

# Battelle

The Business of Innovation

Pacific Northwest National Laboratory  
3200 Q Avenue  
P.O. Box 999  
Richland, WA 99352

## REQUEST FOR PROPOSAL

(This is NOT an order)

This is a request for proposal contemplating negotiations prior to award. Proposals should be initially submitted on the most favorable price and technical terms which can be offered because of the possibility that award will be made without discussion of proposal received.

Buyer reserves the right to: 1) accept any line item or all line items of your offer at the price(s) offered unless exception is stated, 2) negotiate with any or all offerors prior to any award, or 3) reject any or all offers received.

Submit all offers on this form showing unit and total prices for meeting the stated required delivery date. If unable to meet stated date, offer on and state best dependable delivery date.

<b>Date:</b> August 28, 2008	<b>RFP No.:</b> 75355
<b>Offer Due:</b> September 12, 2008	<b>Delivery Required:</b> See Specifications
<b>Buyer:</b> Jennifer Miles-Ecclestone	<b>Phone:</b> 509-375-4467 <b>Fax:</b> 509-375-2738 <b>Email:</b> Jennifer.milesecclestone@pnl.gov
<b>TO</b>	Attn: Phone: Fax:

Item	Qty	U/M	Description	Unit Price	Total Price

### THIS RFP INCLUDES THE FOLLOWING ENCLOSURES

- Enclosure 1 Solicitation Provisions and Instructions
- Enclosure 2 Technical Specifications
- Enclosure 3 Evaluation Criteria
- Enclosure 4 General Provisions
- Enclosure 5 Representations and Certification Form

The Offeror takes no exception to the General Provisions specified in Enclosure 4.

\_\_\_\_\_  
Signature of Offeror

\_\_\_\_\_  
Date

We offer to sell the above items (or alternate items as specified) at the prices indicated, on the terms and conditions stated and the general provisions attached, which will be a part of any resulting order.  See Enclosure 4 for the required General Provisions	<b>F.O.B. Point:</b> Richland, WA		
	<b>Delivery Date at F.O.B. Point</b>		
	<b>Terms of Payment</b> NET 30		
Name/Title	Firm Name	Weight	Recommended Carrier
Signature	Telephone No.	Offer Date	

**SOLICITATION PROVISIONS AND INSTRUCTIONS**

**SUBMISSION OF PROPOSALS**

Proposals should be prepared simply and economically, and provide a straightforward, concise delineation of the information required to be furnished. Emphasis should be on completeness and clarity. Elaborate brochures or other presentations are neither required nor desired.

Each proposal submitted should include a statement of acceptance of the enclosed sample terms and conditions (see Enclosure 4).

One original, signed by a representative of the Offeror authorized to enter into legally binding commitments and 1 (copy) additional copies are required for each proposal submitted. Envelopes containing proposals should be marked in the lower right hand corner with "Proposal to RFP No. 75355". Proposals must be received by Battelle no later than 4:00 p.m. PST, September 12, 2008.

Proposals to be transmitted via regular mail should be addressed as follows:

Battelle, Pacific Northwest Division  
ATTN: Jennifer Miles-Ecclestone, K8-18  
P.O. Box 999  
Richland, WA 99352

Proposals to be transmitted via a commercial delivery service, U. S. Postal Service Express Mail Next Day Service - Post Office to Addressee, or hand carried should be addressed as follows:

Battelle, Pacific Northwest Division  
ATTN: Jennifer Miles-Ecclestone, K8-18  
3230 Q Avenue  
Richland, WA 99352

**LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF PROPOSALS**

- A. Any offer received by Battelle after the exact time specified for receipt will not be considered unless it is received before the award is made and it:
  - 1. Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);
  - 2. Was sent by mail and it is determined by Battelle that the late receipt was due solely to mishandling by Battelle after receipt by Battelle; or

3. Was sent by U.S. Postal Service Express Mail Next Day Service - Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays; or
  4. Is the only proposal received.
- B. Any modification of an offer, except a modification resulting from Battelle's request for "best and final" offers, is subject to the same conditions as in Subparagraph A.1., A.2., and A.3. above.
  - C. A modification resulting from Battelle's request for "best and final" offers received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by Battelle after receipt by Battelle.
  - D. The only acceptable evidence to establish the date of mailing of a late proposal or modification sent either by U.S. Postal Service registered or certified mail is the U.S. postmark both on the envelope or wrapper and on the original receipt from the U.S. Postal Service. Both postmarks must show a legible date or the proposal, quotation, or modification shall be processed as if mailed late. "Post-mark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. Postal Service on the date of mailing. Therefore, Offerors should request the postal clerk to place a legible hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.
  - E. The only acceptable evidence to establish the time of receipt by Battelle is the time/date stamp of Battelle on the offer wrapper or other documentary evidence of receipt maintained by Battelle.
  - F. The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in Paragraph D. of this provision. Therefore, Offerors should request the postal clerk to place a legible hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.
  - G. Notwithstanding Paragraph A. above, a late modification of an otherwise successful offer that makes its terms more favorable will be considered at any time it is received and may be accepted.

- H. Proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before award. Proposals may be withdrawn in person by an Offeror or an authorized representative, if the representative's identity is made known and the representative signs a receipt for the proposal before award.

**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 PNNL 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. PNNL 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 PNNL'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. PNNL 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 policy, in consideration of the award, to obtain unlimited rights for the Government in technical data contained in the proposal unless the prospective contractor 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 PNNL, 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 contractor's proposal dated \_\_\_\_\_, which are asserted by the Contractor 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.

#### **PUBLIC LAW 95-516**

Public Law 95-516 provides that small businesses which meet the criteria of the law may acquire by contract greater rights with regard to patents than was afforded under previous laws and regulations. Under the new law, 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.

#### **TECHNICAL SPECIFICATIONS**

The Technical Specifications for the services required is Enclosure 2.

#### **AMENDMENTS TO RFP**

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

Offerors shall acknowledge receipt of any amendment of this RFP (a) by signing and returning the form provided for such purpose; (b) by stating in its proposal that the amendment (date and number) was received and considered in formulating the proposal; or (c) by letter, telegram, or

E-mail. Battelle must receive the acknowledgement by the time specified for receipt of proposals.

### **EXPLANATION TO PROSPECTIVE OFFERORS**

Any prospective Offeror desiring an explanation or interpretation of the RFP must request it in writing soon enough to allow a reply to reach all prospective Offerors before the submission of their offers. Oral explanations or instruction given before the award of the contract will not be binding. Any information given to a prospective Offeror concerning the RFP will be furnished promptly to all other prospective Offerors as an amendment of the solicitation, if that information is necessary in submitting offers or if the lack of it would be prejudicial to any other prospective Offeror.

### **CONTRACT AWARD**

If an award is made Battelle will award contract(s) resulting from this RFP to the responsible and responsive Offeror(s) with the lowest price proposal. See Enclosure 3 "Evaluation Criteria."

Contract award may be made on the initial offers received, without discussions. Therefore, initial proposals should contain the Offeror's best price.

Battelle may reject any or all offers or waive informalities and minor irregularities in offers received. Battelle is not obligated to pay any cost incurred in the preparation and submission of a proposal, nor to enter into a contract or any other arrangement with any Offeror.

There will be no public opening of proposals. Offerors will be advised when source selection has been made. By submitting a proposal an Offeror represents that its proposal is firm for one hundred twenty (120) days after the proposal due date.

### **AUTHORIZED NEGOTIATORS**

If a negotiation meeting is held, the Offeror shall designate as its negotiator a person who is authorized to make legally binding commitments without further review or approval. If, for any reason, it is impractical for the Offeror to be represented at a negotiation meeting by other than a person fully authorized to act in its behalf, Battelle shall be notified sufficiently in advance to allow a decision to be made whether the negotiations should proceed as scheduled or be postponed. The Offeror's notice, if originally given orally, shall be confirmed in writing.

## Technical Specification for a Multi-Collector Inductively Coupled Plasma Mass Spectrometer

Pacific Northwest National Laboratory

August 2008

### Section I. Introduction

This document lists technical and other requirements for the purchase of a multi-collector, inductively coupled plasma ion source, magnetic sector field mass spectrometer designed for elemental and isotopic analysis of small amounts of uranium, plutonium and other elements. In contrast to much of the work done with such instruments, our applications often involve small, limited quantities of analyte. The hardware and software design and performance must therefore be optimized for analytical protocols involving limited analyte quantities.

Selected tests shall be conducted or data provided at various stages in the procurement process. Performance tests are specified in the "Test Plan" below. PNNL desires to divide the procurement process into stages: a "pre-shipment" stage and an "on-site testing and acceptance" stage. These stages involve at a minimum the following activities and milestones:

1. In the pre-shipment stage, selected performance metrics of the instrument built for PNNL shall be demonstrated at the factory prior to shipment to PNNL. This set of performance metrics shall be part of the purchase specifications. At PNNL's option, a PNNL representative shall be present at the factory for such performance demonstration. PNNL written approval that acceptable performance has been achieved by the offeror is required before the instrument may be shipped.
2. The "on-site testing and acceptance stage" shall consist of delivery, installation, on-site testing, training, and final acceptance by PNNL. All requirements set forth herein shall be demonstrated after delivery and installation at PNNL. A PNNL representative shall then acknowledge in writing that all requirements in this contract have been met.

