

**REQUEST FOR PROPOSAL**

**NO. 57868**

**for**

**Chemical Management Services**

**Date: June 24, 2008**

**Proposals Due: August 12, 2008**

**Battelle Memorial Institute  
Pacific Northwest Division  
902 Battelle Blvd  
P. O. Box 999  
Richland, WA 99352**

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Associate Contracts Manager  
Phone: (360) 681-3642  
Fax: (360) 681-3600  
Email: [jan.slater@pnl.gov](mailto:jan.slater@pnl.gov)**

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## **I. REQUEST FOR PROPOSAL**

- A. Introduction**
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## A. INTRODUCTION

### INTRODUCTION

Battelle Memorial Institute, Pacific Northwest Division (Battelle), which operates the Pacific Northwest National Laboratory (PNNL) for the U.S. Department of Energy (DOE) is soliciting proposals for Chemical Management Services for two facilities in accordance with the enclosed Statement of Work (SOW) dated May 2008.

Responsibility of operating PNNL for DOE includes procuring and managing chemicals for research and facility maintenance. These activities are managed within the chemical management system by PNNL's Worker Safety and Health technical group. This contract will require routine interface with Battelle Contract staff members and Worker Safety and Health staff members.

PNNL seeks a contractor to provide the Bioproducts, Sciences, and Engineering Laboratory (BSEL), and Radiochemical Processing Laboratory (RPL), with chemical management services (CMS) supporting the chemical lifecycle stages from planning, procurement, delivery, receiving, storage, inventory management, and use, but not including waste management.



Aerial photo with the Pacific Northwest National Laboratory campus in the foreground and the Hanford Site 300 Area and the Columbia River in the background

## **B. INSTRUCTIONS**

### **POINT OF CONTACT**

The two (2) Battelle Contracts Representative shown below are the **sole points of contact** for any communications or questions regarding this acquisition. Ms. Cullerton will be the addressee for delivery of your proposal package as follows:

Mr. Jan H. Slater  
Associate Contracts Manager  
Battelle Memorial Institute  
Pacific Northwest Division  
1529 West Sequim Bay Road  
Sequim, WA 98382

Phone: (360) 681-3642  
Fax: (360) 681-3600  
Email: jan.slater@pnl.gov

Ms. Kerry Cullerton  
B2B Program Manager  
Battelle Memorial Institute  
Pacific Northwest Division  
790 6<sup>th</sup> Street, MSIN J1-24  
Richland, WA 99354

Phone: (509) 371-7526  
Fax: (509) 371-7534  
Email: kerry.cullerton@pnl.gov

### **IMPORTANT DATES**

Offeror's should submit all questions or request for clarifications to the Battelle Contracts Representative, either by email or in writing by 4:00 P.M. Pacific Daylight Time on July 24, 2008. All questions will be compiled and answers will be sent to all Offerors. Mandatory pre-proposal and facilities walk-through will be conducted on July 17, 2008. Completed Notices of Intent for this presentation and walk-through are due by 4:00 P.M. Pacific Daylight Time July 10, 2008.

All proposals are due by 3:00 P.M. Pacific Daylight Time on **August 12, 2008**.

### **CONTRACT TYPE**

Battelle intends to award a Fixed Unit Price type contract for this requirement.

### **PROPOSAL PREPARATION**

Proposals should be prepared simply and economically in two separate volumes, the Technical Proposal and the Financial Proposal, and provide a straightforward, concise delineation of the information required. Emphasis should be on completeness and clarity. Elaborate brochures or other presentations are neither required nor desired. A representative of the Offeror authorized to enter into legally binding commitments

shall sign offers. Complete, sign, and return all documentation required in the Information Required with Offers Section of this Request for Proposal (RFP).

Proposals shall be valid for a period of 120 days after the final proposal due date. **One original and five (5) copies of the Technical Proposal and one original and two (2) copies of the Financial Proposal** shall be submitted.

## **TECHNICAL PROPOSALS**

Technical proposals should clearly demonstrate the capability to provide expert chemical management services as described in the Statement of Work (see Section IV, Attachment B). A Technical Proposal Checklist is included to help Offerors complete their technical proposal.

## **FINANCIAL PROPOSAL PREPARATION**

Offerors shall complete the Pricing Form included in Section IV, Attachment D. A Financial Proposal Checklist is included to help Offerors complete their financial proposal.

Fixed unit prices (hourly rates) for the services described herein will be proposed for the labor categories identified in the Price Form for the base period and the one-year option period. Such rates will include all labor, overheads, and profit. Material costs for chemicals (excluding compressed gases) will be proposed based on firm fixed discounts off current, dated, published price lists less 5% (see Section I, Attachment D) from all chemical subcontractors proposed.

The delivery point will be Richland, Washington.

## **FUNDING**

It is anticipated that a Fixed Unit Price type contract with an initial contract period of October 1, 2008 through September 30, 2010. The contract will have one (1) additional one-year option period.

## **SERVICE CONTRACT ACT**

The Service Contract Act of 1965, as amended (41 U.S.C. 351, et. Seq.) will be used in any contract resulting from this solicitation (see Section IV, Attachment C).

The applicable Wage Determinations are incorporated into this RFP (see Section IV, Attachment E).

## **NAICS CODE**

The North American Industrial Classification System (NAICS) for this RFP is 325120; the small business size standard is \$6,000,000.

## **MANDATORY PRE-PROPOSAL WALK-THROUGH**

A mandatory pre-proposal meeting and walk-through of the facilities to be serviced under this contract will be conducted on July 17, 2008. Offerors not attending may be deemed non-responsive. Offerors are limited to three (3) attendees and will be subject to the DOE's security and training requirements. Training (both online and in-person) requirements will be provided to attendees prior to the meeting. Offerors are required to complete the attached Notice of Intent (see Section I, Attachment C) by July 10, 2008.

If there is no intent to attend this mandatory pre-proposal walk-through and submit a proposal, it is requested the aforementioned Notice of Intent be completed indicating Offeror will not be able to submit an offer on this requirement.

## C. NOTICE OF INTENT

### NOTICE OF INTENT

**Kerry Cullerton, MSN J1-24**  
**Battelle, Pacific Northwest National Laboratory**  
**P.O. Box 999**  
**Richland, WA 99354**

**Return Fax No.: (509) 371-7534**  
**Telephone No.: (509) 371-7526**  
**Email: kerry.cullerton@pnl.gov**

We hereby acknowledge receipt of the above Request for Proposal.

- We intend to submit an offer by the due date noted.
- We will not be able to submit an offer on this requirement.

We intend to send the following individuals to the mandatory pre-proposal walk-through:

1. \_\_\_\_\_  
Full Name as it appears on Photo ID (Drivers License/Passport), middle initial if applicable  
Full Date of Birth: \_\_\_\_\_  
Full SSN #: \_\_\_\_\_  
US Citizen?: \_\_\_\_\_  
Email: \_\_\_\_\_  
Gender: \_\_\_\_\_
  
2. \_\_\_\_\_  
Full Name as it appears on Photo ID (Drivers License/Passport), middle initial if applicable  
Full Date of Birth: \_\_\_\_\_  
Full SSN #: \_\_\_\_\_  
US Citizen?: \_\_\_\_\_  
Email: \_\_\_\_\_  
Gender: \_\_\_\_\_



3. \_\_\_\_\_  
Full Name as it appears on Photo ID (Drivers License/Passport), middle initial if applicable

Full Date of Birth: \_\_\_\_\_

Full SSN #: \_\_\_\_\_

US Citizen?: \_\_\_\_\_

Email: \_\_\_\_\_

Gender: \_\_\_\_\_

**Note: Because of escort requirements, Offerors may send up to, but no more than, 3 individuals.**

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Contact Name/Title: \_\_\_\_\_

Email \_\_\_\_\_

Phone/Fax: ( ) \_\_\_\_\_ ( ) \_\_\_\_\_

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

**D. PROPOSAL EVALUATION****SOURCE EVALUATION PANEL**

Evaluation of proposals will be conducted by a Source Selection Panel. The selection for award will be made by a Source Selection Authority.

**CONTRACT AWARD**

Award will be made to the responsible Offeror whose proposal contains the combination of criteria offering the **best overall value** to Battelle and not necessarily to the Offeror with the lowest price or highest evaluated score. After initial completion of numerical scoring, Battelle will determine best value by trade-off analysis of comparative differences in the value of technical merit with differences in price. Battelle will not make an award at a significantly higher overall price to achieve slightly superior technical service.

**EVALUATION OF OFFERS**

Technical and Financial Proposals will be evaluated independently. Technical requirements will be given greater importance than price, reflecting Battelle's desire to acquire a high-quality service/product at an advantageous price.

Offerors should rely exclusively on their initial written submission, including responses to any requests for information, because Battelle will not point out proposal weaknesses during discussion resulting from a lack of diligence, competence or inventiveness in preparing the proposal. Each Offeror will be responsible for making decisions that maximize the technical/price mix of their offer.

**EVALUATION CRITERIA**

Proposals will be evaluated in accordance with this Evaluation Criteria section. The technical and price criteria specified below will be used in the evaluation of each proposal. The relative weight to be accorded to each criterion is expressed as points with a maximum total of 1,000 points.

**TECHNICAL PROPOSAL – WEIGHT 60% (600 points)**

The technical criteria listed below will be used in the evaluation and scoring of each proposal and shall be worth 600 points of the total offer score. At the conclusion of the evaluation, scores for each criterion will be totaled to determine the overall score for each proposal's Technical merit.

Proposals will be evaluated based on the following technical criteria:

**1. Management: (75 Points)**

The proposed management, professional and technical staff/technicians possess the qualifications, education, skills, and experience specified in the SOW, Appendix L.

The Training and Qualification Plan demonstrates management commitment to the Objectives described in the SOW. Key positions and the drivers for the qualifications, education, and training are identified, i.e., hazards, knowledge, and skills needed for the type of work performed and by the location of the work. The requirements for the RPL onsite technical staff reflect the RPL training plan requirements. There is a balance between efficiency and qualifications. If there are equivalencies proposed, the bases are described. Training records for key staff indicate management commitment to training completion.

The Project Management Plan clearly addresses how the Offeror will meet the Objectives and requirements of the SOW. Offeror adequately describes the technical activities and approach, the technical issues and assumptions, the work breakdown structure, the major procurements and subcontracts needed to perform the work, prior related work, and reference documents. Management oversight activities; performance measurement; change control; communications; project closeout; records management; project team roles, responsibilities, accountabilities and authorities (R2A2s); and resource needs are described. The proposed project demonstrates an understanding of the SOW. Project risks and mitigation strategies are identified.

The project communication plan demonstrates how Offeror plans to communicate regarding project management and oversight, day-to-day operational issues, in emergencies, and after hours. The interfaces between the organizations are well-mapped, and the responsibility for communications is appointed.

## 2. **Technical Approach: (245 points)**

Offeror's proposal demonstrates capability and experience, and effectively communicates an understanding of the SOW requirements and Objectives to:

- comprehensively support tracking of chemicals and their hazards at PNNL
- provide a network of existing and proposed facilities and how they will be used to comprehensively support delivery of chemicals to PNNL and other requirements of the SOW
- ensure that transportation meets compliance with regulations
- meet stated delivery turnaround time requirements
- operate a user-friendly pharmacy while meeting the requirements stated in SOW
- achieve right-sizing
- support research and development (R&D)
- maintain protocols that will support chemical integrity, labeling, and inventory control
- ensure lifecycle cost avoidance.

Proposal lists sufficient supplier catalogs that will be linked from or included in the Business to Business (B2B) catalog and which meet PNNL's needs as stated in the SOW.

Proposal describes an effective working approach that will be used to process special requests in a responsive manner, including notification of delivery confirmation (e.g., product, supplier, cost, and anticipated delivery date identified) within 2 days. The process includes effective communication with the requestor, including direct communication (e.g., email). The special request process must be easy to use.

Proposal describes an effective process that will be used to resolve and continuously improve fulfillment problems.

Proposal describes Offeror's existing comprehensive management solution that will manage the information needed to perform the SOW. System characteristics that will be evaluated are: ease of access (webform vs. client server model); ease of installation; compatibility with PNNL interface; cross-platform compatibility (windows, Mac); whether middleware is required to operate; whether it connects well with other databases; and ease of information output, reporting, data management, and maintenance.

Offeror's proposed information management system optimizes the efficiency of staff time sourcing, requesting, and managing chemicals. System minimizes impact to researcher. The proposed system should be easy to use, not time-consuming. Offeror proposes chemical management enhancements to the requestor, such as searchable database parameters, inventory listings, etc.

Proposal demonstrates capability of the Offeror's Material Safety Data Sheet (MSDS) management system to meet the criteria stated in the SOW.

Proposed cyber security adequately protects PNNL data, intellectual property, and computing environment. The proposed system architecture and operating agreement is acceptable and compatible. The Security Plan meets PNNL requirements as stated in the SOW.

### 3. **Quality Assurance: (35 points)**

The proposal demonstrates the Offeror's ability to comply with each aspect of the Quality Assurance Requirements and NQA-1, 2000 elements including subpart 2.7 (software) as depicted in the SOW. If the Offeror is unable to comply with these requirements how well does the Offeror provide needed changes and a crosswalk on how these requirements will be satisfied? Does the Offeror have an established Quality Assurance (QA) program/system that has been qualified to meet a national or international standard that ensures compliance to these requirements? A crosswalk to NQA-1, 2000 and subpart 2.7 is required.

The proposal demonstrates a comprehensive and reliable approach to managing, administering and controlling services that require quality controlled materials (e.g., calibration standards, radiological materials, or quality affecting compressed gases).

The proposal demonstrates a comprehensive and reliable approach for inventory tracking, chemical request processing and just-in-time acquisition and storage of chemicals and compressed gases.

### 4. **Results and Past Performance: (245 points)**

Proposal demonstrates Offeror's experience and client satisfaction in conducting chemical management services (including chemical inventory), in the following specific areas, client types, and facilities:

- applicable federal government agency/contractor experience
- applicable research laboratory experience
- applicable radiological experience
- applicable maintenance shop experience
- applicable gas management program experience
- applicable performance-based contract experience
- experience with Business-to-Business utilizing punchout, cXML technology
- complex chemical management services
- recommended process improvements/value-added engineering proposals
- successful optimization of client inventories

- experience with use of risk profile analysis for clients and outcome of resulting awareness
- experience integrating with clients' other data systems.

Offeror's proposal demonstrates adequate workers safety performance.

## **PRICE PROPOSAL – WEIGHT 40% (400 points)**

Pricing proposals will be scored by giving the lowest overall price offer the maximum points, giving the highest overall price offer zero points, and pro-rating the remaining offerors in between the highest and lowest overall price offers. Lowest overall price will be determined using information derived from the Pricing Form (Section IV, Attachment of the RFP) and the Discount Form for Chemical Subcontractors (Section IV, Attachment E of the RFP).

## II. INFORMATION REQUIRED WITH OFFERS

- A. **Technical Proposal Checklist**
- B. **Financial Proposal Checklist**
- C. **Contact Information Required With Offers Form**
- D. **Quality Assurance Documentation Form**
- E. **Representations and Certifications Form**

## **A. TECHNICAL PROPOSAL CHECKLIST**

**TECHNICAL SECTION** - The following submittals, at a minimum, must be returned with your technical proposal. Please organize your proposal in this format; submittals must be individually identified consistent with the following headings:

### **Executive Summary**

Briefly describe the Offeror's organization and summarize its qualifications for performance of chemical management services for a national laboratory.

### **1. Management**

- a. Provide resumes for the key project management, administrative, scientific and/or technical staff to be assigned to the performance of the services proposed.
- b. Provide Training & Qualification (T&Q) Plan for qualifying and maintaining/improving key project staff proficiency as follows:
  - i. Include training records for key staff (from 1a above)
  - ii. Identify drivers for T&Q
  - iii. Include requirements dictated by hazards, knowledge, and skills needed for the type of work performed and the location of the work
  - iv. Identify education, training, certification, and experience requirements. If there are equivalencies for these requirements, identify them
  - v. Describe the personnel selection process
  - vi. Describe the analysis process that identifies requirements for a position
  - vii. Describe the continuing education/training/requalification processes
  - viii. Describe trainer qualifications
  - ix. Describe the process to ensure compliance with changing drivers, assess the effectiveness of the plan, and achieve continuous improvement
  - x. Describe how training records are managed
  - xi. Provide a management plan, workflow chart, and organization chart identifying the structure, staff planning, and delegation of authorities used in performing the requested services.
- c. Provide a project management plan that includes;
  - i. project communication plan
  - ii. workflow chart
  - iii. organization chart identifying the structure
  - iv. use of subcontractors, staff planning, and delegation of authorities used in performing the requested services.
- d. If using subcontractors, provide the subcontractor's project management plan, T&Q plan, and resumes for key staff.

2. **Technical Approach Overview** - Provide an overview of Offeror's proposed technical approach to accomplish the SOW.

**a. Logistics**

- i. Describe the process that will be used in Offeror's proposal to track chemical inventory, including container tracking, physical inventory, container transfer, pharmacy containers issued, and splits. Describe Offeror's chemical characterization process and chemical list maintenance. Describe how Offeror's proposal ties inventory to locations (cabinet, room, fire zone, facility) for effective reporting. Describe how physical inventories and management of time-sensitive chemicals are accomplished.
- ii. Describe the existing and proposed facilities that will support Offeror's services in executing the SOW.
- iii. Provide Offeror's transportation program document. The document should include the scope of activities, the program objectives, the administrative and operational controls, Offeror's shipping manual, programmatic coordination and responsibilities, training and qualifications requirements, and a method to assess effectiveness and ensure continuous improvement. Include hazardous material shippers training records for those personnel who will be performing hazardous material shipping or providing subject matter guidance in support of the SOW.
- iv. Describe how Offeror's proposal addresses stated delivery requirements.
- v. Describe whether Offeror's proposal includes a pharmacy, either in RPL or offsite. If pharmacy is proposed, describe how Offeror's proposal will meet the requirements stated in the SOW, including: (a) client interaction, (b) distribution/hours/logistics, (c) location/setup, (d) inventory.
- vi. Discuss how Offeror's proposal will address right-sizing while earning R&D staff approval by maintaining chemical integrity, labeling, inventory control, or other means. Describe Offeror's experience with providing right-sizing to other clients.
- vii. List the supplier catalogs that will be linked from or included in Offeror's B2B catalog.
- viii. Describe how the Offeror will resolve fulfillment problems, e.g. wrong material, sub-quality, wrong quantity, late delivery. Describe the approach to continuous improvement in fulfillment.

**b. Systems**

- i. Describe the proposed information management solution. (a) System installation/access: Specify whether it is web form or client server. Describe whether it operates in Mac and Windows environments. Describe what middleware is needed to operate. (b) Interfacing: Describe how well the system interfaces with other laboratory information systems (e.g. periodic batch, real-time, web services, etc.) (c) Operations and reporting: Describe the ease with which information is managed and reported.
- ii. Discuss the aspects of Offeror's information management system that optimize the efficiency of staff time sourcing, requesting, and managing chemicals.
- iii. Discuss your MSDS management solution.

**c. Cyber Security**

- i. Describe the protection you will provide to PNNL data, PNNL intellectual property, and computing environment. (See Appendix B, Cyber Security Requirements)
- ii. Provide a System Architecture document.
- iii. Provide a proposed operating agreement.



- iv. Provide a Security Plan using the PNNL-approved format. (See Appendix D: Security Plan)
- d. **Other** – Discuss any other information pertaining to accomplishment of this SOW that is not addressed above. Include awards and recognition, either for Offeror's organization or for clients if directly related to Offeror's support.

### 3. Quality Assurance

Document Offeror's Quality Assurance (QA) program. A pre-award desk audit will be conducted at PNNL's discretion.

- a. Provide Quality Manual.
- b. If QA program does not currently meet all the requirements ASME NQA-1-2000, *Quality Assurance Requirements for Nuclear Facility Applications*, including Subpart 2.7 addressing software requirements, provide a plan to meet the requirements,...
- c. ...and a crosswalk to map current plan elements to the elements of NQA-1-2000 (reference Appendix A, Quality Assurance Requirements, of this Solicitation.)
- d. Supplement with evidence of demonstrated ability to implement the plan.

### 4. Results and Past Performance

Unless chemical management services experience is specifically requested, relevant related experience may be included in Offeror's response.

- a. Provide examples demonstrating length and breadth of experience, and client satisfaction with results, describe the Offeror's chemical management services (including chemical inventory) experience with and capabilities for managing:
  - i. federal government agency/contractor
  - ii. research laboratory
  - iii. radiological, including work performed under the Price-Anderson Amendments Act
  - iv. maintenance shop
  - v. gas management program
  - vi. performance to measured client-defined objectives.
- b. Describe Offeror's experience with B2B utilizing punchout, cXMT technology. Include descriptions of supplier catalogs linked from Offeror's catalog, or other automated inclusion of supplier goods. Discuss challenges that have been overcome.
- c. Describe the Offeror's largest and most complex chemical management services contract/project performed within the five-year period preceding the submission of its proposal.
- d. Describe outcomes of recommended process improvements/value-added engineering proposals recommended by Offeror to clients.
- e. Describe successful optimization of client inventories.
- f. Describe experience with use of risk profile analysis for clients and outcome of resulting awareness.
- g. Describe experience successfully integrating with clients' other data systems.
- h. Provide references for up to three clients for which the Offeror performed services similar to those proposed herein for at least a period of two years. Additionally, references from the two most

recent sales of similar components shall be included. Any contacts with references will remain confidential. Each reference should include the following information:

- i. The client name, address, telephone number, and the name of a knowledgeable representative within the client organization, fax, and email information for each. If the reference is a government agency, provide the contract number, the name of the technical representative or the contracting officer.
  - ii. A summary description of services performed including copies of reports, the workload, the period during which the services were performed, and the applicable regulatory requirements.
  - iii. If contractual limitations preclude providing any of the requested references, please include a statement to that effect on company letterhead.
- i. State whether Offeror's work onsite will be conducted according to the Battelle Contractor Environment, Safety & Health Manual, or supply the proposed alternative manual.
  - j. Provide environmental compliance history of state and federal inspections during the last three years. Submit the reports from these inspections, notices of violation or correction, and Offeror's responses to these.
  - k. Provide the following documentation of Offeror's safety performance.
    - i. Provide Worker's Compensation Risk Ratings or Experience Modification Rates for the past three years (including current year), or for as many years as the company has been in existence up to three years.
    - ii. Provide Occupational Safety and Health Administration (OSHA) 200/300 Log (or equal) year-end summaries (signed and dated by a company representative) for each of the past three years, or for as many years as the company has been in existence up to three years.
    - iii. Provide total employee hours worked by company employees for each of the past three years, or for as many years as the company has been in existence up to three years.
    - iv. Provide copies of transmittal letters (describing the outcome and number of citations, if any, from each the Occupational Safety and Health Administration (OSHA), Washington Industrial Safety and Health Administration (WISHA), and other OSHA state-plan inspections in the last three years. If no inspections have been performed in this time, provide a signed statement to this effect on company letterhead.
    - v. Provide North American Industry Classification System (NAICS) and/or Standard Industrial Classification (SIC) numbers used on previous contracts.

Company: \_\_\_\_\_

Signed: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **B. FINANCIAL PROPOSAL CHECKLIST**

**FINANCIAL SECTION** - The following submittals, at a minimum, should be returned with your Financial proposal. Please use this checklist to organize your proposal, and return the checklist with your Financial proposal. Submittals shall be individually identified consistent with the following headings:

- Completed Pricing Form (Section IV, Attachment D) providing components of fixed unit labor rates and estimated number of hours to accomplish work.
- Completed Contact Information Required with Offers Form (Section II, Attachment C).
- Completed Discount for Chemical Subcontractors Form (Section IV, Attachment E), including current, dated, published price lists (PPLs) for all chemical subcontractors proposed (excluding compressed gas), and proposed discount off each PPL.
- Discount agreement for each chemical supplier proposed.
- Quality Assurance Documentation Form (Section II, Attachment D).
- Completed Representations and Certifications (Section II, Attachment E).
- Additional Financial Data and/or Annual Report for Prime.
- Any other available Business Management Data.
- Any other financial documentation required to demonstrate Offeror's ability to meet the financial requirements of this RFP.
- Offeror takes no exception to provisions contained in the sample contract, including general provisions. *(Failure to check this box may result in Offeror being deemed non-responsive).*

Company: \_\_\_\_\_

Signed: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **C. CONTACT INFORMATION REQUIRED WITH OFFERS FORM**

**Technical Point of Contact (POC):** \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Mobile: \_\_\_\_\_

Email: \_\_\_\_\_

**Contractual POC:** \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Mobile: \_\_\_\_\_

Email: \_\_\_\_\_

**Legal POC:** \_\_\_\_\_

Title: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

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## D. QUALITY ASSURANCE DOCUMENTATION FORM

Submit the following documents and information with your proposal:

**Name and Contact Number** for Offeror's Quality Assurance Representative who will be responsible for coordinating Quality Assurance Requirements for this acquisition:

- a. Company: \_\_\_\_\_
- Representative: \_\_\_\_\_
- Phone No. \_\_\_\_\_
- Fax No. \_\_\_\_\_
- Email \_\_\_\_\_

**Names and Phone Numbers** of other customer representatives who have evaluated Offeror's current Quality Assurance Program within the past 12 months:

- a. Company: \_\_\_\_\_
- Representative: \_\_\_\_\_
- Phone No. \_\_\_\_\_
  
- b. Company: \_\_\_\_\_
- Representative: \_\_\_\_\_
- Phone No. \_\_\_\_\_
  
- c. Company: \_\_\_\_\_
- Representative: \_\_\_\_\_
- Phone No. \_\_\_\_\_

## E. REPRESENTATIONS AND CERTIFICATIONS FORM

### **Battelle Memorial Institute Pacific Northwest National Laboratory**

The following representations and certifications must be completed, and this form must be signed and returned with the Offeror's proposal.

