



Department of Energy

Golden Field Office
1617 Cole Boulevard
Golden, Colorado 80401-3305

September 30, 2008

FAC-17-2.
2229

DIRECTOR'S OFFICE

SEP 30 2008

Mr. W.S. Glover, Deputy Laboratory Director
And Chief Operating Officer
National Renewable Energy Laboratory
1617 Cole Boulevard
Golden, CO

SUBJECT: Modification to Contract DE-AC36-08GO28308, Modification M004

Dear Mr. Glover:

Enclosed you will find two copies of the subject modification. This modification incorporates changes to Section H and incorporates by reference deliverables required to be produced during the contract transition.

Please sign both copies, retain one for your files and return the remaining copy to me. If you have any questions please feel free to contact me at (303) 275-4724.

Sincerely,

Steven L. Scott
Contracting Officer



AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT		1. CONTRACT ID CODE	PAGE OF PAGES 1 8
2. AMENDMENT/MODIFICATION NO. M004	3. EFFECTIVE DATE See Block 16C	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)
6. ISSUED BY Golden Field Office U.S. Department of Energy 1617 Cole Blvd. Golden, CO 80401	CODE	7. ADMINISTERED BY (If other than Item 6) Golden Field Office U.S. Department of Energy 1617 Cole Blvd. Golden, CO 80401	CODE
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code) Alliance for Sustainable Energy, LLC Denver West Building No. 51 Denver West Parkway, Suite 335 Lakewood, CO 80401		<input type="checkbox"/>	9A. AMENDMENT OF SOLICITATION NO.
		<input type="checkbox"/>	9B. DATED (SEE ITEM 11)
		<input checked="" type="checkbox"/>	10A. MODIFICATION OF CONTRACT/ORDER NO. DE-AC36-08GO28308
			10B. DATED (SEE ITEM 13) 7/29/2008
CODE	FACILITY CODE		

11. THIS ITEM 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 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 YOUR ACKNOWLEDGEMENT 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)

See attached page 1

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

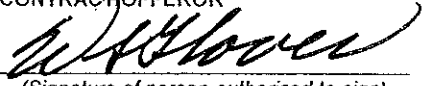
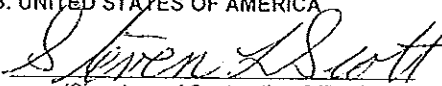
<input type="checkbox"/>	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority)
<input type="checkbox"/>	THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT/ORDER NO. IN ITEM 10A.
<input checked="" type="checkbox"/>	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
<input type="checkbox"/>	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
<input type="checkbox"/>	D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor is not, is required to sign this document and return 0 copies to the issuing office.

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

This modification M004 adds, deletes or the following terms and conditions:

- Clause H.3 Employee Compensation: Pay and Benefits is deleted and replaced to reflect agreements regarding pension plans.
- Clause H.4 Post Contract Responsibilities for Pension and Other Benefit Programs is deleted and replaced to reflect agreements regarding pension administration.
- Clause H.32 Privately Funded Technology Transfer Program is added to the contract.
- Clause H.33 Provisional Payment of Fee is added to the contract.
- Clause H.34 Temporary Laboratory Closures at NREL is added to the contract.
- Section J, Attachment D Special Financial Institution Account Agreement For Use With The Payments Cleared Financing Arrangement is incorporated by reference.
- Section J, Attachment K Diversity Plan is incorporated by reference.
- Section J, Attachment M Equal Employment Opportunity Program is incorporated by reference.

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Steven L. Scott Contracting Officer	
15B. CONTRACT OFFEROR	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA	16C. DATE SIGNED
BY  (Signature of person authorized to sign)	10/1/08	BY  (Signature of Contracting Officer)	10/1/08

This Modification incorporates the following significant changes to contract DE-AC36-08GO28308:

- I. Section H.3 Employee Compensation: Pay and Benefits is deleted and replaced as indicated below. This change reflects agreements regarding pension benefits.

