



**GENERAL PROVISIONS**  
**Educational Institutions and Nonprofit Organizations**  
 For the Pacific Northwest National Laboratory  
 Operated by Battelle Memorial Institute

Battelle Memorial Institute has executed and is engaged in the performance of Prime Contract DE-AC05-76RL01830 with the United States Department of Energy (DOE), for the management, operation, and maintenance of the Pacific Northwest National Laboratory (PNNL) in Richland, Washington. This contract is entered into in furtherance of the performance of the work provided in the Prime Contract, and is subject to the following general provisions:

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**Definitions** *(cl. 301 - Oct 2008)*

- 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 "Contract" includes this purchase order or

subcontract and the term "Subcontract" refers to lower-tier subcontracts.

**Acceptance of Contract Terms and Conditions** *(cl. 302 - Oct 2008)*

The Contractor, by signing this Contract or performing the services and/or delivering the supplies identified herein, agrees to comply with all the terms and conditions and all specifications and other documents that this Contract incorporates by reference or attachment. Battelle hereby objects to any terms and conditions contained in any acknowledgment of this Contract that are different from or in addition to those mentioned in this document. Failure of Battelle to enforce any of the provisions of this Contract shall not be construed as evidence to interpret the requirements of this Contract, nor a waiver of any requirements, nor of the right of Battelle to enforce each

and every provision. All rights and obligations shall survive final performance of this Agreement.

**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 or statement of work)
- B. Representations and other instructions
- C. Contract clauses
- D. Other documents, exhibits, and attachments
- E. The specifications or statement of work

**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.

**Bankruptcy** (cl. 318 - Nov 2008)

If the Contractor enters into any proceeding related to bankruptcy, it shall give written notice to the Battelle Contracts Representative via certified mail within five days of initiation of the proceeding. The notification shall include the date on which the proceeding was filed, the identity and location of the court, and a listing of the Battelle purchase orders, contracts, or agreements affected.

**Pacific Northwest National Laboratory or Battelle Name** (cl. 374 - Oct 2008)

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

**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 occurs as a result of the Contractor's fault or negligence.

**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 (1) 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; (2) provide interpretations of any provision or requirement of this contract; (3) direct, advise, or recommend any particular course of conduct on the part of the Contractor; or (4) 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.

**Taxes** (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.)

**Laws, Regulations, and DOE Directives** (cl 3121 - Dec 2000)

- A. In performing work under this contract, the Contractor shall comply with the requirements of applicable Federal, State, and local laws and regulations (including DOE regulations), unless relief has been granted in writing by the appropriate regulatory agency. A List of Applicable Laws and regulations (List A) may be appended to this contract for information purposes. Omission of any applicable law or regulation from List A does not affect the obligation of the contractor to comply with such law or regulation pursuant to this paragraph.
- B. In performing work under this contract, the Contractor shall comply with the requirements of those Department of Energy directives, or parts thereof, identified in the List of Applicable Directives (List B) appended to this contract. Except as otherwise provided for in Paragraph D of this clause, the Battelle Contracts Representative may, from time to time and at any time, revise List B by unilateral modification to the contract to add, modify, or delete specific requirements. Prior to revising List B, the Battelle Contracts Representative shall notify the contractor in writing of its intent to revise List B and provide the Contractor with the opportunity to assess the effect of the Contractor's compliance with the revised list on contract cost and funding, technical performance, and schedule; and identify any potential inconsistencies between the revised list and the other terms and conditions of the contract. Within 30 days

after receipt of the Battelle Contracts Representative's notice, the Contractor shall advise the Battelle Contracts Representative in writing of the potential impact of the contractor's compliance with the revised list. Based on the information provided by the contractor and any other information available, the Battelle Contracts Representative shall decide whether to revise List B and so advise the Contractor not later than 30 days prior to the effective date of the revision of List B. The Contractor and the Battelle Contracts Representative shall identify and, if appropriate, agree to any changes to other contract terms and conditions, including cost and schedule, associated with the revision of List B pursuant to the clause of this contract entitled, "Changes."

