

TABLE OF CONTENTS

GENERAL PROVISIONS – FIXED PRICE CONTRACT 2

DEFINITIONS (*cl 301 – Apr 2000*) 2

ORDER OF PRECEDENCE (*cl 309 - Oct 1997*)..... 2

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*)..... 3

PERMITS AND RESPONSIBILITIES (*cl 358 - Nov 1991*) 3

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

SUSPECT MATERIAL (*cl QA-179 – Mar 2007*)..... 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

 INSPECTION OF SUPPLIES – FIXED PRICE (cl 379c - Aug 1996) 26

 ENVIRONMENT, SAFETY AND HEALTH REQUIREMENTS (cl 3113e – Jan 2007) 27

 ACCESS TO AND OWNERSHIP OF RECORDS (cl 3109 - Dec 2000)..... 27

 DEFAULT - FIXED PRICE SUPPLY AND SERVICE (cl 365c - Dec 1985) 28

 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT – FIXED PRICE (cl 365d - May 2004)..... 29

 WARRANTY OF SUPPLIES OF A NONCOMPLEX NATURE (cl 383b - June 2003)..... 32

 NUCLEAR HAZARDS INDEMNITY AGREEMENT (cl. 3110 - Jun 1996) 33

 NUCLEAR HAZARDS INDEMNITY AGREEMENT (cl. 3110-B – Oct 2005)..... 35

 PRICE-ANDERSON AMENDMENTS ACT (cl 3111 - Nov 2006) 37

 WORKPLACE SUBSTANCE ABUSE PROGRAM (cl 395 – Feb. 2005) 38

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.

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. 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.

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 *(el 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
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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. 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, 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, 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 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. 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

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.

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 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.

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.

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.

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 365-
 - a. All supplies furnished under this contract will be free from defects in material or workmanship and will conform with all requirements of this contract; and
 - b. The preservation, packaging, packing, and marking, and the preparation for, and method of, shipment of such supplies will conform with the requirements of this contract.
 2. When return, correction, or replacement is required, transportation charges and responsibility for the supplies while in transit shall be borne by the Contractor. However, the Contractor's liability for the transportation charges shall not exceed an amount equal to the cost of transportation by the usual commercial method of shipment between the place of delivery specified in this contract and the Contractor's plant, and return.
 3. Any supplies or parts thereof, corrected or furnished in replacement under this clause, shall also be subject to the terms of this clause to the same extent as supplies initially delivered. The warranty, with respect to supplies or parts thereof, shall be equal in duration to that in paragraph B.1. of this clause and shall run from the date of delivery of the corrected or replaced supplies.
 4. All implied warranties of merchantability and "fitness for a particular purpose" are excluded from any obligation contained in this contract.
- C. Remedies available to Battelle.
1. The Battelle Contracts Representative shall give written notice to the Contractor of any breach of warranties in paragraph B.1 of this clause within 30.
 2. Within a reasonable time after the notice, the Battelle Contracts Representative may either –
 - a. Require, by written notice, the prompt correction or replacement of any supplies or parts thereof (including preservation, packaging, packing, and marking) that do not conform with the requirements of this contract within the meaning of paragraph B.1 of this clause; or
 - b. Retain such supplies and reduce the contract price by an amount equitable under the circumstances.
 3. a. If the contract provides for inspection of supplies by sampling procedures, conformance of supplies or components subject to warranty action shall be determined by the applicable sampling procedures in the contract. The Battelle Contracts Representative –
 - (i) May, for sampling purposes, group any supplies delivered under this contract;
 - (ii) Shall require the size of the sample to be that required by sampling procedures specified in the contract for the quantity of supplies on which warranty action is proposed;
 - (iii) May project warranty sampling results over supplies in the same shipment or other supplies contained in other shipments even though all of such supplies are not present at the point of reinspection; provided, that the supplies remaining are reasonably representative of the quantity on which warranty action is proposed; and
 - (iv) Need not use the same lot size as on original inspection or reconstitute the original inspection lots.
 - b. Within a reasonable time after notice of any breach of the warranties specified in paragraph B.1 of this clause, the Battelle Contracts Representative may exercise one or more of the following options:
 - (i) Require an equitable adjustment in the contract price for any group of supplies.
 - (ii) Screen the supplies grouped for warranty action under this clause at the Contractor's expense and return all nonconforming supplies to the Contractor for correction or replacement.