H.3 Employee Compensation: Pay and Benefits

- (a) *Human Resources Compensation Plan* - The Contractor shall submit by September 30, 2008, a Human Resources Compensation Plan demonstrating how the Contractor will comply with the requirements of this Contract. The *Human Resources Compensation Plan* shall describe the Contractor's policies regarding compensation, pensions -and other benefits, and how these policies will support at reasonable cost the effective recruitment and retention of a highly skilled, motivated, and experienced workforce.
- (b) *Total Compensation System* - The Contractor shall develop, implement and maintain formal policies, practices and procedures to be used in the administration of its compensation system including a compensation system Self-Assessment Plan consistent with FAR 31.205-6 and DEAR 97.3102-05-6, *Compensation for Personal Services (Total Compensation System)*. DOE-approved standards (e.g., set forth in an advance understanding or appendix), if any, shall be applied to the Total Compensation System. The Contractor's Total Compensation System shall meet the tests of allowability established by and in accordance with FAR 31.205-6 and DEAR 97.3102-05-6, be fully documented, consistently applied, and acceptable to the Contracting Officer. Costs incurred in implementing the Total Compensation System shall be consistent with the Contractor's documented *Human Resources Compensation Plan* as approved by the Contracting Officer.
- (c) *Appraisals of Contractor Performance* - DOE will conduct periodic appraisals of Contractor performance with respect to Total Compensation System implementation. Such appraisals will be conducted through either DOE validation of the Contractor's performance self-assessment of its Total Compensation System or third party expert review
- (d) *Reports and Information* - The Contractor shall provide the Contracting Officer with the following reports and information with respect to pay and benefits provided under this Contract:
- (1) An Annual Contractor Salary-Wage Increase Expenditure Report to include, at a minimum, breakouts for merit, promotion, variable pay, special adjustments, and structure movements for each pay structure showing actual against approved amounts.
 - (2) A list of the top five most highly compensated executives as defined in FAR 31.205-6(p)(2)(ii) and their total cash compensation at the time of Contract award, and at the time of any subsequent change to their total cash compensation
 - (3) An Annual Report of Contractor Expenditures for Employee Supplemental Compensation through the Department Workforce Information System (WFIS) Compensation and Benefits Module no later than March 1 of each year.
 - (4) A performance self-assessment of the Total Compensation System implementation and results to include an evaluation of total benefits using the Employee Benefits Value Study and the Employee Benefits Cost Survey Comparison Analysis described in paragraph (f) below.

- (e) *Pay and Benefit Programs* - The Contractor shall establish pay and benefit programs for Incumbent Employees and Non-Incumbent Employees as defined in paragraphs (1) and (2) below; provided, however, that employees scheduled to work fewer than 20 hours per week receive only those benefits required by law. Employees are eligible for benefits, subject to the terms, conditions, and limitations of each benefit program.
- (1) Incumbent Employees are the employees who are Regular Employees of the National Renewable Energy Laboratory Division of Midwest Research Institute as of September 30, 2008.
- (i) *Pay* - Subject to Section H.2 above, the Contractor shall provide equivalent pay to Incumbent Employees as compared to pay provided by Midwest Research Institute for at least the first year of the term of the Contract
- (ii) *Pension and Other Benefits* - The Contractor shall provide a total package of benefits to Incumbent Employees comparable to that provided by Midwest Research Institute. Comparability of the total benefit package shall be determined by the Contracting Officer in his/her sole discretion.
- (iii) Incumbent Employees shall remain in their existing pension plans (or comparable successor plans if continuation of the existing plans is not practicable) pursuant to pension plan eligibility requirements and applicable law. DOE shall remain the sponsor of NREL's existing pension plan and Contractor shall continue to perform, or have performed on its behalf, those functions previously performed by either Midwest Research Institute ("MRI") or the National Renewable Energy Laboratory Division of MRI. The Contractor shall become a sponsor of the other benefit plans (or comparable successor plans); including other post-retirement benefit (PRB) plans, as applicable, for Incumbent Employees and retired plan participants, with responsibility for management and administration of the plans subject to sub-subparagraphs (iv) and (v) below. The Contractor shall be responsible for maintaining the qualified status of those plans. The Contractor shall carry over the length of service credit and leave balances accrued as of the date of the Contractor's assumption of Contract performance, including service credits and leave balances for those MRI employees previously assigned to NREL and who become Contractor employees as of October 1, 2008.
- (iv) Contractor and MRI shall determine all assets and liabilities associated with the MRI and NREL Division pension plans, effective as of Midnight, September 30, 2008 for all Incumbent Employees and MRI employees; such determination shall be based on whether said employees become an employee of Contractor or become, or remain, an employee of MRI, whether assigned to NREL or not, effective as of October 1, 2008. This Determination shall be calculated as soon as practicable, after October 1, 2008, and the result shall be communicated to the Contracting Officer for approval. The Parties agree to work together in good faith to resolve any issues associated with this Determination so that Contracting Officer approval can be obtained in sufficient time to allow Contractor and MRI to transfer the necessary assets, by January 31, 2009 or such later date established in writing by the Contracting Officer), associated with post-retirement liabilities being assumed by each of them based on whether or not the individuals involved become Contractor employees or remain or become MRI employees.
- (v) Contractor's management and administration responsibilities for its post - retirement pension and other benefit plans shall be performed on a bi-furcated basis, with Alliance remaining directly responsible for exercising its management and fiduciary responsibilities for these plans and day-to-day management and administration