- C. Environmental, safety, and health (ES&H) requirements appropriate for work conducted under this contract may be determined by a DOE approved process to evaluate the work and the associated hazards and identify an appropriately tailored set of standards, practices, and controls, such as a tailoring process included in a DOE approved Safety Management System implemented under the clause entitled "Integration of Environment, Safety, and Health into Work Planning and Execution." When such a process is used, the set of tailored (ES&H) requirements, as approved by DOE pursuant to the process, shall be incorporated into List B as contract requirements with full force and effect. These requirements shall supersede, in whole or in part, the contractual environmental, safety, and health requirements previously made applicable to the contract by List B. If the tailored set of requirements identifies an alternative requirement varying from an ES&H requirement of an applicable law or regulation, the contractor shall request an exemption or other appropriate regulatory relief specified in the regulation.
- D. Except as otherwise directed by the Battelle Contracts Representative, the Contractor shall procure all necessary permits or licenses required for the performance of work under this contract.

Regardless of the performer of the work, the Contractor is responsible for compliance with the requirements of this clause. The Contractor is responsible for flowing down the requirements of this clause to subcontracts at any tier to the extent necessary to ensure the contractor's compliance with the requirements.

#### **Insurance – Liability to Third Persons** (cl. 378b - Mar 1996)

- A. 1. Except as provided in Paragraph A.2 of this clause, the Contractor shall provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as the Battelle Contracts Representative may require under this contract.
2. The Contractor may, with the approval of the Battelle Contracts Representative, maintain a self-insurance program, provided that, with respect to workers' compensation, the Contractor is qualified pursuant to statutory authority.
3. All insurance required by this paragraph shall be in a form and amount and for those periods as the Battelle Contracts Representative may

require or approve and with insurers approved by the Battelle Contracts Representative.

- B. The Contractor agrees to submit for the Battelle Contracts Representative's approval, to the extent and in the manner required by the Battelle Contracts Representative, any other insurance that is maintained by the Contractor in connection with the performance of this contract and for which the Contractor seeks reimbursement.
- C. The Contractor shall be reimbursed—
1. For that portion—
    - a. Of the reasonable cost of insurance allocable to this contract; and
    - b. Required or approved under this clause; and
  2. For certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise without regard to and as an exception to the limitation of cost or the limitation of funds clause of this contract. These liabilities must arise out of the performance of this contract, whether or not caused by the negligence of the Contractor or of the Contractor's agents, servants, or employees, and must be represented by final judgments or settlements approved in writing by Battelle. These liabilities are for—
    - a. Loss of or damage to property (other than property owned, occupied, or used by the Contractor, rented to the Contractor, or in the care, custody, or control of the Contractor); or
    - b. Death or bodily injury.
- D. Battelle's liability under Paragraph C of this clause is subject to the availability of appropriated funds at the time a contingency occurs. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.
- E. The Contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities)—
1. For which the Contractor is otherwise responsible under the express terms of any clause specified in the Schedule or elsewhere in the contract;
  2. For which the Contractor has failed to insure or to maintain insurance as required by the Battelle Contracts Representative; or
  3. That result from willful misconduct or lack of good faith on the part of any of the Contractor's directors, officers, managers, superintendents, or other representatives who have supervision or direction of—
    - a. All or substantially all of the Contractor's business;
    - b. All or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; or
    - c. A separate and complete major industrial operation in connection with the performance of this contract.
- F. The provisions of Paragraph E of this clause shall not restrict the right of the Contractor to be reimbursed for the cost of insurance maintained by the Contractor in connection with the performance of this contract,

other than insurance required in accordance with this clause; *provided*, that such cost is allowable under the Allowable Cost and Payment clause of this contract.

G. If any suit or action is filed or any claim is made against the Contractor, the cost and expense of which may be reimbursable to the Contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the Contractor shall—

1. Immediately notify the Battelle Contracts Representative and promptly furnish copies of all pertinent papers received;
2. Authorize Battelle representatives to collaborate with counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed exceeds the amount of coverage; and
3. Authorize Battelle representatives to settle or defend the claim and to represent the Contractor in or to take charge of any litigation, if required by Battelle, when the liability is not insured or covered by bond. The Contractor may, at its own expense, be associated with the Battelle representatives in any such claim or litigation.