### Section II. General requirements.

The mass spectrometer is intended for high precision isotopic analysis of small amounts of actinides, primarily uranium and plutonium, and other elements and isotopes. The proposed instrument's performance must be demonstrated using analytical protocols in which the sample

analyte amount is limited. Thus, we request the offeror to provide data that meet performance specifications for various absolute amounts of analyte in the solution presented to the instrument. For uranium, these levels of interest are 1 pg, 10 pg, and 1000 pg. For plutonium, these levels are 1 femtogram (fg), 10 fg, and 1000 fg. If the offeror facility is unable to handle plutonium, then this requirement can be met by combining uranium performance data with background data at key plutonium isotope masses. Typically, these analytes would be presented to the instrument as 1 mL aqueous solutions of 1-5% nitric acid containing the above amounts of uranium or plutonium. Such small volumes minimize chemical blanks and are compatible with high efficiency, desolvating nebulizing systems. In addition, several isotopic compositions are of interest including uranium that is depleted in its abundance of  $^{235}\text{U}$  relative to isotopically natural uranium, uranium that is isotopically natural, and uranium that is isotopically enriched.

There shall be a sufficient number of ion detectors to simultaneously measure as many as five isotopes of uranium (233, 234, 235, 236, and 238). These detectors, possibly augmented with additional detectors, shall also be usable for detection of as many as six isotopes of plutonium (238, 239, 240, 241, 242, and 244). At least three pulse counting (PC) detectors are required. These PC detectors will typically be accompanied by Faraday Cup (FC) detectors to enable monitoring of all isotopes of interest for a first element of interest and possibly for other elements whose isotopic masses overlap those of the first element of interest. Additional FC detectors beyond those needed for U and Pu will be required to measure the isotopic composition of other elements in the Periodic Table (Li to Cm) without changing the number or sequence of detector types in the detector array. The instrument shall be capable of rapid changeover of either the magnetic field, cup positions, and optics potentials such that isotopes of multiple elements can be measured using a single, small aliquot of sample. That is, the magnetic field and optics switching and settling times as well as cup repositioning time (if applicable) must be short compared to data acquisition times so as to maximize utilization of the sample. The instrument must have very low detector dark currents and detector cross talk. Other background must also be very low, such as background from scattered ions, unstructured (continuous) by mass ions and spectral peaks at the masses of the isotopes analyzed.

For uranium isotope dilution mass spectrometric (IDMS) analysis,  $^{233}\text{U}$  is used as the spike. The isotopes in the sample which are of interest to be measured include  $^{234}\text{U}$ ,  $^{235}\text{U}$ ,  $^{236}\text{U}$ , and



$^{238}\text{U}$ .  $^{235}\text{U}/^{238}\text{U}$  ratios range from 0.002 up to ~20 which will require the capability to accurately measure  $^{234}\text{U}$  and  $^{236}\text{U}$  in the presence of high levels of  $^{235}\text{U}$  and  $^{238}\text{U}$ .

The plutonium isotopes to be measured are  $^{238}\text{Pu}$ ,  $^{239}\text{Pu}$ ,  $^{240}\text{Pu}$ ,  $^{241}\text{Pu}$ ,  $^{242}\text{Pu}$ , and  $^{244}\text{Pu}$ .

Plutonium-244 is used as the spike for IDMS measurements. Spiking levels may range from 1 to 100 fg. Quantities of  $^{241}\text{Pu}$  and  $^{242}\text{Pu}$  in the samples are normally much lower than the  $^{239}\text{Pu}$  and  $^{240}\text{Pu}$  levels. Care should be taken in the fabrication and testing of this instrument to minimize contamination or other issues that would lead to spectral background at these actinide masses of interest. The above Pu isotopes shall all be measured using PC detectors to provide maximum sensitivity. It is required that all Pu isotopes of interest must be measurable using PC detectors with at most two central axis mass settings (magnet field settings). PNNL requests a bid for a separately priced option for a detector array that enables simultaneous measurement of  $^{239}\text{Pu}$ ,  $^{240}\text{Pu}$ ,  $^{241}\text{Pu}$ , and  $^{242}\text{Pu}$  on PC detectors without compromising the ability to measure uranium isotopes as specified herein and without compromising the ability to measure other elements from Li to Cm.

The instrument, instrument control and data acquisition, analysis and output protocol must be optimized for high sensitivity, high precision isotopic measurements. Some of the following general requirements will be specified more fully in subsequent sections of this document.

Vacuum construction shall use state-of-the-art ultrahigh vacuum materials and techniques including non-magnetic, weldable, bakeable stainless steel wherever appropriate. The use of metal-gasketed, ultra-high vacuum compatible flanges is required in the instrument's vacuum chambers, except for the foreline vacuum sections, although metal gasketed flanges are preferred here as well. Equipment for baking the instrument must be included with the instrument.

The instrument is intended for analysis of small amounts of actinides, thus, all development and testing shall be performed using low concentrations of uranium or other actinides in any sample introduced to the instrument so as to minimize instrumental memory for the trace analyses for which the instrument is intended. In no case shall isotopically natural uranium solutions be introduced into the instrument with concentrations exceeding 1 ng/mL. In no case shall isotopically non-natural uranium solutions be introduced at concentrations exceeding 10 pg/mL. In no case shall plutonium solutions be introduced with concentrations exceeding 10 pg/mL. It

shall be possible to simultaneously monitor all Pu (238-244, excluding 243) or all U isotopes (233-238, excluding 237) on PC detectors using a maximum of two magnet settings.

### Section III. Performance metrics

Performance metrics shall be demonstrated using solutions of standard reference materials where appropriate. Such test materials shall be provided by the offeror. Where signal intensities are stated in terms of ion currents, it shall be understood that this does not restrict measurement of such peaks to either a PC detector or to a FC detector.

#### III.1. Mass range

The instrument shall be capable of routinely detecting positive ions with mass-to-charge ratios between 1 and 280 Da/charge to enable the measurement of actinide molecular ions.

#### III.2. Mass resolving power and mass spectral peak shape.

The mass spectrum is defined as the plot of detected ion current as a linear function of mass-to-charge ratio. The mass peak is the shape of the spectral response as the magnetic field is scanned across a single isotope. The mass resolving power for each detector must be at least  $M/\Delta M = 400$  at 238 amu.  $\Delta M$  shall be measured at mass M using the mass peak width at 10% of peak height. The mass peak top is defined as the portion of the peak between the points at which the ion signal is 99% of maximum on the high and low mass sides of the peak, respectively. The (mass) width of the peak top shall be no less than 50% of the (mass) width of the peak measured at 50% of peak maximum for both PC and FC detectors. Peaks must be flat with signal intensity variation less than 0.01% on all FC collectors over at least the central 50% of the peak top (determined as the relative standard deviation of 10 one second integrations of the signal across the peak top). Peak flatness must be 0.1% or better for all PC detectors.

#### III.3. Abundance sensitivity.

The abundance sensitivity is the ratio of the signal contribution from an intense peak at a mass M measured at one mass unit higher or lower, (i.e., at an adjacent isotope's mass,  $M \pm 1$ ) to the signal of the parent peak at M. Abundance sensitivity is typically measured on the low mass side of a peak to account for scattered, reduced energy ions and to eliminate confusion that may arise from the presence of hydrides or other interfering ion peaks when measuring the high mass peak tail. Alternatively, abundance sensitivity can be measured at fractional mass positions and the value at the mass of isotopes of interest interpolated. For at least one of the

high sensitivity, PC detectors, abundance sensitivity shall be better than 0.5 ppm while meeting the sensitivity, peak shape and flatness requirements defined herein. Abundance sensitivity shall be measured as the ratio of mass  $^{237}\text{U}$  ion current to the  $^{238}\text{U}$  ion current under sampling conditions in which the signal at mass 238 is dominated by uranium and the signal at mass 237 is dominated by scattered uranium ions. The intensity of this scattered  $^{238}\text{U}$  ion beam measured at mass 237 shall be at least 10 times the background at mass 237 so that the measured abundance sensitivity is dominated by scatter and not by other effects. Such low abundance sensitivity shall be provided on one or more PC detectors situated such that when the  $^{234}\text{U}$  or  $^{236}\text{U}$  beams are measured on the low abundance sensitivity PC detector, the  $^{235}\text{U}$  beam can be measured on a second PC detector and the  $^{238}\text{U}$  beam on either a PC or FC detector.

#### III.4. Sensitivity

The instrument must demonstrate high efficiency where efficiency is defined as the number of valid counts registered by the data system per atom in the sample introduced into the instrument. Such efficiencies are typically  $\sim 0.1\%$  for the actinides in state-of-the-art ICP/MS instruments. These efficiencies are typically lower for light elements. The required performance for the PNNL MC-ICPMS is  $0.3\%$  (3 counts for every 1000 atoms in the solution being analyzed) for  $^{238}\text{U}$  under conditions that simultaneously meet the peak shape, isotope ratio precision, mass resolving power, stability, and abundance sensitivity requirements set forth herein. When tuned for this high actinide efficiency, the instrument need not meet stringent sensitivity requirements for lighter elements. However, the response for Li, Sr, and U shall be at least  $0.002\%$ ,  $0.05\%$ , and  $0.1\%$ , respectively, using a single instrument tuning optimized for this broad elemental mass range.

#### III.5. Stability.

Stability of high voltage power supplies shall be better than  $\pm 20$  ppm over a 30 minute period. Ripple and noise shall not exceed 50 mV peak-to-peak. Critical ion optical components shall have voltage stability of 1 ppm, e.g., 5 mV lens bias stability relative to a source bias of 5000V.