1. Taxpayer Identification
2. Small Business Program Representations
3. Affirmative Action Compliance
4. Previous Contracts and Compliance Reports
5. Royalty Payment Certification
6. Buy American Act Certification
7. Technical Data Certification
8. Patents Rights Representation
9. Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters
10. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions
11. Cost Accounting Standards Notice and Certification

#### **1. TAXPAYER IDENTIFICATION (Oct 1998)**

(a) *Definitions.*

“*Common parent,*” as used in this solicitation provision, means that corporation entity owns or controls an affiliated group of corporation that files its Federal income tax returns on a consolidated bases, and of which the offeror is a member.

“*Taxpayer Identification Number (TIN),*” as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employee Identification Number.

(b) All offerors must submit the information required in paragraphs (d) through (f) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M and implementing regulations issued by the IRS. If the resulting contract is subject to the reporting requirements described in Federal Acquisition Regulation (FAR) 4.904, the failure or refusal by the offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.

(c) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(d) *Taxpayer Identification Number (TIN).*

TIN: \_\_\_\_\_

TIN has been applied for.

TIN is not required because

\_\_\_\_\_  
 Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income

effectively connected with the conduct of trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States.

- Offeror is an agency or instrumentality of a foreign government
- Offeror is an agency or instrumentality of a Federal Government
- Other. State basis. \_\_\_\_\_

(e) *Type of organization*

- Sole proprietorship
- Partnership
- Corporate entity (not tax-exempt)
- Corporate entity (tax-exempt)
- Government entity (Federal, State, or local)
- Foreign government
- International organization per 26 CFR 1.6049-4
- Other \_\_\_\_\_

(f) *Common Parent.*

- Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this provision.
- Name and TIN of common parent:

Name \_\_\_\_\_ TIN \_\_\_\_\_

## 2. SMALL BUSINESS PROGRAM REPRESENTATIONS (Apr 2002)

*(Applicable if any performance will be inside the United States, its territories or possessions, Puerto Rico, the District of Columbia, or the Trust Territory of the Pacific Islands)*

(a) (1) The North American Industry Classification System (NAICS) code for this acquisition is 541380.

(2) The small business size standard is \$6,000,000.

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

(b) *Representations.*

(1) The offeror represents as part of its offer that it  is,  is not a **small business concern**.

*(Complete (2), (3), and (4) below, as applicable, only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.)*

(2) The offeror represents, for general statistical purposes, that it  is,  is not, a **small disadvantaged business concern** as defined in 13 CFR 124.1002. *(If so, also complete the Small Disadvantaged Business Status representation, below.)*

(3) The offeror represents as part of its offer that it  is,  is not a **women-owned small business concern**.

(4) The offeror represents as part of its offer that it  is,  is not a **veteran-owned small business concern**.

(5) The offeror represents as part of its offer that it  is,  is not a **service-disabled veteran-owned small business concern**.

(6) The offeror represents, as part of its offer, that—

- a. It  is,  is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office of ownership, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR part 126; and
- b. It  is,  is not a joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (b)(5)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture.

*[The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture:*

\_\_\_\_\_ ]

Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

(c) *Definitions.* As used in this provision ...

**"Service-disabled veteran-owned small business concern"**—

- (1) Means a small business concern (i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and (ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.
- (2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

**"Small business concern"** means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (a) of this provision.

**"Veteran-owned small business concern"** means a small business concern—

- (1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and
- (2) The management and daily business operations of which are controlled by one or more veterans.

**"Women-owned small business concern"** means a small business concern—

- (1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
- (2) Whose management and daily business operations are controlled by one or more women.

(d) *Notice.*

- (1) If this solicitation is for supplies and has been set aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.
- (2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small, HUBZone small, small disadvantaged, or women-owned small business concern in order to obtain a contract to be



awarded under the preference programs established pursuant to section 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall- (i) Be punished by imposition of fine, imprisonment, or both; (ii) Be subject to administrative remedies, including suspension and debarment; and (iii) Be ineligible for participation in programs conducted under the authority of the Act.

**3. AFFIRMATIVE ACTION COMPLIANCE (Apr 1984)**

The offeror represents that it

- Has developed and has on file,  has not developed and does not have on file, at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2); or
- Has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

**4. PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (Feb 1999)**

Offeror represents that it

- (a)  Has  Has Not Participated in a previous contract or subcontract subject the Equal Opportunity clause of this solicitation;
- (b)  Has  Has Not Filed all required compliance reports; and
- (c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

**5. ROYALTY PAYMENT CERTIFICATION (Jan 1986)**

In order that DOE may be informed regarding royalty payments to be made by a contractor in connection with any acquisition, construction, or operation where the amount of the royalty payment is reflected in the contract price, or is to be reimbursed by Battelle, check one of the following:

- The Contract price includes no amount representing the payment of royalty by the Offeror directly to others in connection with the performance of the contract.
- The Contract price includes an amount for royalty payment expected to be made in connection with the proposed award set forth below:
  1. the amount of each payment,
  2. the names of the licensor, and
  3. either the patent numbers involved or such other information as will permit identification of the patents and patent applications and the basis on which royalties will be paid.

**6. BUY AMERICAN ACT CERTIFICATION (May 2002)**

- (a) The offeror certifies that each end product, except those listed in paragraph (b) of this provision, is a domestic end product as defined in the clause of this solicitation entitled "Buy American Act-Supplies" and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

(b) Foreign End Products:

Line Item No.	Country of Origin

(c) Offers will be evaluated in accordance with the policies and procedures of Part 25 of the Federal Acquisition Regulation.

**7. TECHNICAL DATA CERTIFICATION (Jan 1986)**

The offeror certifies that it has not delivered or is not obligated to deliver to Battelle or to the Government under any contract or subcontract the same or substantially the same technical data included in its offer, except as set forth below:

- None
- Contract No. (and Subcontract No., if applicable), Agency name and place of delivery.

**8. PATENT RIGHTS REPRESENTATION (Jan 1986)**

- Is  Is Not A **small business** as defined in 15 US 632(a) and the implementing regulations of the Administrator of the Small Business Administration, 13 CFR Part 121.
- Is  Is Not An organization of the type described in section 501(c)(3) of the Internal Revenue Code, 26 USC 501(c), and **exempt from taxation** under section 501(a) of the Internal Revenue Code, 26 USC 501(a).
- Is  Is Not A **nonprofit scientific or educational organization** qualified under a state nonprofit organization statute.
- Is  Is Not A U.S. **domestic university** or other U.S. institution of higher education.

**9. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (Dec 2001) (Applicable to proposals exceeding \$25,000)**

(a) (1) The Offeror certifies, to the best of its knowledge and belief, that-

(i) The Offeror and/or any of its Principals-

Are  are not  presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

Have  have not  within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

Are  are not  presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision.

(ii) The Offeror has or has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.

- (b) The Offeror shall provide immediate written notice to the Battelle Contracts Specialist if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Battelle Contracts Specialist may render the Offeror nonresponsible.
- (d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- (e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Battelle Contracts Specialist may terminate the contract resulting from this solicitation for default.

## 10. CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (Apr 1991)

*(Applicable to proposals exceeding \$100,000)*

- (a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.
- (b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989 —
  - (1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;
  - (2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

- (3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.
- (c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

## 11. COST ACCOUNTING STANDARDS NOTICE AND CERTIFICATION (June 2002)

*(Applicable to proposals exceeding \$500,000. This notice does not apply to small businesses or foreign governments.)*

This notice is in three parts, identified by Roman numerals I through III. Offerors shall examine each part and provide the requested information in order to determine Cost Accounting Standards (CAS) requirements applicable to any resultant contract.

If the offeror is an educational institution, Part II does not apply unless the contemplated contract will be subject to full or modified CAS coverage pursuant to 48 CFR 9903.201-2(c)(5) or 9903.201-2(c)(6), respectively.

### I. Disclosure Statement-Cost Accounting Practices and Certification

- (a) Any contract in excess of \$500,000 resulting from this solicitation will be subject to the requirements of the Cost Accounting Standards Board (48 CFR Chapter 99), except for those contracts which are exempt as specified in 48 CFR 9903.201-1.
- (b) Any offeror submitting a proposal which, if accepted, will result in a contract subject to the requirements of 48 CFR Chapter 99 must, as a condition of contracting, submit a Disclosure Statement as required by 48 CFR 9903.202. When required, the Disclosure Statement must be submitted as a part of the offeror's proposal under this solicitation unless the offeror has already submitted a Disclosure Statement disclosing the practices used in connection with the pricing of this proposal. If an applicable Disclosure Statement has already been submitted, the offeror may satisfy the requirement for submission by providing the information requested in paragraph (c) of Part I of this provision.

Caution: In the absence of specific regulations or agreement, a practice disclosed in a Disclosure Statement shall not, by virtue of such disclosure, be deemed to be a proper, approved, or agreed-to practice for pricing proposals or accumulating and reporting contract performance cost data.

- (c) Check the appropriate box below:

*Certificate of Concurrent Submission of Disclosure Statement.* The offeror hereby certifies that, as a part of the offer, copies of the Disclosure Statement have been submitted as follows:

(i) Original and one copy to the cognizant Administrative Contracting Officer (ACO) or cognizant Federal agency official authorized to act in that capacity (Federal official), as applicable; and

(ii) One copy to the cognizant Federal auditor.

(Disclosure must be on Form No. CASB DS-1 or CASB DS-2, as applicable. Forms may be obtained from the cognizant ACO or Federal official and/or from the loose-leaf version of the Federal Acquisition Regulation.)

Date of Disclosure Statement: \_\_\_\_\_

Name and Address of Cognizant ACO or Federal Official Where Filed:

\_\_\_\_\_  
\_\_\_\_\_

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement.

- Certificate of Previously Submitted Disclosure Statement.* The offeror hereby certifies that the required Disclosure Statement was filed as follows:

Date of Disclosure Statement: \_\_\_\_\_

Name and Address of Cognizant ACO or Federal Official Where Filed:

\_\_\_\_\_  
\_\_\_\_\_

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the applicable Disclosure Statement.

- Certificate of Monetary Exemption.* The offeror hereby certifies that the offeror, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated prime contracts and subcontracts subject to CAS totaling \$50 million or more in the cost accounting period immediately preceding the period in which this proposal was submitted. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.
- Certificate of Interim Exemption.* The offeror hereby certifies that (i) the offeror first exceeded the monetary exemption for disclosure, as defined in (3) of this subsection, in the cost accounting period immediately preceding the period in which this offer was submitted and (ii) in accordance with 48 CFR 9903.202-1, the offeror is not yet required to submit a Disclosure Statement. The offeror further certifies that if an award resulting from this proposal has not been made within 90 days after the end of that period, the offeror will immediately submit a revised certificate to the Contracting Officer, in the form specified under paragraph (c)(1) or (c)(2) of Part I of this provision, as appropriate, to verify submission of a completed Disclosure Statement.

Caution: Offerors currently required to disclose because they were awarded a CAS-covered prime contract or subcontract of \$50 million or more in the current cost accounting period may not claim this exemption. Further, the exemption applies only in connection with proposals submitted before expiration of the 90-day period following the cost accounting period in which the monetary exemption was exceeded.

## II. Cost Accounting Standards-Eligibility for Modified Contract Coverage

If the offeror is eligible to use the modified provisions of 48 CFR 9903.201-2(b) and elects to do so, the offeror shall indicate by checking the box below. Checking the box below shall mean that the resultant contract is subject to the Disclosure and Consistency of Cost Accounting Practices clause in lieu of the Cost Accounting Standards clause.

- The offeror hereby claims an exemption from the Cost Accounting Standards clause under the provisions of 48 CFR 9903.201-2(b) and certifies that the offeror is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause because during the cost accounting period immediately preceding the period in which this proposal was submitted, the offeror received less than \$50 million in awards of CAS-covered prime contracts and subcontracts. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

Caution: An offeror may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a CAS-covered contract of \$50 million or more or if, during its current cost accounting period, the offeror has been awarded a single CAS-covered prime contract or subcontract of \$50 million or more.

### III. Additional Cost Accounting Standards Applicable to Existing Contracts

The offeror shall indicate below whether award of the contemplated contract would, in accordance with paragraph (a)(3) of the Cost Accounting Standards clause, require a change in established cost accounting practices affecting existing contracts and subcontracts.

- Yes     No

### SIGNATURE

Note: A person authorized to make legally binding commitments on behalf of the offeror must sign below. Signature constitutes a representation that reasonable and prudent inquiry has been made to ascertain the true and accurate basis of all statements. Statements which a person knows or has reason to know are false, fictitious, or fraudulent may result in criminal or civil penalties, as prescribed in 18 USC 1001 and 31 USC 3802(a)(2). These Representations and Certifications shall remain in effect for a period of one (1) year from the date signed and shall satisfy any subsequent proposal requirements during that one-year period. The Offeror shall notify Battelle of any changes that occur in any of the representation or certifications during that period.

Company Name \_\_\_\_\_

Signature \_\_\_\_\_

Signer's Name (Printed) \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

### **III. PROVISIONS APPLICABLE TO SOLICITATION AND AWARD**

#### **A. Solicitation Provisions**

#### **B. Quality Assurance Provisions**



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**A. SOLICITATION PROVISIONS**

**GENERAL SOLICITATION PROVISIONS:**

- |  |   |
|--|---|
| 1. Battelle Contracts Representative     | 8. Solicitation Amendments                  |
| 2. Proposal Due Date and Validity Period | 9. Alternate Proposals                      |
| 3. Type Of Contract                      | 10. Bid and Proposal Costs                  |
| 4. Evaluation Criteria                   | 11. Submission, Modification, Revision, and |
| 5. Prompt Payment Discounts              | Withdrawal of Proposals                     |
| 6. Reservation of Rights                 |   |

**BATTELLE HANDLING OF PROPOSALS:**

7. "No Offers"

**SOLICITATION DATA PROVISIONS:**

12. Treatment Of Proposal Data  
13. Notice Of Disposition Of Proprietary Data  
14. Public Law 96-517

**1. BATTELLE CONTRACTS REPRESENTATIVE**

The identified Battelle Contracts Representatives are the **points of contact** for any communications or questions regarding this acquisition.

**2. PROPOSAL DUE DATE AND VALIDITY PERIOD**

Written proposals shall be delivered to Battelle on or before the proposal due date. Faxed copies will not be accepted. Proposals shall be valid for a minimum of 120 days.

**3. TYPE OF CONTRACT**

Battelle anticipates placing a fixed unit price type contract for this requirement.

**4. EVALUATION CRITERIA**

Evaluation will be based on the Evaluation Criteria Section of this Request for Proposal.

**5. PROMPT PAYMENT DISCOUNTS**

In addition to normal payment terms please advise amount and details of other cash discounts or savings available to Battelle for more expeditious or favorable methods of payment or for other reasons.

**6. RESERVATION OF RIGHTS.** Battelle reserves the right to:

- A. reject any or all offers
- B. require oral presentations from any or all Offerors, determined to be in the competitive range (Offerors will be notified of the time and place for such presentation)
- C. conduct site visits to the home or field offices of Offerors determined to be within the competitive range (Offerors will be notified with the date and time of arrival and an outline of the duration of the visit and any assistance/information required)
- D. request clarification of minor irregularities, informalities, or apparent clerical mistakes
- E. waive minor irregularities, informalities, or apparent clerical mistakes in offers received



- F. award multiple contracts as a result of this solicitation
- G. award based on initial offers received without further discussions (initial proposals should contain the Offeror's best price and technical terms)
- H. request oral and/or written discussions
- I. determine a competitive range, including all proposals that are judged to have a reasonable chance of being selected for award, and negotiate with all Offerors within it. (In the event a competitive range is determined, it will be based solely on Battelle's judgement, and Best and Final Offers will be requested at the conclusion of negotiations)
- J. negotiate only with a single Offeror to further reduce the price paid if, in the judgement of Battelle after a review of the technical and price offers, only one Offeror has a reasonable chance of being selected for award.

## 7. "NO OFFERS"

In the event Offeror chooses not to submit a proposal, it is requested that a short note of explanation. The Notice of Intent may be returned via facsimile to Ms. Kerry Cullerton at (509) 371-7534 rather than pay excess postage by returning the entire solicitation package.

## 8. SOLICITATION AMENDMENTS

If this RFP is amended, all provisions which are not modified shall remain unchanged.

## 9. ALTERNATE PROPOSALS

Battelle is inviting proposals in **full accord**ance with the attached specifications or description. In the event that Offeror is unable to submit a proposal responsive to this requirement and Offeror believes they have an item(s) which may otherwise be acceptable, Offerors are invited to submit a proposal for Battelle's consideration, **stating item by item** each incidence of noncompliance. Offerors are hereby advised that Battelle shall **not be obligated** to evaluate this proposal, but if acceptable, this RFP will either be canceled and reissued or revised to incorporate any appropriate changes.

## 10. BID AND PROPOSAL COSTS

Battelle is **not** obligated to pay any price incurred in the preparation and submission of a proposal, nor to enter into a contract or any other arrangement with any Offeror.

## 11. SUBMISSION, MODIFICATION, REVISION, AND WITHDRAWAL OF PROPOSALS

- A. Offerors are responsible for submitting proposals, and any modifications or revisions, so as to reach the Battelle office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:00 p.m., local time, for the designated Battelle office on the date that proposal or revision is due.
- B. Any proposal, modification, or revision received at the Government office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the Battelle Contracts Representative determines that accepting the late offer would not unduly delay the acquisition; and—
  - i. If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Battelle, Pacific Northwest Division, infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or
  - ii. There is acceptable evidence to establish that it was received at the Battelle site designated for receipt of offers and was under Battelle's control prior to the time set for receipt of offers; or

- iii. It is the only proposal received.
- C. However, a late modification of an otherwise successful proposal that makes its terms more favorable to the Battelle, will be considered at any time it is received and may be accepted.
  - i. Acceptable evidence to establish the time of receipt at the Battelle site includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Battelle personnel.
  - ii. If an emergency or unanticipated event interrupts normal Battelle processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Battelle requirements preclude amendment of the solicitation, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Battelle processes resume.
  - iii. Proposals may be withdrawn by written notice received at any time before award. Oral proposals in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile proposals, proposals may be withdrawn via facsimile received at any time before award. Proposals may be withdrawn in person by an offeror or an authorized representative, if the identity of the person requesting withdrawal is established and the person signs a receipt for the proposal before award.
  - iv. Unless otherwise specified in the solicitation, the offeror may propose to provide any item or combination of items.
  - v. Offerors shall submit proposals in response to this solicitation in English and in U.S. dollars unless otherwise permitted by the solicitation.
  - vi. Offerors may submit modifications to their proposals at any time before the solicitation closing date and time, and may submit modifications in response to an amendment, or to correct a mistake at any time before award.
  - vii. Offerors may submit revised proposals only if requested or allowed by the Battelle Contracts Representative.
  - viii. Proposals may be withdrawn at any time before award. Withdrawals are effective upon receipt of notice by the Battelle Contracts Representative
- D. *Offer expiration date.* Proposals in response to this solicitation will be valid for the number of days specified on the solicitation cover sheet (unless a different period is proposed by the offeror).
- E. *Restriction on disclosure and use of data.* Offerors that include in their proposals data that they do not want disclosed to the public for any purpose, or used by Battelle except for evaluation purposes, shall—
  - i. Mark the title page with the following legend:

*This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed—in whole or in part—for any purpose other than to evaluate this proposal. If, however, a contract is awarded to this offeror as a result of—or in connection with—the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets [insert numbers or other identification of sheets]; and*
  - ii. Mark each sheet of data it wishes to restrict with the following legend:

*Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.*

## 12. TREATMENT OF PROPOSAL DATA

- A. Although not specifically requested by the RFP, the proposal may include technical data and other data, including trade secrets and/or privileged or confidential commercial or financial information, which the Offeror does not want disclosed to the public or used by Battelle or the Government for any purpose other than proposal evaluation. To protect such data, the Offeror will specifically identify each page including each line or paragraph thereof containing the data to be protected and mark the cover sheet of the proposal with the following notice:

**NOTICE**

**The data contained in pages \_\_\_\_ of this proposal have been submitted in confidence and contain trade secrets and/or privileged or confidential commercial or financial information, and such data shall be used or disclosed only for evaluation purposes, Battelle and the Government shall have the right to use or disclose the data herein to the extent provided in the contract. This restriction does not limit Battelle's and the Government's right to use or disclose data obtained without restriction from any source, including the Offeror.**

Reference to this notice on the cover sheet should be placed on each page to which the notice applies. Battelle assumes no liability for disclosure or use of unmarked data and may use or disclose such data for any purpose.

- B. Should a contract be awarded based on a proposal, it is DOE policy, in consideration of the award, that Battelle obtain unlimited rights for the Government in technical data contained in the proposal unless the prospective sub-Offeror marks those portions of the technical information that he asserts as "proprietary data," or specifies those portions of such technical data that are not directly related to or will not be utilized in the work to be funded under this subcontract. "Proprietary data" are defined as technical data which embody trade secrets developed at private expense, such as design procedures or techniques, chemical composition of materials, or manufacturing methods, processes, or treatments, including minor modifications thereof, provided that such data: (1) are not generally known or available from other sources without obligation concerning their confidentiality; (2) have not been made available by the owner to others without obligation concerning their confidentiality; and (3) are not already available to the Government without obligation concerning their confidentiality. An Offeror who receives a contract award shall mark the data identified as proprietary by specifying the appropriate proposal page number to be inserted in the Rights to Proposal Data clause below. Subject to the concurrence of Battelle, information unrelated to the subject may be deleted from the proposal by the Offeror. The responsibility, however, of identifying technical data as proprietary or deleting it as unrelated rests with the Offeror.
- C. The following clause shall be included in any contract based on a proposal. This clause is intended to apply only to technical data and not to other data, such as privileged or confidential commercial or financial information.

**RIGHTS TO PROPOSAL DATA**

**Except for technical data contained on pages \_\_\_\_ of the Offeror's proposal dated \_\_\_\_\_, which are asserted by the Offeror as being proprietary data, it is agreed that as a condition of the award of this contract, notwithstanding the provisions of any notice appearing on the proposal, the Government shall have the right to use, duplicate, and disclose and have others do so for any purpose whatsoever, the technical data contained in the proposal upon which this contract is based.**

**13. NOTICE OF DISPOSITION OF PROPRIETARY DATA**

Unless otherwise clearly indicated in your offer that additional copies of offers containing proprietary data are to be returned to Offeror, freight collect, they will be destroyed by Battelle after award.

**14. PUBLIC LAW 96-517**

Public Law 96-517, also known as the Bayh-Dole Act, provides that small businesses and non-profit organizations may elect to retain title to any inventions which are conceived or first actually reduced to practice in the performance of work under a funding agreement with a Federal agency for the performance of experimental, developmental, or research work. In the event you qualify as a small business or non-profit organization under Section 2 of Public Law 85-536 (15 USC 632) or Section 501(c)(3) of the Internal Revenue Code of 1954 (26 USC 501(c)), and so certify by executing the enclosed Patent Rights Certification, the appropriate patent rights clause for small businesses and non-profit organizations will be included in the agreement.

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## **B. QUALITY ASSURANCE PROVISIONS**

### **SUPPLIER HAZARDOUS MATERIAL CONTROL** (cl QA-172 – April 2008)

The Contractor shall comply with the applicable Code of Federal Regulations, Title 49, Parts 107, and 171 through 178 when required to handle, package, mark, and ship any Hazardous Material received from Battelle on this contract.

The Contractor shall submit, before contract award, qualification records of the person(s) who is knowledgeable in Department of Transportation (DOT) Hazardous Material regulations and will be designated the responsibility for any handling and shipping of Hazardous Material received from Battelle. The qualification records shall include the following:

- the person(s)' name
- a summary statement of the person(s)' qualifications
- copies of training certificates
- any other documented evidence of the person(s)' training, experience, and knowledge of DOT Hazardous Material regulations.