- (iii) Require the Contractor to screen the supplies at locations designated by Battelle or the Government within the continuous United States and to correct or replace all nonconforming supplies.
 - (iv) Return the supplies grouped for warranty action under this clause to the Contractor (irrespective of the f.o.b. point or the point of acceptance) for screening and correction or replacement.
4. a. The Battelle Contracts Representative may, by contract or otherwise, correct or replace the nonconforming supplies with similar supplies from another source and charge to the Contractor the cost occasioned to Battelle thereby if the Contractor-
- (i) Fails to make redelivery of the corrected or replaced supplies within the time established for their return; or
 - (ii) Fails either to accept return of the nonconforming supplies or fails to make progress after their return to correct or replace them so as to endanger performance of the delivery schedule, and in either of these circumstances does not cure such failure within a period of 10 days (or such longer period as the Battelle Contracts Representative may authorize in writing) after receipt of notice from the Battelle Contracts Representative specifying such failure.
- b. Instead of correction or replacement by Battelle, the Battelle Contracts Representative may require an equitable adjustment of the contract price. In addition, if the Contractor fails to furnish timely disposition instructions, the Battelle Contracts Representative may dispose of the nonconforming supplies for the Contractor's account in a reasonable manner. Battelle is entitled to reimbursement from the Contractor, or from the proceeds of such disposal, for the reasonable expenses of the care and disposition of the nonconforming supplies, as well as for excess costs incurred or to be incurred.
5. The rights and remedies of Battelle provided in this clause are in addition to and do not limit any rights afforded to Battelle by any other clause of this contract.

NUCLEAR HAZARDS INDEMNITY AGREEMENT (cl. 3110 - Jun 1996)

- A. Authority. This clause is incorporated into this Contract pursuant to the authority contained in subsection 170d of the Atomic Energy Act of 1954, as amended (hereinafter called the Act).
- B. Definitions. The definitions set out in the Act shall apply to this clause.
- C. Financial Protection. Except as hereafter permitted or required in writing by the Department of Energy (DOE), the Contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability, as described in Paragraph D.2 below. DOE may, however, at any time require in writing that the Contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the Contractor by DOE.
- D. Indemnification.
- 1. To the extent that the Contractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE, DOE will indemnify the Contractor and other persons indemnified against (a) claims for public liability as described in Paragraph D.2 of this clause; and (b) such legal costs of the Contractor and other persons indemnified as are approved by DOE, provided that DOE's liability, including such legal costs, shall not exceed the amount set forth in section 170e.(1)(B) of the Act in the aggregate for each nuclear incident or precautionary evaluation occurring within the United States or \$100 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.
 - 2. The public liability referred to in Paragraph D.1 of this Clause is public liability as defined in the Act which (a) arises out of or in connection with the activities under this Contract, including transportation; and (b) arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.
- E. Waiver of Defenses.
- 1. In the event of a nuclear incident, as defined in the Act, arising out of nuclear waste activities, as defined in the Act, the Contractor, on behalf of itself and other persons indemnified, agrees to waive any issue or defense as to charitable or governmental immunity.
 - 2. In the event of an extraordinary nuclear occurrence which—
 - a. Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or

- b. Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or
 - c. Arises out of or results from the possession, operation, or use by the Contractor or a subcontractor of a device utilizing special nuclear material or by-product material, during the course of the contract activity; or
 - d. Arises out of, results from, or occurs in the course of nuclear waste activities, the Contractor, on behalf of itself and other persons indemnified, agrees to waive:
 - (i) Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault of persons indemnified, including, but not limited to—
 - (a) Negligence;
 - (b) Contributory negligence;
 - (c) Assumption of risk; or
 - (d) Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God;
 - (ii) Any issue or defense as to charitable or governmental immunity; and
 - (iii) Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or change and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.
 - e. The term extraordinary nuclear occurrence means an event that DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in 10 CFR Part 840.
 - f. For the purposes of that determination, “offsite” as that term is used in 10 CFR Part 840 means away from “the contract location” which phrase means any DOE facility, installation, or site at which contractual activity under this contract is being carried on, and any Contractor-owned or controlled facility, installation, or site at which the Contractor is engaged in the performance of contractual activity under this contract.
3. The waivers set forth above:
- a. Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action;
 - b. Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;
 - c. Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;
 - d. Shall not apply to injury or damage to a claimant or to a claimant’s property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;
 - e. Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefore are either payable or required to be provided under any workmen’s compensation or occupational disease law;
 - f. Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;
 - g. Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection; and
 - h. Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (i) the limit of liability provisions under subsection 170e of the Act, and (ii) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.