#### **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.

#### **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.

#### **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.

#### **Contractor Publication and Release of Information** *(cl. 3701 - May 2007)*

Contractor agrees to allow Battelle to review a copy of any Contractor manuscript that will be submitted for publication or any scientific or technical information generated under this Contract. This review will be facilitated by the Contractor submitting the manuscript to the Battelle Contracts Representative no less than thirty (30) days prior to Contractor's manuscript submission for publication or release of scientific or technical information outside of Contractor's control. Battelle shall review Contractor's manuscript or scientific and technical

information consistent with Battelle's information release policies then in effect and may submit any of Contractor's scientific and technical information to the U.S. Department of Energy's (DOE) Office of Scientific and Technical Information (OSTI) as required by Battelle's contract for the management and operation of the Pacific Northwest National Laboratory or any DOE Order made applicable to Battelle thereunder. Battelle's review and submission of Contractor's manuscripts or scientific and technical information does not absolve Contractor's duties to comply with any information or data review, reporting, or disclosure requirements made applicable to Contractor under this Contract.

Contractor agrees to amend any manuscript or scientific and technical information release to remove any information that Battelle identifies which is necessary to protect—(1) Battelle's or the U.S. Government's rights in patentable subject matter conceived or first reduced to practice by Battelle; or (2) proprietary information provided to Contractor under this Contract.

#### **Compliance with Internet Protocol Version 6 (IPv6) in Acquiring Information Technology** *(cl. 3750 - May 2006)*

*This clause applies when information technology (e.g., Ethernet cards, network switches, routers, printers, related software, and commercial services for connectivity) will be delivered as a part of this contract.*

- A. This contract involves the acquisition of Information Technology (IT) that uses Internet Protocol (IP) technology. The contractor agrees that—
1. all deliverables that involve IT that uses IP (products, services, software, etc.) will comply with IPv6 standards and interoperate with both IPv6 and IPv4 systems and products
  2. it has IPv6 technical support for development and implementation and fielded product management available.
- B. If the contractor plans to offer a deliverable that involves IT that is not initially compliant, the contractor agrees to—
1. obtain the Battelle Contracts Representative's approval before starting work on the deliverable
  2. provide a migration path and firm commitment to upgrade to IPv6 for all application and product features by June 2008
  3. have IPv6 technical support for development and implementation and fielded product management available.
- C. Should the contractor find that the statement of work or specifications of this contract do not conform to the IPv6 standard, it must notify the Battelle Contracts Representative of such nonconformance and act in accordance with instructions of the Battelle Contracts Representative.

#### **Environment, Safety, and Health Requirements** *(cl. 3113e - Jan 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 perform work safely, in a manner that ensures [provides] 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 environment, safety, and health (ES&H) functions and activities becomes an integral but visible part of the Contractor's work planning and execution processes.

- B. For complex or hazardous work, the Contractor shall, in the performance of work, ensure that:
  - 1. 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.
  - 2. 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.
  - 3. 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.
  - 4. 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. For complex or hazardous work, 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 is responsible for its subcontractors' compliance with the ES&H requirements of this contract.

#### **Foreign Travel** (cl. 366 - Apr 2009)

- A. Foreign travel means approved travel (whether wholly or partly on official business) from the United States (including Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands, and the territories and possessions of the United States) to a foreign country and return, travel between foreign countries, by persons, including foreign nationals, whose salaries or travel expenses or both will ultimately be funded in whole or in part by DOE or NNSA from its appropriations. Official foreign travel also includes travel funded by non-DOE or non-NNSA sources for which the traveler represents the

Department or NNSA or conducts business on behalf of the U.S. Government.