Unless otherwise specified, Contractor shall mail all documents required by this contract to be delivered to the Battelle Contracts Representative, Battelle, PO Box 999, Richland, Washington 99352. A document is not delivered until it is received by Battelle. Battelle shall have the right to reject, as not in conformity with the requirements of this contract, any supplies or services for which all required reports, procedures or certifications are not delivered. Contractor's failure to deliver such documents, or delivery of deficient documents, shall be deemed a failure to make delivery within the meaning of the Default clause of this contract.

**PRE-AWARD EVALUATION REQUIREMENT:** A pre-award evaluation will be conducted of a prospective Contractor's technical and quality assurance capability. Evaluation shall be performed of the documented quality assurance program(s)/system(s) applicable to materials to be produced or services to be performed by the prospective Contractor or subcontractor(s).

### **TEST REPORT: CHEMICAL ANALYSIS OR CERTIFICATE OF ANALYSIS** (cl QA-186 – April 2008)

Contractor shall submit a Chemical Analytical Report(s) (or Certificate of Analysis) containing the actual results of a chemical analysis performed on the specific chemicals or supplies tendered for acceptance. Such analysis shall be reported on a batch, heat, or lot basis. Each report shall be legible, reproducible, and contain, in addition to any other requirements as specified by this contract, the following:

1. The contract number
2. A clear identification of the supplies covered, including, but not limited to, the use of serial, lot, batch, heat, or mill numbers
3. The date and title of the person signing.

Submission of a certification constitutes Contractor's express warranty that the identified supplies conform to all of the requirements of this contract. Unless otherwise specified, Contractor shall mail all documents required by this contract to be delivered to the Battelle Contracts Representative, Battelle, PO Box 999, Richland, Washington, 99352. A document is not delivered until it is received by Battelle. Battelle shall have the right to reject, as not in conformity with the requirements of this contract, any supplies or services for which all required reports, procedures or certifications are not delivered. Contractor's failure to deliver such documents, or delivery of deficient documents, shall be deemed a failure to make delivery within the meaning of the Default clause of this contract.

**TEST REPORT: REFERENCE OR STANDARD MATERIAL** (cl QA-188 – April 2008)

Contractor shall submit a Reference or Standard Materials Report(s) specifying (1) the measurements made; (2) the results of such measurements; (3) an estimate of the uncertainties of each measurement recorded (such as random and systematic errors); and (4) the basis for the validity of each measurement recorded, consisting of a certification that the measurements are traceable to a nationally recognized standard or derived from accepted values of natural physical constants.

Each report shall be legible, reproducible, and contain, in addition to any other requirements as specified by this contract, the following:

1. The contract number
2. A clear identification of the supplies covered, including, but not limited to, the use of serial, lot, batch, heat, or mill numbers
3. The date and title of the person signing.

Unless otherwise specified, Contractor shall mail all documents required by this contract to be delivered to the Battelle Contracts Representative, Battelle, PO Box 999, Richland, Washington 99352. Submission of a certification constitutes Contractor's express warranty that the identified supplies conform to all of the requirements of this contract. A document is not delivered until it is received by Battelle. Battelle shall have the right to reject, as not in conformity with the requirements of this contract, any supplies or services for which all required reports, procedures or certifications are not delivered. Contractor's failure to deliver such documents, or delivery of deficient documents, shall be deemed a failure to make delivery within the meaning of the Default clause of this contract.

**TEST REPORT: INSPECTION DATA** (cl QA-191 – April 2008)

Contractor shall submit an Inspection Data Report(s) of actual inspection results, specifying what was inspected, the characteristics inspected, and the acceptance criteria, all as required by this contract. Each report shall be legible, reproducible, and contain, in addition to any other requirements as specified by this contract, the following:

1. The contract number
2. A clear identification of the supplies covered, including, but not limited to, the use of serial, lot, batch, heat, or mill numbers
3. The date and title of the person signing.

Unless otherwise specified, Contractor shall mail all documents required by this contract to be delivered to the Battelle Contracts Representative, Battelle, PO Box 999, Richland, Washington 99352. Submission of a certification constitutes Contractor's express warranty that the identified supplies conform to all of the requirements of this contract. A document is not delivered until it is received by Battelle. Battelle shall have the right to reject, as not in conformity with the requirements of this contract, any supplies or services for which all required reports, procedures or certifications are not delivered. Contractor's failure to deliver such documents, or delivery of deficient documents, shall be deemed a failure to make delivery within the meaning of the Default clause of this contract.

**MARKING: SHELF LIFE, CURE DATE, OR EXPIRATION DATE** (cl QA-194d – April 1999)

Contractor shall mark the item(s) with the shelf life, cure date, or expiration date. Each piece, package or container of material shall be marked. Temperature, humidity, and other environmental storage conditions required shall be displayed in a conspicuous manner.

## **IV. ATTACHMENTS**

- A. Important Dates**
- B. Statement of Work**
- C. Sample Contract**
- D. Pricing Form**
- E. Discount for Chemical Subcontractors Form**
- F. Wage Determinations**

**A. IMPORTANT DATES**

<b>Description</b>	<b>Date</b>
Notice of Intent Due	July 10, 2008
Mandatory Pre-proposal Meeting and Facilities walk-through	July 17, 2008
Questions Due	July 24, 2008
Proposals Due	August 12, 2008
Contract Award	On or before October 1, 2008
Anticipated Contract Start Date	Anticipated October 1, 2008
Initial Term	October 1, 2008 through September 30, 2010
Option Year	October 1, 2010 through September 30, 2011

**B. STATEMENT OF WORK**

**Reference Statement of Work provided in separate document.**



**C. SAMPLE CONTRACT**

BATTELLE MEMORIAL INSTITUTE  
PACIFIC NORTHWEST DIVISION

SCHEDULE

I. RECITALS

The contracting parties are Battelle Memorial Institute, Pacific Northwest Division, an Ohio Corporation with principal offices in Columbus, Ohio (hereinafter called "Battelle"), and TBD, a corporation located in TBD, (hereinafter called the "Contractor").

This contract is made for the procurement of services needed in connection with Battelle's management, operation and maintenance of the U.S. Department of Energy's Pacific Northwest Laboratory at Richland, Washington, under Contract DE-AC05-76RL01830.

The contract type is Fixed Unit Price.

II. AGREEMENTS

1. Contract Period: The based contract period of two (2) years is \_\_\_\_ through \_\_\_\_ . The One Year Option Period, if exercised by Battelle is \_\_\_\_ through \_\_\_\_.
2. Ceiling Price: \$ **TBD**
3. Fixed Unit Prices:

In accordance with the attached Pricing Form, the following fixed unit labor rates shall apply:

<u>Individual/Category</u>	<u>Two-Year Base Period Hourly Rate</u>	<u>One-Year Option Period Hourly Rate</u>
Program Manager	\$0.00	\$0.00
On-Site Rep/Pharmacy	\$0.00	\$0.00
Safety & Health Professional	\$0.00	\$0.00
QA Professional	\$0.00	\$0.00
Programmer	\$0.00	\$0.00
Purchasing Agent	\$0.00	\$0.00
Data Entry Clerk	\$0.00	\$0.00
Laborer	\$0.00	\$0.00

The fixed hourly labor rates of other personnel which may be used by the contractor in the performance of the work required herein shall have prior written approval by a Battelle Contract Representative.

Materials (chemical, gas, and cylinder accessories) to be provided in accordance with the attached Discount Form for Chemical Subcontractors.

4. Non-Labor Costs: Provision of any non-labor costs (excluding chemical gases, and cylinder accessories) must first be approved in writing by the Battelle Contract Representative.
5. Invoices: Battelle prefers to receive invoices electronically. To FACILITATE PROMPT PAYMENT, submit an electronic (PDF format) invoice to Battelle at: [ap.invoices@pnl.gov](mailto:ap.invoices@pnl.gov). Invoices may not be submitted more frequently than monthly and shall include all supporting data such as time cards, travel tickets, hotel receipts and receipts for any single travel expenditure exceeding \$75.00. Invoices shall be prepared substantially in accordance with the forms listed at [www.pnl.gov/contracts/documents/invoices.asp](http://www.pnl.gov/contracts/documents/invoices.asp).

If electronic transmittal is not possible, one invoice and all supporting documentation will be acceptable via mail:

Battelle, Pacific Northwest Division  
ATTN: ACCOUNTS PAYABLE  
P.O. Box 999, MSIN: J1-04  
Richland, WA 99352  
United States

6. Key Personnel: The following named personnel shall be assigned to the performance of the work and shall not be replaced without the prior written approval of the Battelle Contract Representative.

TBD

7. Contractor Acquired Property: All property, the cost of which the Contractor is entitled to be reimbursed as a direct item of cost, shall be reported upon receipt in accordance with the Property Forms listed at [www.pnl.gov/contracts/documents/property.stm](http://www.pnl.gov/contracts/documents/property.stm).
8. Government-Furnished Property: The following Government property shall be delivered to the contractor:

<u>Item</u>	<u>ID Number</u>	<u>Date of Delivery</u>
TBD	0	01/01/01

9. Approval of Subcontracts: Subcontracts of \$10,000 or more require the prior written approval of the Battelle Contract Representative.
10. Insurance: Minimum insurance requirements are (A) comprehensive general liability, broad form, \$5,000,000 combined single limit each occurrence for bodily injury and property damage; (B) comprehensive automobile liability (owned and non-owned), \$1,000,000 per person, \$1,000,000 per occurrence for bodily injury, and \$1,000,000 per occurrence for property damage; (C) statutory coverage Workers' Compensation; (D) pollution Liability, \$5,000,000 per occurrence; (E) environmental automobile liability (owned and non-owned), \$5,000,000.
11. Technical Administrator: All technical questions should be directed to the Technical Administrator, TBD, at (000) 000-0000.
12. Contract Administrator: All contractual questions should be directed to the Contract Administrator, TBD, at (000) 000-0000.
13. Environment, Safety, and Health Requirements: Reference General Provision entitled Environment, Safety, and Health Requirements (cl 3113a) for the requirements of onsite work and the requirement for a Preliminary Hazard Assessment (PHA)

14. Software Escrow Account: Contractor shall be required to deposit the source code of the software used in performance under this contract into an account held by a third party escrow agent.
15. Service Contract Act: The Service Contract Act of 1965, as amended (41 U.S.C. 351, et. Seq.) will be used in any contract resulting from this solicitation. See the additional clauses section of the General Provisions (Attachment C). The wage determination has been requested from the U.S. Department of Labor for the following: Data Entry, Laborer.
16. Alterations to General Provisions: The General Provisions specified below are modified as follows:  
**TBD**, as needed
17. Contract Contents: In addition to this Schedule, the contract consists of:
- Statement of Work, dated \_\_\_\_\_, Attachment A
  - Quality Assurance Provisions \_\_\_\_\_, Attachment B
  - General Provisions, dated \_\_\_\_\_, Attachment C
  - Pricing Form, dated \_\_\_\_\_, Attachment D
  - Discount Form for Chemical Subcontractors, dated \_\_\_\_\_, Attachment E
  - Representations and Certifications, dated \_\_\_\_\_, and hereby incorporated by reference
  - Wage Determination No. 2005-2569 (Rev 5) and 1996-0223 (Rev 23), Attachment F.
18. Integration: The Agreement contains the entire understanding between the parties, and there are no understandings or representations not set forth or incorporated by reference herein. No subsequent modifications of this agreement shall be of any force or effect unless in writing signed by the party claimed to be bound thereby. No communications, written or oral, by other than a Battelle Contract Representative shall be effective to modify or otherwise affect the provisions of the agreement.

### III. SIGNATURES

BATTELLE MEMORIAL INSTITUTE  
PACIFIC NORTHWEST DIVISION

SUPPLIER

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

**General Provisions  
Attachment C  
5/9/2008**

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## GENERAL PROVISIONS – FIXED PRICE CONTRACT

### DEFINITIONS (cl 301 – Apr 2000)

- A. The terms “Battelle,” “Pacific Northwest National Laboratory,” “PNNL,” and “Laboratory” mean Battelle Memorial Institute, Pacific Northwest Division.
- B. The term “Government” means the Government of the United States of America.
- C. The term “DOE” means the U.S. Department of Energy.
- D. “Battelle Contracts Representative” means an employee of Battelle Memorial Institute, Pacific Northwest Division, acting within the limits of a written authorization to execute legally binding commitments on behalf of Battelle.
- E. Except as otherwise provided in this contract, the term “Subcontracts” includes purchase orders under this contract.

### ORDER OF PRECEDENCE (cl 309 - Oct 1997)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

- A. The Schedule (excluding the specifications).
- B. Representations and other instructions.
- C. Contract clauses.
- D. Other documents, exhibits, and attachments.
- E. The Statement of Work.

### PATENT INDEMNITY (cl 367a - Apr 1984)

- A. The Contractor shall indemnify Battelle and the Government and their officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work.
- B. This indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by Battelle of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to—
  - 1. An infringement resulting from compliance with specific written instructions of the Battelle Contracts Representative directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor;
  - 2. An infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance; or
  - 3. A claimed infringement that is unreasonably settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

### PROHIBITION OF SEGREGATED FACILITIES (cl 319 - Feb 1999)

- A. “Segregated facilities,” as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

- B. The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.
- C. The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

**ASSIGNMENT** (cl 357 - Jan 2003)

Battelle may assign this contract to the U.S. Department of Energy (DOE) or a designee of DOE. Upon receipt by the Contractor of written notice that DOE or its designee has been assigned this contract, Battelle shall be relieved of all responsibility hereunder, and the Contractor shall thereafter look solely to the assignee for performance of Battelle's obligations. The Contractor shall not assign this contract or any interest therein, nor claims thereunder without the prior written consent of Battelle or Battelle's assignee. Any assignment, by operation of law or otherwise, without prior written consent of Battelle or Battelle's assignee shall be void.

**DISPUTES** (cl 331 - Oct 1979)

Except as otherwise provided or agreed any dispute relating to this contract which is not disposed of by agreement shall be decided by litigation in a court of competent jurisdiction upon filing of a legal action by the aggrieved party. It is further agreed by the Contractor that litigation shall be limited and confined exclusively to the appropriate state or Federal court located within the State of Washington. Determination of any substantive issue of law shall be based upon application of Federal law. During the pendency of any dispute, the Contractor shall proceed diligently with the performance of the contract and in accordance with the direction of Battelle.

**PERMITS AND RESPONSIBILITIES** (cl 358 - Nov 1991)

The Contractor is an independent contractor, not an agent or employee of Battelle. The Contractor shall, without additional expense to Battelle or the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence.

**COVENANT AGAINST CONTINGENT FEES** (cl 339 - Apr 1984)

- A. The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, Battelle shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.
- B. "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.  
  
"Bona fide employee," as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.  
  
"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.  
  
"Improper influence," as used in this clause, means any influence that induces or tends to induce a Battelle employee or officer to give consideration or to act regarding a contract on any basis other than the merits of the matter.

**BUY AMERICAN ACT-SUPPLIES** (cl. 341 - June 2003)

- A. *Definitions.* As used in this clause—

"Component" means an article, material, or supply incorporated directly into an end product.

"Cost of components" means—

1. For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued);  
or
2. For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in Paragraph 1 of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

"Domestic end product" means—

1. An unmanufactured end product mined or produced in the United States; or
2. An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

"End product" means those articles, materials, and supplies to be acquired under the contract for public use.

"Foreign end product" means an end product other than a domestic end product.

"United States" means the 50 States, the District of Columbia, and outlying areas.

- B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.

- C. Offerors may obtain from the Battelle Contracts Representative a list of foreign articles that Battelle will treat as domestic for this contract.
- D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the solicitation entitled "Buy American Act Certificate."

**USE OF PACIFIC NORTHWEST NATIONAL LABORATORY OR BATTELLE NAME** (cl 374 – June 2006)

The Contractor agrees not to use Pacific Northwest National Laboratory's or Battelle's name or identifying characteristics for advertising, sales promotion, or other publicity purposes without the prior written consent of Battelle. This clause shall survive the termination or expiration of this contract.

**AUTHORIZATION AND CONSENT** (cl 373 - July 1995)

- A. The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this contract or any subcontract at any tier.
- B. The Contractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed \$100,000); however, omission of this clause from any subcontract, including those at or below \$100,000, does not affect this authorization and consent.

**AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES** (cl 321 - June 1998)

- A. General.
  - 1. Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as—
    - a. Recruitment, advertising, and job application procedures;
    - b. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
    - c. Rates of pay or any other form of compensation and changes in compensation;
    - d. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
    - e. Leaves of absence, sick leave, or any other leave;
    - f. Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
    - g. Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
    - h. Activities sponsored by the Contractor, including social or recreational programs; and
    - i. Any other term, condition, or privilege of employment.
  - 2. The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.
- B. Postings.
  - 1. The Contractor agrees to post employment notices stating-
    - a. The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and
    - b. The rights of applicants and employees.
  - 2. These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.
  - 3. The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.
- C. Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.



- D. Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

**NOTICE OF LABOR DISPUTES** (cl 359 - Feb 1997)

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Battelle Contracts Representative.

**WORKERS' COMPENSATION** (cl 323 - Nov 1983)

The Contractor shall comply with State Industrial Insurance or Workers' Compensation and Unemployment Compensation Laws of any state in which work is performed, to the extent such laws are applicable.

**CONTRACT ADMINISTRATION** (cl 384 - Jan 1986)

- A. The Contractor's progress and compliance with the technical requirements of this contract may be monitored for Battelle by a Technical Administrator. The name of the Technical Administrator, if one is designated, will be furnished the Contractor by the Battelle Contracts Representative.
- B. The Battelle Technical Administrator is authorized to receive information, conduct inspections of work in process and witness Contractor tests. He/she has no authority to: change or waive any provision of this contract, including but not limited to statements of work, drawings, specifications and standards, whether attached or incorporated by reference; provide interpretations of any provision or requirement of this contract; direct, advise, or recommend any particular course of conduct on the part of the Contractor; or create any legally binding commitment on behalf of Battelle.
- C. The Contractor is solely responsible for strict compliance with all requirements of this contract. No notice, communication or representation in any form or from any person other than a Battelle Contracts Representative shall be effective to relieve the Contractor of such obligation or to stop Battelle from enforcing the contract exactly according to its written terms.

**CONVICT LABOR** (cl 390 - Aug 1996)

The Contractor agrees not to employ in the performance of this contract any person undergoing a sentence of imprisonment which has been imposed by any court of a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands. This limitation, however, shall not prohibit the employment by the Contractor in the performance of this contract of persons on parole or probation to work at paid employment during the term of their sentence or persons who have been pardoned or who have served their terms. Nor shall it prohibit the employment by the Contractor in the performance of this contract of persons confined for violation of the laws of any of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if—

- A. 1. The worker is paid or is in an approved work training program on a voluntary basis;
2. Representatives of local union central bodies or similar labor union organizations have been consulted;
3. Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services; and
4. The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and
- B. The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

**EQUAL OPPORTUNITY** (cl 317 - Apr 2002)

- A. Definition. "United States," as used in this clause, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.
- B. If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with paragraphs B.1 through B.11 of this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.
1. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.
2. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to—
- a. Employment;



- b. Upgrading;
  - c. Demotion;
  - d. Transfer;
  - e. Recruitment or recruitment advertising;
  - f. Layoff or termination;
  - g. Rates of pay or other forms of compensation; and
  - h. Selection for training, including apprenticeship.
3. The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Battelle Contracts Representative that explain this clause.
  4. The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
  5. The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
  6. The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
  7. The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.
  8. The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.
  9. If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.
  10. The Contractor shall include the terms and conditions of paragraphs (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.
  11. The Contractor shall take such action with respect to any subcontract or purchase order as the Battelle Contracts Representative may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request Battelle to enter into the litigation to protect the interests of the United States.
- C. Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

**RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (cl 3107 - July 2000)**

- A. The Contractor shall not acquire, for use in the performance of this contract, any supplies or services originating from sources within, or that were located in or transported from or through, countries whose products are banned from importation into the United States under regulations of the Office of Foreign Assets Control, Department of the Treasury. Those countries are Cuba, Iran, Iraq, Libya, North Korea, Sudan, the territory of Afghanistan controlled by the Taliban, and Serbia (excluding the territory of Kosovo).
- B. The Contractor shall not acquire for use in the performance of this contract any supplies or services from entities controlled by the government of Iraq.
- C. The Contractor shall insert this clause, including this paragraph C., in all subcontracts.

**SUBCONTRACTS FOR COMMERCIAL ITEMS (cl 364 - Sep 2006)**

- A. *Definitions.* As used in this clause—  
"Commercial item" has the meaning contained in the clause at 52.202-1, Definitions.  
"Subcontract" includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or Subcontractor at any tier.

- B. To the maximum extent practicable, the Contractor shall incorporate, and require its Subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.
- C. 1. The Contractor shall insert the following FAR clauses in subcontracts for commercial items:
- a. 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$550,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
  - b. 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).
  - c. 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sep 2006) (38 U.S.C. 4212(a));
  - d. 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).
  - e. 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201). Flow down as required in accordance with paragraph (g) of FAR clause 52.222-39)
  - f. 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. App. 1241 and 10 U.S.C. 2631) (flow down required in accordance with paragraph (d) of FAR clause 52.247-64).
2. While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.
- D. The Contractor shall include the terms of this clause, including this Paragraph D, in subcontracts awarded under this contract.

#### ACCOUNTS, RECORDS, AND INSPECTION (cl 345 – Dec 2000)

- A. Accounts. The contractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting: all allowable costs incurred; collections accruing to the contractor in connection with the work under this contract, other applicable credits, negotiated fixed amounts, and fee accruals under this contract; and the receipt, use, and disposition of all Government property coming into the possession of the contractor under this contract. The system of accounts employed by the contractor shall be satisfactory to Battelle and in accordance with generally accepted accounting principles consistently applied.
- B. Inspection and audit of accounts and records. All books of account and records relating to this contract shall be subject to inspection and audit by Battelle or the Department of Energy or its designees in accordance with the provisions of Clause "Access To and Ownership of Records," at all reasonable times, before and during the period of retention provided for in Paragraph D of this clause, and the contractor shall afford Battelle, DOE, or its designee proper facilities for such inspection and audit.
- C. Audit of subcontractors' records. The contractor also agrees, with respect to any subcontracts (including fixed-price or unit-price subcontracts or purchase orders) where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor of any tier, to either conduct an audit of the subcontractor's costs or arrange for such an audit to be performed by the cognizant government audit agency through the contracting officer.
- D. Disposition of records. Except as agreed upon by Battelle and the contractor, all financial and cost reports, books of account and supporting documents, system files, data bases, and other data evidencing costs allowable, collections accruing to the contractor in connection with the work under this contract, other applicable credits, and fee accruals under this contract, shall be the property of the Government, and shall be delivered to Battelle or otherwise disposed of by the contractor either as the Battelle Contracts Representative may from time to time direct during the progress of the work or, in any event, as the Battelle Contracts Representative shall direct upon completion or termination of this contract and final audit of accounts hereunder. Except as otherwise provided in this contract, including provisions of Clause "Access To and Ownership of Records," all other records in the possession of the contractor relating to this contract shall be preserved by the contractor for a period of three years after final payment under this contract or otherwise disposed of in such manner as may be agreed upon by the Government and the contractor.
- E. Reports. The contractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this contract as the contracting officer may from time to time require.
- F. Inspections. Battelle or its designee shall have the right to inspect the work and activities of the contractor under this contract at such time and in such manner as it shall deem appropriate.
- G. Subcontracts. The contractor further agrees to require the inclusion of provisions similar to those in Paragraphs A through G and Paragraph H of this clause in all subcontracts (including fixed-price or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.
- H. Comptroller General.
- 1. The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.
  - 2. This paragraph may not be construed to require the contractor or subcontractor to create or maintain any record that the contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
  - 3. Nothing in this contract shall be deemed to preclude an audit by the General Accounting Office of any transaction under this contract.

- I. Internal audit (applicable to cost-reimbursement contracts with an estimated cost exceeding \$5 million and expected to run for more than 2 years). The contractor agrees to conduct an internal audit and examination satisfactory to Battelle of the records, operations, expenses, and the transactions with respect to costs claimed to be allowable under this contract annually and at such other times as may be mutually agreed upon. The results of such audit, including the working papers, shall be submitted or made available to the Battelle Contracts Representative. The contractor shall include this Paragraph I in all cost-reimbursement subcontracts with an estimated cost exceeding \$5 million and expected to run for more than 2 years, and any other cost-reimbursement subcontract determined by the Battelle Contracts Representative.

**PAYMENTS - FIXED PRICE** (cl 350 – Aug 1984)

Battelle shall pay the Contractor upon submission of a proper invoice the prices stipulated in this contract for supplies delivered or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified, payment shall be made upon acceptance of any portion of the supplies delivered or services rendered for which a price is separately stated in the contract. Payment date and discount period, if any, shall be calculated from the date of acceptance or receipt of a proper invoice whichever is later.