- F. Notification and Litigation of Claims. The Contractor shall give immediate written notice to Battelle of any known action or claim filed or made against the Contractor or other person indemnified for public liability as defined in Paragraph D.2. Except as otherwise directed by the Battelle Contracts Representative, the Contractor shall furnish promptly to Battelle, copies of all pertinent papers received by the Contractor or filed with respect to such actions or claims. Battelle and DOE shall have the right to, and may collaborate with, the Contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right to—
1. require the prior approval of Battelle for the payment of any claim that DOE be required to indemnify hereunder; and
 2. appear through the Attorney General on behalf of the Contractor or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder; take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by Battelle or DOE, the Contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.
- G. Continuity of DOE Obligations. The obligations of DOE under this Clause shall not be affected by any failure on the part of the Contractor to fulfill its obligation under this Contract and shall be unaffected by the death, disability, or termination of existence of the Contractor, or by the completion, termination or expiration of this Contract.
- H. Effect of Other Clauses. The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to any, other clause of this contract, including the clause entitled “Disputes” provided, however, that this clause shall be subject to the clauses entitled “Covenant Against Contingent Fees,” “Officials Not to Benefit,” and “Examination of Records by the Comptroller General,” and any provisions that are later added to this Contract as required by applicable Federal law, including statutes, executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.
- I. The Contractor is specifically exempt from civil penalties pursuant to Section 234A of the Price-Anderson Amendment Act of 1988.
- J. Criminal Penalties. Any individual director, officer, or employee of the Contractor or of its subcontractors and suppliers who are indemnified under the provisions of this Clause are subject to criminal penalties, pursuant to 223(c) of the Act, for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.
- K. Inclusion in Subcontract. The Contractor shall insert this clause in any subcontract that may involve the risk of public liability, as that term is defined in the Act and further described in Paragraph D.2 above. However, this clause shall not be included in subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b of the Act or NRC agreements of indemnification under section 170c or k of the Act for the activities under the subcontract.
- L. This indemnity agreement shall be applicable with respect to nuclear incidents occurring on or after December 3, 2002.

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

- A. Authority. This clause is incorporated into this Contract pursuant to the authority contained in subsection 170d of the Atomic Energy Act of 1954, as amended (hereinafter called the Act).
- B. Definitions. The definitions set out in the Act shall apply to this clause.
- C. Financial Protection. Except as hereafter permitted or required in writing by the Department of Energy (DOE), the Contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability, as described in Paragraph D.2 below. DOE may, however, at any time require in writing that the Contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the Contractor by DOE.
- D. Indemnification.
1. To the extent that the Contractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE, DOE will indemnify the Contractor and other persons indemnified against (a) claims for public liability as described in Paragraph D.2 of this clause; and (b) such legal costs of the Contractor and other persons indemnified as are approved by DOE, provided that DOE’s liability, including such legal costs, shall not exceed the amount set forth in section 170t of the Act in the aggregate for each nuclear incident or precautionary evaluation occurring within the United States or \$500 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.

2. The public liability referred to in Paragraph D.1 of this Clause is public liability as defined in the Act which (a) arises out of or in connection with the activities under this Contract, including transportation; and (b) arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.

E. Waiver of Defenses.

1. In the event of a nuclear incident, as defined in the Act, arising out of nuclear waste activities, as defined in the Act, the Contractor, on behalf of itself and other persons indemnified, agrees to waive any issue or defense as to charitable or governmental immunity.
2. In the event of an extraordinary nuclear occurrence which—
 - g. Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or
 - h. Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or
 - i. Arises out of or results from the possession, operation, or use by the Contractor or a subcontractor of a device utilizing special nuclear material or by-product material, during the course of the contract activity; or
 - j. Arises out of, results from, or occurs in the course of nuclear waste activities, the Contractor, on behalf of itself and other persons indemnified, agrees to waive:
 - (i) Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault of persons indemnified, including, but not limited to—
 - (a) Negligence;
 - (b) Contributory negligence;
 - (c) Assumption of risk; or
 - (d) Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God;
 - (ii) Any issue or defense as to charitable or governmental immunity; and
 - (iii) Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or change and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.
 - k. The term extraordinary nuclear occurrence means an event that DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in 10 CFR Part 840.
 - l. For the purposes of that determination, “offsite” as that term is used in 10 CFR Part 840 means away from “the contract location” which phrase means any DOE facility, installation, or site at which contractual activity under this contract is being carried on, and any Contractor-owned or controlled facility, installation, or site at which the Contractor is engaged in the performance of contractual activity under this contract.
3. The waivers set forth above:
 - i. Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action;
 - j. Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;
 - k. Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;
 - l. Shall not apply to injury or damage to a claimant or to a claimant’s property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;
 - m. Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefore are either payable or required to be provided under any workmen’s compensation or occupational disease law;