- B. Foreign travel in connection with the performance of this contract shall be subject to the prior approval of DOE and shall be conducted pursuant to the requirements contained in DOE Order 551.1, Official Foreign Travel, or any subsequent version of the order in effect at the time of award.
- C. Requests for approval of each separate trip shall be submitted to the Battelle Contracts Representative no less than sixty days prior to a planned departure date. The required "Request for Approval of Foreign Travel (RAFT)" form may be obtained from the Battelle Contracts Representative. The Battelle Contracts Representative will route the RAFT for appropriate approvals. The Contractor will not incur any travel costs until after it receives notice of approval from the Battelle Contracts Representative.

#### **Suspect Material** (cl. QA-179 - Mar 2007)

The Contractor shall assure that all products delivered on this contract do not contain suspect/counterfeit parts as indicated in the S/CI Awareness Training Manual (PDF) [http://www.hss.energy.gov/CSA/CSP/sci/SCI\\_TrainingManual\\_100306\\_rev5.pdf](http://www.hss.energy.gov/CSA/CSP/sci/SCI_TrainingManual_100306_rev5.pdf). If suspect/counterfeit parts are discovered, this may be cause for rejection of the entire shipment and will be reported to the U.S. Department of Energy, Office of Inspector General for possible investigation. The discrepant product(s) will be returned at the Contractor's expense. In addition, the contract may be terminated for default.

#### **Guest House at PNNL** (cl. 333 / Dec 2008)

If and when the Contractor's personnel travel and require lodging within 25 miles of Richland, Washington, under the scope of this Contract, Contractor's personnel shall stay at the Guest House at PNNL (Guest House, phone: 509-372-6736; email: [guesthouse@pnl.gov](mailto:guesthouse@pnl.gov); website: [www.pnl.gov/guesthouse](http://www.pnl.gov/guesthouse)) unless adequate space is unavailable. Invoices for lodging costs will not be reimbursed under this Contract for lodging elsewhere within 25 miles of Richland, Washington, without documentation from the Guest House of unavailability submitted with the invoice. The allowed price of lodging at the Guest House will be consistent with the Federal Travel Regulation per diem limits in effect at the time of travel.

#### **Insurance Requirements** (cl. 378, Jan 2009)

*This clause not only applies when work will be performed on the Pacific Northwest National Laboratory or other DOE-owned or -leased sites (see below), but it also applies when Contractors will be driving or operating Battelle-owned or government-owned vehicles or boats.*

- A. Contractor shall purchase and maintain during the term of this Contract, at its own expense, and any extensions thereof, insurance in amounts reasonable and customary for the industry in which Contractor is engaged. Contractor shall maintain all insurance which is required by any law, statute, ordinance, or regulation of any jurisdiction having authority in whole or in part over the Contractor's operations or Contract activities, including without limitation any non-U.S. jurisdictions. Nevertheless, the following minimum insurance coverage shall be maintained:

1. Workers Compensations: Statutory
  2. Employers' Liability: \$100,000 per occurrence
  3. Commercial General Liability (including contractual and products and completed operations liability): \$500,000 per occurrence
  4. Business Auto Liability (to include bodily injury and property damage liability covering the operation of all autos owned and unowned used in connection with performance of contract): \$200,000 per person; \$500,000 per occurrence for bodily injury; and \$20,000 per occurrence for property damage
  5. Any additional insurance which may be required by Battelle or the Department of Energy
- B. The insurance coverage shall be with insurer(s) that are satisfactory to Battelle. Battelle shall be designated as an Additional Insured under the Commercial General Liability, Business Auto Liability, and any Umbrella coverages. Contractor's insurance shall be primary and non-contributing over any and all insurance that may be maintained by Battelle. Contractor and its insurer(s) shall waive all rights of subrogation against Battelle, its officers, directors, agents, trustees and employees.
- C. Contractor shall furnish to Battelle Certificates of Insurance evidencing compliance with the insurance requirements herein. These certificates shall provide for at least 30 days prior written notice to Battelle of any cancellation, non-renewal, or material reduction in coverage. These certificates shall be provided prior to the initiation of contract activities and upon each policy renewal for a total of three years after termination or expiration of this Contract. Failure of Battelle to notify Contractor of any non-compliance with the provisions of this Contract shall not constitute a waiver of Contractor's obligations under this Contract. Battelle does not warrant or represent that the minimum amounts of coverage required are sufficient to protect the Contractor in fulfilling its obligations under this subcontract. Such minimum insurance limits shall not limit Contractor's liability under this Contract. Contractor shall require any lower-tier subcontractors to satisfy the requirements of this provision.