**CHANGES – FIXED PRICE** (cl. 346b – Sep 2007)

- A. The Battelle Contracts Representative may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:
1. Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for Battelle in accordance with the drawings, designs, or specifications.
  2. Method of shipment or packing.
  3. Place of delivery.
- B. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Battelle Contracts Representative shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.
- C. The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Battelle Contracts Representative decides that the facts justify it, the Battelle Contracts Representative may receive and act upon a proposal submitted before final payment of the contract.
- D. If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Battelle Contracts Representative shall have the right to prescribe the manner of the disposition of the property.
- E. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

**FEDERAL, STATE, AND LOCAL TAXES – FIXED PRICE** (cl 354b - Apr 1984)

Except as may be otherwise provided in this contract, the contract price includes all applicable Federal, State, and local taxes and duties. (Washington State Contractors Note: The supplies/services specified herein are deemed to be for resale to DOE and are exempt from Washington Retail Sales Tax.)

**STOP-WORK ORDER – FIXED PRICE** (cl 380b - Aug 1989)

- A. The Battelle Contracts Representative may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Battelle Contracts Representative shall either—
1. Cancel the stop-work order; or
  2. Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.
- B. If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Battelle Contracts Representative shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if—
1. The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
  2. The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Battelle Contracts Representative may receive and act upon the claim submitted at any time before final payment under this contract.
- C. If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Battelle Contracts Representative shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

- D. If a stop-work order is not canceled and the work covered by the order is terminated for default, the Battelle Contracts Representative shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

### CLAUSES FOR CONTRACTS EXCEEDING \$25,000

#### EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (cl. 320 - Dec 2001)

A. Definitions. As used in this clause—

“All employment openings” means all positions except executive and top management, those positions that will be filled from within the Contractor’s organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days duration, and part-time employment.

“Executive and top management” means any employee—

1. Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;
2. Who customarily and regularly directs the work of two or more other employees;
3. Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight;
4. Who customarily and regularly exercises discretionary powers; and
5. Who does not devote more than 20 percent or, in the case of an employee of a retail or service establishment, who does not devote more than 40 percent of total hours of work in the work week to activities that are not directly and closely related to the performance of the work described in paragraphs 1. through 4. of this definition. This paragraph 5. does not apply in the case of an employee who is in sole charge of an establishment or a physically separated branch establishment, or who owns at least a 20 percent interest in the enterprise in which the individual is employed.

“Other eligible veteran” means any other veteran who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.

“Positions that will be filled from within the Contractor’s organization” means employment openings for which the Contractor will give no consideration to persons outside the Contractor’s organization (including any affiliates, subsidiaries, and parent companies) and includes any openings the Contractor proposes to fill from regularly established “recall” lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

“Qualified special disabled veteran” means a special disabled veteran who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such veteran holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.

“Special disabled veteran” means—

1. A veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability—
  - a. Rated at 30 percent or more; or
  - b. Rated at 10 or 20 percent in the case of a veteran who has been determined under 38 U.S.C. 3106 to have a serious employment handicap (i.e., a significant impairment of the veteran’s ability to prepare for, obtain, or retain employment consistent with the veteran’s abilities, aptitudes, and interests); or
2. A person who was discharged or released from active duty because of a service-connected disability.

“Veteran of the Vietnam era” means a person who-

1. Served on active duty for a period of more than 180 days and was discharged or released from active duty with other than a dishonorable discharge, if any part of such active duty occurred—
  - a. In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or
  - b. Between August 5, 1964, and May 7, 1975, in all other cases; or
2. Was discharged or released from active duty for a service-connected disability if any part of the active duty was performed—
  - a. In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or
  - b. Between August 5, 1964, and May 7, 1975, in all other cases.

B. General.

1. The Contractor shall not discriminate against the individual because the individual is a special disabled veteran, a veteran of the Vietnam era, or other eligible veteran, regarding any position for which the employee or applicant for employment is qualified. The Contractor shall take

affirmative action to employ, advance in employment, and otherwise treat qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans without discrimination based upon their disability or veterans' status in all employment practices such as—

- a. Recruitment, advertising, and job application procedures;
  - b. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
  - c. Rate of pay or any other form of compensation and changes in compensation;
  - d. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
  - e. Leaves of absence, sick leave, or any other leave;
  - f. Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
  - g. Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
  - h. Activities sponsored by the Contractor including social or recreational programs; and
  - i. Any other term, condition, or privilege of employment.
2. The Contractor shall comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended (38 U.S.C. 4211 and 4212).

C. Listing openings.

1. The Contractor shall immediately list all employment openings that exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract, and including those occurring at an establishment of the Contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local public employment service office of the State wherein the opening occurs. Listing employment openings with the U.S. Department of Labor's America's Job Bank shall satisfy the requirement to list jobs with the local employment service office.
2. The Contractor shall make the listing of employment openings with the local employment service office at least concurrently with using any other recruitment source or effort and shall involve the normal obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing of employment openings does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.
3. Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State public employment agency in each State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State agency, it need not advise the State agency of subsequent contracts. The Contractor may advise the State agency when it is no longer bound by this contract clause.

D. Applicability. This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands of the United States, and Wake Island.

E. Postings.

1. The Contractor shall post employment notices in conspicuous places that are available to employees and applicants for employment.
2. The employment notices shall—
  - a. State the rights of applicants and employees as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are special disabled veterans, veterans of the Vietnam era, and other eligible veterans; and
  - b. Be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary of Labor), and provided by or through the Battelle Contracts Representative.
3. The Contractor shall ensure that applicants or employees who are special disabled veterans are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled veteran, or may lower the posted notice so that it can be read by a person in a wheelchair).
4. The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement, or other contract understanding, that the Contractor is bound by the terms of the Act and is committed to take affirmative action to employ, and advance in employment, qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans.

F. Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

G. Subcontracts. The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$25,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Deputy Assistant Secretary of Labor to enforce the terms, including action for noncompliance.

**EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS** (cl 3102 - Dec 2001)

- A. Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on—
  - 1. The number of special disabled veterans, the number of veterans of the Vietnam era, and other eligible veterans in the workforce of the Contractor by job category and hiring location; and
  - 2. The total number of new employees hired during the period covered by the report, and of the total, the number of special disabled veterans, the number of veterans of the Vietnam era, and the number of other eligible veterans; and
  - 3. The maximum number and the minimum number of employees of the Contractor during the period covered by the report.
- B. The Contractor shall report the above items by completing the Form VETS-100, entitled “Federal Contractor Veterans’ Employment Report (VETS-100 Report)”.
- C. The Contractor shall submit VETS-100 Reports no later than September 30 of each year beginning September 30, 1988.
- D. The employment activity report required by Paragraph A.2 of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by Paragraph A.1 of this clause. Contractors may select an ending date—
  - 1. As of the end of any pay period between July 1 and August 31 of the year the report is due; or
  - 2. As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).
- E. The Contractor shall base the count of veterans reported according to Paragraph A of this clause on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all special disabled veterans, veterans of the Vietnam era, and other eligible veterans who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that—
  - 1. The information is voluntarily provided;
  - 2. The information will be kept confidential;
  - 3. Disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and
  - 4. The information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.
- F. The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$25,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

**CLAUSES FOR CONTRACTS EXCEEDING \$100K**

**UTILIZATION OF SMALL BUSINESS CONCERNS** (cl 311 / May 2004)

- A. It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.
- B. The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor’s compliance with this clause.
- C. Definitions. As used in this contract-
  - “HUBZone small business concern” means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.
  - “Service-disabled veteran-owned small business concern”-
    - 1. Means a small business concern—
      - a. Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and
      - b. The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.
    - 2. Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).



“Small business concern” means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

“Small disadvantaged business concern” means a small business concern that represents, as part of its offer that-

1. It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, Subpart B;
2. No material change in disadvantaged ownership and control has occurred since its certification;
3. Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and
4. It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net).

“Veteran-owned small business concern” means a small business concern—

1. Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and
2. The management and daily business operations of which are controlled by one or more veterans.

“Women-owned small business concern” means a small business concern—

1. That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
2. Whose management and daily business operations are controlled by one or more women.

- D. Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a HUBZone small business concern, a small disadvantaged business concern, or a women-owned small business concern.

#### **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION** (cl 316 - Sept 2000)

- A. Overtime requirements. No Contractor or subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.300) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.
- B. Violation; liability for unpaid wages; liquidated damages. The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph A. of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The liquidated damages will be assessed at the rate of \$10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards Act.
- C. Withholding for unpaid wages and liquidated damages. The Battelle Contracts Representative will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, Battelle will withhold payments from other Federal or federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards Act.
- D. Payrolls and basic records.
1. The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.
  2. The Contractor and its subcontractors shall allow authorized representatives of Battelle, the Department of Energy, or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph D.1. of this clause. The Contractor or subcontractor also shall allow authorized representatives of Battelle, the Department of Energy, or the Department of Labor to interview employees in the workplace during working hours.
- E. Subcontracts. The Contractor shall insert the provisions set forth in paragraphs A. through D. of this clause in subcontracts exceeding \$100,000 and require subcontractors to include these provisions in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs A. through D. of this clause.

#### **NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT** (cl 368 – Aug 2002)

- A. The Contractor shall report to the Battelle Contracts Representative promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

- B. If any person files a claim or suit against Battelle or the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government or Battelle, when requested by the Battelle Contracts Representative, all evidence and information in possession of the Contractor pertaining to such suit or claim. Except where the Contractor has agreed to indemnify the Government or Battelle, the Contractor shall furnish such evidence and information at the expense of Battelle.
- C. The Contractor agrees to include, and require inclusion of, this clause suitably modified to identify the parties, in all subcontracts at any tier expected to exceed \$100,000.

**INTEREST** (cl 377 - Jun 1996)

- A. Except as otherwise provided in this contract under a Price Reduction for Defective Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to Battelle under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.
- B. Amounts shall be due at the earliest of the following dates:
  - 1. The date fixed under this contract.
  - 2. The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.
  - 3. The date Battelle transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.
  - 4. If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.
- C. The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

**RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT** (cl 3108 - Jul 1995)

- A. Except as provided in Paragraph B. of this clause, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.
- B. The prohibition in Paragraph A. of this clause does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.
- C. The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract which exceed \$100,000.

**ANTI-KICKBACK PROCEDURES** (cl 398 - Jul 1995)

**A. Definitions**

“Kickback,” as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to Battelle, Battelle employees, subcontractor, or subcontractor employees for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

“Person,” as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

“Prime contract,” as used in this clause, means a contract or contractual action entered into by Battelle for the purpose of obtaining supplies, materials, equipment, or services of any kind.

“Prime Contractor,” as used in this clause, means a person who has entered into a prime contract with Battelle.

“Prime Contractor employee,” as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

“Subcontract,” as used in this clause, means a contract or contractual action entered into by Battelle or a subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

“Subcontractor,” as used in this clause, (1) means any person, other than Battelle, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to Battelle or a higher tier subcontractor.



“Subcontractor employee,” as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

- B. **The Anti-Kickback Act of 1986** (41 U.S.C. 51-58) (the Act), prohibits any person from -
  - 1. Providing or attempting to provide or offering to provide any kickback;
  - 2. Soliciting, accepting, or attempting to accept any kickback; or
  - 3. Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime contractor to the United States or in the contract price charged by a subcontractor to a prime contractor or higher tier subcontractor.
- C.
  - 1. When the Contractor has reasonable grounds to believe that a violation described in paragraph B of this clause may have occurred, the Contractor shall promptly report to the Battelle Contracts Representative in writing the possible violation. Such reports shall be made to the inspector general of Battelle, and Battelle shall forward such reports to DOE, or the Department of Justice.
  - 2. The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph B of this clause.
  - 3. The Battelle Contracts Representative may (i) offset the amount of kickback against any monies owed by Battelle under the prime contract and/or (ii) direct that the prime Contractor withhold from sums owed a subcontractor under the prime contract, the amount of the kickback. The Battelle Contracts Representative may order that monies withheld under subdivision C.3.(ii) of this clause be paid over to DOE unless Battelle has already offset those monies under subdivision C.3.(i) of this clause. In either case, the Prime Contractor shall notify the Battelle Contracts Representative when the monies are withheld.
  - 4. The Contractor agrees to incorporate the substance of this clause, including this subparagraph C.4, in all subcontracts under this contract which exceed \$100,000.

**PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS** (cl 336 - Apr 2003)

- A. Except as provided in Paragraph E of this clause, the Cargo Preference Act of 1954 (46 U.S.C. Appx 1241(b)) requires that Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are—
  - 1. Acquired for a U.S. Government agency account;
  - 2. Furnished to, or for the account of, any foreign nation without provision for reimbursement;
  - 3. Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or
  - 4. Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.
- B. The Contractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this contract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in Paragraph A of this clause, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.
- C.
  - 1. The Contractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both—
    - a. The Battelle Contracts Representative, and
    - b. The ... Office of Cargo Preference  
Maritime Administration (MAR-590)  
400 Seventh Street, S.W.  
Washington, DC 20590

.....Subcontractor bills of lading shall be submitted through the Battelle Contracts Representative.

- 2. The Contractor shall furnish these bill of lading copies (a) within 20 working days of the date of loading for shipments originating in the United States, or (b) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:
  - a. Sponsoring U.S. Government agency.
  - b. Name of vessel.
  - c. Vessel flag of registry.
  - d. Date of loading.
  - e. Port of loading.
  - f. Port of final discharge.
  - g. Description of commodity.

- h. Gross weight in pounds and cubic feet if available.
  - i. Total ocean freight revenue in U.S. dollars.
- D. The Contractor shall insert the substance of this clause, including this Paragraph D, in all subcontracts or purchase orders under this contract, except those described in Paragraph E.4.
- E. The requirement in Paragraph A does not apply to—
- 1. Cargoes carried in vessels of the Panama Canal Commission or as required or authorized by law or treaty;
  - 2. Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353);
  - 3. Shipments of classified supplies when the classification prohibits the use of non-Government vessels; and
  - 4. Subcontracts or purchase orders for the acquisition of commercial items unless this contract is (a) a contract or agreement for ocean transportation services; or (b) a construction contract; or if the supplies being transported are (a) Items the Contractor is reselling or distributing to the Government without adding value. (Generally, the Contractor does not add value to the items when it subcontracts items for f.o.b. destination shipment); or (b) Shipped in direct support of U.S. military—
    - a. Contingency operations;
    - b. Exercises; or
    - c. Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.
- F. Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the:

Office of Costs and Rates  
Maritime Administration  
400 Seventh Street, SW  
Washington DC 20590  
Phone: (202) 366-4610.

#### **NOTICE OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES** (cl 343 - July 2006)

In accordance with Executive Order 13201 (E.O. 13201), Contractor shall post in a conspicuous place for their employees a copy of the notice (Beck Poster) available at U.S. Department of Labor website [http://www.dol.gov/esa/regs/compliance/olms/EO13201\\_PosterWithNLRB.pdf](http://www.dol.gov/esa/regs/compliance/olms/EO13201_PosterWithNLRB.pdf). This poster advises employees that they have certain rights related to union membership and use of union dues and fees under federal law.

This clause applies to all contracts equal to or exceeding \$100,000. Contractors are exempt from this requirement under any of the following conditions:

- Contractor has fewer than 15 employees;
  - Contractor establishments or construction work sites where no union has been formally recognized by the prime contractor or certified as the exclusive bargaining representative of the prime contractor's employees;
  - Contractor establishments where state law forbids enforcement of union-security clauses ("right-to-work" states); or
  - Work performed outside the United States that does not involve the recruitment or employment of workers within the United States.
- A. More information about this requirement is available from the U.S. Department of Labor at <http://www.dol.gov/compliance/laws/comp-eo13201.htm> or at 1-866-487-2365.

#### **CLAUSES FOR CONTRACTS EXCEEDING \$500K**

##### **SUBCONTRACTOR COST OR PRICING DATA** (cl 353a - Oct 1997)

- A. Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.
- B. The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.
- C. In each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4, when entered into, the Contractor shall insert either—
- 1. The substance of this clause, including this Paragraph C, if Paragraph A of this clause requires submission of cost or pricing data for the subcontract; or
  - 2. The substance of the clause Subcontractor Cost or Pricing Data-Modifications.

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**SUBCONTRACTOR COST OR PRICING DATA - MODIFICATIONS** (cl 353am - Oct 1997)

- A. The requirements of Paragraphs B and C of this clause shall—
  - 1. Become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4; and
  - 2. Be limited to such modifications.
- B. Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.
- C. The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under Paragraph B of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.
- D. The Contractor shall insert the substance of this clause, including this paragraph D, in each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4 on the date of agreement on price or the date of award, whichever is later.

**PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA** (cl 353c - Oct 1997)

- A. If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because—
    - 1. The Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;
    - 2. A subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or
    - 3. Any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.
  - B. Any reduction in the contract price under Paragraph A of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which—
    - 1. The actual subcontract; or
    - 2. The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.
  - C. 1. If the Battelle Contracts Representative determines under Paragraph A of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:
    - a. The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.
    - b. The Battelle Contracts Representative should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Battelle Contracts Representative.
    - c. The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.
    - d. The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.
  - 2. a. Except as prohibited by subdivision C.2.b of this clause, an offset in an amount determined appropriate by the Battelle Contracts Representative based upon the facts shall be allowed against the amount of a contract price reduction if—
    - i. The Contractor certifies to the Battelle Contracts Representative that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and
    - ii. The Contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.
  - b. An offset shall not be allowed if—
    - i. The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or
    - ii. Battelle proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.
- D. If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid—

1. Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date Battelle is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
2. A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

**PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA - MODIFICATIONS** (*cl 353d - Oct 1997*)

- A. This clause shall become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, except that this clause does not apply to any modification if an exception under FAR 15.403-1 applies.
  - B. If any price, including profit or fee, negotiated in connection with any modification under this clause, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under Paragraph A of this clause.
  - C. Any reduction in the contract price under Paragraph B of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which—
    1. The actual subcontract; or
    2. The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.
  - D. 1. If the Battelle Contracts Representative determines under Paragraph B of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:
    - a. The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.
    - b. The Battelle Contracts Representative should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Battelle Contracts Representative.
    - c. The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.
    - d. The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.2. a. Except as prohibited by Paragraph D.2.b of this clause, an offset in an amount determined appropriate by the Battelle Contracts Representative based upon the facts shall be allowed against the amount of a contract price reduction if—
    - i. The Contractor certifies to the Battelle Contracts Representative that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and
    - ii. The Contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.b. An offset shall not be allowed if—
    - i. The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or
    - ii. Battelle proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.
- E. If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay Battelle at the time such overpayment is repaid—
  1. Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date Battelle is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
  2. A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

**SMALL BUSINESS SUBCONTRACTING PLAN** (*CL 312 - SEP 2006*)

- A. This clause does not apply to small business concerns.
- B. *Definitions.* As used in this clause—

“Commercial item” means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

“Commercial plan” means a subcontracting plan (including goals) that covers the offeror’s fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (*e.g.*, division, plant, or product line).

“Individual contract plan” means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror’s planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

“Master plan” means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

“Subcontract” means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

- C. The offeror, upon request by the Battelle Contracts Representative, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Battelle Contracts Representative. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.
- D. The offeror’s subcontracting plan shall include the following:
1. Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.
  2. A statement of—
    - a. Total dollars planned to be subcontracted for an individual contract plan; or the offeror’s total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;
    - b. Total dollars planned to be subcontracted to small business concerns;
    - c. Total dollars planned to be subcontracted to veteran-owned small business concerns;
    - d. Total dollars planned to be subcontracted to service-disabled veteran-owned small business;
    - e. Total dollars planned to be subcontracted to HUBZone small business concerns;
    - f. Total dollars planned to be subcontracted to small disadvantaged business concerns; and
    - g. Total dollars planned to be subcontracted to women-owned small business concerns.
  3. A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to—
    - a. Small business concerns;
    - b. Veteran-owned small business concerns;
    - c. Service-disabled veteran-owned small business concerns;
    - d. HUBZone small business concerns;
    - e. Small disadvantaged business concerns; and
    - f. Women-owned small business concerns.
  4. A description of the method used to develop the subcontracting goals in paragraph D.1 of this clause.
  5. A description of the method used to identify potential sources for solicitation purposes (*e.g.*, existing company source lists, the Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration (SBA), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in PRO-Net as an accurate representation of a concern’s size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of PRO-Net as its source list does not relieve a firm of its responsibilities (*e.g.*, outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.
  6. A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—

- a. Small business concerns;
  - b. Veteran-owned small business concerns;
  - c. Service-disabled veteran-owned small business concerns;
  - d. HUBZone small business concerns;
  - e. Small disadvantaged business concerns; and
  - f. Women-owned small business concerns.
7. The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.
8. A description of the efforts the offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.
9. Assurances that the offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$550,000 (\$1,000,000 for construction of any public facility) to adopt a subcontracting plan that complies with the requirements of this clause.
10. Assurances that the offeror will—
- a. Cooperate in any studies or surveys as may be required;
  - b. Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;
  - c. Submit electronically through [www.eSRS.gov](http://www.eSRS.gov), their Individual Subcontracting Report (ISR, formerly SF-294) on a semi-annual basis and upon contract completion in accordance with the schedule below:

October 1 through March 31	<u>Due by April 15</u>
April 1 through September 30	<u>Due by October 15</u>
- The Subcontractor shall submit electronically through [www.eSRS.gov](http://www.eSRS.gov), their Summary Subcontracting Report (SSR, formerly SF-295) on an annual basis and upon contract completion due on October 15 and covering the period from subcontract inception through the end of the current fiscal year.
- Final Reports are due 25 days after expiration of contract or current budget period.
- The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions.
- d. Ensure that its subcontractors agree to submit reports as described in Paragraph D.10.c.
11. A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):
- a. Source lists (e.g., PRO-Net), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.
  - b. Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.
  - c. Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating—
    - Whether small business concerns were solicited and, if not, why not;
    - Whether veteran-owned small business concerns were solicited and, if not, why not;
    - Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;
    - Whether HUBZone small business concerns were solicited and, if not, why not;
    - Whether small disadvantaged business concerns were solicited and, if not, why not;
    - Whether women-owned small business concerns were solicited and, if not, why not; and
    - If applicable, the reason award was not made to a small business concern.
  - d. Records of any outreach efforts to contact—



- Trade associations;
  - Business development organizations;
  - Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and
  - Veterans service organizations.
- e. Records of internal guidance and encouragement provided to buyers through—
- Workshops, seminars, training, etc.; and
  - Monitoring performance to evaluate compliance with the program's requirements.
- f. On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.
- E. In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:
1. Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.
  2. Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.
  3. Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.
  4. Confirm that a subcontractor representing itself as a HUBZone small business concern is identified as a certified HUBZone small business concern by accessing the Central Contractor Registration (CCR) database or by contacting SBA.
  5. Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.
- F. A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided—
1. The master plan has been approved;
  2. The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and
  3. Goals and any deviations from the master plan deemed necessary by the Battelle Contracts Representative to satisfy the requirements of this contract are set forth in the individual subcontracting plan.
- G. A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Commercial plans are also preferred for subcontractors that provide commercial items under a prime contract, whether or not the prime contractor is supplying a commercial item.
- H. Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.
- I. The failure of the Contractor or subcontractor to comply in good faith with—
1. The clause of this contract entitled "Utilization Of Small Business Concerns;" or
  2. An approved plan required by this clause, shall be a material breach of the contract.
- J. The Contractor shall submit the following reports:
1. *Individual Subcontracting Report (ISR, formerly Standard Form 294)*. This report shall be submitted electronically through [www.eSRS.gov](http://www.eSRS.gov) to the Battelle Contracts Representative semiannually and at contract completion. The report covers subcontract award data related to this contract. This report is not required for commercial plans.
  2. *Summary Subcontract Report(SSR, formerly )*. This report shall be submitted electronically through [www.eSRS.gov](http://www.eSRS.gov). This report encompasses all of the contracts with the awarding agency. It must be submitted annually for contracts with civilian agencies. If the reporting activity is covered by a commercial plan, the reporting activity must report annually all subcontract awards under that plan. All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a breakout, in the Contractor's format, of subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. For a

commercial plan, the Contractor may obtain from each of its subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.