Detected ion beam currents shall be stable over both short and long time periods under conditions optimized for other key performance metrics, especially sensitivity and abundance sensitivity. Short term stability shall be better than  $0.5\%$  (relative internal precision, 1-sigma) of 10 replicate 5 second integrations of a uranium isotope signal. Such stability shall be demonstrated over a period of at least 10 minutes. Long term stability shall be better than  $2\%$

measured using no more than one minute integrations of the same signal used for the short term stability measurement and shall be demonstrated for a period of at least 4 hours. All of the above stability measurements shall be demonstrated using both FC and PC detectors.

### III.6. Uranium and Plutonium Background.

The instrument must be fabricated, assembled, maintained, operated, and delivered in an extremely clean condition with respect to uranium and plutonium contamination. The intensities of background peaks on all PC detectors in the mass spectral regions of interest (233 amu to 244 amu) shall be lower than 1 count/second (cps), except for the peak at mass-to-charge ratio 238, which shall have intensity less than 5 cps. Such backgrounds shall be demonstrated while introducing 1% nitric acid into sample introduction system associated with the ion source under normal sample uptake conditions. Non-spectral background, e.g., signals measured at "half-mass" position, in this region shall be less than 0.1 cps.

Actinide hydride levels must be kept very low. Uranium shall be used to characterize the hydride level. Uranium hydride ( $^{238}\text{UH}^+$ ) abundance relative to  $^{238}\text{U}^+$  shall be demonstrated to be lower than 20 ppm using the standard sample nebulizer and better than 5 ppm using a high efficiency, desolvating nebulizer such as a DSN, APEX, or PFA.

### III.7. Non-actinide background

While introducing a blank solution of nitric acid into the instrument, the background in the mass region 233-244 shall demonstrate that no actinides are detectable, except for uranium and then only at the  $^{238}\text{U}$  isotope. The  $^{238}\text{U}$  signal in such a background measurement shall be as low as possible, but in no case greater than 5 cps. This background shall be demonstrated to be stable; in particular, the standard deviation of this background signal shall be no worse than twice the Poisson counting statistics limit. For example, the background might be measured using 10 one minute integrations. At 5 cps, each such integration would yield an average of 300 counts. If these replicate integrated values are Poisson distributed, the standard deviation of the 10 replicate integrations will be  $(300)^{-1/2}$ , or 5.8%. Thus, the instrument must demonstrate a standard deviation no worse than twice this value or ~12%

### III.8. Magnetic Field

The magnetic field must be stable and computer controlled. The magnetic field must be stable to +/- 50 ppm over a 30 minute period. A sensor to accurately measure the magnetic field, such

as a Hall Effect probe, shall be included and the output of this sensor shall be recorded routinely with the data acquired for various scans. The output of this sensor shall also be available for measurement external to the instrument. The magnetic field control system must use a single, high resolution digital-to-analog converter to control the instrument mass setting across each mass range of interest. The smallest mass step of the computer controlled magnetic field shall be no larger than 0.001 amu in the mass region of uranium. Settling time shall be fast, such that rapid switching between the elements of interest (U, Pu) can be performed without sacrificing data acquisition time. This magnet switching and settling time between elements is taken as the time for a user selected mass position to be reached within  $\pm 0.005$  amu. Any voltages that are changed in connection with this mass change shall also be stable within this magnet settling time as well as Faraday amplifier settling time. This time shall be less than 5 seconds and the magnet position shall be stable to  $\pm 0.01$  amu for a period of at least 30 minutes. It is required that the instrument be capable of measuring at least 3 isotopes of each of these elements at a single mass setting, and to measure additional isotopes of other elements using additional magnet settings and do so with the aforementioned rapid magnet switching.

### III.9. Detectors

PNNL requires that multiple detectors of each type, PC and FC, be provided such that simultaneous detection of the isotopes of interest is possible. The stability, noise characteristics, and dynamic range of these detectors must be sufficient to ensure that the precision of isotope ratio measurements for small samples is not detector limited, but are instead limited primarily by the counting statistics of the minor isotopes detected. Of course for higher count rates (exceeding 100K cps for conventional, large format electron multipliers), detector stability and/or linearity can begin to limit precision and accuracy. It is necessary that a sufficient number of PC detectors be provided so that all five uranium isotopes of interest (233, 234, 235, 236, and 238) can be measured using at most two magnet settings. Similarly, this same detector array shall be capable of measuring the six plutonium isotopes (238, 239, 240, 241, 242, and 244) of interest using at most two magnet settings. At a minimum, it shall be possible to simultaneously measure 234, 235, and 238 isotopes at a single magnet setting using PC detectors; this configuration is required for the lowest of the analyte levels of interest for this instrument. It is required that the detector array contain additional FC and/or PC detectors to enable a wide range of elements from Li to Pu to be analyzed. Each detector must have

separate amplifiers or pulse counting circuits as appropriate and data acquisition channels for simultaneous data acquisition of all detectors.

The PC detectors are to be spaced so as to allow for the simultaneous measurement of various actinide isotopes as described above. One possible configuration of detectors is shown in the Table below. The Table shows a subset of the full detector array in the vicinity of the detectors that would be used for actinide analysis; the full array will require additional detectors to cover the full elemental range of interest. The ability to analyze spiked samples using either a PC or FC detector for the spike is required; it is also desirable to analyze unspiked samples. For plutonium analyses, all isotopes of interest shall be measured on PC detectors. For uranium analyses, various configurations may be used depending on the amount and isotopic composition of the uranium to be measured. [The offeror is requested and encouraged to suggest alternative detector configurations that may better meet the measurement requirements set forth herein.](#)

Collector Configurations in the Vicinity of Actinide Ion Beams

Sample	PC	PC	PC	XX	PC	FC	PC	XX	FC
Pu-1	239	240	241			244			
Pu-2	240	241	242		244				
U low – un-spiked	234	235	236		238				
U low – spiled			238			235	234	233	
U high					234	235	236		238

Provision must be made for the inter-calibration of FC detector amplifiers on a routine basis using the same reference voltage. PC detector gains must be measurable to an accuracy of 1 part in one thousand. PC detector response must not deviate from a linear function by more than 1% for detected analyte signals covering the full response range of the detector, i.e., up to maximum count rates corresponding to the maximum routinely usable count rate specified by the detector manufacturer. A documented method, including all necessary hardware and software, for routinely calibrating the FC and PC detectors, must be provided. Calibration shall include calibration of detector linearity, absolute response, and cross calibrations to include FC to FC and PC to FC. FC detector amplifier circuits must be linear to better than 0.001% of full scale plus 0.02% of signal. Ion current measurement circuitry must have short time constants and low voltage coefficients at all gains to enable precise data acquisition within several (<5) seconds of applying an ion current to a detector. Cross talk between detectors must be

sufficiently low such that there is no significant effect on key performance requirements set forth herein.

Specific detector systems:

III.9.a. Faraday Cup detection systems

FC detectors shall be shielded and the effects of secondary electron or ion emission suppressed. Stray ion beams shall not be able to impinge on FCs or on the components associated with the FC detector or signal leads (shielded case, suppressor plates, entrance aperture plates, in-vacuum amplifier leads, etc). The noise on each FC detector shall be less than 0.1 fA measured using a 1 second integration of the FC current. Such noise measurement shall be made with the plasma on and all instrument high voltages and magnet current applied.

III.9.b. Ion counting detection system

The PC ion detector systems (PC detector and associated amplifier, discriminator and pulse counting circuits) shall have absolute efficiencies (quantum efficiency) of at least 85%, i.e., at least 85% of ions impinging on the detectors shall produce a count under amplifier-discriminator settings which yield a dark count rate no greater than 1 count per minute. Apart from this efficiency requirement, the PC ion detector systems shall have dark count rates lower than 1 count per minute. The aggregated dead time for the PC detectors, associated amplifiers, and counting electronics as an overall PC detection system shall be  $\leq 20$  nanoseconds. The signal range of the PC detector shall be from the dark count rate to a count rate sufficient to achieve the isotope ratio precision requirements given herein. Specifically, the dynamic range of the PC detectors shall be sufficiently large to not limit the isotope ratio performance of the instrument for the analyte amounts of interest stated herein. This is especially important for intermediate ranges of analyte amount where the major isotope is clearly best measured using an FC detector, the minor isotope(s) are best measured with a PC detector, but isotopes of intermediate abundance can be measured with either an FC or PC detector. The maximum count rate of the PC detectors shall be given as the maximum rate that the PC detectors can sustain as part of routine analyses without unduly shortening the life of the detector. The maximum count rate of the PC detectors shall be included in the instrument performance specifications section of the offeror's response to this RFP.

Section IV. Software and Host Computer

The host computer, its operating system, and the instrument control, data acquisition, data reduction, and data output shall be Microsoft Windows compatible. The host computer shall be US standard compatible and have the following minimum hardware components: 100 GB of free hard disk space on the delivered system, at least 3 GHz CPU operating speed, 2 GB RAM, Microsoft operating system (XP preferred), two LCD monitors (each at least 20 inches wide), at least three USB ports on the front of the CPU case with additional USB ports on the back of case, and a DVD burner.

