

REQUEST FOR PROPOSAL

NO. 5304

for

**PNNL Science and Engineering Education Center
Website Development/Maintenance Support**

August 13, 2004

Proposals Due: August 31, 2004

**Pacific Northwest National Laboratory
Operated by Battelle for the U.S. Department of Energy
902 Battelle Boulevard
P. O. Box 999, MSIN K1-21
Richland, WA 99352**

**Victoria Hill
Contract Specialist
Business Support Services
Phone (509) 372-4306
Fax (509) 372-4801
email: vickie.hill@pnl.gov**

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AND SOLICITATION PROVISIONS

POINT OF CONTACT

The Battelle Contracts Representative shown below is the **sole point of contact** for any communications or questions regarding this acquisition, and will be the addressee for delivery of your proposal package:

Victoria Hill, Contract Specialist
Pacific Northwest National Laboratory Operated by Battelle for the US DOE
902 Battelle Boulevard
P. O. Box 999, MSIN K1-21
Richland, WA 99352

Phone (509) 372-4306
Fax (509) 372-4801
email: Vickie.hill@pnl.gov

CONTRACT TYPE

Battelle intends to award one fixed price task order type contract for this requirement.

PROPOSAL PREPARATION

The Proposal should be prepared simply and economically in two separate sections, the Technical Proposal and the Financial Proposal, and provide a straightforward, concise delineation of the information required. Emphasis should be on completeness and clarity. Elaborate brochures or other presentations are neither required nor desired. A representative of the Offeror authorized to enter into legally binding commitments shall sign the offer. Complete, sign, and return all documentation required in the Information Required With Offers section of this Request for Proposal (RFP).

Proposals are due by 5:00 p.m., P.S.T. on August 31, 2004 and shall be valid for a period of 60 days after the proposal due date. One original and one (1) copy of the Technical Proposal and one original copy of the Financial Proposal shall be submitted.

TECHNICAL PROPOSALS

Submit the Technical Proposal as a separate part of the total proposal package. Omit all pricing details from the technical proposal. The technical proposal shall address all the requirements of the statement of work and shall be presented in a manner to allow for review and evaluation in accordance with the Evaluation Criteria.

Technical Proposal shall include the following:

- Resumes of Key Personnel
- Discussion of experience, qualifications as outlined in the Statement of Work.
- Proposed work plan and organizational approach to achieving the requirements of the Statement of Work.
- Overall proposal, including any resumes, reports, or other attachments, should be less than 50 pages in length.

FINANCIAL PROPOSALS

Financial proposal shall consist of the following:

1. Price Proposal Form included in the Information Required with Offers section of the RFP.
2. Representations and Certifications Form included in the Information Required with Offers section of the RFP.

BID AND PROPOSAL COSTS

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

EVALUATION CRITERIA

Introduction

Award will be made to that offeror whose proposal contains the combination of those criteria offering the best overall value to PNNL and not necessarily to the offeror with the lowest price or highest evaluated score. Best value will be determined by a trade-off analysis of comparative differences in the value of technical merit with differences in price/cost. PNNL is more

concerned with obtaining superior technical performance than with making an award at the lowest overall price/cost. However, PNNL will not make an award at a significantly higher overall price/cost to achieve slightly superior technical or management performance. Offerors will be given a technical score and a price score.

RATING AND SCORING SCHEME

Technical Merit — 65% (65 points out of 100)

1. Understanding of the Services Required Soundness of the Offeror's technical approach to the tasks described in the statement of work. Demonstrated understanding of relevant issues. Inclusion of a time phased plan addressing critical milestones and how the critical milestones will be achieved.
2. Qualifications of the Proposed Personnel Technical expertise and experience of the project manager and other key personnel proposed as demonstrated by resume or similar narrative in planning, marketing, and managing an Exposition of similar size and complexity.
3. Management and Experience Offeror's management, experience and organization. Ability of Offeror to dedicate sufficient resources to this Exposition. Ability of Offeror to account for Exposition revenues and expenses. Sophistication of Offeror's prior Exposition marketing. Price — 35% (35 points out of 100 points)

Financial Proposals (35%)

Proposals will be evaluated with those proposals with the lowest overall price considered the most favorable for this financial criteria.

Price — 35% (35 points out of 100 points)

STATEMENT OF WORK
PNNL Science and Engineering Education Center

BACKGROUND

The mission of the U.S. Department of Energy's (DOE's) Office of Workforce Development for Teachers and Scientists (WDTS) program is to continue a long-standing tradition of training young scientists, engineers, and technicians in the scientifically and technically advanced environments of DOE's National Laboratories, including Pacific Northwest National Laboratory (PNNL). The National Laboratories and their scientists and engineers are a national resource with a strong record of improving the scientific content knowledge among undergraduates, graduates, teachers and faculty by advancing their scientific talent through a mentor intensive research experience. It is this laboratory research experience, and the investigation that takes place at its unique facilities, that bridges the gap between the science and technology principles and the application of scientific research. These efforts yield especially well qualified individuals who eventually enter the research community and meet specific needs for future scientists and engineers in key technology areas.