## ADDITIONAL CLAUSES

### COST ACCOUNTING STANDARDS (cl. 328 - Apr 1998)

- A. If the contract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR Part 9903 are incorporated herein by reference and the Contractor, in connection with this contract, shall—
1. (CAS-covered Contracts Only) By submission of a Disclosure Statement, disclose in writing its cost accounting practices as required by 48 CFR 9903.202-1 through 48 CFR 9903.2025 including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and that contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Battelle Contracts Representative that the Disclosure Statement contains trade secrets, and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.
  2. Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for purposes of any contract or subcontract subject to Cost Accounting Standards (CAS) requirements, the change must be applied prospectively to this contract, and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with Paragraph A.4 or A.5 of this clause, as appropriate.
  3. Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR Part 9904, in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter becomes applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.
  4.
    - a. Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph A.3 above, the Contractor is required to make to Contractor's established cost accounting practices.
    - b. Negotiate with the Battelle Contracts Representative to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph A.4 of this clause; provided, that no agreement may be made under this provision that will increase costs paid by Battelle.
    - c. When the parties agree to a change to a cost accounting practice, other than a change under subparagraph A.4.a. of this clause, negotiate with Battelle an equitable adjustment as provided in the Changes clause of this contract.
  5. Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by Battelle. Such adjustment shall provide for recovery of the increased costs to Battelle together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C 6621) for such period, from the time the payment by Battelle was made to the time the adjustment is effected. In no case shall Battelle recover costs greater than the increased cost to Battelle, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to Battelle.
- B. The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.
- C. The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause and shall require such inclusion in all other subcontracts of any tier, including the obligation to comply with all CAS in effect on the subcontract's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of \$500,000 except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

### ADMINISTRATION OF COST ACCOUNTING STANDARDS (cl 329 - Nov 1999)

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Contractor shall take the steps outlined in paragraphs A. through G. of this clause:

- A. Submit to the Battelle Contracts Representative a description of any cost accounting practice change, the total potential impact of the change on contracts containing a CAS clause, and a general dollar magnitude of the change which identifies the potential shift of costs between CAS-covered contracts by contract type (i.e., firm-fixed-price, incentive, cost-plus-fixed fee, etc.) and other contractor business activity. As related to CAS-covered contracts, the analysis should identify the potential impact on funds of the various Agencies/Departments (i.e., Department of Energy, National Aeronautics and Space Administration, Army, Navy, Air Force, other Department of Defense, other Government) as follows:
1. For any change in cost accounting practices required in accordance with paragraph A.3. and subdivision (a)(4)(i) of the clause at FAR 52.230-2, Cost Accounting Standards; or paragraph (a)(3) and subdivisions (a)(4)(i) or (a)(4)(iv) of the clause at FAR 52.230-5, Cost Accounting



Standards-Educational Institution; within 60 days (or such other date as may be mutually agreed to) after award of a contract requiring this change.

2. For any change in cost accounting practices proposed in accordance with subdivision (a)(4)(ii) or (iii) of the clauses at FAR 52.230-2, Cost Accounting Standards, and FAR 52.230-5, Cost Accounting Standards-Educational Institution; or with paragraph (a)(3) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, not less than 60 days (or such other date as may be mutually agreed to) before the effective date of the proposed change.
  3. For any failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by paragraph (a)(5) at FAR 52.230-2, Cost Accounting Standards, and FAR 52.230-5, Cost Accounting Standards-Educational Institution; or by paragraph (a)(4) at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices):
    - a. Within 60 days (or such other date as may be mutually agreed to) after the date of agreement with the initial finding of noncompliance, or
    - b. In the event of Contractor disagreement with the initial finding of noncompliance, within 60 days of the date the Contractor is notified by the Battelle Contracts Representative of the determination of noncompliance.
- B. After an ACO, or cognizant Federal agency official, determination of materiality, submit a cost impact proposal in the form and manner specified by the Battelle Contracts Representative within 60 days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to paragraph A. of this clause. The cost impact proposal shall be in sufficient detail to permit evaluation, determination, and negotiation of the cost impact upon each separate CAS-covered contract and subcontract.
1. Cost impact proposals submitted for changes in cost accounting practices required in accordance with paragraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230-2, Cost Accounting Standards; or paragraph (a)(3) and subdivisions (a)(4)(i) or (a)(4)(iv) of the clause at FAR 52.230-5, Cost Accounting Standards-Educational Institution; shall identify the applicable standard or cost principle and all contracts and subcontracts containing the clauses entitled Cost Accounting Standards or Cost Accounting Standards-Educational Institution, which have an award date before the effective date of that standard or cost principle.
  2. Cost impact proposals submitted for any change in cost accounting practices proposed in accordance with subdivisions (a)(4)(ii) or (iii) of the clauses at FAR 52.230-2, Cost Accounting Standards, and FAR 52.230-5, Cost Accounting Standards-Educational Institution; or with paragraph (a)(3) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices; shall identify all contracts and subcontracts containing the clauses at FAR 52.230-2, Cost Accounting Standards, FAR 52.230-5, Cost Accounting Standards-Educational Institution, and FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices.
  3. Cost impact proposals submitted for failure to comply with an applicable CAS or to follow a disclosed practice as contemplated by paragraph (a)(5) of the clauses at FAR 52.230-2, Cost Accounting Standards, and FAR 52.230-5, Cost Accounting Standards-Educational Institution; or by paragraph (a)(4) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, shall identify the cost impact on each separate CAS-covered contract from the date of failure to comply until the noncompliance is corrected.
- C. If the submissions required by paragraphs A. and B. of this clause are not submitted within the specified time, or any extension granted by the Battelle Contracts Representative, an amount not to exceed 10 percent of each subsequent amount determined payable related to the Contractor's CAS-covered prime contracts, up to the estimated general dollar magnitude of the cost impact, may be withheld until such time as the required submission has been provided in the form and manner specified by the Battelle Contracts Representative.
- D. Agree to appropriate contract and subcontract amendments to reflect adjustments established in accordance with paragraphs (a)(4) and (a)(5) of the clauses at FAR 52.230-2 and 52.230-5; or with paragraphs (a)(3) or (a)(4) of the Disclosure and Consistency of Cost Accounting Practices clause at FAR 52.230-3.
- E. For all subcontracts subject to the clauses at FAR 52.230-2, 52.230-3, or 52.230-5-
1. So state in the body of the subcontract, in the letter of award, or in both (self-deleting clauses shall not be used);
  2. Include the substance of this clause in all negotiated subcontracts; and
  3. Within 30 days after award of the subcontract, submit the following information to the Contractor's cognizant contract administration office for transmittal to the contract administration office cognizant of the subcontractor's facility:
    - a. Subcontractor's name and subcontract number.
    - b. Dollar amount and date of award.
    - c. Name of Contractor making the award.
- F. Notify the Battelle Contracts Representative in writing of any adjustments required to subcontracts under this contract and agree to an adjustment, based on them, to this contract price or estimated cost and fee. This notice is due within 30 days after proposed subcontract adjustments are received and shall include a proposal for adjusting the higher tier subcontract or the prime contract appropriately.
- G. For subcontracts containing the clauses at FAR 52.230-2 or 52.230-5, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

#### **INSPECTION OF SERVICES –FIXED-PRICE** (cl 379b - Aug 1996)

- A. Definition. "Services," as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.

- B. The Contractor shall provide and maintain an inspection system acceptable to Battelle covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to Battelle during contract performance and for as long afterwards as the contract requires.
- C. Battelle has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract. Battelle shall perform inspections and tests in a manner that will not unduly delay the work.
- D. If Battelle performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.
- E. If any of the services do not conform to contract requirements, Battelle may require the Contractor to perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by reperformance, Battelle may—
  - 1. Require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and
  - 2. Reduce the contract price to reflect the reduced value of the services performed.
- F. If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, Battelle may—
  - 1. By contract or otherwise, perform the services and charge to the Contractor any cost incurred by the Government that is directly related to the performance of such service; or
  - 2. Terminate the contract for default.

#### **INSPECTION OF SUPPLIES – FIXED PRICE** (cl 379c - Aug 1996)

- A. Definition. "Supplies," as used in this clause, includes but is not limited to raw materials, components, intermediate assemblies, end products, and lots of supplies.
- B. The Contractor shall provide and maintain an inspection system acceptable to Battelle covering supplies under this contract and shall tender to Battelle for acceptance only supplies that have been inspected in accordance with the inspection system and have been found by the Contractor to be in conformity with contract requirements. As part of the system, the Contractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to Battelle during contract performance and for as long afterwards as the contract requires. Battelle may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly delay the contract work. The right of review, whether exercised or not, does not relieve the Contractor of the obligations under the contract.
- C. Battelle has the right to inspect and test all supplies called for by the contract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. Battelle shall perform inspections and tests in a manner that will not unduly delay the work. Battelle assumes no contractual obligation to perform any inspection and test for the benefit of the Contractor unless specifically set forth elsewhere in this contract.
- D. If Battelle performs inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the contract, Battelle shall bear the expense of inspections or tests made at other than the Contractor's or subcontractor's premises; provided, that in case of rejection, Battelle shall not be liable for any reduction in the value of inspection or test samples.
- E.
  - 1. When supplies are not ready at the time specified by the Contractor for inspection or test, the Battelle Contracts Representative may charge to the Contractor the additional cost of inspection or test.
  - 2. The Battelle Contracts Representative may also charge the Contractor for any additional cost of inspection or test when prior rejection makes reinspection or retest necessary.
- F. Battelle has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with contract requirements. Battelle may reject nonconforming supplies with or without disposition instructions.
- G. The Contractor shall remove supplies rejected or required to be corrected. However, the Battelle Contracts Representative may require or permit correction in place, promptly after notice, by and at the expense of the Contractor. The Contractor shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and, when required, shall disclose the corrective action taken.
- H. If the Contractor fails to promptly remove, replace, or correct rejected supplies that are required to be removed or to be replaced or corrected, Battelle may either (1) by contract or otherwise, remove, replace, or correct the supplies and charge the cost to the Contractor or (2) terminate the contract for default. Unless the Contractor corrects or replaces the supplies within the delivery schedule, the Battelle Contracts Representative may require their delivery and make an equitable price reduction. Failure to agree to a price reduction shall be a dispute.
- I.
  - 1. If this contract provides for the performance of Battelle quality assurance at source and if requested by Battelle, the Contractor shall furnish advance notification of the time—
    - a. When Contractor inspection or tests will be performed in accordance with the terms and conditions of the contract; and

- b. When the supplies will be ready for Battelle inspection.
- 2. Battelle's request shall specify the period and method of the advance notification and the Battelle representative to whom it shall be furnished. Requests shall not require more than 2 workdays of advance notification if the Battelle representative is in residence in the Contractor's plant, nor more than 7 workdays in other instances.
- J. Battelle shall accept or reject supplies as promptly as practicable after delivery, unless otherwise provided in the contract. Battelle's failure to inspect and accept or reject the supplies shall not relieve the Contractor from responsibility, nor impose liability on Battelle, for nonconforming supplies.
- K. Inspections and tests by Battelle do not relieve the Contractor of responsibility for defects or other failures to meet contract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.
- L. If acceptance is not conclusive for any of the reasons in Paragraph K hereof, Battelle, in addition to any other rights and remedies provided by law, or under other provisions of this contract, shall have the right to require the Contractor—
  - 1. At no increase in contract price, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the Contractor's plant at Battelle's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and the Battelle Contracts Representative; provided, that the Battelle Contracts Representative may require a reduction in contract price if the Contractor fails to meet such delivery schedule, or
  - 2. Within a reasonable time after receipt by the Contractor of notice of defects or nonconformance, to repay such portion of the contract as is equitable under the circumstances if Battelle elects not to require correction or replacement.

When supplies are returned to the Contractor, the Contractor shall bear the transportation cost from the original point of delivery to the Contractor's plant and return to the original point when that point is not the Contractor's plant. If the Contractor fails to perform or act as required in Paragraph L.1. or L.2. of this clause and does not cure such failure within a period of 10 days (or such longer period as the Battelle Contracts Representative may authorize in writing) after receipt of notice from Battelle specifying such failure, Battelle shall have the right by contract or otherwise to replace or correct such supplies and charge to the Contractor the cost occasioned Battelle thereby.

#### PROPERTY (cl 352 - Dec 2000)

- A. **Furnishing of Government Property.** Battelle reserves the right to furnish any property or services required for the performance of the work under this contract.
- B. **Title to Property.** Except as otherwise provided by the Battelle Contracts Representative, title to all materials, equipment, supplies, and tangible personal property of every kind and description purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass directly from the Contractor's vendor to the Government. Battelle reserves the right to inspect, and to accept or reject, any item of such property. The Contractor shall make such disposition of rejected items as the Battelle Contracts Representative shall direct. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the Government upon —
  - 1. issuance for use of such property in the performance of this contract, or
  - 2. commencement of processing or use of such property in the performance of this contract, or
  - 3. reimbursement of the cost thereof by Battelle, whichever first occurs. Property furnished by the Government and property purchased or furnished by the Contractor, title to which vests in the Government, under this paragraph are hereinafter referred to as Government property.Title to Government property shall not be affected by the incorporation of the property into or the attachment of it to any property not owned by the Government, nor shall such Government property or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any realty.
- C. **Identification.** To the extent directed by the Battelle Contracts Representative, the Contractor shall identify Government property coming into the Contractor's possession or custody, by marking and segregating in such a way, satisfactory to the Battelle Contracts Representative, as shall indicate its ownership by the Government.
- D. **Disposition.** The Contractor shall make such disposition of Government property which has come into the possession or custody of the Contractor under this contract as the Battelle Contracts Representative may direct during the progress of the work or upon completion or termination of this contract. The Contractor may, upon such terms and conditions as the Battelle Contracts Representative may approve, sell, or exchange such property, or acquire such property at a price agreed upon by the Battelle Contracts Representative and the Contractor as the fair value thereof. The amount received by the Contractor as the result of any disposition, or the agreed fair value of any such property acquired by the Contractor, shall be applied in reduction of costs allowable under this contract or shall be otherwise credited to account to Battelle, as the Battelle Contracts Representative may direct. Upon completion of the work or the termination of this contract, the Contractor shall render an accounting, as prescribed by the Battelle Contracts Representative, of all government property which had come into the possession or custody of the Contractor under this contract.
- E. **Protection of government property-management of high-risk property and classified materials**
  - 1. The Contractor shall take all reasonable precautions and such other actions as may be directed by the Battelle Contracts Representative, or in the absence of such direction, in accordance with sound business practice, to safeguard and protect government property in the Contractor's possession or custody.
  - 2. In addition, the Contractor shall ensure that adequate safeguards are in place, and adhered to, for the handling, control and disposition of high-risk property and classified materials throughout the life cycle of the property and materials consistent with the policies, practices and

procedures for property management contained in the Federal Property Management regulations (41 CFR chapter 101), the Department of Energy Property Management regulations (41 CFR chapter 109), and other applicable regulations.

3. High-risk property is property, the loss, destruction, damage to, or the unintended or premature transfer of which could pose risks to the public, the environment, or the national security interests of the United States. High-risk property includes proliferation sensitive, nuclear related dual use, export controlled, chemically or radioactively contaminated, hazardous, and specially designed and prepared property, including property on the militarily critical technologies list.

**F. Risk of Loss of Government Property.**

1. a. The Contractor shall not be liable for the loss or destruction of, or damage to, Government property unless such loss, destruction, or damage was caused by any of the following:
    - i. Willful misconduct or lack of good faith on the part of the Contractor's managerial personnel;
    - ii. Failure of the Contractor's managerial personnel to take all reasonable steps to comply with any appropriate written direction of the contracting officer to safeguard such property under Paragraph E of this clause; or
    - iii. Failure of Contractor managerial personnel to establish, administer, or properly maintain an approved property management system in accordance with Paragraph I.1 of this clause.
  - b. If, after an initial review of the facts, the Battelle Contracts Representative informs the Contractor that there is reason to believe that the loss, destruction of, or damage to the government property results from conduct falling within one of the categories set forth above, the burden of proof shall be upon the Contractor to show that the Contractor should not be required to compensate the government for the loss, destruction, or damage.
1. In the event that the Contractor is determined liable for the loss, destruction or damage to Government property in accordance with Paragraph F.1 of this clause, the Contractor's compensation to Battelle shall be determined as follows:
    - a. For damaged property, the compensation shall be the cost of repairing such damaged property, plus any costs incurred for temporary replacement of the damaged property. However, the value of repair costs shall not exceed the fair market value of the damaged property. If a fair market value of the property does not exist, the Battelle Contracts Representative shall determine the value of such property, consistent with all relevant facts and circumstances.
    - b. For destroyed or lost property, the compensation shall be the fair market value of such property at the time of such loss or destruction, plus any costs incurred for temporary replacement and costs associated with the disposition of destroyed property. If a fair market value of the property does not exist, the contracting officer shall determine the value of such property, consistent with all relevant facts and circumstances.
  2. The portion of the cost of insurance obtained by the Contractor that is allocable to coverage of risks of loss referred to in Paragraph F.1 of this clause is not allowable.

**G. Steps To Be Taken in Event of Loss.** In the event of any damage, destruction, or loss to Government property in the possession or custody of the Contractor with a value above the threshold set out in the Contractor's approved property management system, the Contractor:

1. Shall immediately inform the Battelle Contracts Representative of the occasion and extent thereof,
2. Shall take all reasonable steps to protect the property remaining, and
3. Shall repair or replace the damaged, destroyed, or lost property in accordance with the written direction of the Battelle Contracts Representative. The Contractor shall take no action prejudicial to the right of the Government or Battelle to recover therefor, and shall furnish to Battelle, on request, all reasonable assistance in obtaining recovery.

**H. Government Property for Government Use Only.** Government property shall be used only for the performance of this contract.

**I. Property Management.** Battelle reserved the right to approve Contractor's Property Management System.

1. Property Management System
  - a. The Contractor shall establish, administer, and properly maintain an approved property management system of accounting for and control, utilization, maintenance, repair, protection, preservation, and disposition of Government property in its possession under the contract. If requested by the Battelle Contracts Representative, the Contractor's property management system shall be submitted to the Battelle Contracts Representative for approval and shall be maintained and administered in accordance with sound business practice, applicable Federal Property Management regulations and Department of Energy Property Management regulations, and such directives or instructions which the Battelle Contracts Representative may from time to time prescribe.
  - b. In order for a property management system to be approved, it must provide for:
    - i. Comprehensive coverage of property from the requirement identification, through its life cycle, to final disposition;
    - ii. Employee personal responsibility and accountability for Government-owned property;
    - iii. Full integration with the Contractor's other administrative and financial systems; and
    - iv. A method for continuously improving property management practices through the identification of best practices established by "best in class" performers.

2. Property Inventory. Unless otherwise directed by the Battelle Contracts Representative, the Contractor shall on an annual basis provide an inventory covering all items of Government property to the Battelle Contracts Representative.

J. The Contractor shall include this clause in all cost-reimbursable subcontracts.

#### **GOVERNMENT PROPERTY – FIXED PRICE CONTRACTS** (cl 352b - Jun 2003)

A. Government-furnished property.

1. Battelle shall deliver Government-furnished property to the Contractor, for use in connection with and under the terms of this contract, the Government-furnished property described in the Schedule or specifications together with any related data and information that the Contractor may request and is reasonably required for the intended use of the property (hereinafter referred to as "Government-furnished property").
2. The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use (except for property furnished "as is") will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the contract's delivery or performance dates.
3. If Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt of it, notify the Battelle Contracts Representative, detailing the facts, and, as directed by the Battelle Contracts Representative and at Battelle expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the Contractor, the Battelle Contracts Representative shall make an equitable adjustment as provided in Paragraph H of this clause.
4. If Government-furnished property is not delivered to the Contractor by the required time, the Battelle contracts Representative shall, upon the Contractor's timely written request, make a determination of the delay, if any, caused the Contractor and shall make an equitable adjustment in accordance with Paragraph H of this clause.

B. Changes in Government-furnished property.

1. The Battelle Contracts Representative may, by written notice, (a) decrease the Government-furnished property provided or to be provided under this contract, or (b) substitute other Government-furnished property for the property to be provided by Battelle, or to be acquired by the Contractor for Battelle, under this contract. The Contractor shall promptly take such action as the Battelle Contracts Representative may direct regarding the removal, shipment, or disposal of the property covered by such notice.
2. Upon the Contractor's written request, the Battelle Contracts Representative shall make an equitable adjustment to the contract in accordance with Paragraph H of this clause, if Battelle has agreed in the Schedule to make the property available for performing this contract and there is any—
  - a. Decrease or substitution in this property pursuant to Paragraph B.1 of this clause; or
  - b. Withdrawal of authority to use this property, if provided under any other contract or lease.

C. Title in Government property.

1. The Government shall retain title to all Government-furnished property.
2. All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. However, special tooling accountable to this contract is subject to the provisions of the Special Tooling clause and is not subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.
3. Title to each item of facilities and special test equipment acquired by the Contractor for the Government under this contract shall pass to and vest in the Government when its use in performing this contract commences or when the Government has paid for it, whichever is earlier, whether or not title previously vested in the Government.
4. If this contract contains a provision directing the Contractor to purchase material for which Battelle will reimburse the Contractor as a direct item of cost under this contract—
  - a. Title to material purchased from a vendor shall pass to and vest in the Government upon the vendor's delivery of such material; and
  - b. Title to all other material shall pass to and vest in the Government upon—
    - i. Issuance of the material for use in contract performance;
    - ii. Commencement of processing of the material or its use in contract performance; or
    - iii. Reimbursement of the cost of the material by the Government, whichever occurs first.

D. Use of Government property. The Government property shall be used only for performing this contract, unless otherwise provided in this contract or approved by the Battelle Contracts Representative.

E. Property administration.

1. The Contractor shall be responsible and accountable for all Government property provided under this contract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5, as in effect on the date of this contract.



2. The Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound industrial practice and the applicable provisions of Subpart 45.5 of the FAR.
  3. If damage occurs to Government property, the risk of which has been assumed by the Government under this contract, the Government shall replace the items or the Contractor shall make such repairs as the Government directs. However, if the Contractor cannot effect such repairs within the time required, the Contractor shall dispose of the property as directed by the Battelle Contracts Representative. When any property for which the Government is responsible is replaced or repaired, the Battelle Contracts Representative shall make an equitable adjustment in accordance with Paragraph H of this clause.
  4. The Contractor represents that the contract price does not include any amount for repairs or replacement for which the Battelle is responsible. Repair or replacement of property for which the Contractor is responsible shall be accomplished by the Contractor at its own expense.
- F. Access. Battelle shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.
- G. Risk of loss. Unless otherwise provided in this contract, the Contractor assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, Government property upon its delivery to the Contractor or upon passage of title to the Government under Paragraph C of this clause. However, the Contractor is not responsible for reasonable wear and tear to Government property or for Government property properly consumed in performing this contract. ]
- H. Equitable adjustment. When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Battelle Contracts Representative may initiate an equitable adjustment in favor of Battelle. The right to an equitable adjustment shall be the Contractor's exclusive remedy. Battelle shall not be liable to suit for breach of contract for-
1. Any delay in delivery of Government-furnished property;
  2. Delivery of Government-furnished property in a condition not suitable for its intended use;
  3. A decrease in or substitution of Government-furnished property; or
  4. Failure to repair or replace Government property for which the Government is responsible.
- I. Final accounting and disposition of Government property. Upon completing this contract, or at such earlier dates as may be fixed by the Battelle Contracts Representative, the Contractor shall submit, in a form acceptable to Battelle, inventory schedules covering all items of Government property (including any resulting scrap) not consumed in performing this contract or delivered to Battelle. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the Battelle Contracts Representative. The net proceeds of any such disposal shall be credited to the contract price or shall be paid to Battelle as the Battelle Contracts Representative directs.
- J. Abandonment and restoration of Contractor's premises. Unless otherwise provided herein, the Government—
1. May abandon any Government property in place, at which time all obligations of Battelle regarding such abandoned property shall cease; and
  2. Has no obligation to restore or rehabilitate the Contractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon contract completion). However, if the Government-furnished property (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under Paragraph H of this clause may properly include restoration or rehabilitation costs.
- K. Communications. All communications under this clause shall be in writing.

## RIGHTS IN DATA—GENERAL (cl 371a Jun 1987)

### A. Definitions.

1. *Computer data bases*, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.
2. *Computer software*, as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.
3. *Data*, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. For the purposes of this clause, the term does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.
4. *DOE Contracting Officer*, as used in this clause, means the DOE Contracting Officer assigned to the Pacific Northwest Site Office and having the following mailing address:

DOE Contracting Officer  
Pacific Northwest Site Office  
U.S. Department of Energy  
P.O. Box 350, K9-42  
Richland, Washington 99352

5. *DOE Patent Counsel*, as used in this clause, means the DOE Patent Counsel assigned to the Berkeley Site Office and having the following mailing address:

DOE Patent Counsel  
U.S. Department of Energy  
Berkeley Site Office  
Lawrence Berkeley National Laboratory  
1 Cyclotron Road, MS 90-1023  
Berkeley, California 94720

6. *Form, fit, and function data*, as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.
7. *Limited rights data*, as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of subparagraph (g)(2) of this section if included in this clause.
8. *Restricted computer software*, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of subparagraph (g)(3) of this section if included in this clause.
9. *Technical data*, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.
10. *Unlimited rights*, as used in this clause, means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

B. *Allocations of rights.*

1. Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in--
  - a. Data first produced in the performance of this contract;
  - b. Form, fit, and function data delivered under this contract;
  - c. Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and
  - d. All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.
2. The Contractor shall have the right to--
  - a. Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this clause;
  - b. Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause;
  - c. Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and
  - d. Establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided in subparagraph (c)(1) of this clause.

C. *Copyright.*

1. *Data first produced in the performance of this contract.* Unless provided otherwise in paragraph (d) of this clause, the Contractor may establish, without prior approval of the DOE Contracting Officer, claim to copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings or similar works. The prior, express written permission of the DOE Contracting Officer is required to establish claim to copyright subsisting in all other data first produced in the performance of this contract. When claim to copyright is made, the Contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Contractor grants to the Government and others acting in its behalf, a paid-up nonexclusive, irrevocable worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly by or on behalf of the Government.

