

2. AMENDMENT/MODIFICATION NO. 101	3. EFFECTIVE DATE See Block 16c	4. REQUISITION/PURCHASE REQ. N/A NO PR	5. PROJECT NO. (If applicable) N/A
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6. ISSUED BY U.S. Department of Energy Carlsbad Field Office P. O. Box 3090 Carlsbad, NM 88220-3090	CODE 03003	7. ADMINISTERED BY (If other than Item 6) CODE
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8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, state, ZIP Code) Nuclear Waste Partnership, LLC Attn: Marty Gonzales Nuclear Waste Partnership 106 Newberry Street SW Aiken, SC 29801	CODE 968993910	FACILITY CODE	9A. AMENDMENT OF SOLICITATION NO.
			9B. DATED (SEE ITEM 11)
			10A. MODIFICATION OF CONTRACT/ORDER NO. DE-EM0001971
			10B. DATED (SEE ITEM 13) April 20, 2012

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)
NOT A FUNDING ACTION

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):
	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).
X	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: FAR 52.243-2 Changes – Cost Reimbursement (AUG 1987) Alt. II (APR 1984) - Adjustment of FY15 Fee Base and Available Award Fee
	D. OTHER (SPECIFY TYPE OF MODIFICATION AND AUTHORITY)

E. IMPORTANT: Contractor is not, 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.)
The purpose of this modification is to revise Section B of the contract to increase the FY15 fee base and total available award fee for the period October 1, 2014 through September 30, 2015 in accordance with Contract Clauses I.166 DEAR 970.5243-1 Changes (DEC 2000), I. 92 FAR 52.243-2 Changes – Cost Reimbursement (AUG 1987) ALT II (APR 1984) and Section B.2.2(c) Total Available Award Fee. The revisions to the fee base and available award fee resulted from the increase to FY15 anticipated funding authorized in Modification 94 signed April 27, 2015. See page 2.

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) Robert L. McQuinn, President and Project Manager	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Vicki Diane Snow, Contracting Officer
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15B. CONTRACTOR/OFFEROR BY Exemption 6 (Signature of person authorized to sign)	15C. DATE SIGNED 5/26/15	16B. UNITED STATES OF AMERICA BY Exemption 6 (Signature of Contracting Officer)	16C. DATE SIGNED 5-26-15
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BACKGROUND:

In Section B.2-2 (a) of the contract, award fee of \$8,192,895 is available for the period October 1, 2014 through September 30, 2015 (FY15) for the contractor to earn through the completion of performance-based objectives and subjective award fee criteria as described in the FY15 Performance Evaluation and Measurement Plan (PEMP). The fee of \$8,192,895 was based on fee of 7.5% on a fee base of \$109,238,604 and anticipated funding of \$150,948,446 for FY15.

However, in Modification 94, the FY15 anticipated funding was increased from \$150,948,446, by \$95,169,915, to \$246,118,361. Since this is a plus or minus change of 15% to the fee base, NWP submitted a proposal for an equitable adjustment of available award fee in accordance with Section B.2.2.(c) of the contract as copied below:

At the end of each performance period specified above, there shall be no adjustment in the amount of the total available award fee based on differences between the annual fee base and the actual fee base resulting from performance of the work. Total Available Award Fee is subject to adjustment only under the provisions of the clause in Section I entitled FAR 52.243-2 "Changes – Cost Reimbursement;" and, for a plus or minus 15% change in the annual fee base. An adjustment in total available award fee shall not be negotiated for any amount within the plus or minus 15% change threshold from the annual fee base. If an adjustment in the total available award fee is necessary in accordance with this subparagraph, the revised total available award fee shall be calculated based on the fee percentage in Section B.2-2(a) multiplied by the changes in the annual fee base for the applicable performance period to which an adjustment is to be made.

The fee base for FY15 has been recalculated from \$109,238,604, to \$182,212,609 based on DEAR Clause 970.1504-1-7 Fee Base with exclusions documented on Page 3.