PNNL has developed and continues to maintain websites for WDTS for their many programs including Undergraduate Internships, National Science Bowl, National Middle School Science Bowl, and Albert Einstein Distinguished Educator Fellowship Programs. As in many programs that recruit nationally, these websites are essential for conducting business. The websites include information exchange on the programs, application, selection, and notification processes for the internship appointments, and hosting the National Science Bowl websites.

For the past several years, PNNL has worked with WDTS to create, expand, and maintain several high-quality, automated, easy-to-use, and interactive systems and websites to support WDTS programs. The systems allow tracking of applicants and appointees and their related information from the beginning of the application process through completion of their internship, including all of their requirements and associated documentation. The current programs with websites and application systems that are in development are listed below.

- National Science Bowl[®] (www.scied.science.doe.gov/nsb/default.htm)
- National Middle School Science Bowl (www.scied.science.doe.gov/nmsb/default.htm)
- DOE Faculty and Student Team (FaST) Program (www.scied.science.doe.gov/scied/fast/about.html)
- DOE Laboratory Science Teacher Professional Development (LSTPD) Program (www.scied.science.doe.gov/scied/LSTPD/about.htm)
- applicationLink (<https://applicationlink.labworks.org/applicationlink/default.htm>)
- Other WDTS Programs

Several other WDTS programs have application systems and websites already developed and requiring primarily maintenance. These include, but are not limited to the Science Undergraduate Laboratory Internship (SULI) program, the Pre-Service Teacher (PST) program, and the Community College Institute of Science and Technology (CCI).

- Other Educational Programs

PNNL has specifically developed these systems to be easily modified and adapted to new DOE and other government educational programs. It is intended that the basic systems already developed be easily updated, changed and used for new programs as they are needed by DOE or other government customers.

TASKS

Product Development/Revision: Coordinate with PNNL to develop new or revise existing application/registration forms. Assist in reviewing and editing the product input for final incorporation. Know the content on the DOE server and work with PNNL to define scope to avoid duplicating or conflicting existing information already under configuration control as well as link to existing related educational information. Discuss issues with PNNL staff throughout the development/revision process.

Deliverables:

- National Middle School Science Bowl website and online forms for 2005 for Regional and National competitions.
- National Science Bowl website and online forms for 2005 for Regional and National competitions.
- The Laboratory Science Teacher Professional Development (LSTPD) program - continued development of the online deliverables submission tool
- The Faculty and Student Teams (FaST) Program – develop online deliverables submission tool (similar to eduLink undergraduate and LSTPD submission forms).
- Set up the website for Physical Science Careers on the DOE server.
- Modify current undergraduate program applications as directed by PNNL (i.e., deleting GPA requirements, making the PST and CCI programs to include a 1st and 2nd choice lab).

Training: Assist in providing one-on-one or group training to appropriate parties on newly modified and developed forms/views.

Deliverable: Provide training assistance as requested.

Reporting: Provide reports as requested regarding applicationLink/server usage, status on product revision(s)/development(s) and the feedback process. Maintain and monitor the applicationLink mailbox. Deliverable: Provide reports as requested.

Website Operations: Knowledge of current configuration of DOE server and the various web pages hosted. Understand configuration control and maintain electronic archived files and electronic working files (i.e. maintain the author, test, production, and archive environments in sync.) Trouble-shoot document and computer system problems. Must be proficient in the following software:

- Adobe Acrobat 5.0
- Adobe Photoshop 6.0

- Allaire Homesite
- DirectCD software
- HTML Coding
- Lotus NotesSQL and Designer Software
- Macromedia Dreamweaver
- Microsoft Office Suite

Deliverables: 1) Review html code and file format and test draft products using web browsers, Word, PowerPoint, Excel, and Adobe Acrobat to ensure files meet online delivery acceptance requirements; 2) Update navigation coding, forms, views, directories, and indexes, to support site wide functionality and consistency; and 3) Ensure notification mailing lists are current and distribute change notification messages to PNNL staff when products are revised and go under configuration control.

HISTORY OF PACIFIC NORTHWEST NATIONAL LABORATORY /BATTELLE

Pacific Northwest National Laboratory

The Department of Energy's Pacific Northwest National Laboratory in Richland, Washington, is one of nine national, multiprogram laboratories. The laboratory employs about 3,400 staff members and has an annual budget of approximately \$500 million. In addition to its main Richland complex, Pacific Northwest operates a marine sciences laboratory in Sequim, Washington, and has offices in Portland, Oregon, Tacoma, Washington, and Washington, D.C.

