

2. AMENDMENT/MODIFICATION NO. M002	3. EFFECTIVE DATE See Block 16c	4. REQUISITION/PURCHASE REQ. NO. NOPR	5. PROJECT NO. (If applicable)
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6. ISSUED BY U.S. Department of Energy Idaho Operations Office (NE-ID) Procurement Services Division 1955 Fremont Avenue Idaho Falls, ID 83401-1221	7. ADMINISTERED BY (If other than Item 6) Cheryl A. Thompson, Contracting Officer (208) 526-5743
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8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and Zip Code) Battelle Energy Alliance, LLC 2525 Fremont Avenue Idaho Falls, ID 83415	9A. AMENDMENT OF SOLICITATION NO.
	9B. DATED (SEE ITEM 11)
	10A. MODIFICATION OF CONTRACT/ORDER NO. DE-AC07-05ID14517
	10B. DATED (SEE ITEM 13) November 9, 2004

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)
N/A

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): Secretarial Authority under P.L. 85-804 (48 CFR 50.403-1)

E. IMPORTANT: Contractor ___ is not, X 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)

(See attached)

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) John J. Grossenbacher President, Battelle Energy Alliance	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Wendy L. Bauer Contracting Officer
15B. CONTRACTOR/OFFEROR BY  (Signature of person authorized to sign)	15C. DATE SIGNED 31 JAN 05
16B. UNITED STATES OF AMERICA BY  (Signature of Contracting Officer)	16C. DATE SIGNED 1/31/05

The contract is modified to add Clause I. 59, **INDEMNIFICATION UNDER PUBLIC LAW 85-804 (APR 1984) ALTERNATE I (APR 1984)**. The Table of Contents is also revised as attached.

- I. 59 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 officers, directors, 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 in 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 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 this 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 Limitation of Cost or Limitation of Funds clause.
- (j) The term "a risk defined in this contract as unusually hazardous or nuclear" as used in this Section I.59 means the risk of nuclear liability to third parties (including costs incurred by the Contractor in investigating, settling, or defending claims or suits to which the indemnity under this clause applies but only if such costs are approved by the Secretary or the Secretary's delegate) arising from actions or inactions in the course of the following work performed by the Contractor under this contract:
- (1) Assistance in the redesign of research and test reactors outside the United States under the Reduced Enrichment for Research and Test Reactors (RERTR) program (including but not limited to that performed pursuant to the contract between the University of Chicago and Russian Research and Development Institute of Power Engineering (RRDIPE), dated January 17, 1995, and any extension thereto), so that the reactors can use low rather than high-enriched uranium and thus reduce the potential for the loss or diversion of high-enriched uranium.
 - (2) Assistance in nuclear materials protection, control and accounting technical support (MPC&A) to the DOE with respect to nonproliferation activities involving nuclear material outside the United States, such as establishing safeguard systems to prevent diversion of nuclear material or preventing the unauthorized import or export of nuclear material, including but not limited to:
 - a. The Department of Energy MPC&A activities in the Ukraine under the Agreement Between the Department of Defense of the United States of America and the Ukraine State Committee on Nuclear and Radiation Safety Concerning Development of State Systems of Control, Accounting and Physical Protection of Nuclear Material to Promote the Prevention of Nuclear Weapons Proliferation from Ukraine, dated December 18, 1993, and any extension thereto;
 - b. The Department of Energy's MPC&A activities in the Belarus under the Agreement Between the Department of Defense of the United States of America and the Ministry of Defense of the Republic of Belarus Concerning Control, Accounting and Physical Protection of Nuclear Material to Promote the Prevention of Nuclear Weapons Proliferation, dated June 23, 1995, and any extension thereto;