**On-Site Work** (cl. 3000 - Oct 2008)

The following clauses apply when the work specified by this contract requires work on the Pacific Northwest National Laboratory or other DOE-owned or -leased sites:

**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. *This paragraph J.2 does not apply to contracts with state and local governments or state-owned universities.* 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.

#### 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.

#### Collective Bargaining Agreements *(cl. 397 - Dec 2000)*

When negotiating collective bargaining agreements applicable to the work force under this contract, the Contractor shall use its best efforts to ensure such agreements contain provisions designed to assure continuity of services. All such agreements entered into during the contract period of performance should provide that grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout, or other interruption of normal operations. For this purpose, each collective bargaining agreement should provide an effective grievance procedure with arbitration as its final step, unless the parties mutually agree upon some other method of assuring continuity of operations. As part of such agreements, management and labor should agree to cooperate fully with the Federal Mediation and Conciliation Service. The contractor shall include the substance of this clause in any subcontracts for protective services or other services performed on the DOE-owned site which will affect the continuity of operation of the facility.

#### Clauses Incorporated by Reference *(cl. 3001-Ed - Oct 2008)*

The following additional Federal Acquisition Regulation (FAR) and Department of Energy Acquisition Regulation (DEAR) clauses, which may be located in Chapters 1 and 9, respectively, of Title 48 of the Code of Federal Regulations, are incorporated by this reference as a part of the Contract and as prescribed below. Except as otherwise defined herein, as used in the clauses incorporated by reference, the term "Government" shall mean Battelle Memorial Institute and "Contracting Officers" shall mean Battelle Contracts Representative, "Contracting Officer" shall mean shall mean the DOE Contracting Officer for Prime Contract DE-AC05-76RL01830 with Battelle Memorial Institute (Prime Contract), and "Patent Counsel" shall mean the DOE Patent Counsel assisting the procuring activity which has



administrative responsibility for the Prime Contract. As used in FAR clauses 52.227-1, -2, -3, -14, -16 and DEAR clauses 952.227-11, -13, and 970.5227-1, -4, -5, -8 "Government" shall mean the U.S. Government.

The Contractor shall include the listed clauses in its subcontracts at any tier to the extent applicable.

FAR 52.216-7 Allowable Cost and Payment (Dec 2002) – *in paragraph (a)(1) "Subpart 31.2" is deleted and "Subpart 31.3" is inserted. To the extent the Contractor has a Colleges and Universities Rate Agreement that includes Facilities and Administrative Cost Rates (Agreement) with the U.S. Government, for those areas addressed both by this clause and the Agreement, the Agreement will take precedence.*

FAR 52.222-21 Prohibition of Segregated Facilities (Feb 1999)

FAR 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006)

FAR 52.222-39 Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004)

FAR 52.225-13 Restrictions on Certain Foreign Purchases (June 2008)

FAR 52.227-10 Filing of Patent Applications – Classified Subject Matter (Dec 2007) – *applies if the Contract involves a classified solicitation or contract or a solicitation or contract where the nature of the work reasonably might result in a patent application containing classified subject matter*

FAR 52.227-14 Rights in Data – General (Jun 1987), modified in accordance with FAR 927.409(a) and including Alternate V – *applies to this Contract if: (a) technical data or computer software is expected to be produced; or (b) if the Contract is for supplies that contain a requirement for production or delivery of data.*  
*FAR 52.227-14 Alternate II shall apply if the delivery of Limited Rights Data is required under this Contract. The following five purposes shall be included at the end of Alternate II, Paragraph (a):*

1. *Use (except for manufacture) by other contractors.*
2. *Evaluation by non-government evaluators.*
3. *Use (except for manufacture) by other contractors participating in the Government's program of which the specific contract is a part, for information and use in connection with the work performed under each contract.*