Pacific Northwest's core mission is to deliver environmental science and technology to meet key national needs. The laboratory also applies its capabilities to meet selected energy, health, and national security needs, and makes contributions to America's economy and to the education of future scientists and engineers.

Battelle of Columbus, Ohio, has managed the PNNL Laboratory for the federal government since its inception in 1965.

Battelle

Battelle (Memorial Institute), which began operations in 1929, was established in Columbus, Ohio, by Gordon Battelle and serves as a memorial to his family – leaders in America's early steel industry. Battelle serves industry and government in developing new technologies and products. We develop the technology behind the products of some of the most successful companies in the world. Our focus is on developing high-quality solutions and products and reducing time-to-market for our clients.

Battelle inserts technology into systems and processes for manufacturers; pharmaceutical and agrochemical industries; trade associations; and government agencies supporting energy, the environment, health, national security, and transportation.

Battelle has a staff of 7,500 scientists, engineers, and support specialists. Each year, thousands of technology projects are in progress at Battelle's various business operations. These projects

are performed for nearly 2,000 companies and government agencies. Battelle's business volume is nearly \$1 billion a year. Typically, this work results in between 50-100 patented inventions each year.

Notable Accomplishments

- Battelle scientists played a crucial role in developing the office copier machine (Xerox). In all, Battelle was awarded more than 250 patents related to the dry-copying process.
- Battelle did pioneering work on optical digital recording technology that led to the compact disc.
- Battelle conducted studies for the U.S. Treasury that led to the adoption of the "sandwich" coin now used for dimes, quarters, and silver dollars.
- Battelle recommended a bar code symbol now used on grocery packaging that enables automated check-out and inventory control at supermarkets and other retail outlets.
- Since 1963, R&D Magazine has honored inventors by identifying the 100 most technologically significant products and advancements for each year and recognizing the winning innovators and their organizations. **Pacific Northwest National Laboratory** has received 54 of these coveted R&D 100 Awards since we began submitting entries.

Total Other Direct Costs		\$ _____
8. General and Administrative Expense	(Rate _____% X _____ Base)	\$ _____
9. Fee or Profit	(Rate _____% X _____ Base)	\$ _____
Total Estimated Cost and Fee or Profit		\$ _____
E. Contact for specific financial information: Name		Telephone No.

REPRESENTATIONS AND CERTIFICATIONS

For the Pacific Northwest National Laboratory
Operated by Battelle Memorial Institute

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

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

1. TAXPAYER IDENTIFICATION (Oct 1998)

(a) Definitions.

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

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

- (b) All offerors must submit the information required in paragraphs (d) through (f) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c)

and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M and implementing regulations issued by the IRS. If the resulting contract is subject to the reporting requirements described in Federal Acquisition Regulation (FAR) 4.904, the failure or refusal by the offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.

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

(d) Taxpayer Identification Number (TIN).

- TIN: _____
- TIN has been applied for.
- TIN is not required because

-
- _____
 - Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States.
 - Offeror is an agency or instrumentality of a foreign government
 - Offeror is an agency or instrumentality of a Federal Government
 - Other. State basis.
-

(e) *Type of organization*

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

Other _____

(f) *Common Parent.*

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

Name _____ TIN _____

2. SMALL BUSINESS PROGRAM REPRESENTATIONS (Apr 2002)

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

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

(2) The small business size standard is _____.

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

(b) *Representations.*

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

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

-
- (2) The offeror represents, for general statistical purposes, that it is, is not, a **small disadvantaged business concern** as defined in 13 CFR 124.1002. (If so, also complete the *Small Disadvantaged Business Status representation, below.*)
- (3) The offeror represents as part of its offer that it is, is not a **women-owned small business concern**.
- (4) The offeror represents as part of its offer that it is, is not a **veteran-owned small business concern**.
- (5) The offeror represents as part of its offer that it is, is not a **service-disabled veteran-owned small business concern**.
- (6) The offeror represents, as part of its offer, that—
- a. It is, is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office of ownership, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR part 126; and
- b. It is, is not a joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (b)(5)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture.

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

_____]

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

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

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

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

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

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

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

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

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

(d) *Notice.*

- (1) If this solicitation is for supplies and has been set aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.
- (2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small, HUBZone small, small disadvantaged, or women-owned small business concern in order to obtain a contract to be awarded under the preference programs established pursuant to section 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall- (i) Be punished by imposition of fine, imprisonment, or both; (ii) Be subject to administrative remedies, including suspension and debarment; and (iii) Be ineligible for participation in programs conducted under the authority of the Act.