- c. The Department of Energy's MPC&A activities in Kazakhstan under the Agreement Between the Department of Defense of the United States of America and the Ministry of Defense of the Republic of Kazakhstan Concerning Control, Accounting and Physical Protection of Nuclear Material to Promote the Prevention of Nuclear Weapons Proliferation, dated December 13, 1993, and any extension thereto;
 - d. The Department of Energy's MPC&A activities in Russia under the Agreement Between the Department of Defense of the United States of America and the Ministry of the Russian Federation for Atomic Energy Concerning Control, Accounting and Physical Protection of Nuclear Material, dated September 2, 1993, and any extension thereto; and
 - e. The Department of Energy's MPC&A activities in the Baltic States of Latvia and Lithuania and in Uzbekistan under the Coordinated Technical Support Plans (CTSP), and any extension thereto for the states of the former Soviet Union as supported by the member states of the Atomic Energy Agency.
- (3) As requested or approved by the President of the United States, the Secretary of Energy, the Deputy Secretary of Energy, or the Under Secretary of Energy, provide assistance in other nonproliferation activities outside the United States other than the work identified in (1) and (2) above, provided that the request or approval specifically makes the indemnity provided by this clause applicable thereto.

(k) For purposes of this Section I.59, the term "Contractor" means:

- a. Battelle Energy Alliance, LLC ("BEA"),
- b. BEA's member company: Battelle Memorial Institute, and
- c. BEA's Teaming Subcontractors: BWX Technologies and Washington Group International.

Part II Section I
Contract Clauses

Table of Contents

I.1	FAR 52.252-1 – Solicitation Provisions Incorporated by Reference. (FEB 1998).....	1
I.2	FAR 52.202-1 – Definitions. (DEC 2001).....	4
I.3	FAR 52.204-1 -- Approval Of Contract. (DEC 1989).....	6
I.4	FAR 52.223-7 -- Notice Of Radioactive Materials. (JAN 1997)	6
I.5	FAR 52.223-11 -- Ozone-Depleting Substances.(MAY 2001).....	7
I.6	FAR 52.225-9 -- Buy American Act-Construction Materials. (JUN 2003)	8
I.7	Reserved.....	11
I.8	FAR 52.252-6 -- Authorized Deviations In Clauses. (APR 1984).....	11
I.9	DEAR 952.209-72 -- Organizational Conflicts of Interest. (JUN 1997) Alternate I (JAN 1997).....	11
I.10	DEAR 970.5203-1 -- Management Controls. (DEC 2000) (DEVIATION).....	14
I.11	DEAR 970.5203-2 -- Performance Improvement And Collaboration. (DEC 2000)....	14
I.12	DEAR 970.5203-3 -- Contractor's Organization. (DEC 2000).....	15
I.13	DEAR 970.5204-1 -- Counterintelligence. (DEC 2000).....	16
I.14	DEAR 970.5204-2 -- Laws, Regulations, And DOE Directives. (DEC 2000) (DEVIATION)	16
I.15	DEAR 970.5204-3 -- Access To And Ownership Of Records. (DEC 2000)	16
I.16	DEAR 970.5208-1 -- Printing. (DEC 2000).....	18
I.17	DEAR 970.5215-1 -- Total Available Fee: Base Fee Amount And Performance Fee Amount. Alternate I (DEC 2000) Alternate IV (DEC 2000)	19
I.18	DEAR 970.5215-2 -- Make-Or-Buy Plan. (DEC 2000).....	21
I.19	DEAR 970.5215-3 -- Conditional Payment of Fee, Profit, and Other Incentives-- Facility Management Contracts. Alternative II (JAN 2004)	23
I.20	DEAR 970.5222-1 -- Collective Bargaining Agreements Management And Operating Contracts. (DEC 2000)	27
I.21	DEAR 970.5222-2 -- Overtime Management. (DEC 2000)	27
I.22	DEAR 970.5223-1 -- Integration of Environment, Safety, and Health into work Planning and Execution. (DEC 2000)	28
I.23	DEAR 970.5223-2 -- Affirmative Procurement Program. (MAR 2003).....	30
I.24	DEAR 970.5223-4 -- Workplace Substance Abuse Programs At DOE Sites. (DEC 2000)	31