responsibilities being provided by MRI to Contractor under an Administrative Work Authorization approved by the Contracting Officer.

(2) Non-Incumbent Employees are new hires, i.e., employees other than Incumbent Employees who are hired by the Contractor after September 30, 2008. All Non-Incumbent Employees shall receive a total pay and benefits package that provides for market based retirement and medical benefit plans that are competitive with the industry from which the Contractor recruits its employees and in accordance with Contract requirements.

(3) Cash Compensation

- (i) The Contractor shall submit the following to the Contracting Officer for a determination of cost allowability for reimbursement under the Contract:
 - (A) Any additional compensation system self-assessment data requested by the Contracting Officer that may be needed to validate and approve the total compensation system.
 - (B) Any proposed major compensation program design changes prior to implementation.
 - (C) An Annual Compensation Increase Plan.
 - (D) Individual compensation actions for the Key Personnel, including initial and proposed changes to base salary and/or payments under an Executive Incentive Compensation Plan
 - (E) Any proposed establishment of an incentive compensation plan (variable pay plan/pay-at-risk).
- (ii) The Contracting Officer's approval of individual compensation actions will be required only for the Laboratory Director and those other first-tier reports to the aforementioned position, as identified by the Contracting Officer.
- (iii) Severance Pay is not payable to an employee under this Contract if the employee:
 - (A) Voluntarily separates, resigns or retires from employment;
 - (B) Is offered employment with a successor/replacement contractor; .
 - (C) Is offered employment with a parent or affiliated company; or
 - (D) Is discharged for cause.
- (iv) Service Credit for purposes of determining severance pay does not include any period of prior service for which severance pay has been previously paid through a DOE cost-reimbursement contract.

(f) *Pension and Other Benefit Programs*

- (1) No presumption of allowability will exist when the Contractor implements a new benefit plan or makes changes to existing benefit plans for either Incumbent Employees or Non-Incumbent Employees until the Contracting Officer makes a determination of cost allowability for reimbursement for new or changed benefit plans.