4. *Emergency repair or overhaul work.*
5. *Release to a foreign government, or instrumentality thereof, as the interest of the United States Government may require for information or evaluation, or for emergency repair or overhaul work by such government.*

*FAR 52.227-14 Alternate III shall apply if delivery of Restricted Computer Software is required under this Contract.*

*FAR 52.227-14 Alternate IV shall apply if this Contract is awarded for basic or applied research (other than a contract for the management or operation of Government facilities or where international agreements require otherwise), to be performed solely by universities and colleges.*

FAR 52.232-20 Limitation of Cost (Apr 1984) – *applies if contract is to be fully funded*

FAR 52.232-21 Limitation of Funds (Apr 1984) – *applies if contract is to be incrementally funded*

FAR 52.242-15 Stop-Work Order (Aug 1989) with Alternate I (Apr 1984)

FAR 52.243-2 Changes – Cost Reimbursement (Aug 1987). *FAR 52.243-2 Alternate V (April 1984) shall apply if the requirement is for research and development.*

FAR 52.244-2 Subcontracts (June 2007) with Alternate 1 (June 2007)

FAR 52.244-6 Subcontracts for Commercial Items (Mar 2007)

FAR 52.246-5 Inspection of Service – Cost Reimbursement (Apr 1984)

FAR 52.246-16 Responsibility for Supplies (Apr 1984)

FAR 52.247-63 Preference for U.S.-Flag Air Carriers (June 2003)

FAR 52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006)

FAR 52.249-5 Termination for the Convenience of the Government (Educational and Other Nonprofit Institutions) (Sept 1996)

FAR 52.249-14 Excusable Delays (Apr 1984)

DEAR 952.204-77 Computer Security (Aug 2006) – *applies if contractor will be granted access to computers owned, leased, or operated on behalf of the U.S. Department of Energy*

DEAR 952.227-82 Rights to Proposal Data (Apr 1994) - *applies if contract award is based upon a technical proposal.*

DEAR 970.5204-3 Access to and Ownership of Records (July 2005)

- DEAR 970.5208-1 Printing (Dec 2000)
- DEAR 970.5223-4 Workplace Substance Abuse Programs at DOE Sites (Dec 2000)
- DEAR 970.5227-1 Rights in Data – Facilities (Dec 2000) – *applies if this Contract involves the design or operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated under its contract with DOE or for support services related thereto.*
- DEAR 970.5227-8 Refund of Royalties (Aug 2002) – *applies if the amount of royalties reported by Contractor during negotiations of this Contract exceeds \$250.*
- DEAR 970.5229-1 State and Local Taxes (Dec 2000)
- DEAR 970.5245-1 Property (Dec 2000); *Alternate 1 applies if Contractor is a nonprofit business*

**The Following Clauses Apply if the Contract Value Exceeds \$2,500:**

- FAR 52.222-41 Service Contract Act of 1965, as Amended (Nov 2007) - *applies if the Contract is principally for the furnishing of services through the use of "service employees" UNLESS the Contract qualifies for class deviation under Section 4(b) of the McNamara-O'Hara Service Contract Act*
- FAR 52.225-1 Buy American Act – Supplies (June 2003) - *unless the requirement is restricted to domestic end products (see FAR 25.101), the goods to be delivered will be used outside the United States, or the goods and materials are not available from U.S. manufacturers*

**The Following Clauses Apply if the Contract Value Exceeds \$10,000:**

- FAR 52.222-36 Affirmative Action for Workers with Disabilities (June 1998)
- FAR 52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006)

**The Following Clause Applies if the Contract Value Exceeds \$30,000:**

- FAR 52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Sept 2006)

**The Following Clauses Apply if the Contract Value Exceeds \$100,000:**

- FAR 52.203-6 Restriction on Subcontractor Sales to the Government (Sept 2006)
- FAR 52.203-7 Anti-Kickback Procedures (Jul 1995) – excluding paragraph (c)(1)