- n. Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;
 - o. Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection; and
 - p. Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (i) the limit of liability provisions under subsection 170e of the Act, and (ii) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.
- F. Notification and Litigation of Claims. The Contractor shall give immediate written notice to Battelle of any known action or claim filed or made against the Contractor or other person indemnified for public liability as defined in Paragraph D.2. Except as otherwise directed by the Battelle Contracts Representative, the Contractor shall furnish promptly to Battelle, copies of all pertinent papers received by the Contractor or filed with respect to such actions or claims. Battelle and DOE shall have the right to, and may collaborate with, the Contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right to—
- 3. require the prior approval of Battelle for the payment of any claim that DOE be required to indemnify hereunder; and
 - 4. appear through the Attorney General on behalf of the Contractor or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder; take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by Battelle or DOE, the Contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.
- G. Continuity of DOE Obligations. The obligations of DOE under this Clause shall not be affected by any failure on the part of the Contractor to fulfill its obligation under this Contract and shall be unaffected by the death, disability, or termination of existence of the Contractor, or by the completion, termination or expiration of this Contract.
- H. Effect of Other Clauses. The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to any, other clause of this contract, including the clause entitled “Disputes” provided, however, that this clause shall be subject to the clauses entitled “Covenant Against Contingent Fees,” “Officials Not to Benefit,” and “Examination of Records by the Comptroller General,” and any provisions that are later added to this Contract as required by applicable Federal law, including statutes, executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.
- I. The Contractor is specifically exempt from civil penalties pursuant to Section 234A of the Price-Anderson Amendment Act of 1988.
- J. Criminal Penalties. Any individual director, officer, or employee of the Contractor or of its subcontractors and suppliers who are indemnified under the provisions of this Clause are subject to criminal penalties, pursuant to 223(c) of the Act, for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.
- K. Inclusion in Subcontract. The Contractor shall insert this clause in any subcontract that may involve the risk of public liability, as that term is defined in the Act and further described in Paragraph D.2 above. However, this clause shall not be included in subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b of the Act or NRC agreements of indemnification under section 170c or k of the Act for the activities under the subcontract.
- L. Effective Date. The indemnity of Paragraph D.1. is limited to the indemnity provided by the Price-Anderson Amendments Act of 1988 for any nuclear incident to which the indemnity applies that occurred on or after August 8, 2005. The Contractor’s liability for civil violations of the Atomic Energy Act of 1954 under this Contract is that in effect for Battelle prior to August 8, 2005 (see Paragraph I. of this Clause).

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

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

- 1. Indemnification for Nuclear Safety Violations
 - a. **Applicability.** The provisions of this clause shall be applicable if the Contractor’s products or services are subject to the Nuclear Hazards Indemnity provisions of section 170 of the Atomic Energy Act of 1954, as amended, and the U.S. Department of Energy’s Procedural Rules for DOE Nuclear Activities as described in Title 10, Code of Federal Regulations, Part 820 (10 CFR Part 820), or could otherwise have any effect on nuclear or radiological safety.

- b. The Contractor assumes full responsibility and shall indemnify, hold harmless, and defend Battelle, its directors, officers, and employees from any civil liability under §234A of the Atomic Energy Act of 1954, as amended, or the implementing regulations, arising out of the activities of the Contractor, its subcontractors, suppliers, agents, employees, and their officers, or directors. The Contractor's obligation to indemnify and hold harmless shall expressly include attorney fees and other reasonable costs of defending any action or proceeding instituted under §234A or DOE's implementing regulations.

2. Nuclear Safety Regulations

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

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

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

- A. *Program Implementation.* The Contractor shall, consistent with 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, incorporated herein by reference with full force and effect, develop, implement, and maintain a workplace substance abuse program for employees identified as being in Testing Designated Positions (TDP). The Contractor's program must be reviewed and approved by Battelle prior to beginning work under this Contract and is subject to monitoring by Battelle throughout the term of the Contract.
- B. *Remedies.* In addition to any other remedies available to Battelle and the U.S. Department of Energy, the contractor's failure to comply with the requirements of 10 CFR part 707 or to perform in a manner consistent with its approved program may render the contractor subject to the suspension of contract payments, or, where applicable, a reduction in fee; termination for default; and suspension or debarment.
- C. *Subcontracts.*

1. The Contractor agrees to notify the Battelle Contracts Representative reasonably in advance of, but not later than 35 days prior to, the award of any subcontract the Contractor believes may be subject to the requirements of 10 CFR part 707.
2. The Contractor shall require all subcontracts subject to the provisions of 10 CFR part 707 to agree to develop and implement a workplace substance abuse program that complies with the requirements of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, as a condition for award of the subcontract. The Contractor shall obtain Battelle's review and approval of each subcontractor's program, and Battelle will periodically monitor each subcontractor's implementation of the program for effectiveness and compliance with 10 CFR part 707.
3. The Contractor agrees to include, and require the inclusion of, the requirements of this clause in all subcontracts, at any tier, that are subject to the provisions of 10 CFR part 707.