The instrument must be delivered with computer-controlled ion source, ion optics, magnet and detector electronics. The instrument control software must be integrated with software that controls data acquisition and post-acquisition data reduction. The source code for instrumental control, data acquisition, storage, reduction, and display shall be provided. It is required that source code and complete algorithm descriptions associated with data acquisition, post-acquisition processing, and processing be provided. The latter is intended to enable the user to perform all data manipulations to obtain fully corrected and calibrated isotope ratio results independent of the offeror's software. The program must provide an accurate timebase for all operations and data will be acquired and stored as high precision (time, mass, integrated signal from all detectors) records with appropriate indexing and supporting parameters (e.g., dwell time, amplifier gain range, number of scans). The data acquisition software must include provision to acquire, store, recall, and export mass spectra over defined mass ranges, displaying detected ion current data acquired in real time on linear or logarithmic scales versus mass. The mass range for such "mass scans" shall be over any user selected scan start and end values including up to the full mass range of the instrument. The software will also provide capability to acquire ion currents as a function of time at a single magnetic field setting and display such acquired data in real time during the acquisition. Such real time display of detector signals shall be possible for any number of detectors simultaneously including for all detectors (PC or FC). In either the mass scan mode or temporal scan mode, the software shall provide for both numeric and graphical display of the data being acquired for any number of detectors up to and including for all detectors.

The software shall provide for both graphical and numeric display of data, analysis of data (eg, isotope ratio calculation, baseline drift correction, fitting of data to simple functional forms), and exportation of data to commercial spreadsheet software. Data and displays from all scan types and calculation results, numeric or graphical, shall be fully displayable and fully exportable.



Common mass bias correction functions (linear, power law, exponential) shall be incorporated into the data reduction/correction software. The PC detector deadtime used in calculations shall be able to be changed by the user. Isobaric and molecular ion interference corrections shall be built in to the software enabling interference corrections to be made without exporting the data. Calculated values such as isotope ratios, interference corrected signals (count rates or ion currents), ratios of interference corrected signals, shall be able to be displayed in real time. Such display of calculated values shall include current as well as recent history of such values, for example, a display showing a user selectable time window of such data from the present back to 10 minutes earlier, 1 hour earlier, etc.

## Section V. Additional requirements and specifications

### V.1. Power.

PNNL requires that the instrument be supplied ready for use with United States standard electrical power. If transformers are required for operation with U.S. standard electrical power, such transformers will be included with the instrument.

### V.2. Uninterruptible Power Supplies

Uninterruptible backup power supplies shall be provided for essential vacuum system components. This UPS system shall be capable of sustaining vacuum for a minimum of three (3) hours in the event of a facility power failure.

### V.3. Pumping System.

The high vacuum pumps shall be turbomolecular pumps and shall be provided from a commercial vacuum pump manufacturer along with required controllers. The foreline pump for the turbomolecular pumps shall be a scroll pump. All tubes, chambers, valves, and other vacuum components of the foreline pumping system shall be thoroughly degreased prior to assembly and use so as to eliminate hydrocarbon contaminants. It is preferred that all such components be of stainless steel construction and/or UHV compatible (all metal gasket seals). With these provisions, the components of the foreline and forepump system will be interchangeable with other mass spectrometers at PNNL.

### V.4. Datalogging.

Provision shall be made for recording data acquisition setups, instrument status, and tuning parameters for each analysis (i.e., for each mass spectral or temporal scan recorded by the

instrument). Provision shall also be made for logging the following instrument parameters during each analysis: the magnetic field strength measured with at least 16 bits of resolution and the critical high voltages that affect ion beam stability and mass position.

#### V.5. Instrument design, fabrication, and testing.

Only oil-free vacuum pumps (high vacuum and foreline) will be used in all stages of fabrication, assembly, testing, and use. All spectrometer components shall be fabricated from non-magnetic materials.

At no time during assembly and testing shall the instrument be exposed to large amounts of substantially non-natural isotopic composition elements of interest. By "large amounts", we mean the largest aliquot sizes listed herein for the various performance tests.

#### Section VI. Spare parts, options and consumables

The delivered system shall include the following spare parts and consumables:

1. ICP parts to include at least two spare torches, one spare load coil, and gaskets
2. one each of the various types of turbomolecular pumps (and controllers) used in the instrument.
3. One Complete Set of Fuses
4. Scroll pump rebuild kit
5. Two spare PC detectors

#### Section VII. Delivery, documentation, and training

##### VII.1. Delivery

The offeror shall deliver the complete instrument, ready for installation and testing, not later than 6 months after receipt of the purchase order. The offeror shall install, test, and train in accordance with the requirements set forth herein not later than 8 months after receipt of the purchase order.

##### VII.2. Documentation

Documentation and manuals shall be provided describing all aspects of operations, data reduction methods, data calculations, maintenance, and troubleshooting of every sub-system of which the instrument is comprised. Typically these sub-systems are the vacuum system, low and high voltage power supplies, magnet power supplies, data acquisition electronics, and

software. These systems also include various controlling electronics associated with each sub-system. Software refers to all instrument control, host computer to instrument computer/controller interface, and data acquisition, reduction, and display functions. Firmware components and code shall be documented where these are not described in other hardware or software documentation. Two copies each of both electronic and paper (hardcopy) versions of all manuals and drawings shall be provided.

### VII.3. User Training

Training shall be provided for up to three PNNL staff, such training to include at a minimum all aspects of instrument start-up, shutdown, procedures for recovery from a facility power or other utility failure, hardware and software setup, data acquisition, data display, export and processing, instrument tuning, operation, and maintenance. Training shall include a demonstration of the uninterruptible power supply capability. Training shall be provided covering all instrument setup, tuning, and operations required to demonstrate the required performance metrics set forth herein as well as to perform analysis of samples. Training shall include incidental aspects of instrument operation such as display and analysis of data both in real time and using stored data, exporting of data files into commercial software programs, and the creation and use of programmed sequences of analyses.

### VII.4 Offeror Training.

Offeror training will be required for the laboratory work associated with installation and testing on-site. The instrument will be installed in the 320 Building at PNNL's Richland, WA location. Safety and other operational training specific to that building will be required prior to the start of laboratory work at PNNL. Such training shall be provided by PNNL.

### Section VIII. Performance Test Plan

The offeror shall demonstrate instrument performance on the instrument after installation at PNNL that meets all of the offerors published specifications for the instrument. In addition to the offeror performance tests, the following specific measurements and resulting data, unless they are equivalent to a published offeror specification, shall be provided at various phases of the award process. Where offeror published performance specifications and performance tests described herein differ in their stringency, the more stringent test or specification shall be demonstrated. For each measurement required, the raw data shall be provided as well as the final calculated parameters, e.g., stability, sensitivity, etc. These measurements will require

work to be performed at both the offeror's site and at PNNL in Richland, WA. An equivalent measurement protocol can be offered by the offeror as part of the offeror's bid, but its suitability for determining the performance metric of interest shall be determined by PNNL. Prior to shipping, the offeror shall provide in writing to PNNL a description of how their instrument will be operated to achieve each of the performance tests required.

#### VIII.1. Sensitivity.

The required sensitivity (section III.3) shall be demonstrated by performing replicate analyses of an isotopically certified uranium standard solution. For this test, the solution can be of natural or near-natural isotopic composition. Sensitivity shall not be increased at the expense of resolution or isotope ratio precision; PNNL requires an optimization of these and other performance metrics which maximizes precision and accuracy of isotopic composition measurements when the amount of analyte element is highly limited, e.g., when the total amount of available actinide element is 1 picogram or less.

#### VIII.2. Mass resolving power and peak shapes.

The required mass resolving power and peak shape shall be demonstrated by mass spectral scans of  ${}^6\text{Li}$ ,  ${}^{23}\text{Na}$ ,  ${}^{88}\text{Sr}$ ,  ${}^{144}\text{Nd}$ , and  ${}^{238}\text{U}$ . These scans shall be acquired using at least six decades of detector dynamic range, that is, the maximum signal for each peak shall be at least 1,000,000-fold larger than the adjacent half-mass background signal. In this way, the shape of the peak tails can be quantified.

#### VIII.3. Abundance sensitivity

The required abundance sensitivity shall be demonstrated by mass spectral scans of the 235-240 mass range while introducing isotopically natural uranium. Such scans shall be acquired at a mass increment no greater than 0.02 amu, i.e., there shall be at least 50 channels of data per amu in the mass spectral scan. The concentration of the uranium solution shall be selected such that the intensity of the  ${}^{238}\text{U}^+$  peak during such scans shall be sufficient to obtain scattered  ${}^{238}\text{U}^+$  signals at mass 237 that are at least 10 times the background.

#### VIII.4. Stability

The required voltage stabilities shall be measured by appropriately configured recording oscilloscope and/or multimeter. The ion beam current variations shall be documented using a mass peak no more intense than required to meet the stability specification.

#### VIII.5. Non-Actinide background

The required low background for non-actinide masses shall be demonstrated by acquiring mass spectral scans over appropriate regions under conditions for which the instrument meets all other performance specifications, especially mass resolution, peak shape, sensitivity, stability, isotope ratio precision, and abundance sensitivity. The test shall be done both with and without uranium introduced into the ion source. For the purposes of this test, the flow rate of uranium into the instrument shall be sufficient to yield  $^{238}\text{U}$  ion current of 10 pA.

#### VIII.6. Actinide background

The required background for key actinide masses shall be demonstrated by data acquisition at the appropriate masses. At the conclusion of on-site testing at PNNL, the background at mass 238 shall be no more than 5 counts/sec when introducing 1% nitric acid into the instrument. The background for all other masses of interest in actinide analysis (mass 233 to 244 inclusive) shall be less than 0.1 counts/sec. Sufficient dwell time on each mass shall be used in this measurement to provide an uncertainty (1-sigma) on the background measurement that is no greater than 10% of the background signal.