I.25	DEAR 970.5226-1 -- Diversity Plan. (DEC 2000).....	31
I.26	DEAR 970.5226-2 -- Workforce Restructuring Under Section 3161 Of The National Defense Authorization Act For Fiscal Year 1993. (DEC 2000)	32
I.27	Reserved.....	32
I.28	Reserved.....	32
I.29	DEAR 970.5227-2 -- Rights In Data-Technology Transfer. (DEC 2000)	32
I.30	DEAR 970.5227-3 -- Technology Transfer Mission. (AUG 2002).....	42
I.31	DEAR 970.5227-4 -- Authorization And Consent. (AUG 2002)	52
I.32	DEAR 970.5227-5 -- Notice And Assistance Regarding Patent And Copyright Infringement. (AUG 2002)	53
I.33	DEAR 970.5227-6 -- Patent Indemnity--Subcontracts. (DEC 2000).....	54
I.34	DEAR 970.5227-8 -- Refund Of Royalties. (AUG 2002)	54
I.35	DEAR 970.5227-10 -- Patent Rights--Management And Operating Contracts, Nonprofit Organization Or Small Business Firm Contractor. (AUG 2002).....	55
I.36	Reserved.....	66
I.37	DEAR 970.5227-12 -- Patent Rights--Management And Operating Contracts, For- Profit Contractor, Advance Class Waiver. (AUG 2002)	66
I.38	DEAR 970.5228-1 -- Insurance-Litigation And Claims. (MAR 2002)	79
I.39	DEAR 970.5229-1 -- State And Local Taxes. (DEC 2000)	82
I.40	DEAR 970.5231-4 -- Preexisting Conditions. (DEC 2000) Alternate II (DEC 2000)...	82
I.41	DEAR 970.5232-1 -- Reduction Or Suspension Of Advance, Partial, Or Progress Payments Upon Finding Of Substantial Evidence Of Fraud. (DEC 2000).....	83
I.42	DEAR 970.5232-2 -- Payments And Advances. (DEC 2000). Alternate II (DEC 2000) Alternate III (DEC 2000)	83
I.43	DEAR 970.5232-3 -- Accounts, Records, And Inspection. Alternate II (DEC 2000) .	86
I.44	DEAR 970.5232-4 -- Obligation Of Funds. (DEC 2000)	88
I.45	DEAR 970.5232-5 -- Liability With Respect To Cost Accounting Standards. (DEC 2000)	89
I.46	DEAR 970.5232-6 -- Work For Others Funding Authorization. (DEC 2000).....	89
I.47	DEAR 970.5232-7 -- Financial Management System. (DEC 2000).....	90
I.48	DEAR 970.5232-8 -- Integrated Accounting. (DEC 2000).....	90
I.49	DEAR 970.5235-1 -- Federally Funded Research And Development Center Sponsoring Agreement. (DEC 2000)	90
I.50	DEAR 970.5236-1 -- Government Facility Subcontract Approval. (DEC 2000)	91

I.51	DEAR 970.5237-2 -- Facilities Management. (DEC 2000)	91
I.52	DEAR 970.5242-1 -- Penalties For Unallowable Costs. (DEC 2000).....	92
I.53	DEAR 970.5243-1 -- Changes. (DEC 2000)	93
I.54	DEAR 970.5244-1 -- Contractor Purchasing System. (DEC 2000)	93
I.55	DEAR 970.5245-1 -- Property. (DEC 2000) Alternate I (DEC 2000).....	98
I.56	DEAR 970.5223-5 -- DOE Motor Vehicle Fleet Fuel Efficiency. (OCT 2003)	102
I.57	FAR 52.223-3 -- Hazardous Material Identification and Material Safety Data (Jan 1997).....	102
I.58	FAR 52.227-23 -- Rights to Proposal Data (Technical) (Jun 1987)	104
I.59	FAR 52.250-1 -- Indemnification Under Public Law 85-804 (Apr 1984) Alternate I (Apr 1984)	105 ¹

¹ I.59 incorporated by Modification M002