



GENERAL PROVISIONS
Commercial Items – Supplies and Services
 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.

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 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 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

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,

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.

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.

Changes (cl. ci-62 - Feb 2007)

Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

Compliance with Laws (cl. ci-3121 – Oct 2008)

Contractor shall comply with all applicable federal, state, and local laws and ordinances and all pertinent orders, DOE directives, rules, and regulations (including DOE regulations) and such compliance shall be a material requirement of this Contract. Contractor shall, without additional cost to Battelle, be responsible for obtaining any necessary licenses and permits.

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.

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.)

Invoices and Payment (cl. 350 – Oct 2008)

Contractor shall submit its invoice at the time of final shipment or final completion of the services, unless otherwise provided in the Contract Schedule or Purchase Order. Invoices shall reference the Battelle Purchase Order number and include a complete description of the ordered items, prices, ship dates, and other documentation as required by the Contract Schedule or Purchase Order. Whenever possible, invoices should be sent electronically to ap.invoices@pnl.gov. Failure to

comply with any of these requirements may result in a delay in payment of the invoices.

Payment shall be made for items delivered to the specified delivery destination, and for services completed and accepted by Battelle. Unless otherwise provided in the Contract Schedule or Purchase Order, the terms of payment shall be 30 days after receipt of the Contractor's properly submitted invoice. Any offered discount shall be taken if payment is made within the discount period indicated by the Contractor. Payments may be made by check or by electronic funds transfer, at the option of Battelle. Payment shall be deemed to have been made as of the date of mailing or the date on which an electronic funds transfer was made.

Title (cl. ci-70 – Sept 2007)

Unless specified elsewhere in this Contract, title to items furnished under this Contract shall pass to the Government upon acceptance by Battelle, regardless of when or where Battelle takes physical possession.

Risk of Loss (cl. ci-63 - Feb 2007)

Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to Battelle upon:

- A. Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
- B. Delivery of the supplies to Battelle at the destination specified in the contract, if transportation is f.o.b. destination.

Inspection/Acceptance (cl. ci-64 - Feb 2007)

The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. Battelle reserves the right to inspect or test any supplies or services that have been tendered for acceptance. Battelle may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not feasible, Battelle may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. Battelle must exercise its post-acceptance rights—(1) within a reasonable time after the defect was discovered or should have been discovered; and (2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

Warranty (cl. ci-65 – Sept 2009)

Unless otherwise specified in the Contract Schedule, the Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract and that services performed will be as specified in the descriptions and specifications of this Contract and free from defects in workmanship, material, and Contractor's design or engineering contributions. The Contractor shall correct any nonconformance with this warranty discovered within one year after acceptance or initial use of the supplies or services.

Limitation of Liability (cl. ci-66 – Feb 2007)

Except as otherwise provided by an express warranty, the Contractor will not be liable to Battelle or the Government for consequential damages resulting from any defect or deficiencies in accepted items.

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.

Classified Inventions (cl. 372 – Aug 2002)

Applies to contracts that cover or are likely to cover subject matter classified for reasons of security.

- A. Approval for filing a foreign patent application. The Contractor shall not file, or cause to be filed, an application or registration for a patent disclosing a subject invention related to classified subject matter in any country other than the United States without first obtaining the written approval of the DOE Contracting Officer.
- B. Transmission of classified subject matter. If in accordance with this clause the Contractor files a patent application in the United States disclosing a subject invention that is classified for reasons of security, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter. If the Contractor transmits a patent application disclosing a classified subject invention to the United States Patent and Trademark Office (USPTO), the Contractor shall submit a separate letter to the USPTO identifying the contract or contracts by agency and agreement number that require security classification markings to be placed on the patent application.
- C. Inclusion of clause in subcontracts. The Contractor agrees to include the substance of this clause in subcontracts at any tier that cover or are likely to cover subject matter classified for reasons of security.

Termination for Cause (cl. ci-67 - Feb 2007)

Battelle may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide Battelle, upon request, with adequate assurances of future performance. In the event of termination for cause, Battelle shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to Battelle for any and all rights and remedies provided by law. If it is determined that Battelle improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

Termination for Convenience (cl. ci-68 - Feb 2007)

Battelle reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of Battelle using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give Battelle or the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

Excusable Delays (cl. ci-69 - Feb 2007)

The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Battelle Contracts Representative in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Battelle Contracts Representative of the cessation of such occurrence. Such an excusable delay may result in an extension of the contract completion date but will not result in additional funding.

Suspect Material (cl. OA-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. 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.

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.

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.

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

The following additional Federal Acquisition Regulation (FAR) and Department of Energy (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. As used in the clauses, the term "Government" shall mean Battelle Memorial Institute and "Contracting Officers" shall mean Battelle Contracts Representative, except in FAR clauses 52.227-1, 52.227-2, and 52.227-3, in which clauses "Government" shall mean the U.S. Government and "Contracting Officer" shall mean shall mean the DOE Contracting Officer for Prime Contract DE-AC05-76RL01830 with Battelle Memorial Institute. The Contractor shall include the listed clauses in its subcontracts at any tier to the extent applicable.

FAR 52.203-6	Restriction on Subcontractor Sales to the Government (Sept 2006) with Alternate 1 (Oct 1995) – <i>applies if the contract value exceeds \$100,000.</i>
FAR 52.203-12	Limitation on Payments to Influence Certain Federal Transactions (Sep 2007) – <i>applies if the contract value exceeds \$100,000.</i>
FAR 52.209-6	Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Sept 2006) - <i>applies to all contracts exceeding \$30,000.</i>
FAR 52.219-8	Utilization of Small Business Concerns (May 2004) - <i>applies if the contract value exceeds \$100,000</i>
FAR 52.219-9	Small Business Subcontracting Plan (Apr 2008) - <i>applies if the contract value exceeds \$550,000 and contractor is a large business concern.</i>
FAR 52.222-21	Prohibition of Segregated Facilities (Feb 1999)
FAR 52.222-26	Equal Opportunity (Mar 2007) <i>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.</i>
FAR 52.222-35	Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006)
FAR 52.222-36	<i>Affirmative Action for Workers with Disabilities (June 1998)</i>
FAR 52.222-37	Employment Reports on 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 52.222-41	Service Contract Act of 1965, as Amended (Nov 2007) - <i>applies if the Contract is principally for the furnishing of services through the use of "service employees" and if the Contract exceeds \$2,500 UNLESS the Contract qualifies for class deviation under Section 4(b) of the McNamara-O'Hara Service Contract Act.</i>
FAR 52.225-1	Buy American Act – Supplies (Feb 2009) - <i>applies if the contract value exceeds \$2,500, 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.</i>

FAR 52.225-13	Restrictions on Certain Foreign Purchases (June 2008)	FAR 52.227-10	Filing of Patent Applications – Classified Subject Matter (Dec 2007) – <i>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</i>
FAR 52.227-1	Authorization and Consent (Dec 2007), without Alternate 1 - <i>applies if the contract value exceeds \$100,000.</i>		
DEAR 970.5227-5	Notice and Assistance Regarding Patent and Copyright Infringement (Aug 2002) - <i>applies if the contract value exceeds \$100,000.</i>	FAR 52.244-6	Subcontracts for Commercial Items (Mar 2007)
FAR 52.227-3	Patent Indemnity (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)