- (2) Cost reimbursement for Incumbent Employee and Non-Incumbent Employee pension and other benefit programs sponsored by the Contractor will be based on the Contracting Officer's approval of Contractor actions pursuant to an approved *Employee Benefits Value Study* and an *Employee Benefits Cost Survey Comparison* as described below.
- (3) Unless otherwise stated, or as directed by the Contracting Officer, the Contractor shall submit the studies required in paragraphs (i) and (ii) below. The studies shall be used by the Contractor as part of its performance self assessment described in paragraph (d) (4) above and in calculating the cost of benefits under existing benefit plans. In addition, the Contractor shall submit updated studies to the Contracting Officer for approval prior to the adoption of any change to a pension or other benefit plan.
 - (i) An *Employee Benefits Value Study* (Ben-Val), every two years each for Incumbent and Non-Incumbent Employees benefits, which is an actuarial study of the relative value (RV) of the benefits programs offered by the Contractor to Incumbent and Non-Incumbent Employees measured against the RV of benefit programs offered by comparator companies approved by the Contracting Officer. To the extent that the value studies do not address post retirement benefits other than pensions, the Contractor shall provide a separate cost and plan design data comparison for the post retirement benefits other than pensions using external benchmarks derived from nationally recognized and Contracting Officer approved survey sources; and
 - (ii) An *Employee Benefits Cost Study Comparison*, annually each for Incumbent and Non-Incumbent Employees that analyzes the Contractor's employee benefits cost for Incumbent and Non-Incumbent Employees on a per capita basis per full time equivalent employee and as a percent of payroll and compares it with the cost reported by the U.S. Chamber of Commerce Annual Employee Benefits Cost Survey or other Contracting Officer approved broad based national survey.
- (4) When the net benefit value exceeds the comparator group by more than five percent, the Contractor shall submit a corrective action plan to the Contracting Officer.
- (5) When the average total benefit per capita cost or total benefit cost as a percent of payroll exceeds the comparator group by more than five percent, when and if required by the Contracting Officer, the Contractor shall submit an analysis of the specific plan costs that are above the per capita cost range or total benefit cost as a percent of payroll and a corrective action plan to achieve conformance with a Contracting Officer directed per capita cost range or total benefit cost as a percent of payroll.
- (6) Within two years of Contracting Officer approval of the Contractor's corrective action plan, the Contractor shall align employee benefit programs with the benefit value and per capita cost range as approved by the Contracting Officer
- (7) The Contractor shall submit the Report of Contractor Expenditures for Supplementary Compensation for the previous calendar year via the DOE Workforce Information System (WFIS) Compensation and Benefits Module no later than March 1 of the current calendar year.
- (8) The Contractor may not terminate any benefit plan during the term of the Contract without the prior approval of the Contracting Officer in writing.
- (9) Cost reimbursement for PRBs if any is contingent on DOE approved service eligibility requirements for PRB that shall be based on a minimum period of continuous employment service 5 years under a DOE cost reimbursement contract(s) immediately prior to retirement. Unless required by Federal or State law, advance funding of PRBs is not allowable.

- II. Section H.4 Post Contract Responsibilities for Pension and Other Benefit Programs is deleted and replaced as indicated below. This change reflects agreements regarding pension benefit administration.

H.4 Post Contract Responsibilities for Pension and Other Benefit Programs

- (a) If this Contract expires or terminates and DOE has awarded a contract under which the new contractor becomes a sponsor and assumes responsibility for management and administration of the pension or other benefit plans covering active or retired contractor employees with respect to service at the National Renewable Energy Laboratory (collectively, the "Plans"), the Contractor shall cooperate with both DOE (to the extent DOE retains sponsorship of the pension plan) and the new contractor in order to transfer to the new contractor its responsibility for sponsorship (excluding the pension plan), management and administration of the Plans consistent with direction from the Contracting Officer.
- (b) If this Contract expires or terminates and DOE has not awarded a contract to a new contractor under which the new contractor becomes a sponsor and assumes responsibility for management and administration of the Plans, or if the Contracting Officer determines that the scope of work under the Contract has been completed (any one such event may be deemed by the Contracting Officer to be "Contract Completion" for purposes of this clause), whichever is earlier, and notwithstanding any other obligations and requirements concerning expiration or termination under any other clause of this Contract, the following actions shall occur regarding the Contractor's obligations regarding the Plans at the time of Contract Completion.
- (1) Subject to subparagraph (2) below, and notwithstanding any legal obligations independent of the Contract the Contractor may have regarding responsibilities for sponsorship, management, and administration of the Plans, the Contractor shall remain the sponsor of the Plans, in accordance with applicable legal requirements. Notwithstanding the foregoing, Contractor has no responsibility to sponsor the pension plan since DOE is the sponsor of said plan.
- (2) The parties shall exercise their best efforts to reach agreement on the Contractor's responsibilities for sponsorship (excluding the pension plan), management and administration of the Plans prior to or at the time of Contract Completion. However, if the parties have not reached agreement on the Contractor's responsibilities for sponsorship (excluding the pension plan), management and administration of the Plans prior to or at the time of Contract Completion, unless and until such agreement is reached, the Contractor shall comply with written direction from the Contracting Officer regarding the Contractor's responsibilities for continued provision of pension and welfare benefits under the Plans, including but not limited to continued sponsorship of the Plans, (excluding the pension plan) in accordance with applicable legal requirements. To the extent that the Contractor incurs costs in implementing direction from the Contracting Officer, the Contractor's costs (including those benefit administration costs incurred on its behalf by MRI) will be reimbursed pursuant to applicable Contract provisions.