Revised fee is calculated at 7.5% of the revised fee base of \$182,212,609, or \$13,665,946, per Section B.2.2.(a) of the contract. FY15 available award fee in B.2-2 (a) is now revised from \$8,192,895 to \$13,665,946.

CHANGES TO THE CONTRACT:

Section B.2 TRANSITION COST, ANTICIPATED FUNDING, AND TOTAL AVAILABLE AWARD FEE

The following changes were made to Section B.2:

B.2-2 (a)

The total available award fee for the performance period October 1, 2014 – September 30, 2015 has been revised from \$8,192,895, to \$13,665,946.

B.2-2(b)

The fee base for the period October 1, 2014 – September 30, 2015 has been revised from \$109,238,604 to \$182,212,610, as follows:

The annual fee base for CLIN 2: Base Period – Site Operations for the period of performance October 1, 2014 through September 30, 2015 has been revised from \$109,238,604 to \$100,097,068.

The fee base for CLIN 4: WBS 1.7 Performance Measurement Baseline for Recovery Activities for the FY15 WIPP Recovery Project was added to the contract in the amount of \$82,115,542.

Revised Section B is attached to this modification.

CONTRACTOR'S RELEASE OF CLAIMS (FAR 43.204): In consideration of the modification agreed to herein as a complete and equitable adjustment for the no-cost change incorporated hereto, the Contractor hereby releases the Government from any and all liability under this contract for further equitable adjustments attributed to *such facts or circumstances* giving rise to this modification, with no exceptions.

ADJUSTMENTS TO FY15 FEE BASE

	FY15 Funding	Exclusions	Fee Base
Total FY15 anticipated funding for base work and recovery activities is \$266,469,729. Contractor's fee base proposal was rounded to \$266,469,722.	\$266,469,722		
Less Capital Asset Line item of \$16,000,00		\$16,000,000	
Less DOE contingency in final Program Guidance letter		\$4,351,368	
Less Fee included in budget		\$13,665,946	
Exclusions per DEAR 970.1504-1-7			
(a) cost of source and special nuclear materials; estimated costs of land, building and facilities whether to be leased purchased or constructed; depreciation of Government facilities, and any estimate of effort for which a separate fee is to be negotiated.		No exclusions.	
(b)(1) Any part of the estimated cost of capital equipment (other than special equipment) which the contractor procures by subcontract or other similar costs which is of such magnitude or nature as to distort the technical and management effort actually required of the contractor;		No exclusions.	
(b)(2) At least 20% of the estimated cost or price of subcontracts and other major contractor procurements;		\$19,980,721	
(b)(3) Up to 100% of the estimated cost or price of subcontracts and other major contractor procurements if they are of a magnitude or nature as to distort the technical and management effort actually required of the contractor.		No exclusions.	
(b)(4) Special equipment as defined in 970.1504-1-8		No exclusions.	
(b)(5) Estimated cost of government-furnished property, services and equipment;		No exclusions.	
(b)(6) All estimates of costs not directly incurred by or reimbursed to the operating contractor;		No exclusions.	
(b)(7) Estimates of home office or corporate general and administrative expenses that shall be reimbursed through the contract		No exclusions.	
(b)(8) Estimates of any independent R&D cost or bid and proposal expenses that may be approved under the contract;		N/A.	
(b)(9) Any cost of work funded with uncosted balances previously included in a fee base of this or any other contract performed by the contractor.		N/A.	
(b)(10) Cost of rework attributable to the contractor; and		\$18,111,043	
(b)(11) State taxes		\$12,148,034	
TOTAL EXCLUSIONS		\$84,257,112	
FY15 REVISED FEE BASE			Site Operations \$100,097,068 Recovery Activities \$82,115,542 Revised Fee Base \$182,212,610

PART I – THE SCHEDULE

SECTION B
(Modified in Mods 4, 20, 73, 74, 76, 96, 101)