2. *Data not first produced in the performance of this contract.* The Contractor shall not, without prior written permission of the DOE Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause; *provided, however,* that if such data are computer software the Government shall acquire a copyright license as set forth in subparagraph (g)(3) of this clause if included in this contract or as otherwise may be provided in a collateral agreement incorporated in or made part of this contract.
3. *Removal of copyright notices.* The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

D. *Release, publication and use of data.*

1. The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this clause or expressly set forth in this contract.
2. The Contractor agrees that to the extent it receives or is given access to data necessary for the performance of this contract which contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the DOE Contracting Officer.
3. The Contractor agrees not to assert copyright in computer software first produced in the performance of this contract without prior written permission of the DOE Patent Counsel assisting the contracting activity. When such permission is granted, the DOE Patent Counsel shall specify appropriate terms, conditions, and submission requirements to assure utilization, dissemination, and commercialization of the data. The Contractor, when requested, shall promptly deliver to DOE Patent Counsel a duly executed and approved instrument fully confirmatory of all rights to which the Government is entitled.

E. *Unauthorized marking of data.*

1. Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notices specified in subparagraph (g)(2) or (g)(3) of this clause and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by this contract, the DOE Contracting Officer may at any time either return the data to the Contractor, or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings.
  - a. The DOE Contracting Officer shall make written inquiry to the Contractor affording the Contractor 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;
  - b. If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the DOE Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.
  - c. If the Contractor provides written justification to substantiate the propriety of the markings within the period set in subdivision (e)(1)(i) of this clause, the DOE Contracting Officer shall consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the DOE Contracting Officer determines that the markings are authorized, the Contractor shall be so notified in writing. If the DOE Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the DOE Contracting Officer shall furnish the Contractor a written determination, which determination shall become the final agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of the DOE Contracting Officer's decision. The Government shall continue to abide by the markings under this subdivision (e)(1)(iii) until final resolution of the matter either by the DOE Contracting Officer's determination becoming final (in which instance the Government shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.
2. The time limits in the procedures set forth in subparagraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.
3. This paragraph (e) does not apply if this contract is for a major system or for support of a major system by a civilian agency other than NASA and the U.S. Coast Guard agency subject to the provisions of Title III of the Federal Property and Administrative Services Act of 1949.
4. Except to the extent the Government's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor is not precluded by this paragraph (e) from bringing a claim under the Contract Disputes Act, including pursuant to the Disputes clause of this contract, as applicable, that may arise as the result of the Government removing or ignoring authorized markings on data delivered under this contract.

F. *Omitted or incorrect markings.*

1. Data delivered to the Government without either the limited rights or restricted rights notice as authorized by paragraph (g) of this clause, or the copyright notice required by paragraph (c) of this clause, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the DOE Contracting Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Contractor's expense, and the DOE Contracting Officer may agree to do so if the Contractor --



- a. Identifies the data to which the omitted notice is to be applied;
  - b. Demonstrates that the omission of the notice was inadvertent;
  - c. Establishes that the use of the proposed notice is authorized;  
and
  - d. Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.
2. The DOE Contracting Officer may also (i) permit correction at the Contractor's expense of incorrect notices if the Contractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or (ii) correct any incorrect notices.

G. *Protection of limited rights data and restricted computer software.*

1. When data other than that listed in subdivisions (b)(1) (i), (ii), and (iii) of this clause are specified to be delivered under this contract and qualify as either limited rights data or restricted computer software, if the Contractor desires to continue protection of such data, the Contractor shall withhold such data and not furnish them to the Government under this contract. As a condition to this withholding, the Contractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer data base for delivery to the Government are to be treated as limited rights data and not restricted computer software.
2. [Reserved]
3. [Reserved]

H. *Subcontracting.* The Contractor has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government such rights, the Contractor shall promptly bring such refusal to the attention of the DOE Contracting Officer and not proceed with subcontract award without further authorization.

I. *Relationship to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

J. The Contractor agrees, except as may be otherwise specified in this contract for specific data items listed as not subject to this paragraph, that the DOE Contracting Officer or an authorized representative may, up to three years after acceptance of all items to be delivered under this contract, inspect at the Contractor's facility any data withheld pursuant to paragraph (g)(1) of this clause, for purposes of verifying the Contractor's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the Contractor whose data are to be inspected demonstrates to the DOE Contracting Officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the DOE Contracting Officer shall designate an alternate inspector.

**RIGHTS TO PROPOSAL DATA** (cl 376 - Apr 1994)

Except for technical data contained on pages .. which are asserted by the Contractor as being proprietary data, it is agreed that, as a condition of the award of this contract, and notwithstanding the provisions of any notice appearing on the proposal, the Government shall have the right to use, duplicate, disclose and have others do so for any purpose whatsoever, the technical data contained in the proposal upon which this contract is based.

**RIGHTS IN DATA--FACILITIES** (cl 371f Dec 2000)

A. Definitions.

1. *Computer data bases*, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.
2. *Computer software*, as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.
3. *Data*, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term "data" does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.
4. *DOE Contracting Officer*, as used in this clause, means the DOE Contracting Officer assigned to the Pacific Northwest Site Office and having the following mailing address:

DOE Contracting Officer  
Pacific Northwest Site Office  
U.S. Department of Energy  
P.O. Box 350, K9-42  
Richland, Washington 99352

5. *DOE Patent Counsel*, as used in this clause, means the DOE Patent Counsel assigned to the Berkeley Site Office and having the following mailing address:

DOE Patent Counsel  
U.S. Department of Energy  
Berkeley Site Office  
Lawrence Berkeley National Laboratory  
1 Cyclotron Road, MS 90-1023  
Berkeley, California 94720

6. *Limited rights data*, as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of subparagraph (e) of this clause.
7. *Restricted computer software*, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of paragraph (f) of this clause.
8. *Technical data*, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.
9. *Unlimited rights*, as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

B. *Allocation of Rights.*

1. The Government shall have:
  - a. Ownership of all technical data and computer software first produced in the performance of this Contract;
  - b. Unlimited rights in technical data and computer software specifically used in the performance of this Contract, except as provided herein regarding copyright, limited rights data, or restricted computer software, or except for other data specifically protected by statute for a period of time or, where, approved by DOE, appropriate instances of the DOE Work for Others Program;
  - c. The right to inspect technical data and computer software first produced or specifically used in the performance of this Contract at all reasonable times. The Contractor shall make available all necessary facilities to allow DOE personnel to perform such inspection;
  - d. The right to have all technical data and computer software first produced or specifically used in the performance of this Contract delivered to the Government or otherwise disposed of by the Contractor, either as the DOE Contracting Officer may from time to time direct during the progress of the work or in any event as the DOE Contracting Officer shall direct upon completion or termination of this Contract. The Contractor agrees to leave a copy of such data at the facility or plant to which such data relate, and to make available for access or to deliver to the Government such data upon request by the DOE Contracting Officer. If such data are limited rights data or restricted computer software, the rights of the Government in such data shall be governed solely by the provisions of paragraph (e) of this clause ("Rights in Limited Rights Data") or paragraph (f) of this clause ("Rights in Restricted Computer Software"); and
  - e. The right to remove, cancel, correct, or ignore any markings not authorized by the terms of this Contract on any data furnished hereunder if, in response to a written inquiry by DOE concerning the propriety of the markings, the Contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE will notify the Contractor of the action taken.
1. The Contractor shall have:
  - a. The right to withhold limited rights data and restricted computer software unless otherwise provided in accordance with the provisions of this clause; and
  - b. The right to use for its private purposes, subject to patent, security or other provisions of this Contract, data it first produces in the performance of this Contract, except for data in DOE's Uranium Enrichment Technology, including diffusion, centrifuge, and atomic vapor laser isotope separation, provided the data requirements of this Contract have been met as of the date of the private use of such data.
3. The Contractor agrees that for limited rights data or restricted computer software or other technical, business or financial data in the form of recorded information which it receives from, or is given access to by, DOE or a third party, including a DOE Contractor or subcontractor, and for technical data or computer software it first produces under this Contract which is authorized to be marked by DOE, the Contractor shall treat such data in accordance with any restrictive legend contained thereon.

C. *Copyrighted Material.*

1. The Contractor shall not, without prior written authorization of the DOE Patent Counsel, assert copyright in any technical data or computer software first produced in the performance of this contract. To the extent such authorization is granted, the Government reserves for itself and others acting on its behalf, a nonexclusive, paid-up, irrevocable, world-wide license for Governmental purposes to publish, distribute, translate, duplicate, exhibit, and perform any such data copyrighted by the Contractor.
2. The Contractor agrees not to include in the technical data or computer software delivered under the contract any material copyrighted by the Contractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for

the benefit of the Government of the same scope as set forth in paragraph (c)(1) of this clause. If the Contractor believes that such copyrighted material for which the license cannot be obtained must be included in the technical data or computer software to be delivered, rather than merely incorporated therein by reference, the Contractor shall obtain the written authorization of the DOE Contracting Officer to include such material in the technical data or computer software prior to its delivery.

D. *Subcontracting.*

1. Unless otherwise directed by the DOE Contracting Officer, the Contractor agrees to use in subcontracts in which technical data or computer software is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data in accordance with the policy and procedures of 48 CFR Subpart 27.4 as supplemented by 48 CFR 927.401 through 927.409, the clause entitled, "Rights in Data-General" at 48 CFR 52.227-14 modified in accordance with 927.409(a) and including Alternate V. Alternates II through IV of that clause may be included as appropriate with the prior approval of DOE Patent Counsel, and the Contractor shall not acquire rights in a subcontractor's limited rights data or restricted computer software, except through the use of Alternates II or III, respectively, without the prior approval of DOE Patent Counsel. The clause at 48 CFR 52.227-16, Additional Data Requirements, shall be included in subcontracts in accordance with DEAR 927.409(h). The Contractor shall use instead the Rights in Data-Facilities clause at 48 CFR 970.5227-1 in subcontracts, including subcontracts for related support services, involving the design or operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated under its contract with DOE.
2. It is the responsibility of the Contractor to obtain from its subcontractors technical data and computer software and rights therein, on behalf of the Government, necessary to fulfill the Contractor's obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government such rights, the Contractor shall:
  - a. Promptly submit written notice to the DOE Contracting Officer setting forth reasons or the subcontractor's refusal and other pertinent information which may expedite disposition of the matter, and
  - b. Not proceed with the subcontract without the written authorization of the DOE Contracting Officer.
3. Neither the Contractor nor higher-tier subcontractors shall use their power to award subcontracts as economic leverage to acquire rights in a subcontractor's limited rights data or restricted computer software for their private use.

- E. *Rights in Limited Rights Data.* Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license by or for the Government, in any limited rights data of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any limited rights data when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Limited Rights Notice" set forth. All such limited rights data shall be marked with the following "Limited Rights Notice":

Limited Rights Notice

These data contain "limited rights data," furnished under Contract No. DE-AC05-76RL01830 with the United States Department of Energy which may be duplicated and used by the Government with the express limitations that the "limited rights data" may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the Contractor, except that further disclosure or use may be made solely for the following purposes:

1. Use (except for manufacture) by support services contractors within the scope of their contracts;
2. This "limited rights data" may be disclosed for evaluation purposes under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;
3. This "limited rights data" may be disclosed to other contractors participating in the Government's program of which this Contract is a part for information or use (except for manufacture) in connection with the work performed under their contracts and under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;
4. This "limited rights data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed; and
5. Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government.

This Notice shall be marked on any reproduction of this data in whole or in part.

(End of notice)

F. *Rights in Restricted Computer Software.*

1. Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up, license by or for the Government, in any restricted computer software of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any restricted computer software when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Restricted Rights Notice" set forth below. All such restricted computer software shall be marked with the following "Restricted Rights Notice":

Restricted Rights Notice-Long Form

- a. This computer software is submitted with restricted rights under Department of Energy Contract No. DE-AC05-76RL01830. It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice.
- b. This computer software may be:
  - i. Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;
  - ii. Used, copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced;
  - iii. Reproduced for safekeeping (archives) or backup purposes;
  - iv. Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and
  - v. Disclosed to and reproduced for use by contractors under a service contract (of the type defined in 48 CFR 37.101) in accordance with subparagraphs (b)(1) through (4) of this Notice, provided the Government makes such disclosure or reproduction subject to these restricted rights.
- c. Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in the restricted rights notice above.
- d. This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of notice)

2. Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used.

Restricted Rights Notice--Short Form

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of DOE Contract No. [insert subcontract no. here] with [insert subcontractor name here].

(End of notice)

3. If the software is embedded, or if it is commercially impractical to mark it with human readable text, then the symbol R and the clause date (mo/yr), in brackets or a box, a [R-mo/yr], may be used. This will be read to mean restricted computer software, subject to the rights of the Government as described in the Long Form Notice, in effect as of the date indicated next to the symbol. The symbol shall not be used to mark human readable material. In the event this Contract contains any variation to the rights in the Long Form Notice, then the contract number must also be cited.
  4. If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, the software will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions and with unlimited rights, unless the Contractor includes the following statement with such copyright notice "Unpublished-rights reserved under the Copyright Laws of the United States."
- G. *Relationship to patents.* Nothing contained in this clause creates or is intended to imply a license to the Government in any patent or is intended to be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

(End of clause)

**SERVICE CONTRACT ACT OF 1965, AS AMENDED** (*cl 381a - May 1989*)

- A. Definitions. "Act," as used in this clause, means the Service Contract Act of 1965, as amended (41 U.S.C. 351, *et seq.*).

"Contractor," as used in this clause or in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government Prime Contractor."

"Service employee," as used in this clause, means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in Part 541 of Title 29, Code of Federal Regulations, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.
- B. Applicability. This contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, as interpreted in Subpart C of 29 CFR part 4.
- C. Compensation.
  1. Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this contract.

2. a. If a wage determination is attached to this contract, the Contractor shall classify any class of service employee which is not listed therein and which is to be employed under the contract (*i.e.*, the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (*i.e.*, appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this Paragraph C.
  - b. This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee. The Contractor shall submit Standard Form (SF) 1444, Request For Authorization of Additional Classification and Rate, to the Battelle Contracts Representative no later than 30 days after the unlisted class of employee performs any contract work. The Battelle Contracts Representative shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify Battelle within 30 days of receipt that additional time is necessary.
  - c. The final determination of the conformance action by the Wage and Hour Division shall be transmitted to Battelle who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as a part of the wage determination.
  - d. i. The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.
  - ii. In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds a contract under which the classification in question was previously conformed pursuant to Paragraph C of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (*i.e.*, adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Battelle Contracts Representative of the action taken but the other procedures in subdivision C.2.b of this clause need not be followed.
  - iii. No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.
  - e. The wage rate and fringe benefits finally determined under this Paragraph C.2 of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.
  - f. Upon discovery of failure to comply with Paragraph C.2 of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.
2. Adjustment of compensation. If the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by the Wage and Hour Division.
- D. Obligation to furnish fringe benefits. The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under Paragraph C.2 of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR part 4.
  - E. Minimum wage. In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under this contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause shall relieve the Contractor or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.
  - F. Successor contracts. If this contract succeeds a contract subject to the Act under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized



representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

- G. Notification to employees. The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.
- H. Safe and sanitary working conditions. The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary, hazardous, or dangerous to the health or safety of the service employees. The Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR part 1925.
- I. Records.
1. The Contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:
    - b. For each employee subject to the Act—
      - i. Name and address and social security number;
      - ii. Correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;
      - iii. Daily and weekly hours worked by each employee; and
      - iv. Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.
    - c. For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of Paragraph C of this clause. A copy of the report required by subdivision C.2.b of this clause will fulfill this requirement.
    - d. Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by Paragraph N of this clause.
  2. The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.
  3. Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, Battelle, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.
  4. The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.
- J. Pay periods. The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.
- K. Withholding of payments and termination of contract. Battelle shall withhold or cause to be withheld from the Contractor under this or any other Government contract with the Prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as Battelle decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, Battelle may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, Battelle may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.
- L. Subcontracts. The Contractor agrees to insert this clause in all subcontracts subject to the Act.

- M. Collective bargaining agreements applicable to service employees. If wages to be paid or fringe benefits to be furnished any service employees employed by the Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Contractor shall report such fact to the Battelle Contracts Representative, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance such agreements shall be reported promptly after negotiation thereof.
- N. Seniority list. Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (29 CFR 4.173), the incumbent Contractor shall furnish the Battelle Contracts Representative a certified list of the names of all service employees on the Contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service employee. The Battelle Contracts Representative shall turn over such list to the successor Contractor at the commencement of the succeeding contract.
- O. Rulings and interpretations. Rulings and interpretations of the Act are contained in Regulations, 29 CFR part 4.
- P. Contractor's certification.
1. By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed under section 5 of the Act.
  2. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract under section 5 of the Act.
  3. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.
- Q. Variations, tolerances, and exemptions involving employment. Notwithstanding any of the provisions in Paragraphs B through O of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:
1. Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency, or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR parts 520, 521, 524, and 525).
  2. The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR parts 520, 521, 524, and 525).
  3. The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR parts 525 and 528.
- R. Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program.
- S. Tips. An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR part 531. However, the amount of credit shall not exceed \$1.34 per hour beginning January 1, 1981. To use this provision—
1. The employer must inform tipped employees about this tip credit allowance before the credit is utilized;
  2. The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);
  3. The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; and



4. The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.
- T. Disputes concerning labor standards. The U.S. Department of Labor has set forth in 29 CFR parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

#### ENVIRONMENT, SAFETY AND HEALTH REQUIREMENTS (cl 3113a – Feb 2007)

- A. In performing work under this contract, the Contractor shall comply with all applicable federal, state and local environment, safety, and health laws and regulations. The Contractor shall also comply with 10 CFR 851, DOE Worker Safety and Health Program, and DEAR 970.5223-1, Integration of Environment, Safety and Health (ES&H) into Work Planning and Execution (Dec. 2000). In order to comply with the requirements of 10 CFR 851 and DEAR 970.5223-1, the Contractor shall be guided by the principles set forth below.
- B. The Contractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The Contractor shall exercise a degree of care commensurate with the work and the associated hazards. The Contractor shall ensure that management of ES&H functions and activities becomes an integral but visible part of the Contractor's work planning and execution processes. The Contractor shall, in the performance of work, ensure that:
  1. Line management is responsible for the protection of employees, public, and the environment. Line management includes those contractor and subcontractor employees managing and supervising employees performing work.
  2. Clear and unambiguous lines of authority and responsibility for ensuring (ES&H) are established and maintained at all organizational levels.
  3. Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities, and shall retain records respecting such competency and qualifications, making them available upon request.
  4. Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.
  5. Before work is performed, the associated hazards are evaluated and a set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.
  6. Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.
- C. The Contractor, relative to the Statement of Work and contract specifications, shall be able to demonstrate through documentation and work practices that its performance of work under this contract-
  1. Fulfilled the scope of work as outlined in this contract
  2. Identified and analyzed specific, task-level hazards associated with the work
  3. Developed and implemented hazard controls related to the hazards
  4. Allowed the performance of work within the controls
  5. Provided feedback to Battelle and Contractor employees on adequacy of hazard controls
- D. The Contractor shall perform work in accordance with a DOE-approved Worker Safety and Health Program (also referred to in the DEAR as a Safety Management Plan) as described below:
  1. The Contractor shall demonstrate well-established safety protocols applicable to the scope of work and consistent with the required elements stated in this clause. Prior to the initiation of any on-site work, the Contractor shall either:
    - a. Accept and incorporate Battelle's **PNNL Contractor Environment Safety and Health Manual** (<http://www.pnl.gov/contracts/esh-procedures/>) as its own. The Battelle Contracts Representative can provide a hard copy of the manual upon request. In those cases where the Contractor's on-site activities are limited to an office or meeting environment, the CES&H Manual requirements can be met through review of the Visitor Orientation Pamphlet, available on-line at <http://www.pnl.gov/contracts/esh-procedures/>.
    - b. Submit its own 10 CFR 851 and DEAR 970.5223-1 compliant Worker Safety and Health Program (WSHP) document to the Battelle Contract Representative. The Battelle Contract Representative will coordinate the review and approval of the program document by DOE. The Contractor will be notified by the Battelle Contract Representative of the program document's approval by DOE. Acceptance of the Contractor's program document will be at the sole discretion of DOE.
  2. The Contractor will be provided a Preliminary Hazard Assessment (PHA) checklist by Battelle Contract Representative. Prior to the initiation of any on-site work, the Contractor shall submit a completed PHA for review and approval by Battelle. The PHA incorporates elements of effective job planning. Elements include identifying: the scope of work to be performed; potential hazards to Battelle and Contractor staff the public and environment created by the work performed; hazard control methods and mitigation; and mechanism to evaluate the adequacy of those controls. The PHA Procedures and Form can be accessed at <http://www.pnl.gov/contracts/esh-procedures/>, or a hard copy provided by the Battelle Contracts Representative when requested.
- E. The Contractor shall perform the following additional hazard identification tasks consistent with an approved WSHP:

1. The Contractor shall be responsible for identifying all potential occupational exposures that its employees and the employees of its lower-tier subcontractors will be exposed to while performing any work under this contract.
  2. The Contractor shall assure that its employees and those of any lower-tiered subcontractor are medically qualified to perform work associated with any potential occupational exposures that have been identified. Medical qualification and medical surveillance programs are the sole responsibility of the Contractor. In addition, the Contractor is responsible for maintaining any records associated with the administration of these programs.
  3. For each of its employees and each of its lower-tier subcontract employees that the Contractor has identified as having potential occupational exposures that require enrollment in a medical surveillance or medical qualification program, the Contractor shall provide its Occupational Medical provider with the following information:
    - a. Current information about actual or potential work-related site hazards (chemical, radiological, physical, biological, or ergonomic);
    - b. Employee job-task and hazard analysis information, including essential job functions;
    - c. Actual or potential work-site exposures of each employee; and
    - d. Personnel actions resulting in a change of job functions such that a change of hazards, or exposures results.
  4. For each of its employees and each of its lower-tier subcontract employees, a copy of the exposure information provided to the Contractor's occupational medical provider shall be submitted to the Battelle Contract Representative and approved by Battelle before any of these employees begin work under this contract.
- F. The Contractor shall notify the Battelle Contracts Representative immediately of any OSHA-recordable injuries/illnesses, any "off-normal occurrences," or Government property damaged, that the Contractor determines to have occurred in the course of operations on-site and shall furnish such further information as the Battelle Contract Representative may require. An "off-normal occurrence" is any unplanned or unexpected event, including near misses, or the discovery of a deficiency in a procedure, plan, or system that has real or potentially undesirable consequences to personnel, equipment, facilities, the environment, and/or programs.
- G. The Contractor's on-site ES&H activities will be subject to review by the Technical Administrator of this contract. Other representatives of Battelle may conduct periodic inspections of the Contractor's equipment, work and storage areas for compliance with the applicable ES&H requirements. The Battelle Contract Representative will notify the Contractor by a written Notice of Non-compliance of any observed non-compliance with applicable ES&H requirements. The Contractor shall immediately take appropriate corrective action. The Contractor shall advise the Battelle Contract Representative, in writing, within five (5) working days of the corrective action taken on any safety non-compliance noted on the written Notice of Non-compliance. If the Contractor fails or refuses to correct the safety non-compliance, Battelle may perform, or cause to be performed, the necessary corrective work and unilaterally charge the Contractor for the cost thereof. Such charges will be deducted from payments otherwise due the Contractor under this contract.
- H. The Contractor shall promptly evaluate and resolve any non-compliance with applicable ES&H requirements. If the Contractor fails to provide resolution or if, at any time, the Contractor's acts or failure to act causes substantial harm or an imminent danger to the environment, or health and safety of employees or the public, the Battelle Contract Representative may issue an order stopping work in whole or in part and the Contractor shall be liable for the delay and any costs thereby incurred. Any stop-work order issued by Battelle under this clause (or issued by the Contractor to a subcontractor in accordance with this clause) shall be without prejudice to any other legal or contractual rights of Battelle. In the event that the Battelle Contract Representative issues a stop-work order, an order authorizing the resumption of the work may be issued at the discretion of the Battelle Contract Representative. The Contractor shall not be entitled to an extension of time, or additional cost or fee, or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.
- I. Employee Concerns Program
1. The Contractor, its agents, employees or subcontractors, are entitled to use the Battelle Employee Concerns Program and Hotline (509) 375-3999. The Hotline operates 24 hours per day, 7 days a week. Messages may be left anonymously, and all concerns are handled with confidentiality to the maximum extent possible. Employee concerns may also be submitted in writing to the Battelle Employee Concerns Office, Battelle, Pacific Northwest National Laboratory, P.O. Box 999, K1-42, Richland, Washington, 99352, or in person at the Staff Concerns Office, Battelle's Research Operation Building (ROB) during normal business hours, Monday through Friday 7:30 a.m. to 4:30 p.m.
  2. For the purpose of this document, allegations, concerns, and complaints are handled in a like manner and are referred to collectively as "employee concerns." A concern can consist of a declaration, statement, or assertion of impropriety or inadequacy on the part of one's employer or others at a DOE Site that has affected (or threatens to affect) aspects of operations, such as the environment, health, safety, quality, or security, and may include fraud, mismanagement, waste, or abuse of authority.
  3. No retaliation or retribution shall be taken toward any individual as a result of filing an employee concern consistent with 10 CFR 708.
- J. Civil Penalties and Indemnification
1. The 2002 Bob Stump National Defense Authorization Act amended the Atomic Energy Act by adding section 234C "Worker Health and Safety Rules for Department of Energy Nuclear Facilities." It required DOE to promulgate a worker safety and health rule, which was published in the Federal Register on February 9, 2006 as 10 CFR 851. It establishes worker safety and health requirements that govern the conduct of contractor activities at both nuclear and non-nuclear sites. Contractors that fail to comply with the Rule are subject to civil penalties up to \$70,000.00 per violation or contract penalties.