- III. Section H.32 Privately Funded Technology Transfer Program is added to the contract as follows:

H.32 Privately Funded Technology Transfer Program

Contractor has accepted as a "Mission and Operational Performance Goal" that it will "develop the tools, strategies, and relationships necessary to support achievement of state, national, and international energy goals". An "Attribute of Performance" is that it will "mature promising technologies and rapidly transfer these technologies to the public and private sectors, in the process reduc(ing) risk for public and private sector decision makers". To that end, Contractor and DOE shall begin negotiations as soon as practicable after October 1, 2008 toward the establishment of the

operating parameters under which the Contractor shall operate a "Privately Funded Technology Transfer (PFTT) Program" at NREL guided by the principles set forth in the RFP. The parties shall negotiate in good faith for incorporation of a PFTT clause prior to January 31, 2009. When adopted, the PFTT Program shall (i) include mechanisms whereby Contractor may bring private investment to NREL for the maturation, patenting, marketing and licensing of NREL Intellectual Property, thereby (ii) reducing the risk to EERE and allowable NREL budgets and (iii) increasing the likelihood of transferring these technologies to both the public and private sectors, while (iv) ensuring the benefits of such commercialization inure to the benefit of the Laboratory and its missions and objectives.

III. Section H.33 Provisional Payment of Fee is added to the contract as follows:

H.33 Provisional Payment of Fee

- (a) The Contractor may draw up to one-twelfth (1/12) of 90% of the available fee for the fiscal year on the first day of each month, unless otherwise directed in writing by the Contracting Officer. The draw-down of fee is not to be construed as an evaluation of performance under clause DEAR 970.5215-1, "Total Available Fee: Base Fee Amount and Performance Fee Amount."
- (b) Should DOE's evaluation of Contractor performance at the end of the fiscal year yield an earned fee less than the amount already drawn down by the Contractor, the Contractor agrees to repay the difference with interest calculated in accordance with DEAR 970.5215-1, Total Available Fee: Base Fee Amount and Performance Fee Amount.

IV. Section H.34 Temporary Laboratory Closure at NREL is added to the contract as follows

H.34 Temporary Laboratory Closures at NREL

- (a) From time to time it may become necessary to temporarily close the laboratory or a portion thereof for imminent safety or security reasons. When such a condition exists, the NREL Laboratory Director or his designee shall immediately inform the Golden Field Office (GFO) Manager or her designee of his decision to close the Laboratory or portion thereof and provide her with the rationale and need for such closure.
- (b) There may be other conditions in which a laboratory closure is appropriate and needed. In such cases, the Laboratory Director or his designee will contact the GFO Manager or her designee stating the need and rationale for the closure. With the concurrence of the GFO Manager, the Laboratory Director shall be authorized to make such closure.

V. Section J, Attachment D Special Financial Institution Account Agreement For Use With The Payments Cleared Financing Arrangement dated August 27, 2008 between the Department of Energy (DOE), The Alliance for Sustainable Energy LLC (Alliance) and U. S. Bank is hereby incorporated into this contract by reference.

VI. Section J, Attachment K Diversity Plan (as submitted by the Alliance on September 15, 2008) is hereby incorporated into this contract by reference.

VII. Section J, Attachment M Equal Employment Opportunity Program (as submitted by the Alliance on September 15, 2008) is hereby incorporated into this contract by reference.

VIII. All other terms and conditions of the contract remain the same.