#### VIII.7. Magnetic Field

The required magnetic field stability, settling time, and reproducibility shall be demonstrated by monitoring ion currents on the sides of appropriate mass peaks during mass peak switching between elements, e.g., monitoring the side of the  $^{238}\text{U}$  peak after having switched from monitoring of a nearby mass such as  $^{233}\text{U}$ .

#### VIII.8. Detector performance demonstration

The required performance for detectors shall be demonstrated for each detector by performing the following series of measurements. Data shall be acquired which is sufficient to determine the FC dark current and ion counting detector dark count rates to an accuracy of 10% or less. The offeror shall provide a written description of tests that will be utilized to demonstrate and quantify:

VIII.8.1. Low cross talk. It is suggested that low cross talk be demonstrated by recording mass spectral scans on all detectors simultaneously while scanning an intense beam such as that from  $^{209}\text{Bi}$  or another mono-isotopic element across the entire detector array. In this way any

cross talk from the large signal associated with  $^{209}\text{Bi}$  striking a given detector can be simultaneously registered on all other detectors. While the offeror need not use this method, a comparable data set will be required which satisfactorily demonstrates low cross talk. Low cross-talk is defined herein to mean that the signal on a given detector under test shall be no greater than 50% above its dark count/current while scanning a beam over any other detector that is  $10^7$ -fold more intense than the dark count/current of the detector under test. For example, if a PC detector is being assessed (dark count rate is 0.1 cps), then a  $10^6$  cps beam is scanned across all other detectors. If a FC detector is being assessed (noise level 0.1 fA), then a 1 nA beam is scanned across all other FC detectors (clearly one would not expose a PC detector to such an intense beam).

VIII.8.2. Linearity of the response of the detectors and their associated amplifiers and other electronics shall be demonstrated including measures of the maximum counting rate for ion counting detectors before they depart from linearity in response.

VIII.8.3. Inter-calibration of the gains of FC and PC detectors. It is suggested that this measurement can be made using an isotopically natural certified reference material such as U129a (formerly U950). In this measurement, an FC detector is used to measure  $^{238}\text{U}^+$  and a PC detector to measure  $^{234}\text{U}^+$ . The measured ratio is corrected for mass bias (determined internally or externally) and then compared with the certified isotope ratio. This measurement is then repeated with other combinations of the FC and PC detectors in a sequence that provides inter-calibration of any detector (FC or PC) with any other detector. With PNNL concurrence, the offeror may use an alternative method to demonstrate inter-calibration.

VIII.8.4. Linearity of FC detector amplifiers shall be demonstrated using a calibrated current source. The offeror is requested to include a purchase option that includes the calibrated current source.

#### VIII.9. Actinide isotope ratio determinations

The isotopic ratios of selected uranium reference materials shall be demonstrated to be accurately measured for total uranium amounts ranging from 1 picogram to 10 nanograms. These amounts refer to the amount of uranium consumed during a single analysis, not necessarily to the amount present in the solution presented to the instrument for such analysis. Accuracy shall in all instances be demonstrated to be within the statistical precision of the

measuring devices and the appropriate corrections (e.g. dead time and PC quantum efficiencies), but in no case shall the total uncertainty (random and systematic sources of uncertainty appropriately propagated) in the measured  $^{235}\text{U}/^{238}\text{U}$  isotopic ratios be worse than 0.1% of the measured ratio and in no case shall the measured  $^{234}\text{U}/^{238}\text{U}$  total uncertainty be worse than 1%.

Isotope ratio precision shall also be demonstrated with elements spanning the full elemental range of the instrument. In addition to U and Pu, these other elements shall include at least Li, Sr, Nd, and Pb.

#### Section IX. Requirements by Award Stage

It is our intent to procure a commercially available instrument that meets the specifications in response to this request. The following information must therefore be provided as part of any response to this RFP:

- a. example data corresponding to tests VIII.1, VIII.2, VIII.3, VIII.6, and VIII.9 in the Test Plan. These data can be from any instrument comparable to the one to be fabricated in response to this request. These data are to be representative of the performance of the instrument proposed to be built.
- b. a list of customers who have purchased the same or comparable instruments in the last three years.

##### IX.1 Pre-shipping Stage

- a. Provide test data for tests VIII.1 through VIII.9 in the Test Plan. Data corresponding to each of the tests VIII.1 through VIII.9 inclusive shall be provided in an electronic format that is readable in commercial spreadsheet software as well as in hardcopy format (graphs and plots of data, narrative of the testing performed). The instrument shall not be shipped until PNNL provides a written statement that the above data have been received and are acceptable.

- b. A listing of all items to be shipped shall be provided, including documentation, manuals, drawings, accessories, spares, and consumables. Items not available for shipping with the main instrument, but that are intended to be shipped at a later time, shall be specifically called out and identified along with a guaranteed date of shipment.

### IX.3 Final Acceptance

Prior to final acceptance of the instrument by PNNL, the following shall be demonstrated or delivered:

- a. A fully functional instrument, including all components, spares, accessories, consumables, and related hardware shall be delivered, installed, and tested in accordance with the Test Plan described herein.
- b. All performance metrics shall be successfully demonstrated on the delivered instrument as described in the Test Plan.
- c. All documentation shall be delivered in both electronic and hardcopy formats.
- d. All training shall be completed.

### IX.4 Delivery, Installation, and On-Site Training Dates

The offeror shall deliver the complete instrument, ready for installation and testing, not later than 6 months after receipt of the purchase order. The offeror shall install, test, and train in accordance with the requirements set forth herein not later than 8 months after receipt of the purchase order.

### IX.5. Bid response

The offeror is requested to provide an itemized bid in which a price is quoted for the minimum instrument configuration that meets all requirements, i.e., the "required" features. PNNL also requests separate quotes for instruments that incorporate some or all of other features that the offeror may deem responsive, especially additional detector or detector arrays that better meet the performance specifications described herein. While certain spare parts and consumables are to be included with the instrument, the offeror is requested to provide separate bids for additional consumables, optional equipment, spare parts, extended warranty, and annual maintenance and service plans.

### Section X. Software upgrades and System Warranty

The offeror shall provide to PNNL at no charge all software modifications and software upgrades that occur during the warranty period.

The offeror shall warrant the complete instrument and associated components or systems to be free of defects in materials and workmanship including software for a period of two years from



the date of final acceptance. Power supplies and electronics shall be warranted for a period of three years from the date of final acceptance. During the warranty period, the offeror will repair or replace any defective structures, components, or sub-systems in the instrument and will bear all costs, including travel, labor, and per diem, associated with such repair or replacement. Replacement parts shall be reasonably available, but in no case shall more than 30 days be required to provide such parts with the 30 days measured from the date of the determination by PNNL and the offeror that such parts are needed.

**RFP 75355**

**EVALUATION CRITERIA**

If an award is made, award shall be made to the responsive and responsible Offeror submitting the lowest price proposal.

Battelle, in operation of the Pacific Northwest National Laboratory will make an affirmative determination of contractor responsibility which may include an on site visit to the offeror(s) facility by Battelle staff.

**TABLE OF CONTENTS**

TABLE OF CONTENTS GENERAL PROVISIONS – FIXED PRICE CONTRACT..... 1

GENERAL PROVISIONS – FIXED PRICE CONTRACT ..... 2

    DEFINITIONS (*cl 301 – Apr 2000*) ..... 2

    ORDER OF PRECEDENCE (*cl 309 - Oct 1997*)..... 3

    PATENT INDEMNITY (*cl 367a - Apr 1984*)..... 3

    PROHIBITION OF SEGREGATED FACILITIES (*cl 319 - Feb 1999*)..... 3

    ASSIGNMENT (*cl 357 - Jan 2003*) ..... 3

    DISPUTES (*cl 331 – Oct 1979*)..... 4

    PERMITS AND RESPONSIBILITIES (*cl 358 - Nov 1991*) ..... 4

    COVENANT AGAINST CONTINGENT FEES (*cl 339 - Apr 1984*)..... 4

    BUY AMERICAN ACT-SUPPLIES (*cl. 341 – June 2003*)..... 4

    USE OF PACIFIC NORTHWEST NATIONAL LABORATORY OR BATTELLE NAME (*cl 374 – June 2006*) ..... 5

    AUTHORIZATION AND CONSENT (*cl 373 - July 1995*) ..... 5

    AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (*cl 321 - June 1998*)..... 5

    NOTICE OF LABOR DISPUTES (*cl 359 - Feb 1997*)..... 6

    WORKERS’ COMPENSATION (*cl 323 - Nov 1983*) ..... 6

    CONTRACT ADMINISTRATION (*cl 384 - Jan 1986*)..... 6

    CONVICT LABOR (*cl 390 - Aug 1996*) ..... 6

    EQUAL OPPORTUNITY (*cl 317 - Apr 2002*)..... 7

    RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (*cl 3107 - July 2000*)..... 8

    SUBCONTRACTS FOR COMMERCIAL ITEMS (*cl 364 - Sep 2006*)..... 8

    ACCOUNTS, RECORDS, AND INSPECTION (*cl 345 – Dec 2000*) ..... 9

    PAYMENTS - FIXED PRICE (*cl 350 – Aug 1984*)..... 10

    CHANGES – FIXED PRICE (*CL. 346B – SEP 2007*) ..... 10

    FEDERAL, STATE, AND LOCAL TAXES – FIXED PRICE (*cl 354b - Apr 1984*)..... 10

    STOP-WORK ORDER – FIXED PRICE (*cl 380b - Aug 1989*)..... 10

CLAUSES FOR CONTRACTS EXCEEDING \$25,000..... 11

    EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (*cl. 320 - Dec 2001*)..... 11

    EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (*cl 3102 - Dec 2001*)..... 13

CLAUSES FOR CONTRACTS EXCEEDING \$100K..... 14

    UTILIZATION OF SMALL BUSINESS CONCERNS (*cl 311 / May 2004*) ..... 14

    CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION (*cl 316 - Sept 2000*)..... 15

    NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (*cl 368 – Aug 2002*)..... 16

    INTEREST (*cl 377 - Jun 1996*)..... 16

RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (cl 3108 - Jul 1995)..... 16

ANTI-KICKBACK PROCEDURES ..... 16

PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (cl 336 - Apr 2003)..... 17

NOTICE OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES (cl 343 - July 2006) ..... 18

CLAUSES FOR CONTRACTS EXCEEDING \$500K..... 19

    SUBCONTRACTOR COST OR PRICING DATA (cl 353a - Oct 1997)..... 19

    SUBCONTRACTOR COST OR PRICING DATA - MODIFICATIONS (cl 353am - Oct 1997) ..... 19

    PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (cl 353c - Oct 1997) ..... 19

    PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA - MODIFICATIONS (cl 353d - Oct 1997) ..... 20

    DISPLACED EMPLOYEE HIRING PREFERENCE (cl 363 - Jun 1997)..... 22

    SMALL BUSINESS SUBCONTRACTING PLAN (cl 312 – Sep 2006) ..... 22

ADDITIONAL CLAUSES..... 26

    COST ACCOUNTING STANDARDS—EDUCATIONAL INSTITUTIONS (cl 328a - Apr 1998)..... 26

    ADMINISTRATION OF COST ACCOUNTING STANDARDS (cl 329 - Nov 1999)..... 27

    DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (cl 330 - Apr 1998) ..... 28

    INSPECTION OF SUPPLIES – FIXED PRICE (cl 379c - Aug 1996) ..... 29

    GOVERNMENT PROPERTY – FIXED PRICE CONTRACTS (cl 352b - Jun 2003) ..... 30

    PATENT RIGHTS—ACQUISITION BY THE GOVERNMENT (cl 370b Sep 1997) ..... 32

    RIGHTS IN DATA—GENERAL (cl 371a Jun 1987) ..... 39

    ENVIRONMENT, SAFETY AND HEALTH REQUIREMENTS (cl 3113a – Feb 2007)..... 43

    ACCESS TO AND OWNERSHIP OF RECORDS (cl 3109 - Dec 2000)..... 46

    INSURANCE (cl 378a - Jan 1997) ..... 47

    WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (cl 396 - Dec 2000) ..... 47

    PREFERENCE FOR U.S.-FLAG AIR CARRIERS (cl 335 - Jan 1997) ..... 47

    DEFAULT - FIXED PRICE SUPPLY AND SERVICE (cl 365c - Dec 1985) ..... 48

    TERMINATION FOR CONVENIENCE OF THE GOVERNMENT – FIXED PRICE (cl 365d - May 2004)..... 49

    RESPONSIBILITY FOR SUPPLIES (cl 382 - Apr 1984) ..... 51

    WARRANTY OF SERVICES (cl 383a - May 2001)..... 51

    WARRANTY OF SUPPLIES OF A NONCOMPLEX NATURE (cl 383b - June 2003)..... 51

    DUTY-FREE ENTRY (cl 399 - Feb 2000) ..... 53

**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 specifications.

**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** (ci 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.

- A. 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.

**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.

**DISPLACED EMPLOYEE HIRING PREFERENCE** (cl 363 - Jun 1997)

- A. Definition. Eligible employee means a current or former employee of a contractor or subcontractor employed at a Department of Energy Defense Nuclear Facility (1) whose position of employment has been, or will be, involuntarily terminated (except if terminated for cause), (2) who has also met the eligibility criteria contained in the Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, and (3) who is qualified for a particular job vacancy with the Department or one of its contractors with respect to work under its contract with the Department at the time the particular position is available.
- B. Consistent with Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, the contractor agrees that it will provide a preference in hiring to an eligible employee to the extent practicable for work performed under this contract.
- C. The requirements of this clause shall be included in subcontracts at any tier (except for subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed \$500,000.

**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

April 1 through September 30

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—EDUCATIONAL INSTITUTIONS** (cl 328a - Apr 1998)

- A. Unless the contract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR 9903 are incorporated herein by reference and the Contractor, in connection with this contract, shall—
1. *(CAS-covered Contracts Only)*. If a business unit of an educational institution required to submit a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for accumulating and 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 which 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 the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement, if required, must be amended accordingly. If an accounting principle change mandated under Office of Management and Budget (OMB) Circular A-21, Cost Principles for Educational Institutions, requires that a change in the Contractor's cost accounting practices be made after the date of this contract award, the change must be applied prospectively to this contract and the Disclosure Statement, if required, 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 9905 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 become 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 Paragraph A.3. of this clause, the Contractor is required to make to the 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 Paragraph 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 Subdivision A.4.a. or A.4.d. of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.
    - d. Agree to an equitable adjustment as provided in the Changes clause of this contract, if the contract cost is materially affected by an OMB Circular A-21 accounting principle amendment which, on becoming effective after the date of contract award, requires the Contractor to make a change to the Contractor's established cost accounting practices.
  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 the Government 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 Battelle or 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 applicable CAS in effect

on the subcontractor'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, except that—

1. 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 48 CFR 9903.201-4 shall be inserted;
2. This requirement shall apply only to negotiated subcontracts in excess of \$500,000; and
3. 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.

**DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES** (cl 330 - Apr 1998)

- A. The Contractor, in connection with this contract, shall-
  1. Comply with the requirements of 48 CFR 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs; 48 CFR 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose; 48 CFR 9904.405, Accounting for Unallowable Costs; and 48 CFR 9904.406, Cost Accounting Standard-Cost Accounting Period, in effect on the date of award of this contract as indicated in 48 CFR part 9904.
  2. (CAS-covered Contracts Only) If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5. 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.
  3. a. Follow consistently the Contractor's cost accounting practices. A change to such practices may be proposed, however, by either the Government or the Contractor, and the Contractor agrees to negotiate with the Contracting Officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to this contract, and the Disclosure Statement, if affected, must be amended accordingly.
    - b. The Contractor shall, when the parties agree to a change to a cost accounting practice and the Battelle Contracts Representative has made the finding required in 48 CFR 9903.201-6(b), that the change is desirable and not detrimental, negotiate an equitable adjustment as provided in the Changes clause of this contract. In the absence of the required finding, no agreement may be made under this contract clause that will increase costs paid by Battelle.

4. Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, 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 of interest established under the Internal Revenue Code of 1986 (26 U.S.C. 6621), from the time the payment by Battelle was made to the time the adjustment is effected.
- B. If the parties fail to agree whether the Contractor has complied with an applicable CAS, rule, or regulation as specified in 48 CFR 9903 and 9904 and as to any cost adjustment demanded by Battelle, such failure to agree will constitute a dispute within the meaning of the Disputes clause of this contract.
- C. The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this clause.
- D. The Contractor shall include in all negotiated subcontracts, which the Contractor enters into, the substance of this clause, except Paragraph B, and shall require such inclusion in all other subcontracts of any tier, except that—
  1. 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.
  2. This requirement shall apply only to negotiated subcontracts in excess of \$500,000.
  3. 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.

**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.

**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.

**PATENT RIGHTS—ACQUISITION BY THE GOVERNMENT** (*cl 370b Sep 1997*)

(a) *Definitions.*

*Invention*, as used in this clause, means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

*Practical application*, as used in this clause, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

*Subject invention*, as used in this clause, means any invention of the Contractor conceived or first actually reduced to practice in the course of or under this contract.

*DOE Patent Counsel*, as used in this clause, means the Department of Energy Patent Counsel assisting the procuring activity. This means the DOE Patent Counsel having the following mailing address:

DOE Patent Counsel  
U.S. Department of Energy  
Office of Chief Counsel, CC-10  
200 Administration Rd.

P.O. Box 2001

Oak Ridge, TN 37831-8510

*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

*DOE patent waiver regulations*, as used in this clause, means the Department of Energy patent waiver regulations in effect on the date of award of this contract. See 10 CFR part 784.

"*Agency licensing regulations*" and "*applicable agency licensing regulations*", as used in this clause, mean the Department of Energy patent licensing regulations at 10 CFR part 781.

(b) *Allocations of principal rights.*

(1) *Assignment to the Government.* The Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention, except to the extent that rights are retained by the Contractor under subparagraph (b)(2) and paragraph (d) of this clause.

(2) *Greater rights determinations.*

(i) The Contractor, or an employee-inventor after consultation with the Contractor, may request greater rights than the nonexclusive license and the foreign patent rights provided in paragraph (d) of this clause on identified inventions in accordance with the DOE patent waiver regulations. A request for a determination of whether the Contractor or the employee-inventor is entitled to acquire such greater rights must be submitted to the DOE Patent Counsel with a copy to the DOE Contracting Officer at the time of the first disclosure of the invention pursuant to subparagraph (e)(2) of this clause, or not later than 8 months thereafter, unless a longer period is authorized in writing by the DOE Contracting Officer for good cause shown in writing by the Contractor. Each determination of greater rights under this contract shall be subject to paragraph (c) of this clause, unless otherwise provided in the greater rights determination, and to the reservations and conditions deemed to be appropriate by the Secretary of Energy or designee.