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PART I – THE SCHEDULE

SECTION B

SUPPLIES OR SERVICES AND PRICES/COSTS

B.1 SERVICES BEING ACQUIRED

The Contractor shall, in accordance with the terms of this contract, provide the personnel, equipment, materials, supplies, and services (except as may be furnished by the Government) and otherwise do all things necessary for, or incident to, providing its best efforts so as to carry out in an efficient and effective manner all necessary and related services to manage and operate the Waste Isolation Pilot Plant (WIPP) owned by the U.S. Department of Energy (DOE), located in Carlsbad, New Mexico, as described in Section C, Performance Work Statement (PWS), or as may be directed by the Contracting Officer (CO) within the scope of this contract.

B.2 TRANSITION COST, ANTICIPATED FUNDING, AND TOTAL AVAILABLE AWARD FEE

B.2-1 Transition Activities

The transition activities shall be conducted during the period specified in the clause in Section F entitled "Period of Performance" and shall be performed in accordance with the clause in Section H entitled "Transition Activities" on a cost-reimbursement basis, and no fee shall be paid for these activities. The transition cost shall not exceed \$ 1,553,670.

B.2-2 Total Available Award Fee (Mod 4, 20, 49, 73, 74, 96, 101)

- (a) The total available award fee for the base period of the contract, beginning October 1 2012, and the option period, if exercised, is shown below.

PERFORMANCE PERIOD	Fee Percent (%)	Total Available Award Fee	Total Fee Earned (Mod 49)
Base Period			
October 1, 2012 – September 30, 2013	7.5	\$ 8,192,895	\$7,892,519.32
October 1, 2013 – September 30, 2014	7.5	\$ 8,192,895	\$561,266
October 1, 2014 – September 30, 2015 (Mod 101)	7.5	\$ 13,665,946	
October 1, 2015 – September 30, 2016	7.0	\$ 7,646,702	
October 1, 2016 – September 30, 2017	7.0	\$ 7,646,702	

Option Period			
October 1, 2017 – September 30, 2018	6.5	\$ 7,100,509	
October 1, 2018 – September 30, 2019	6.0	\$ 6,554,316	
October 1, 2019 – September 30, 2020	5.5	\$ 6,008,123	
October 1, 2020 – September 30, 2021	5.5	\$ 6,008,123	
October 1, 2021 – September 30, 2022	5.5	\$ 6,008,123	

- (b) All fee for this contract is performance based. There is no Base Fee for this contract. Since the total available award fee for each period has been established, there will be no negotiation of total available award fee at the beginning of each fiscal year. The total available award fee for each year is a percentage of the Annual Fee Base. The Anticipated Funding and the Annual Fee Base for the Base Period and the Option Period are as follows:

THRU MOD 104

Changes to Section B.2-2(b) Transition Cost, Anticipated Funding, and Total Available Award Fee

CLIN 1: Transition	\$1,553,670.00	
CLIN 2: Base Period – Site Operations	Actual Funding	Annual Fee Base***
October 1, 2012 through September 30, 2013	\$141,902,556.74	\$109,238,604
Funding transferred from WTS contract	\$7,995,864.65	
Funding from other DOE entities per H.55	\$11,373,074.35	
	Anticipated Funding**	Annual Fee Base***
October 1, 2013 through September 30, 2014	\$139,142,722	\$109,238,604
Funding from other DOE entities per H.55	\$1,232,980.92	
October 1, 2014 through September 30, 2015	\$124,335,011	\$100,097,068
Funding from other DOE entities per H.55	\$521,193.66	
October 1, 2015 through September 30, 2016	\$133,217,810	\$109,238,604
October 1, 2016 through September 30, 2017	<u>\$133,217,810</u>	<u>\$109,238,604</u>
	\$692,939,023.32	\$537,051,484
CLIN 3: Option Period – Site Operations		
October 1, 2017 through September 30, 2018	\$133,217,810	\$109,238,604
October 1, 2018 through September 30, 2019	\$133,217,810	\$109,238,604
October 1, 2019 through September 30, 2020	\$133,217,810	\$109,238,604
October 1, 2020 through September 30, 2021	\$133,217,810	\$109,238,604
October 1, 2021 through September 30, 2022	<u>\$133,217,810</u>	<u>\$109,238,604</u>
	\$666,089,050	\$546,193,020