2. The Contractor assumes full responsibility and shall indemnify, hold harmless, and defend Battelle, its directors, officers, and employees from any civil liability under §234C of the Atomic Energy Act of 1954, as amended, or the implementing regulations, arising out of the activities of the Contractor, its subcontractors, suppliers, agents, employees, and their officers, or directors. The Contractor's obligation to indemnify and hold harmless shall expressly include attorney fees and other reasonable costs of defending any action or proceeding instituted under §234C or DOE's implementing regulations.
- K. The Contractor is responsible for its subcontractors' compliance with the ES&H requirements of this contract. The Contractor shall include a clause substantially the same as this clause in lower-tier subcontracts involving work at a DOE site or Battelle-owned or -operated facilities or premises. Such subcontracts shall provide for the right to stop work under the conditions described herein.

#### ACCESS TO AND OWNERSHIP OF RECORDS (cl 3109 - Dec 2000)

- A. Government-Owned Records. Except as provided in Paragraph B of this clause, all records acquired or generated by the contractor in its performance of this contract shall be the property of the Government and shall be delivered to Battelle or otherwise disposed of by the Contractor either as the Battelle Contracts Representative may from time to time direct during the progress of the work or, in any event, as the Battelle Contracts Representative shall direct upon completion or termination of the contract.
- B. Contractor-Owned Records. The following records are considered the property of the Contractor and are not within the scope of Paragraph A of this clause:
  1. Employment-related records (such as workers' compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns, and other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/ health-related records and similar files), and non-employee patient medical/health related records, except for those records described by the contract as being maintained in Privacy Act systems of records.
  2. Confidential contractor financial information, and correspondence between the contractor and other segments of the contractor located away from the DOE facility (i.e., the contractor's corporate headquarters);
  3. Records relating to any procurement action by the Contractor, except for records that under 48 CFR 970.5232-3, Accounts, Records, and Inspection, are described as the property of the Government; and
  4. Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges; and
  5. The following categories of records maintained pursuant to the technology transfer clause of this contract:
    - a. Executed license agreements, including exhibits or appendices containing information on royalties, royalty rates, other financial information, or commercialization plans, and all related documents, notes and correspondence.
    - b. The contractor's protected Cooperative Research and Development Agreement (CRADA) information and appendices to a CRADA that contain licensing terms and conditions, or royalty or royalty rate information.
    - c. Patent, copyright, mask work, and trademark application files and related contractor invention disclosures, documents and correspondence, where the contractor has elected rights or has permission to assert rights and has not relinquished such rights or turned such rights over to the Government.
- C. Contract Completion or Termination. In the event of completion or termination of this contract, copies of any of the contractor-owned records identified in Paragraph B of this clause, upon the request of Battelle, shall be delivered to Battelle, DOE or its designees, including successor contractors. Upon delivery, title to such records shall vest in Battelle, DOE or its designees, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act), as appropriate.
- D. Inspection, Copying, and Audit of Records. All records acquired or generated by the Contractor under this contract in the possession of the Contractor, including those described at Paragraph B of this clause, shall be subject to inspection, copying, and audit by Battelle, DOE, or its designees at all reasonable times, and the Contractor shall afford Battelle, DOE, or its designees reasonable facilities for such inspection, copying, and audit; provided, however, that upon request by the Battelle Contracts Representative, the Contractor shall deliver such records to a location specified by the Battelle Contracts Representative for inspection, copying, and audit. Battelle, DOE, or its designees shall use such records in accordance with applicable federal laws (including the Privacy Act), as appropriate.
- E. Applicability. Paragraphs B, C, and D of this clause apply to all records without regard to the date or origination of such records.
- F. Records Retention Standards. Special records retention standards, described at DOE Order 200.1, Information Management Program (version in effect on effective date of contract), are applicable for the classes of records described therein, whether or not the records are owned by the Government or the contractor. In addition, the Contractor shall retain individual radiation exposure records generated in the performance of work under this contract until Battelle or DOE authorizes disposal. Battelle may waive application of these record retention schedules, if, upon termination or completion of the contract, Battelle exercises its right under Paragraph C of this clause to obtain copies and delivery of records described in Paragraphs A and B of this clause.

#### INSURANCE (cl 378a - Jan 1997)

- A. The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract.

- B. Before commencing work under this contract, the Contractor shall notify the Battelle Contracts Representative in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting Battelle's or the Government's interest shall not be effective—
1. For such period as the laws of the State in which this contract is to be performed prescribe; or
  2. Until 30 days after the insurer or the Contractor gives written notice to the Battelle Contracts Representative, whichever period is longer.
- C. The Contractor shall insert the substance of this clause, including this Paragraph C, in subcontracts under this contract that require work at either a Battelle or a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Battelle Contracts Representative upon request.

#### **WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES** (cl 396 - Dec 2000)

- A. The Contractor shall comply with the requirements of "DOE Contractor Employee Protection Program" at 10 CFR part 708 for work performed on behalf of DOE directly related to activities at DOE-owned or-leased sites.
- B. The Contractor shall insert or have inserted the substance of this clause, including this Paragraph B, in subcontracts at all tiers, for subcontracts involving work performed on behalf of DOE directly related to activities at DOE-owned or leased sites.

#### **DEFAULT - FIXED PRICE SUPPLY AND SERVICE** (cl 365c - Dec 1985)

- A. Battelle may, subject to the provisions of Paragraph C of this clause, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances:
1. If the Contractor fails to perform the work called for by this contract within the time(s) specified herein or any extension thereof; or
  2. If the Contractor fails to perform any of the other provisions of this contract, or so fails to prosecute the work as to endanger performance of this contract; or
  3. If the Contractor ceases to conduct its operations in the normal course of business (including inability to meet its obligations as they mature); or
  4. If any proceeding for bankruptcy or insolvency is brought by or against the Contractor under bankruptcy or insolvency laws.
- B. In the event Battelle terminates this contract in whole or in part as provided in Paragraph A of this clause, Battelle may procure, upon such terms and in such manner as it may deem appropriate, work similar to the work so terminated and the Contractor shall be liable for any excess costs for such similar work: provided, that the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.
- C. Except with respect to defaults of subcontractors, the Contractor shall not be terminated for default if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor and without the fault or negligence of either of them, the Contractor shall not be terminated for default for failure to perform unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule or other performance requirement.
- D. If this contract is terminated as provided in Paragraph A of this clause, Battelle, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver, in the manner and to the extent directed by Battelle, any of the completed or partially completed work not theretofore delivered to, and accepted by, Battelle and any other property, including contract rights, specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon the direction of Battelle, protect and preserve property in the possession of the Contractor in which Battelle has an interest. Battelle shall pay to the Contractor the contract price, if separately stated, for completed work accepted by Battelle and the amount agreed upon by the Contractor and Battelle for 1) completed work for which no separate price is stated, 2) partially completed work, 3) other property described above which is accepted by Battelle, and 4) the protection and preservation of property. Failure to agree shall be a dispute within the meaning of the clause entitled "Disputes." Battelle may withhold from amounts otherwise due the Contractor for such completed supplies or manufacturing materials such sum as Battelle determines to be necessary to protect Battelle against loss because of outstanding liens or claims of former lien holders.
- E. If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of Paragraph C of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the Government, be the same as if the notice of termination had been issued pursuant to such clause. If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, and if this contract does not contain a clause providing for termination for convenience of the Government, the contract shall be equitably adjusted to compensate for such termination and the contract modified accordingly. Failure to agree to any such adjustment shall be a dispute within the meaning of the clause of this contract entitled "Disputes."
- F. The rights and remedies of Battelle provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

G. As used in Paragraph C of this clause, the terms “subcontractor” and “subcontractors” mean subcontractor(s) at any tier.

**TERMINATION FOR CONVENIENCE OF THE GOVERNMENT – FIXED PRICE** (cl 365d - May 2004)

- A. Battelle may terminate performance of work under this contract in whole or, from time to time, in part if Battelle determines that a termination is in the Government's interest. The Battelle Contracts Representative shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.
- B. After receipt of a Notice of Termination, and except as directed by Battelle, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
1. Stop work as specified in the notice.
  2. Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
  3. Terminate all subcontracts to the extent they relate to the work terminated.
  4. Assign, as directed by Battelle, all right, title, and interest of the Contractor under the subcontracts terminated, in which case Battelle shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
  5. With approval or ratification to the extent required by Battelle, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.
  6. As directed by Battelle, transfer title and deliver to the Government-
    - a. The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and
    - b. The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to Battelle.
  7. Complete performance of the work not terminated.
  8. Take any action that may be necessary, or that the Battelle Contracts Representative may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.
  9. Use its best efforts to sell, as directed or authorized by Battelle, any property of the types referred to in Paragraph B.6. of this clause; *provided*, however, that the Contractor –
    - a. is not required to extend credit to any purchaser and
    - b. may acquire the property under the conditions prescribed by, and at prices approved by, Battelle. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by Battelle to the Contractor under this contract, credited to the price or cost of the work, or paid in any other manner directed by Battelle.
- C. The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by Battelle upon written request of the Contractor within this 120-day period.
- D. After expiration of the plant clearance period as defined in Subpart 49.001 of the Federal Acquisition Regulation, the Contractor may submit to Battelle a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by Battelle. The Contractor may request Battelle to remove those items or enter into an agreement for their storage. Within 15 days, Battelle will remove those items or enter into a storage agreement. Battelle may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
- E. After termination, the Contractor shall submit a final termination settlement proposal to Battelle in the form and with the certification prescribed by Battelle. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Battelle Contracts Representative upon written request of the Contractor within this 1-year period. However, if Battelle determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, Battelle may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.
- F. Subject to Paragraph E of this clause, the Contractor and Battelle may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this Paragraph F or Paragraph G of this clause, exclusive of costs shown in Paragraph G.3. of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be modified, and the Contractor paid the agreed amount. Paragraph G of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
- G. If the Contractor and Battelle fail to agree on the whole amount to be paid because of the termination of work, the Battelle Contracts Representative shall pay the Contractor the amounts determined by the Battelle Contracts Representative as follows, but without duplication of any amounts agreed on under Paragraph F of this clause:
1. The contract price for completed supplies or services accepted by Battelle (or sold or acquired under Paragraph B.9. of this clause) not previously paid for, adjusted for any saving of freight and other charges.



2. The total of—
  - a. The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under Paragraph G.1. of this clause;
  - b. The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision G.1.a. of this clause; and
  - c. A sum, as profit on Subdivision G.2.a. of this clause, determined by Battelle under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, Battelle shall allow no profit under this Subdivision G.2.c. and shall reduce the settlement to reflect the indicated rate of loss.
3. The reasonable costs of settlement of the work terminated, including –
  - a. Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
  - b. The termination and settlement of subcontracts (excluding the amounts of such settlements); and
  - c. Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- H. Except for normal spoilage, and except to the extent that Battelle expressly assumed the risk of loss, Battelle shall exclude from the amounts payable to the Contractor under Paragraph G of this clause, the fair value, as determined by Battelle, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government or to a buyer.
- I. The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.
- J. The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by Battelle under Paragraph E, G, or L of this clause, except that if the Contractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in Paragraph E or L, respectively, and failed to request a time extension, there is no right of appeal.
- K. In arriving at the amount due the Contractor under this clause, there shall be deducted—
  1. All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;
  2. Any claim which Battelle has against the Contractor under this contract; and
  3. The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to Battelle.
- L. If the termination is partial, the Contractor may file a proposal with Battelle for an equitable adjustment of the price(s) of the continued portion of the contract. Battelle shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Battelle Contracts Representative.
- M.
  1. Battelle may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if Battelle believes the total of these payments will not exceed the amount to which the Contractor will be entitled.
  2. If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to Battelle upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by Battelle because of the circumstances.
- N. Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the Battelle and the Department of Energy, at the Contractor's office, at all reasonable times, without any direct charge. If approved by Battelle, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

**PRIVACY ACT** (cl 327 - Apr 1984)

- A. Contractor agrees to—
  1. Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the contract specifically identifies:
    - a. The systems of records; and
    - b. The design, development, or operation work that the Contractor is to perform.

2. Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the redesign, development, or operation of a system of records on individuals that is subject to the Act; and
  3. Include this clause, including the subparagraph 3., in all subcontracts awarded under this contract which requires the design, development, or operation of such a system of record.
- B. In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the Contractor is considered to be an employee of the agency.
1. "Operation of a system of records," as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.
  2. "Record," as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voice print or a photograph.
  3. "System of records on individuals," as used in this clause means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

#### **RESPONSIBILITY FOR SUPPLIES** (cl 382 - Apr 1984)

- A. Title to supplies furnished under this contract shall pass directly to the Government upon formal acceptance, regardless of when or where Battelle takes physical possession, unless the contract specifically provides for earlier passage of title.
- B. Unless the contract specifically provides otherwise, risk of loss of or damage to supplies shall remain with the Contractor until, and shall pass directly to the Government upon -
  1. Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
  2. Acceptance by Battelle or delivery of the supplies to Battelle at the destination specified in the contract, whichever is later, if transportation is f.o.b. destination.
- C. Paragraph B above shall not apply to supplies that so fail to conform to contract requirements as to give a right of rejection. The risk of loss of or damage to such nonconforming supplies remains with the Contractor until cure or acceptance. After cure or acceptance, paragraph B above shall apply.
- D. Under Paragraph B above, the Contractor shall not be liable for loss of or damage to supplies caused by the gross negligence of Battelle's officers, agents or employees acting within the scope of their employment.

#### **WARRANTY OF SERVICES** (cl 383a - May 2001)

- A. Definition. "Acceptance," as used in this clause, means the act of an authorized representative of Battelle by which the Government assumes for itself, or as an agent of another, ownership of existing and identified supplies, or approves specific services, as partial or complete performance of the contract.
- B. Notwithstanding inspection and acceptance by Battelle or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this contract. The Contracting Officer shall give written notice of any defect or nonconformance to the Contractor 30. This notice shall state either—
  1. That the Contractor shall correct or reperform any defective or nonconforming services; or
  2. That Battelle does not require correction or reperformance.
- C. If the Contractor is required to correct or reperform, it shall be at no cost to Battelle, and any services corrected or reperformed by the Contractor shall be subject to this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or reperform, the Battelle Contracts Representative may, by contract or otherwise, correct or replace with similar services and charge to the Contractor the cost occasioned to Battelle thereby, or make an equitable adjustment in the contract price.
- D. If Battelle does not require correction or reperformance, the Battelle Contracts Representative shall make an equitable adjustment in the contract price.

#### **WARRANTY OF SUPPLIES OF A NONCOMPLEX NATURE** (cl 383b - June 2003)

- A. Definitions: As used in this clause, "Acceptance" means the act of an authorized representative of Battelle by which Battelle assumes for itself, or as an agent of another, ownership of existing supplies, or approves specific services as partial or complete performance of the contract. "Supplies" means the end items furnished by the Contractor and related services required under this contract. The word does not include "data."



B. Contractor's obligations.

1. Notwithstanding inspection and acceptance by Battelle of supplies furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that for 30-
  - a. All supplies furnished under this contract will be free from defects in material or workmanship and will conform with all requirements of this contract; and
  - b. The preservation, packaging, packing, and marking, and the preparation for, and method of, shipment of such supplies will conform with the requirements of this contract.
2. When return, correction, or replacement is required, transportation charges and responsibility for the supplies while in transit shall be borne by the Contractor. However, the Contractor's liability for the transportation charges shall not exceed an amount equal to the cost of transportation by the usual commercial method of shipment between the place of delivery specified in this contract and the Contractor's plant, and return.
3. Any supplies or parts thereof, corrected or furnished in replacement under this clause, shall also be subject to the terms of this clause to the same extent as supplies initially delivered. The warranty, with respect to supplies or parts thereof, shall be equal in duration to that in paragraph B.1. of this clause and shall run from the date of delivery of the corrected or replaced supplies.
4. All implied warranties of merchantability and "fitness for a particular purpose" are excluded from any obligation contained in this contract.

C. Remedies available to Battelle.

1. The Battelle Contracts Representative shall give written notice to the Contractor of any breach of warranties in paragraph B.1 of this clause within 30.
2. Within a reasonable time after the notice, the Battelle Contracts Representative may either –
  - a. Require, by written notice, the prompt correction or replacement of any supplies or parts thereof (including preservation, packaging, packing, and marking) that do not conform with the requirements of this contract within the meaning of paragraph B.1 of this clause; or
  - b. Retain such supplies and reduce the contract price by an amount equitable under the circumstances.
3. a. If the contract provides for inspection of supplies by sampling procedures, conformance of supplies or components subject to warranty action shall be determined by the applicable sampling procedures in the contract. The Battelle Contracts Representative –
  - (i) May, for sampling purposes, group any supplies delivered under this contract;
  - (ii) Shall require the size of the sample to be that required by sampling procedures specified in the contract for the quantity of supplies on which warranty action is proposed;
  - (iii) May project warranty sampling results over supplies in the same shipment or other supplies contained in other shipments even though all of such supplies are not present at the point of reinspection; provided, that the supplies remaining are reasonably representative of the quantity on which warranty action is proposed; and
  - (iv) Need not use the same lot size as on original inspection or reconstitute the original inspection lots.
- b. Within a reasonable time after notice of any breach of the warranties specified in paragraph B.1 of this clause, the Battelle Contracts Representative may exercise one or more of the following options:
  - (i) Require an equitable adjustment in the contract price for any group of supplies.
  - (ii) Screen the supplies grouped for warranty action under this clause at the Contractor's expense and return all nonconforming supplies to the Contractor for correction or replacement.
  - (iii) Require the Contractor to screen the supplies at locations designated by Battelle or the Government within the continuous United States and to correct or replace all nonconforming supplies.
  - (iv) Return the supplies grouped for warranty action under this clause to the Contractor (irrespective of the f.o.b. point or the point of acceptance) for screening and correction or replacement.
4. a. The Battelle Contracts Representative may, by contract or otherwise, correct or replace the nonconforming supplies with similar supplies from another source and charge to the Contractor the cost occasioned to Battelle thereby if the Contractor-
  - (i) Fails to make redelivery of the corrected or replaced supplies within the time established for their return; or
  - (ii) Fails either to accept return of the nonconforming supplies or fails to make progress after their return to correct or replace them so as to endanger performance of the delivery schedule, and in either of these circumstances does not cure such failure within a period of 10 days (or such longer period as the Battelle Contracts Representative may authorize in writing) after receipt of notice from the Battelle Contracts Representative specifying such failure.
- b. Instead of correction or replacement by Battelle, the Battelle Contracts Representative may require an equitable adjustment of the contract price. In addition, if the Contractor fails to furnish timely disposition instructions, the Battelle Contracts Representative may dispose of the nonconforming supplies for the Contractor's account in a reasonable manner. Battelle is entitled to reimbursement from the Contractor, or from the proceeds of such disposal, for the reasonable expenses of the care and disposition of the nonconforming supplies, as well as for excess costs incurred or to be incurred.

5. The rights and remedies of Battelle provided in this clause are in addition to and do not limit any rights afforded to Battelle by any other clause of this contract.

**DUTY-FREE ENTRY** (cl 399 - Feb 2000)

- A. Definition. "Customs territory of the United States" means the States, the District of Columbia, and Puerto Rico.
- B. Except as otherwise approved by the Battelle Contracts Representative, the Contractor shall not include in the contract price any amount for duties on supplies specifically identified in the Schedule to be accorded duty-free entry.
- C. Except as provided in Paragraph D of this clause or elsewhere in this contract, the following procedures apply to supplies not identified in the Schedule to be accorded duty-free entry:
  1. The Contractor shall notify the Battelle Contracts Representative in writing of any purchase of foreign supplies (including, without limitation, raw materials, components, and intermediate assemblies) in excess of \$10,000 that are to be imported into the customs territory of the United States for delivery to Battelle under this contract, either as end products or for incorporation into end products. The Contractor shall furnish the notice to the Battelle Contracts Representative at least 20 calendar days before the importation. The notice shall identify the—
    - a. Foreign supplies;
    - b. Estimated amount of duty; and
    - c. Country of origin.
  2. The Battelle Contracts Representative will determine whether any of these supplies should be accorded duty-free entry and will notify the Contractor within 10 calendar days after receipt of the Contractor's notification.
  3. Except as otherwise approved by the Battelle Contracts Representative, the contract price shall be reduced by (or the allowable cost shall not include) the amount of duty that would be payable if the supplies were not entered duty-free.
- D. The Contractor is not required to provide the notification under Paragraph C of this clause for purchases of foreign supplies if—
  1. The supplies are identical in nature to items purchased by the Contractor or any subcontractor in connection with its commercial business; and
  2. Segregation of these supplies to ensure use only on Government contracts containing duty-free entry provisions is not economical or feasible.
- E. The Contractor shall claim duty-free entry only for supplies to be delivered to Battelle under this contract, either as end products or incorporated into end products, and shall pay duty on supplies, or any portion of them, other than scrap, salvage, or competitive sale authorized by the Battelle Contracts Representative, diverted to nongovernmental use.
- F. The U.S. Department of Energy (DOE) will execute any required duty-free entry certificates for supplies to be accorded duty-free entry and will assist the Contractor in obtaining duty-free entry for these supplies.
- G. Shipping documents for supplies to be accorded duty-free entry shall consign the shipments to the contracting agency in care of the Contractor and shall include the—
  1. Delivery address of the Contractor (or contracting agency, if appropriate);
  2. Battelle's prime contract number DOE-AC06-76RL01830
  3. Identification of carrier;
  4. Notation "UNITED STATES GOVERNMENT, DEPARTMENT OF ENERGY, Duty-free entry to be claimed pursuant to Item No(s) 834.00, Harmonized Tariff Schedules of the United States (19 USC 1202). Upon arrival of shipment at port of entry, District Director of Customs, please release shipment under 19 CFR part 142 and notify Director of Procurement, U.S. Department of Energy, Richland Operations Office, Box 550, Richland, Washington 99352, for execution of Customs Forms 7501 and 7501-A and any required duty-free entry certificates.";
  5. Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight); and
  6. Estimated value in United States dollars.
- H. The Contractor shall instruct the foreign supplier to—
  1. Consign the shipment as specified in paragraph (g) of this clause;
  2. Mark all packages with the words "UNITED STATES GOVERNMENT, DEPARTMENT OF ENERGY"; and
  3. Include with the shipment at least two copies of the bill of lading (or other shipping document) for use by the District Director of Customs at the port of entry.
- I. The Contractor shall provide written notice to the cognizant contract administration office immediately after notification by the Battelle Contracts Representative that duty-free entry will be accorded foreign supplies or, for duty-free supplies identified in the Schedule, upon award by the Contractor to the overseas supplier. The notice shall identify the—
  1. Foreign supplies;
  2. Country of origin;

3. Contract number; and
  4. Scheduled delivery date(s).
- J. The Contractor shall include the substance of this clause in any subcontract if—
1. Supplies identified in the Schedule to be accorded duty-free entry will be imported into the customs territory of the United States; or
  2. Other foreign supplies in excess of \$10,000 may be imported into the customs territory of the United States.

**NUCLEAR HAZARDS INDEMNITY AGREEMENT** (cl. 3110-B – Oct 2005)

- A. Authority. This clause is incorporated into this Contract pursuant to the authority contained in subsection 170d of the Atomic Energy Act of 1954, as amended (hereinafter called the Act).
- B. Definitions. The definitions set out in the Act shall apply to this clause.
- C. Financial Protection. Except as hereafter permitted or required in writing by the Department of Energy (DOE), the Contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability, as described in Paragraph D.2 below. DOE may, however, at any time require in writing that the Contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the Contractor by DOE.
- D. Indemnification.
1. To the extent that the Contractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE, DOE will indemnify the Contractor and other persons indemnified against (a) claims for public liability as described in Paragraph D.2 of this clause; and (b) such legal costs of the Contractor and other persons indemnified as are approved by DOE, provided that DOE's liability, including such legal costs, shall not exceed the amount set forth in section 170t of the Act in the aggregate for each nuclear incident or precautionary evaluation occurring within the United States or \$500 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.
  2. The public liability referred to in Paragraph D.1 of this Clause is public liability as defined in the Act which (a) arises out of or in connection with the activities under this Contract, including transportation; and (b) arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.
- E. Waiver of Defenses.
1. In the event of a nuclear incident, as defined in the Act, arising out of nuclear waste activities, as defined in the Act, the Contractor, on behalf of itself and other persons indemnified, agrees to waive any issue or defense as to charitable or governmental immunity.
  2. In the event of an extraordinary nuclear occurrence which—
    - a. Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or
    - b. Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or
    - c. Arises out of or results from the possession, operation, or use by the Contractor or a subcontractor of a device utilizing special nuclear material or by-product material, during the course of the contract activity; or
    - d. Arises out of, results from, or occurs in the course of nuclear waste activities, the Contractor, on behalf of itself and other persons indemnified, agrees to waive:
      - (i) Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault of persons indemnified, including, but not limited to—
        - (a) Negligence;
        - (b) Contributory negligence;
        - (c) Assumption of risk; or
        - (d) Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God;
      - (ii) Any issue or defense as to charitable or governmental immunity; and
      - (iii) Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or change and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.
    - e. The term extraordinary nuclear occurrence means an event that DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in 10 CFR Part 840.