(ii) Within two (2) months after the filing of a patent application, the Contractor shall provide the filing date, serial number and title, a copy of the patent application (including an English-language version if filed in a language other than English), and, promptly upon issuance of a patent, provide the patent number and issue date for any subject invention in any country for which the Contractor has been granted title or the right to file and prosecute on behalf of the United States by the Department of Energy.

(iii) Not less than thirty (30) days before the expiration of the response period for any action required by the Patent and Trademark Office, notify the DOE Patent Counsel of any decision not to continue prosecution of the application.

(iv) Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(c) *Minimum rights acquired by the Government.*

(1) With respect to each subject invention to which the Department of Energy grants the Contractor principal or exclusive rights, the Contractor agrees as follows:

(i) The Contractor hereby grants to the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced each subject invention throughout the world by or on behalf of the Government of the United States (including any Government agency).

(ii) The Contractor agrees that with respect to any subject invention in which DOE has granted it title, DOE has the right in accordance with the procedures in the DOE patent waiver regulations (10 CFR part 784) to require the Contractor, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if it determines that—

(A) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(B) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(C) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(D) Such action is necessary because the agreement required by paragraph (i) of this clause has neither been obtained nor waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(iii) The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as DOE may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceedings undertaken by that agency in accordance with subparagraph (c)(1)(ii) of this clause. To the extent data or information supplied under this section is considered by the Contractor, its licensee, or assignee to be privileged and confidential and is so marked, the Department of Energy agrees that, to the extent permitted by law, it will not disclose such information to persons outside the Government.

(iv) The Contractor agrees, when licensing a subject invention, to arrange to avoid royalty charges on acquisitions involving Government funds, including funds derived through a Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on a subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the invention to any party.

(v) The Contractor agrees to provide for the Government's paid-up license pursuant to subparagraph (c)(1)(i) of this clause in any instrument transferring rights in a subject invention and to provide for the granting of licenses as required by subparagraph (c)(1)(ii) of this clause, and for the reporting of utilization information as required by subparagraph (c)(1)(iii) of this clause, whenever the instrument transfers principal or exclusive rights in a subject invention.

(2) Nothing contained in this paragraph (c) shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention.

*(d) Minimum rights to the Contractor..*

(1) The Contractor is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government obtains title, unless the Contractor fails to disclose the subject invention within the times specified in subparagraph (e)(2) of this clause. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in 37 CFR Part 404 and agency licensing regulations. This license will not be revoked in that field of use or the

geographical areas in which the Contractor has achieved practical applications and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, DOE will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by DOE for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable agency licensing regulations and 37 CFR Part 404 concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(4) The Contractor may request the right to acquire patent rights to a subject invention in any foreign country where the Government has elected not to secure such rights, subject to the conditions in subparagraphs (d)(4)(i) through (d)(4)(vii) of this clause. Such request must be made in writing to the DOE Patent Counsel as part of the disclosure required by subparagraph (e)(2) of this clause, with a copy to the DOE Contracting Officer. DOE approval, if given, will be based on a determination that this would best serve the national interest.

(i) The recipient of such rights, when specifically requested by DOE, and three years after issuance of a foreign patent disclosing the subject invention, shall furnish DOE a report stating:

(A) The commercial use that is being made, or is intended to be made, of said invention, and

(B) The steps taken to bring the invention to the point of practical application or to make the invention available for licensing.

(ii) The Government shall retain at least an irrevocable, nonexclusive, paid-up license to make, use, and sell the invention throughout the world by or on behalf of the Government (including any Government agency) and States and domestic municipal governments, unless the Secretary of Energy or designee determines that it would not be in the public interest to acquire the license for the States and domestic municipal governments.

(iii) If noted elsewhere in this contract as a condition of the grant of an advance waiver of the Government's title to inventions under this contract, or, if no advance waiver was granted but a waiver of the Government's title to an identified invention is granted pursuant to subparagraph (b)(2) of this clause upon a determination by the Secretary of Energy that it is in the Government's best interest, this license shall include the right of the Government to sublicense foreign governments pursuant to any existing or future treaty or agreement with such foreign governments.

(iv) Subject to the rights granted in subparagraphs (d)(1), (2), and (3) of this clause, the Secretary of Energy or designee shall have the right to terminate the foreign patent rights granted in this subparagraph (d)(4) in whole or in part unless the recipient of such rights demonstrates to the satisfaction of the Secretary of Energy or designee that effective steps necessary to accomplish substantial utilization of the invention have been taken or within a reasonable time will be taken.

(v) Subject to the rights granted in subparagraphs (d)(1), (2), and (3) of this clause, the Secretary of Energy or designee shall have the right, commencing four years after foreign patent rights are accorded under this subparagraph (d)(4), to require the granting of a nonexclusive or partially exclusive license to a responsible applicant or applicants, upon terms reasonable under the circumstances, and in appropriate circumstances to terminate said foreign patent rights in whole or in part, following a hearing upon notice thereof to the public, upon a petition by an interested person justifying such hearing:

(A) If the Secretary of Energy or designee determines, upon review of such material as he deems relevant, and after the recipient of such rights or other interested person has had the opportunity to provide such relevant and material information as the Secretary or designee may require, that such foreign patent rights have tended substantially to lessen competition or to result in undue market concentration in any section of the United States in any line of commerce to which the technology relates; or

(B) Unless the recipient of such rights demonstrates to the satisfaction of the Secretary of Energy or designee at such hearing that the recipient has taken effective steps, or within a reasonable time thereafter is expected to take such steps, necessary to accomplish substantial utilization of the invention.

(vi) If the Contractor is to file a foreign patent application on a subject invention, the Government agrees, upon written request, to use its best efforts to withhold publication of such invention disclosures for such period of time as specified by DOE Patent Counsel, but in no event shall the Government or its employees be liable for any publication thereof.

(vii) Subject to the license specified in subparagraphs (d)(1), (2), and (3) of this clause, the Contractor or inventor agrees to convey to the Government, upon request, the entire right, title, and interest in any foreign country in which the Contractor or inventor fails to have a patent application filed in a timely manner or decides not to continue prosecution or to pay any maintenance fees covering the invention. To avoid forfeiture of the patent application or patent, the Contractor or inventor shall, not less than 60 days before the expiration period for any action required by any patent office, notify the DOE Patent Counsel of such failure or decision, and deliver to the DOE Patent Counsel, the executed instruments necessary for the conveyance specified in this paragraph.

*(e) Invention identification, disclosures, and reports.*

(1) The Contractor shall establish and maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Contractor personnel responsible for patent matters within 6 months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Contractor shall furnish the DOE Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Contractor shall disclose each subject invention to the DOE Patent Counsel with a copy to the DOE Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters or, if earlier, within 6 months after the Contractor becomes aware that a subject invention has been made, but in any event before any on sale, public use, or publication of such invention known to the Contractor. The disclosure to DOE shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to DOE, the Contractor shall promptly notify DOE Patent Counsel of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor. The report should also include any request for a greater rights determination in accordance with subparagraph (b)(2) of this clause. When an invention is disclosed to DOE under this paragraph, it shall be deemed to have been made in the manner specified in Sections (a)(1) and (a)(2) of 42 U.S.C. 5908, unless the Contractor contends in writing at the time the invention is disclosed that it was not so made.

(3) The Contractor shall furnish the DOE Contracting Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the DOE Contracting Officer) from the date of the contract, listing all subject inventions during that period, and including a statement that all subject inventions have been disclosed (or that there are not such inventions), and that such disclosure has been made in accordance with the procedures required by paragraph (e)(1) of this clause.

(ii) A final report, within 3 months after completion of the contracted work listing all subject inventions or containing a statement that there were no such inventions, and listing all subcontracts at any tier containing a patent rights clause or containing a statement that there were no such subcontracts.

(4) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (e)(2) of this clause.

(5) The Contractor agrees, subject to FAR 27.302(j), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

*(f) Examination of records relating to inventions.*

(1) The DOE Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the

conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether--

- (i) Any such inventions are subject inventions;
- (ii) The Contractor has established and maintains the procedures required by subparagraphs (e)(1) and (4) of this clause;
- (iii) The Contractor and its inventors have complied with the procedures.

(2) If the DOE Contracting Officer learns of an unreported Contractor invention which the DOE Contracting Officer believes may be a subject invention, the Contractor may be required to disclose the invention to DOE for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) *Withholding of payment* (This paragraph does not apply to subcontracts).

(1) Any time before final payment under this contract, the DOE Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding \$50,000 or 5 percent of the amount of this contract, whichever is less, shall have been set aside if, in the DOE Contracting Officer's opinion, the Contractor fails to--

- (i) Convey to the Government, using a DOE-approved form, the title and/or rights of the Government in each subject invention as required by this clause.
- (ii) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to subparagraph (e)(1) of this clause;
- (iii) Disclose any subject invention pursuant to subparagraph (e)(2) of this clause;
- (iv) Deliver acceptable interim reports pursuant to subparagraph (e)(3)(i) of this clause; or
- (v) Provide the information regarding subcontracts pursuant to subparagraph (h)(4) of this clause.

(2) Such reserve or balance shall be withheld until the DOE Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) Final payment under this contract shall not be made before the Contractor delivers to the DOE Contracting Officer all disclosures of subject inventions required by subparagraph (e)(2) of this clause, and acceptable final report pursuant to subparagraph (e)(3)(ii) of this clause, and the DOE Patent Counsel has issued a patent clearance certification to the DOE Contracting Officer.

