unearned due to nonconformance with established PBI measures shall not be returned to the unallocated fee pool but shall be forfeited.
- (d) If there is a change in the scope or complexity of the work requirements, or the new Budget Authority funding varies from the EM Base Program firm funding requirements established for each fiscal year as provided in Contract Clause B.03 (*Estimated Cost and Available Fee*), the fee allocated to the affected PBIs will be negotiated by the Government and the Contractor. If any fee becomes "unallocated" in this process it will be treated in accordance with Section (a) and (b) of this clause. If the variance from the EM

Base Program firm funding amounts specified in clause B.03 (*Estimated Cost and Available Fee*) is plus or minus 5% or greater, the Government and the Contractor will conduct negotiations in good faith to adjust the total available fee pool appropriately. The Government's decision on the fee pool adjustment will be final and the parties agree that the decision is subject to the Disputes clause of the contract.

- (e) Effective October 1, 2001, for purposes of clause I.66 (*DEAR 970.5204-86 Conditional Payment of Fee, Profit, or Incentives (Apr 1999) - Alternate 1 (Apr 1999)*) of this contract, the "evaluation period" shall be deemed to be 6 months in duration, and notwithstanding the terms of clause I.66, the maximum amount of fee reduction per "evaluation period" shall be 1/6 of the total fee (after fee discount) for the 3-year period.
- (f) SuperStretch Performance Based Incentives (SSPBIs) - The parties may agree to negotiate SSPBIs (including associated fee) from cost savings, redirected funds or Government provided funding to perform unfunded or accelerated activities on a case-by-case basis. Candidate SSPBIs are not incorporated into the Performance Evaluation Management Plan (PEMP) until approved through the PEMP change control process and until funds are provided for the scope of such SSPBIs through approval of Baseline Change Proposals. The parties agree that the Contracting Officer's decision on allocation of funds and fee determination for SSPBIs is final, subject to the contract Disputes clause.

The fee for SSPBIs will be allocated from a source other than the Multi-Year Fee Pool established in Section (a) and must be allocated and made available for earning by the Contractor within the multi-year fee period. SSPBIs shall include provisions for incremental payment for partial performance; if a SSPBI is canceled the allocated fee will be considered earned by the Contractor commensurate with the percentage of the SSPBI completed. If the parties fail to agree through good faith negotiations on the available fee or payment for partial performance, the Contracting Officer may make a unilateral determination, subject to the contract Disputes clause.

- (g) Upon completion of each PBI measure/expectation/milestone the contractor will initiate the close-out process with DOE. The Fee Determination Official will approve payment of fee during the close-out process for any measure/expectation/milestone completed as specified in the individual PBI (except that completed milestones will be batched for payment on a quarterly basis). The fee payment for completion of the PBI measure/expectation/milestone will be offset by the portion of the progress/35% fee payments (clause I.27, *DEAR 970.5204-16 Payments and Advances (May 2000) (Modified)*) that are attributable to the PBI measure/expectation/milestone.

6. Community and Economic Development and Corporate-Funded Research and Development Contributions.

There will be no changes to the contract provisions regarding Community and Economic Development and Corporate-Funded Research and Development Contributions.

7. Interference with BBWI's Ability to Meet Performance Objectives

The Multi-Year Fee clause (section 5, *Treatment of Fee*) resolves the issues of this section.

8. Annual Funding

DOE commits to firm EM Base Program Funding as provided in table below for fiscal years FY2002-2004. Inability to meet that level of funding will trigger renegotiations of the PEMP. Contract clause B.03, *Estimated Cost and Available Fee*, will be revised to read as follows:

B.03 Estimated Cost and Available Fee

- (a) The estimated cost and total available fee pool will be established by the Government in accordance with DEAR 970.15404-4 and set forth in a modification to this provision.
- (b) The estimated cost of the specified contract periods, is set forth below:

<u>CONTRACT PERIOD</u>	<u>ESTIMATED COST</u>
October 1, 2001 through September 30, 2002	\$685,000,000
October 1, 2002 through September 30, 2003	\$710,000,000
October 1, 2003 through September 30, 2004	\$753,000,000

- (c) The EM Base Program New Budget Authority (BA) funding provided to the Contractor for the specified contract periods, is set forth below:

PERIOD	EM BASE PROGRAM FUNDING
October 1, 2001 through September 30, 2002	\$405,000,000
October 1, 2002 through September 30, 2003	\$424,000,000
October 1, 2003 through September 30, 2004	\$401,000,000

- (d) The total available fee for the specified contract periods is set forth in B.4 below.
- (e) Except as required by law or the terms of the contact, the contractor has authority and discretion to transfer available funds among PBSs to complete PEMP stretch measures in addition to DWP approved and funded scope. (The DWP is defined as the performance baseline component and the unfunded stretch component.) Notification of such transfers must be made to DOE by the 15th of each month. Transfers are limited to activities within the individual EM control levels (i.e. defense/non-defense site project completion and post 2006 completion) and must be consistent with the requirements contained in DOE orders (e.g. DOE Order 413.3, construction limitations, etc). Work scope not included in an approved DWP must be submitted for approval to DOE via the BCP process before funds will be authorized. The contractor will provide monthly reports to DOE identifying available funding, costs, outstanding commitments and EACS by EM control level and PBS.