- f. For the purposes of that determination, “offsite” as that term is used in 10 CFR Part 840 means away from “the contract location” which phrase means any DOE facility, installation, or site at which contractual activity under this contract is being carried on, and any Contractor-owned or controlled facility, installation, or site at which the Contractor is engaged in the performance of contractual activity under this contract.
3. The waivers set forth above:
    - a. Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action;
    - b. Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;
    - c. Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;
    - d. Shall not apply to injury or damage to a claimant or to a claimant’s property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;
    - e. Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefore are either payable or required to be provided under any workmen’s compensation or occupational disease law;
    - f. Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;
    - g. Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection; and
    - h. Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (i) the limit of liability provisions under subsection 170e of the Act, and (ii) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.
- F. Notification and Litigation of Claims. The Contractor shall give immediate written notice to Battelle of any known action or claim filed or made against the Contractor or other person indemnified for public liability as defined in Paragraph D.2. Except as otherwise directed by the Battelle Contracts Representative, the Contractor shall furnish promptly to Battelle, copies of all pertinent papers received by the Contractor or filed with respect to such actions or claims. Battelle and DOE shall have the right to, and may collaborate with, the Contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right to—
1. require the prior approval of Battelle for the payment of any claim that DOE be required to indemnify hereunder; and
  2. appear through the Attorney General on behalf of the Contractor or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder; take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by Battelle or DOE, the Contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.
- G. Continuity of DOE Obligations. The obligations of DOE under this Clause shall not be affected by any failure on the part of the Contractor to fulfill its obligation under this Contract and shall be unaffected by the death, disability, or termination of existence of the Contractor, or by the completion, termination or expiration of this Contract.
- H. Effect of Other Clauses. The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to any, other clause of this contract, including the clause entitled “Disputes” provided, however, that this clause shall be subject to the clauses entitled “Covenant Against Contingent Fees,” “Officials Not to Benefit,” and “Examination of Records by the Comptroller General,” and any provisions that are later added to this Contract as required by applicable Federal law, including statutes, executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.
- I. The Contractor is specifically exempt from civil penalties pursuant to Section 234A of the Price-Anderson Amendment Act of 1988.
- J. Criminal Penalties. Any individual director, officer, or employee of the Contractor or of its subcontractors and suppliers who are indemnified under the provisions of this Clause are subject to criminal penalties, pursuant to 223(c) of the Act, for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.
- K. Inclusion in Subcontract. The Contractor shall insert this clause in any subcontract that may involve the risk of public liability, as that term is defined in the Act and further described in Paragraph D.2 above. However, this clause shall not be included in subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b of the Act or NRC agreements of indemnification under section 170c or k of the Act for the activities under the subcontract.
- L. Effective Date. The indemnity of Paragraph D.1. is limited to the indemnity provided by the Price-Anderson Amendments Act of 1988 for any nuclear incident to which the indemnity applies that occurred on or after August 8, 2005. The Contractor’s liability for civil violations of the Atomic Energy Act of 1954 under this Contract is that in effect for Battelle prior to August 8, 2005 (see Paragraph I. of this Clause).

#### PRICE-ANDERSON AMENDMENTS ACT (cl 3111 - Nov 2006)

In addition to applicable Quality and ES&H contract clauses and requirements, the following shall apply:

- A. Indemnification for Nuclear Safety Violations

1. **Applicability.** The provisions of this clause shall be applicable if the Contractor's products or services are subject to the Nuclear Hazards Indemnity provisions of section 170 of the Atomic Energy Act of 1954, as amended, and the U.S. Department of Energy's Procedural Rules for DOE Nuclear Activities as described in Title 10, Code of Federal Regulations, Part 820 (10 CFR Part 820), or could otherwise have any effect on nuclear or radiological safety.
2. The Contractor assumes full responsibility and shall indemnify, hold harmless, and defend Battelle, its directors, officers, and employees from any civil liability under §234A of the Atomic Energy Act of 1954, as amended, or the implementing regulations, arising out of the activities of the Contractor, its subcontractors, suppliers, agents, employees, and their officers, or directors. The Contractor's obligation to indemnify and hold harmless shall expressly include attorney fees and other reasonable costs of defending any action or proceeding instituted under §234A or DOE's implementing regulations.

**B. Nuclear Safety Regulations**

1. **Applicability.** The provisions of this clause apply to any activity carried out pursuant to this contract by the Contractor, its subcontractors, suppliers, and employees that has the potential to result in a risk of harm to an individual from radiation or radioactive material, or the potential to affect a DOE nuclear facility or radiological activity. The term "individual" as used in this clause includes, without limitation, general employees, radiological workers, embryo/fetus of a declared pregnant worker, minors, and members of the public. The requirements of this clause do not apply to activities that are regulated, and either indemnified or subject to financial assurance provisions, through a license by the Nuclear Regulatory Commission or a State under an Agreement with the Nuclear Regulatory Commission (an Agreement State), including activities certified by the Nuclear Regulatory Commission under §1701 (42 USC §2297(f)) of the Atomic Energy Act of 1954, as amended. Other specific applicability exclusions are identified in 10 CFR §820 and related Department of Energy regulations.
2. The Contractor shall comply, as applicable, with the requirements of Title 10, Code of Federal Regulations, Part 835, "Occupational Radiation Protection" (10 CFR Part 835). The Contractor's programs and associated documents are subject to review at all times by Battelle.
3. The Contractor shall: (1) comply, as applicable with the requirements of Title 10, Code of Federal Regulations, Part 830 "Nuclear Safety Management," including Subpart A, Quality Assurance Requirements or a quality assurance program that meets the stated requirements of 10 CFR 830.120, and (2) implement, document, and maintain such programs (e.g., administrative controls, procedures, and technical work documents) as necessary to ensure compliance with the QA requirements section of this contract. The Contractor's programs and associated documents are subject to review at all times by Battelle.
4. The Contractor shall: (1) comply with all applicable requirements of Title 10, Code of Federal Regulations, Part 708, "Contractor Employee Protection" (10 CFR 708), and (2) implement, document, and maintain such programs as necessary to ensure compliance with this requirement. The Contractor's programs and associated documents are subject to review at all times by Battelle.
5. The Contractor shall: (1) comply with all applicable requirements of newly promulgated Department of Energy nuclear safety requirements in Title 10, Code of Federal Regulations, and (2) implement, document, and maintain such programs as necessary to ensure compliance with these requirements. The Contractor's programs and associated documents are subject to review at all times by Battelle.
6. If any noncompliance or deficiency occurs in the programs or activities subject to this clause, or a lack of appropriate or timely corrective action by the Contractor, causes a potential violation of nuclear safety requirements, then the Contractor may be subject to enforcement penalties under the Atomic Energy Act, 10 CFR 820 and/or other provisions of this contract.
7. Where reporting of a potential violation of a nuclear safety regulation to the DOE is necessary, the Contractor shall report through Battelle.

- C. The Contractor shall include the provisions of this clause, including this paragraph, in all lower tier Contracts for any activity subject to the applicability requirements in paragraphs 1a and 2a.

**WORKPLACE SUBSTANCE ABUSE PROGRAM (cl 395 – Feb. 2005)**

- A. **Program Implementation.** The Contractor shall, consistent with 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, incorporated herein by reference with full force and effect, develop, implement, and maintain a workplace substance abuse program for employees identified as being in Testing Designated Positions (TDP). The Contractor's program must be reviewed and approved by Battelle prior to beginning work under this Contract and is subject to monitoring by Battelle throughout the term of the Contract.
- B. **Remedies.** In addition to any other remedies available to Battelle and the U.S. Department of Energy, the contractor's failure to comply with the requirements of 10 CFR part 707 or to perform in a manner consistent with its approved program may render the contractor subject to the suspension of contract payments, or, where applicable, a reduction in fee; termination for default; and suspension or debarment.
- C. **Subcontracts.**
  1. The Contractor agrees to notify the Battelle Contracts Representative reasonably in advance of, but not later than 35 days prior to, the award of any subcontract the Contractor believes may be subject to the requirements of 10 CFR part 707.
  2. The Contractor shall require all subcontracts subject to the provisions of 10 CFR part 707 to agree to develop and implement a workplace substance abuse program that complies with the requirements of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, as a condition for award of the subcontract. The Contractor shall obtain Battelle's review and approval of each subcontractor's program, and Battelle will periodically monitor each subcontractor's implementation of the program for effectiveness and compliance with 10 CFR part 707.
  3. The Contractor agrees to include, and require the inclusion of, the requirements of this clause in all subcontracts, at any tier, that are subject to the provisions of 10 CFR part 707.

**REQUIRED SOURCES FOR HELIUM AND HELIUM USAGE DATA** (cl 3117 - Apr 2002)

A. Definitions—

“Bureau of Land Management,” as used in this clause, means the Department of the Interior, Bureau of Land Management, Amarillo Field Office, Helium Operations, located at 801 South Fillmore Street, Suite 500, Amarillo, TX 79101-3545.

“Federal helium supplier” means a private helium vendor that has an in-kind crude helium sales contract with the Bureau of Land Management (BLM) and that is on the BLM Amarillo Field Office’s Authorized List of Federal Helium Suppliers available via the Internet at [http://www.nm.blm.gov/www/amfo/amfo\\_home.html](http://www.nm.blm.gov/www/amfo/amfo_home.html).

“Major helium requirement” means an estimated refined helium requirement greater than 200,000 standard cubic feet (scf) (measured at 14.7 pounds per square inch absolute pressure and 70 degrees Fahrenheit temperature) of gaseous helium or 7510 liters of liquid helium delivered to a helium use location per year.

B. Requirements—

1. Contractors must purchase major helium requirements from Federal helium suppliers, to the extent that supplies are available.
2. The Contractor shall provide to the Battelle Contracts Representative the following data within 10 days after the Contractor or subcontractor receives a delivery of helium from a Federal helium supplier—
  - The name of the supplier;
  - The amount of helium purchased;
  - The delivery date(s); and
  - The location where the helium was used.

C. Subcontracts. The Contractor shall insert this clause, including this paragraph C. in any subcontract or order that involves a major helium requirement.

## D. PRICING FORM

**NOTE: Separate pricing proposals needed for both Two-Year Base Period and One-Year Option Period. Separate pricing proposals needed for proposed Subcontractors for both base period and option period.**

A. Name of Offeror :							
B. Home Office Address:							
C. Division Where Work is Performed:							
D. Detail Description of Fully Burdened Labor: IDENTIFY PERIOD							
Name/Category Reference attached Labor Category Descriptions and Qualifications	Base Labor	Escalation (if any) Rate	Overhead Rate	G&A Rate	Other	Fee Rate	Fully Burdened Rate
1. Program Manager							
2. On-Site Rep/Pharmacy							
3. Safety & Health Prof							
4. Quality Assurance Prof							
5. Programmer							
6. Purchasing Agent							
7. Data Entry Clerk							
8. Laborer							
9.							
10.							
11.							
12.							
13.							
14.							
15.							
E. Reference attached Labor Category Descriptions and Qualifications; IDENTIFY PERIOD							
Direct Labor							
Name/Labor Category	Rate	Hours					
A) <u>Program Manager</u>	\$ _____	_____	\$ _____				
B) <u>On-Site Rep/Pharmacy</u>	\$ _____	_____	\$ _____				
C) <u>Safety &amp; Health Professional</u>	\$ _____	_____	\$ _____				
D) <u>Quality Assurance Professional</u>	\$ _____	_____	\$ _____				
E) <u>Programmer</u>	\$ _____	_____	\$ _____				
F) <u>Purchasing Agent</u>	\$ _____	_____	\$ _____				
G) <u>Data Entry Clerk</u>	\$ _____	_____	\$ _____				
H) <u>Laborer</u>	\$ _____	_____	\$ _____				
<i>Total Direct Labor</i>			\$ _____				
F. Contact for specific financial information:							
Name: _____				Telephone No. _____			



**POSITION QUALIFICATION DESCRIPTIONS**

**Program Manager:** Minimum Masters Degree (science/business management) and 6 years experience or Bachelors Degree (science/business management) and 8 years experience. Demonstrated expertise in chemical knowledge, ES&H, and inventory management.

**On-Site Rep/Pharmacy:** Assuming that there will be a pharmacy in RPL and that the BSEL rep will back up the RPL rep, minimum Bachelor's Degree (science), 2 years chemical laboratory experience, 2 years nuclear facility experience. May substitute Professional Engineer certification or 80 semester hours of engineering, physical science, mathematics, or biological sciences courses and 8 years of related experience for Bachelor's Degree.

**Safety & Health Professional:** Minimum Bachelors (or higher) degree in chemistry, physics, toxicology, biology, biochemistry, engineering or similar science. 2 years experience in chemical characterization, such as developing MSDSs. Prefer Certified Industrial Hygienist certification.

**Quality Assurance Professional:** Minimum Bachelors degree and 9 years experience or advanced degree and 6 years experience. Having progressive experience in applying quality principles to R&D activities is highly desirable. This position requires the staff member to possess expert knowledge of quality concepts, terminology and methodologies; extensive experience in implementing complex quality processes and programs; in-depth knowledge of general business administration; ability to design/develop and implement innovative quality processes or programs in the context of the environment; expert understanding and use of quality processes, tools, and techniques; excellent organizational, analytical, and negotiating skills; excellent interpersonal skills; and excellent verbal and written communication skills.

**Programmer:** Minimum BS in Computer Science or Management Information Systems (MIS) or related field. 3-5 years experience as a business systems programmer. Competency on Oracle, Sequel, and other server types that are used in the offeror's system.

**Purchasing Agent:** Associates degree in business or related field, 3-5 years in commodity buying, at least 2 years experience purchasing chemicals, radioactive materials, and related products. Additional 5 years experience may substitute for Associates degree.

**Data Entry Clerk:** High School Degree or G.E.D. and 2 years experience with computers, basic office software (e.g. MS Office), and relational database data entry. Familiarity with chemical terminology.

**Laborer:** High School Degree or G.E.D. and 2 years work experience.

## E. DISCOUNT FOR CHEMICAL SUBCONTRACTORS FORM

Offerors are to propose a firm fixed discount off all the chemical subcontractors' current, dated published price lists the Offeror intends to use, excluding compressed gas subcontractors. The Awardee will be paid 95% of that discounted price. Discounts will be firm for the entire contract period including the option period (if exercised). Per the Financial Proposal Checklist (Section II, Attachment B), Offerors **must** submit this form with their financial proposal, including and/or identifying:

1. all current, dated, published price lists from the proposed chemical subcontractors
2. the applicable discounts
3. the chemical subcontractors' discount agreements (Offeror may propose discount greater than that which is contained in the chemical subcontractors' discount agreements).

Offeror must include below and in their proposal, at a minimum, Sigma, Acros, MallinckrodtBaker and a "house brand" (if applicable). Awardee may not use chemical subcontractors not contained in their offer unless authorized in writing by the Battelle Contract Representative. Layout of financial proposal with respect to the proposed chemical subcontractors is to be as follows:

<u>Chemical Supplier</u>	<u>% Discount off Published Price List (PPL)</u>	<u>PPL Attached</u>	<u>Discount Agreement Attached</u>
<u>Sigma</u>	_____	<input type="checkbox"/>	<input type="checkbox"/>
<u>Acros</u>	_____	<input type="checkbox"/>	<input type="checkbox"/>
<u>MallinckrodtBaker</u>	_____	<input type="checkbox"/>	<input type="checkbox"/>
<u>(house brand - if applicable)</u>	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	<input type="checkbox"/>	<input type="checkbox"/>

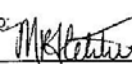
Company: \_\_\_\_\_

Signed: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## F. WAGE DETERMINATIONS

<b>STANDARD FORM 98</b>	<b>NOTICE OF INTENTION TO MAKE A SERVICE CONTRACT AND RESPONSE TO NOTICE</b>	1. NOTICE NO. <b>A</b>						
<b>E-MAIL TO:</b>  DOE-PNSO SCA Point of Contact: Melanie Fletcher – <a href="mailto:Melanie.Fletcher@pnso.science.doe.gov">Melanie.Fletcher@pnso.science.doe.gov</a>		2. Estimated solicitation date (use numerals)						
		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;">Month</td> <td style="width: 33%;">Day</td> <td style="width: 33%;">Year</td> </tr> <tr> <td>04</td> <td>30</td> <td>2008</td> </tr> </table>	Month	Day	Year	04	30	2008
		Month	Day	Year				
		04	30	2008				
3. Estimated date bids or proposals to be opened or negotiations begun (use numerals)								
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;">Month</td> <td style="width: 33%;">Day</td> <td style="width: 33%;">Year</td> </tr> <tr> <td>06</td> <td>01</td> <td>2008</td> </tr> </table>	Month	Day	Year	06	01	2008		
Month	Day	Year						
06	01	2008						
4. Date contract performance to begin (use numerals)		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;">Month</td> <td style="width: 33%;">Day</td> <td style="width: 33%;">Year</td> </tr> <tr> <td>07</td> <td>01</td> <td>2008</td> </tr> </table>	Month	Day	Year	07	01	2008
Month	Day	Year						
07	01	2008						
5. PLACE(S) OF PERFORMANCE (county & state) Benton County, Washington	6. SERVICES TO BE PERFORMED (describe & include contract/requisition #) Requisition No. 56985 Develop and provide a chemical management services program to supply and manage chemicals, gases, and related services.							
7. INFORMATION ABOUT PERFORMANCE								
A. <input type="checkbox"/> Services now performed by a contractor                      B. <input type="checkbox"/> Services now performed by Federal employees                      C. <input checked="" type="checkbox"/> Services not presently being performed								
8. IF BOX A IN ITEM 7 IS MARKED, COMPLETE ITEM 8 AS APPLICABLE								
a. Name and address of incumbent contractor		b. Number(s) of any wage determination(s) in incumbent's contract						
C. Name(s) of union(s) if services are being performed under collective bargaining agreement(s). <i>Important:</i> Attach copies of current applicable collective bargaining agreements		<b>RESPONSE TO NOTICE</b> (by Department of Energy)  A. <input checked="" type="checkbox"/> The attached wage determination(s) listed below apply to procurement.  <div style="text-align: center;"> <i>WD 05-2569 (REV. 5)</i>  <i>WD 96-0223 (REV. 23)</i> </div>  B. <input type="checkbox"/> As of this date, no wage determination applicable to the specified locality and classes of employees is in effect.  C. <input type="checkbox"/> From information supplied, the Service Contract Act does not apply (see attached explanation).  D. <input type="checkbox"/> Notice returned for additional information (see attached explanation).  SIGNED:  (U.S. Department of Energy) 4/25/08 (Date)						
9. OFFICIAL SUBMITTING NOTICE								
Jan Slater	March 21, 2008		(360) 681-3642					
TYPE NAME	DATE		TELEPHONE NO.					
10. TYPE NAME AND TITLE OF PERSON TO WHOM RESPONSE IS TO BE SENT								
Jan H. Slater, Associate Contracts Manager Jan.Slater@pnl.gov								
cc: Battelle SCA POC - Laurie Martin – <a href="mailto:laurie.martin@pnl.gov">laurie.martin@pnl.gov</a>								



WD 05-2569 (Rev.-5) was first posted on www.wdol.gov on 10/09/2007

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REGISTER OF WAGE DETERMINATIONS UNDER THE SERVICE CONTRACT ACT By direction of the Secretary of Labor		U.S. DEPARTMENT OF LABOR EMPLOYMENT STANDARDS ADMINISTRATION WAGE AND HOUR DIVISION WASHINGTON D.C. 20210
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William W.Gross Director	Division of Wage Determinations		Wage Determination No.: 2005-2569 Revision No.: 5 Date Of Revision: 10/01/2007
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States: Oregon, Washington

Area: Oregon Counties of Baker, Grant, Harney, Malheur, Morrow, Umatilla, Union, Wallowa, Wheeler  
Washington Counties of Benton, Franklin, Walla Walla, Yakima

\*\*Fringe Benefits Required Follow the Occupational Listing\*\*

OCCUPATION CODE - TITLE	MINIMUM WAGE RATE
01000 - Administrative Support And Clerical Occupations	
01011 - Accounting Clerk I	12.61
01012 - Accounting Clerk II	14.16
01013 - Accounting Clerk III	16.65
01020 - Administrative Assistant	21.85
01040 - Court Reporter	16.86
01051 - Data Entry Operator I	12.21
01052 - Data Entry Operator II	13.23
01060 - Dispatcher, Motor Vehicle	16.86
01070 - Document Preparation Clerk	12.94
01090 - Duplicating Machine Operator	12.94
01111 - General Clerk I	12.16
01112 - General Clerk II	13.26
01113 - General Clerk III	14.89
01120 - Housing Referral Assistant	19.50
01141 - Messenger Courier	10.59
01191 - Order Clerk I	12.21
01192 - Order Clerk II	13.32
01261 - Personnel Assistant (Employment) I	15.06
01262 - Personnel Assistant (Employment) II	16.86
01263 - Personnel Assistant (Employment) III	18.80
01270 - Production Control Clerk	21.52
01280 - Receptionist	12.56
01290 - Rental Clerk	14.55
01300 - Scheduler, Maintenance	14.95
01311 - Secretary I	14.95
01312 - Secretary II	16.73
01313 - Secretary III	19.50
01320 - Service Order Dispatcher	16.93
01410 - Supply Technician	21.86
01420 - Survey Worker	16.71
01531 - Travel Clerk I	12.96
01532 - Travel Clerk II	13.94
01533 - Travel Clerk III	14.91
01611 - Word Processor I	13.42

<http://www.wdol.gov/wdol/scafiles/std/05-2569.txt>

4/17/2008

WD 96-0223 (Rev.-23) was first posted on www.wdol.gov on 08/14/2007

Hazardous Waste Pickup/Disposal Services

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REGISTER OF WAGE DETERMINATIONS UNDER 3 U.S. DEPARTMENT OF LABOR  
THE SERVICE CONTRACT ACT 3 EMPLOYMENT STANDARDS ADMINISTRATION  
By direction of the Secretary of Labor 3 WAGE AND HOUR DIVISION  
3 WASHINGTON, D.C. 20210  
3  
3

William W. Gross Division of Wage 3 Wage Determination No: 1996-0223  
Director Determinations 3 Revision No: 23  
3 Date Of Revision: 08/07/2007

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NATIONWIDE: Applicable in the continental U.S. and Hawaii

Regions are defined as follows:

MIDWEST REGION: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri,  
Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin;

NORTHEAST REGION: Connecticut, Maine, Massachusetts, New Hampshire, New Jersey,  
New York, Pennsylvania, Rhode Island, and Vermont;

SOUTH REGION: Alabama, Arkansas, Delaware, District of Columbia, Florida,  
Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma,  
South Carolina, Tennessee, Texas, Virginia, and West Virginia;

WEST REGION: Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New  
Mexico, Oregon, Utah, Washington, and Wyoming.  
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\*\*Fringe Benefits Required Follow the Occupational Listing\*\*

Employed on contracts for removal of oil spills, hazardous waste materials and  
related cleanup services.

OCCUPATION CODE - TITLE	MINIMUM WAGE RATE
23440 - Heavy Equipment Operator	
MIDWEST REGION	26.32
NORTHEAST REGION	25.01
SOUTH REGION	22.92
WEST REGION	25.81
23470 - Laborer	
MIDWEST REGION	14.81
NORTHEAST REGION	15.17
SOUTH REGION	11.56
WEST REGION	13.23
30090 - Environmental Technician	
MIDWEST REGION	23.43
NORTHEAST REGION	24.94
SOUTH REGION	22.21
WEST REGION	23.57
31010 - Airplane Pilot	25.35
31361 - Truckdriver, Light	
MIDWEST REGION	13.36
NORTHEAST REGION	16.75
SOUTH REGION	10.85
WEST REGION	11.30
31362 - Truckdriver, Medium	
MIDWEST REGION	21.54
NORTHEAST REGION	21.57
SOUTH REGION	18.32
WEST REGION	20.23

<http://www.wdol.gov/wdol/scafiles/non-std/96-0223.sca>

4/17/2008