- FAR 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (Sep 2007)
- FAR 52.219-8 Utilization of Small Business Concerns (May 2004)
- FAR 52.222-4 Contract Work Hours and Safety Standards Act – Overtime Compensation (Jul 2005)
- FAR 52.222-26 Equal Opportunity (Mar 2007) *The Equal Employment Opportunity Act Poster referenced in paragraph (c)(3) of the above clause may be downloaded from the U.S. Department of Labor website at [www.dol.gov/elaws/posters.htm](http://www.dol.gov/elaws/posters.htm)*
- FAR 52.225-8 Duty-Free Entry (Feb 2000) – *applies when supplies may be imported into the United States*
- FAR 52.227-1 Authorization and Consent (Jul 1995) – *applies without Alternate 1 if this Contract is for supplies or services, including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services.*
- FAR 52.229-3 Federal, State, and Local Taxes (Apr 2003)
- DEAR 952.204-71 Sensitive Foreign National Control (Apr 1994)
- DEAR 970.5227-5 Notice and Assistance Regarding Patent and Copyright Infringement (Aug 2002)
- DEAR 970.5232-3 Accounts, Records, and Inspection (Jun 2007) – *applies if costs incurred are a factor in determining the amount payable*

**The Following Clauses Apply if the Contract Value Exceeds \$500,000:**

- DEAR 952.226-74 Displaced Employee Hiring Preference (Jun 1997)
- DEAR 970.5226-2 Workforce Restructuring Under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 (Dec 2000)

**The Following Clauses Apply if the Contract Value Exceeds \$550,000**

- FAR 52.219-9 Small Business Subcontracting Plan (Apr 2008) - *applies if the contractor is a large business concern*

**The Following Clauses Apply if the Contract Value Exceeds \$650,000**

- FAR 52.215-10 Price Reduction for Defective Cost or Pricing Data (Oct 1997) – *applies if cost or pricing data is required*
- FAR 52.215-11 Price Reduction for Defective Cost or Pricing Data – Modification (Oct 1997)

FAR 52.215-12	Subcontractor Cost or Pricing Data (Oct 1997) – <i>applies if cost or pricing data is required</i>		FAR 52.227-16 Additional Data Requirements (Jun 1987) – <i>applies if this Contract involves experimental, developmental, research, or demonstration work (other than basic or applied research to be performed solely by a university or college where the contract amount will be \$500,000 or less) unless all the requirements for data are believed to be known at the time of contracting and specified in this Contract</i>
FAR 52.215-13	Subcontractor Cost or Pricing Data – Modifications (Oct 1997)		
FAR 52.230-2	Cost Accounting Standards (Oct 2008), excluding paragraph (b) – <i>applies to nonprofit organizations if they are subject to full CAS coverage as set forth in 48 CFR Chapter 99, Subpart 9903.201-2</i>		
FAR 52.230-3	Disclosure and Consistency of Cost Accounting Practices (Oct 2008), excluding paragraph (b)	FAR 52.246-8	Inspection of Research and Development –Cost Reimbursement (May 2001)
FAR 52.230-5	Cost Accounting Standards – Educational Institution (Oct 2008) – <i>applies to educational institutions, unless the contract is exempt</i>	DEAR 952.227-11	Patent Rights – Retention by the Contractor (Short Form) (Mar 1995) – <i>applies if the Contractor is a small business firm or domestic nonprofit organization as defined by 35 USC 201 unless subject to exceptional circumstances as defined in 35 USC 202 and the Prime Contract.</i>
FAR 52.230-6	Administration of Cost Accounting Standards (Mar 2008)		
<b>The Following Clauses Apply if the Contract Indicates it is for Experimental, Developmental, Research, or Demonstration Work</b>			
DEAR 970.5227-4	Authorization and Consent (Aug 2003), paragraph A only – <i>applies if the contract value exceeds \$100,000</i>	DEAR 952.227-13	Patent Rights – Acquisition by the Government (Sep 1997) – <i>applies if the Contractor is <b>not</b> a small business firm or domestic nonprofit organization as defined by 35 USC 201. DOE Patent Counsel shall determine the Patent Rights if this Contract is subject to exceptional circumstances as defined in 35 USC 202 and the Prime Contract.</i>