9. Alternate Dispute Resolution

An ADR clause will not be added to contract. The Contracting Officer will issue a letter indicating the DOE-ID position that ADR is the preferred method for resolving issues in dispute, and that ADR should be used to the greatest extent possible prior to proceeding to the more formal

dispute route. The parties will establish a mutually acceptable list of candidates (5-10 names) with knowledge of the work, to serve as the neutral third party, prior to any use of ADR.

10. Management of Resources – Workforce Restructuring

A. Change Section J, Attachment A, Part 8, Section L, Item 2, *Workforce Restructuring*, as follows:

2. DOE and the Contractor agree that by June 1, 2002 the Contractor shall submit (for DOE approval) an acceptable plan for continued work force adjustments and restructuring in FY2003 - FY2004. The plan once approved will allow the Contractor the flexibility to implement workforce-restructuring policies and carry out reductions as necessary to adjust manpower levels without having to submit any further restructuring plans to DOE Headquarters for approval. However, at least fifteen days prior to each reduction, the Contractor must provide the Idaho Operations Office (ID) appropriate documentation, i.e. reason, dates, diversity analysis, etc. in order for ID to notify and confer with the Department, and appropriate stakeholders, as required or deemed necessary. The DOE-ID Office of Chief Counsel will forward the diversity analysis to the DOE Office of General counsel (OGC) for review and comment. So as not to delay the contractor's restructuring schedules, but allow time to address and/or act upon the comments, the OGC must provide any comments to DOE-ID within three (3) working days of its receipt of the diversity analysis. The Contractor and ID will meet and agree on details of what documentation and notifications to stakeholders, etc. will be required for each reduction. This could change depending on the size, reason, and timing of each reduction.

Under the approved plan, except as noted above the Contractor has the authority to terminate excess employees monthly without obtaining DOE concurrence or approval. If a plan is not approved by November 1, 2002, DOE and the Contractor will conduct negotiations in good faith to adjust the Performance Evaluation Management Plan.

B. Delete, Attachment A, Part 8, Section L, *Workforce Restructuring, Item 3*

11. Management of Overtime

Management of overtime will be in accordance with I.62, DEAR 970.5204-80, *Overtime Management*.

Attachment A, *Personnel Policies and Procedure* of the current contract will be modified as follows:

Delete Part 4, Section H, *Overtime Exempt Employees*, paragraph 2.b.
Delete Part 4, Section H, *Overtime Exempt Employees*, paragraph 2.c.;
Delete Part 4, Section H, *Overtime Exempt Employees*, paragraph 3,. the words "*worked in excess of 5 per week*";
Delete Part 4, Section H, *Overtime Exempt Employees*, paragraph 3.a
Delete Part J, *Overtime Management*

BBWI will submit, and DOE-ID will approve, an Overtime Management Plan that will reflect these changes.

12. Management of Funding

Paragraph (e) included in B.03, *Estimated Cost and Available Fee*, satisfies this issue.

13. Program Execution Guidance

The establishment of PEGs will remain in the contract, but number of PEGs will be minimized and direction in PEGs will not be redundant to the PEMP. PEGs that are confirmed as incorporated into the Detailed Work Plan will be deleted. If remaining PEGs introduce workscope outside the PBIs or contract provisions then the workscope and fee will be negotiated.

14. Change Control

The parties agree that a contract revision will not be required for this issue. An analysis of the change process turnaround time will be accomplished to determine process improvements or systemic bottlenecks. The parties agree to cooperate in reducing the cycle time of the change control processes.

15. Contracting Officer's Representative

DOE reserves the right to determine appropriate number of CORs to accomplish efficient workflow and communication

16. Penalties, Incentives, and Retainage

The parties agree to negotiate PBIs that are fair, reasonable and generally consistent in regards to penalties, incentives and retainage. DOE and BBWI will work together in good faith to streamline and simplify the PBIs.

17. Superstretch Performance Based Incentives

Clause H.35, *Multi-Year Fee*, section (f) provides for Superstretch Performance Based Incentives.