(4) The DOE Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government rights.

(h) *Subcontracts*.

(1) The Contractor shall include the clause at 48 CFR 952.227-11 (suitably modified to identify the parties) in all subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work to be performed by a small business firm or domestic nonprofit organization, except where the work of the subcontract is subject to an Exceptional Circumstances Determination by DOE. In all other subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work, the Contractor shall include this clause (suitably modified to identify the parties). The Contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Contractor--

- (i) Shall promptly submit a written notice to the DOE Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and
- (ii) Shall not proceed with such subcontract without the written authorization of the DOE Contracting Officer.

(3) In the case of subcontracts at any tier, DOE, the subcontractor, and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to those matters covered by this clause.

(4) The Contractor shall promptly notify the DOE Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the DOE Contracting Officer, the Contractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(5) The Contractor shall identify all subject inventions of the subcontractor of which it acquires knowledge in the performance of this contract and shall notify the DOE Patent Counsel, with a copy to the DOE Contracting Officer, promptly upon identification of the inventions.

(i) *Preference United States industry.* Unless provided otherwise, no Contractor that receives title to any subject invention and no assignee of any such Contractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the Government upon a showing by the Contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) *Atomic energy.*

(1) No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted with respect to any invention or discovery made or conceived in the course of or under this contract.

(2) Except as otherwise authorized in writing by the DOE Contracting Officer, the Contractor will obtain patent agreements to effectuate the provisions of subparagraph (e)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.

(k) *Background Patents.*

(1) Background Patent means a domestic patent covering an invention or discovery which is not a subject invention and which is owned or controlled by the Contractor at any time through the completion of this contract:

(i) Which the Contractor, but not the Government, has the right to license to others without obligation to pay royalties thereon, and

(ii) Infringement of which cannot reasonably be avoided upon the practice of any specific process, method, machine, manufacture, or composition of matter (including relatively minor modifications thereof) which is a subject of the research, development, or demonstration work performed under this contract.

(2) The Contractor agrees to and does hereby grant to the Government a royalty-free, nonexclusive license under any background patent for purposes of practicing a subject of this contract by or for the Government in research, development, and demonstration work only.

(3) The Contractor also agrees that upon written application by DOE, it will grant to responsible parties, for purposes of practicing a subject of this contract, nonexclusive licenses under any background patent on terms that are reasonable under the circumstances. If, however, the Contractor believes that exclusive rights are necessary to achieve expeditious commercial development or utilization, then a request may be made to DOE for DOE approval of such licensing by the Contractor.

(4) Notwithstanding subparagraph (k)(3) of this clause, the Contractor shall not be obligated to license any background patent if the Contractor demonstrates to the satisfaction of the Secretary of Energy or designee that:

(i) a competitive alternative to the subject matter covered by said background patent is commercially available or readily introducible from one or more other sources; or

(ii) the Contractor or its licensees are supplying the subject matter covered by said background patent in sufficient quantity and at reasonable prices to satisfy market needs, or have taken effective steps or within a reasonable time are expected to take effective steps to so supply the subject matter.



(l) *Publication.* It is recognized that during the course of the work under this contract, the Contractor or its employees may from time to time desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract. In order that public disclosure of such information will not adversely affect the patent interests of DOE or the Contractor, patent approval for release of publication shall be secured from DOE Patent Counsel prior to any such release or publication.

(m) *Forfeiture of rights in unreported subject inventions.*

(1) The Contractor shall forfeit and assign to the Government, at the request of the Secretary of Energy or designee, all rights in any subject invention which the Contractor fails to report to DOE Patent Counsel within six months after the time the Contractor:

- (i) Files or causes to be filed a United States or foreign patent application thereon; or
- (ii) Submits the final report required by subparagraph (e)(2)(ii) of this clause, whichever is later.

(2) However, the Contractor shall not forfeit rights in a subject invention if, within the time specified in subparagraph (m)(1) of this clause, the Contractor:

- (i) Prepares a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the contract and delivers the decision to DOE Patent Counsel, with a copy to the DOE Contracting Officer; or
- (ii) Contending that the invention is not a subject invention, the Contractor nevertheless discloses the invention and all facts pertinent to this contention to the DOE Patent Counsel, with a copy to the DOE Contracting Officer; or
- (iii) Establishes that the failure to disclose did not result from the Contractor's fault or negligence.

(3) Pending written assignment of the patent application and patents on a subject invention determined by the Secretary of Energy or designee to be forfeited (such determination to be a final decision under the Disputes clause of this contract), the Contractor shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this paragraph (m) shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to subject inventions.

(End of clause)

**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--
- (i) Data first produced in the performance of this contract;
  - (ii) Form, fit, and function data delivered under this contract;
  - (iii) 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
  - (iv) 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--
- (i) 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;
  - (ii) 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;
  - (iii) 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
  - (iv) 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.
  - (i) 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;
  - (ii) 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.
  - (iii) 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 --
  - (i) Identifies the data to which the omitted notice is to be applied;
  - (ii) Demonstrates that the omission of the notice was inadvertent;
  - (iii) Establishes that the use of the proposed notice is authorized;and
  - (iv) 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.

**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.

**PREFERENCE FOR U.S.-FLAG AIR CARRIERS** *(cl 335 - Jan 1997)*

- A. "International air transportation," as used in this clause, means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.
- "United States," as used in this clause, means the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and possessions of the United States.
- "U.S.-flag air carrier," as used in this clause, means an air carrier holding a certificate under 49 U.S.C. Chapter 411.
- B. Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 USC 40118) (Fly America Act) requires that all Federal agencies and Government Contractors and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- C. The Contractor agrees, in performing work under this contract, to use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent that service by those carriers is available.
- D. In the event that the Contractor selects a carrier other than an U.S.-flag air carrier for international air transportation, the Contractor shall include a certification on vouchers involving such transportation essentially as follows:

STATEMENT OF UNAVAILABILITY OF U.S.-FLAG AIR CARRIERS

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see Section 47.403 of the Federal Acquisition Regulation):

(State reasons):

(End of statement)

- E. The Contractor shall include the substance of this clause, including this Paragraph E., in each subcontract or purchase order under this contract that may involve international air transportation.

**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.

**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 730 days. 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 730 days-

- 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 730 days.
  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 ENRGY”; 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.





**REPRESENTATIONS AND CERTIFICATIONS  
COMMERCIAL ITEMS**

For the Pacific Northwest National Laboratory  
Operated by Battelle Memorial Institute

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

- |  |   |
|--|---|
| 1. Taxpayer Identification                   | 5. Buy American Act Certification   |
| 2. Small Business Program Representation     | 6. Certification Regarding Debarment, Suspension,<br>Proposed Debarment, and Other Responsibility Matters |
| 3. Affirmative Action Compliance             | 7. Foreign Interest   |
| 4. Previous Contracts and Compliance Reports |   |

**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*

- |  |   |
|--|---|
| <input type="checkbox"/> Sole proprietorship               | <input type="checkbox"/> Government entity (Federal, State, or local)   |
| <input type="checkbox"/> Partnership                       | <input type="checkbox"/> Foreign government                             |
| <input type="checkbox"/> Corporate entity (not tax-exempt) | <input type="checkbox"/> International organization per 26 CFR 1.6049-4 |
| <input type="checkbox"/> Corporate entity (tax-exempt)     | <input type="checkbox"/> 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 \_\_\_\_\_

- Offeror, its parent company, or subsidiaries, is/has been owned or controlled by a foreign entity. If so, provide the following information:

Name of Parent Company \_\_\_\_\_

Main Office Address \_\_\_\_\_

\_\_\_\_\_

(g) *Other*

- Foreign organization is headquarter in \_\_\_\_\_ (country)
- Company  is,  is not publicly traded

**2. SMALL BUSINESS PROGRAM REPRESENTATIONS** (May 2004)

*(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 334516. (see [http://bss-ams.pnl.gov/NAICS\\_Code/default.htm](http://bss-ams.pnl.gov/NAICS_Code/default.htm) to find NAICS codes)
- (2) The small business size standard is 500.
- (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 service-disabled 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. BUY AMERICAN ACT CERTIFICATION** (June 2003)

- (a) The offeror certifies that each end product, except those listed in paragraph (b) of this provision, is a domestic end product 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. The terms “component,” “domestic end product,” “end product,” “foreign end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American Act—Supplies.”

(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.

**6. 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** , **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.

**7. FOREIGN INTERESTS** (Feb 2007)

In the event that the work should involve/consist of sensitive information on the Militarily Critical Technologies List (<http://www.dtic.mil/mctl/MCTL.html>) or the Developing Science and Technologies List (<http://www.dtic.mil/mctl/DSTL.html>), or Export Controlled Information (15CFR730-774 and 22CFR120-130) that requires an export license, the following information is required. Accordingly, offeror represents that the following questions are answered correctly.

Yes  No Offeror, or its subsidiaries, plans to assign foreign national(s) to work on this project or to receive access to project information.

(If "Yes," specify nationality(ies) \_\_\_\_\_

Yes  No Offeror, or its subsidiaries, parent organization or affiliates, employs persons who serve as agents for any foreign entities.

(If "Yes," specify nationalities \_\_\_\_\_

Provide details for any questions answered "Yes" in question 10 above: \_\_\_\_\_

\_\_\_\_\_

**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 \_\_\_\_\_