**CLIN 4: WBS. 1.7 Performance Measurement
Baseline for Recovery Activities**

		Annual Fee Base
FY14 WIPP Recovery Project WBS 1.7, Fee, MR	31,148,035	
FY15 WIPP Recovery Project WBS 1.7, Fee, MR	122,648,632	\$82,115,542
FY16 WIPP Recovery Project WBS 1.7, Fee, MR	56,180,259	
FY17 WIPP Recovery Project WBS 1.7, Fee, MR	12,322,628	
FY18 WIPP Recovery Project WBS 1.7, Fee, MR (option period)	<u>358,466</u>	
Total WIPP Recovery Project Interim PMB	222,658,020	<u>\$82,115,542</u>

**CLIN 5: WBS 1.8 Capital Asset Project(s) for
Permanent Ventilation System and Exhaust
Shaft**

TBD

Total contract funding is \$1,583,239,763.32

**Anticipated Funding is defined as total estimated cost and total available award fee for work funded by the Carlsbad Field Office. For the period October 1, 2012 through September 30, 2017, anticipated funding does not include funding and fee the contractor receives for performance under Clause H. 55. (Revised Mods 4, 20, 74)

***Annual Fee Base is estimated in accordance with DEAR 970.1504-1, including estimated exclusions, adjustments, and classification factors. For the period October 1, 2012 through September 30, 2017, Annual Fee Base does not include funding the contractor receives under Clause H. 55. (Revised Mods 4, 20, 74)

- (c) At the end of each performance period specified above, there shall be no adjustment in the amount of the total available award fee based on differences between the annual fee base and the actual fee base resulting from performance of the work. Total Available Award Fee is subject to adjustment only under the provisions of the clause in Section I entitled FAR 52.243-2 "Changes – Cost Reimbursement"; and, for a plus or minus 15% change in the annual fee base. An adjustment in total available award fee shall not be negotiated for any amount within the plus or minus 15% change threshold from the annual fee base. If an adjustment in the total available award fee is necessary in accordance with this subparagraph, the revised total available award fee shall be calculated based on the fee percentage in Section B.2-2(a) multiplied by the changes in the annual fee base for the applicable performance period to which an adjustment is to be made.

B.3 AVAILABILITY OF APPROPRIATED FUNDS

Except as may be specifically provided to the contrary in the Section I Clause DEAR 952.250-70 entitled "Nuclear Hazards Indemnity Agreement," the duties

and obligations of the Government hereunder calling for the expenditure of appropriated funds shall be subject to the availability of funds appropriated by the Congress, which DOE may legally spend for such purposes.

B.4 OBLIGATION OF FUNDS (Mod 104)

Pursuant to the Section I Clause DEAR 970.5232-4 entitled "Obligation of Funds," the total amount obligated by the Government with respect to this contract is **\$581,976,058.32**.

B.5 SINGLE FEE

If the Contractor is part of a consortium, joint venture, and/or other teaming arrangement, the team shall share in this contract fee structure. Separate additional subcontractor fee shall not be considered an allowable cost under the contract if a subcontractor is a team member or, supplier, or lower-tier subcontractor is a wholly owned, majority owned, or affiliate of any team member, any fee or profit earned by such entity shall not be considered an allowable cost under this contract unless otherwise approved by the Contracting Officer.

The subcontractor fee restriction in the paragraph above does not apply to members of the Contractor's team that are: (1) small business(es); (2) protégé firms as part of an approved mentor-protégé relationship; (3) subcontractors under a competitively awarded firm-fixed-price or firm-fixed-unit-price subcontract; or (4) commercial items as defined in FAR Subpart 2.1, Definitions of Words and Terms.