3. AFFIRMATIVE ACTION COMPLIANCE (Apr 1984)

The offeror represents that it

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

4. PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (Feb 1999)

Offeror represents that it

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

5. ROYALTY PAYMENT CERTIFICATION (Jan 1986)

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

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

6. BUY AMERICAN ACT CERTIFICATION (May 2002)

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

(b) Foreign End Products:

Line Item No.	Country of Origin

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

7. TECHNICAL DATA CERTIFICATION (Jan 1986)

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

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

8. PATENT RIGHTS REPRESENTATION (Jan 1986)

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

9. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (Dec 2001)

(Applicable to proposals exceeding \$25,000)

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

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

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

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

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

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

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

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

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

erroneous certification, in addition to other remedies available to the Government, the Battelle Contracts Specialist may terminate the contract resulting from this solicitation for default.

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

(Applicable to proposals exceeding \$100,000)

- (a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.
- (b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989 —
 - (1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;
 - (2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and
 - (3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.
- (c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

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

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

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

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

I. Disclosure Statement-Cost Accounting Practices and Certification

- (a) Any contract in excess of \$500,000 resulting from this solicitation will be subject to the requirements of the Cost Accounting Standards Board (48 CFR Chapter 99), except for those contracts which are exempt as specified in 48 CFR 9903.201-1.

(b) Any offeror submitting a proposal which, if accepted, will result in a contract subject to the requirements of 48 CFR Chapter 99 must, as a condition of contracting, submit a Disclosure Statement as required by 48 CFR 9903.202. When required, the Disclosure Statement must be submitted as a part of the offeror's proposal under this solicitation unless the offeror has already submitted a Disclosure Statement disclosing the practices used in connection with the pricing of this proposal. If an applicable Disclosure Statement has already been submitted, the offeror may satisfy the requirement for submission by providing the information requested in paragraph (c) of Part I of this provision.

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

(c) Check the appropriate box below:

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

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

(ii) One copy to the cognizant Federal auditor.

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

Date of Disclosure Statement: _____

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

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

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

Date of Disclosure Statement: _____

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

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

(3) *Certificate of Monetary Exemption.* The offeror hereby certifies that the offeror, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated prime contracts and subcontracts subject to CAS totaling \$50 million or more in the cost accounting period immediately preceding the period in which this proposal was submitted. The offeror further certifies that if such status changes

before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

- (4) *Certificate of Interim Exemption.* The offeror hereby certifies that (i) the offeror first exceeded the monetary exemption for disclosure, as defined in (3) of this subsection, in the cost accounting period immediately preceding the period in which this offer was submitted and (ii) in accordance with 48 CFR 9903.202-1, the offeror is not yet required to submit a Disclosure Statement. The offeror further certifies that if an award resulting from this proposal has not been made within 90 days after the end of that period, the offeror will immediately submit a revised certificate to the Contracting Officer, in the form specified under paragraph (c)(1) or (c)(2) of Part I of this provision, as appropriate, to verify submission of a completed Disclosure Statement.

Caution: Offerors currently required to disclose because they were awarded a CAS-covered prime contract or subcontract of \$50 million or more in the current cost accounting period may not claim this exemption (4). Further, the exemption applies only in connection with proposals submitted before expiration of the 90-day period following the cost accounting period in which the monetary exemption was exceeded.

II. Cost Accounting Standards-Eligibility for Modified Contract Coverage

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

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

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

III. Additional Cost Accounting Standards Applicable to Existing Contracts

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

Yes No

SIGNATURE

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

Company Name _____

Signature _____

Signer's Name (Printed) _____

Title _____

Date _____

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GENERAL PROVISIONS – FIXED PRICE CONTRACT

DEFINITIONS (cl 301 – Apr 2000)

- A. The terms “Battelle,” “Pacific Northwest National Laboratory,” “PNNL,” and “Laboratory” mean Battelle Memorial Institute, Pacific Northwest Division.
- B. The term “Government” means the Government of the United States of America.
- C. The term “DOE” means the U.S. Department of Energy.

- D. "Battelle Contracts Representative" means an employee of Battelle Memorial Institute, Pacific Northwest Division, acting within the limits of a written authorization to execute legally binding commitments on behalf of Battelle.
- E. Except as otherwise provided in this contract, the term "Subcontracts" includes purchase orders under this contract.

ORDER OF PRECEDENCE (cl 309 - Oct 1997)

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

- A. The Schedule (excluding the specifications).
- B. Representations and other instructions.
- C. Contract clauses.
- D. Other documents, exhibits, and attachments.
- E. The 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 - May 2002)

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 and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

- 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 the 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 BATTELLE NAME (cl. 374 - Jan 2003)

The Contractor agrees not to use Battelle’s name or identifying characteristics for advertising, sales promotion, or other publicity purposes.

AUTHORIZATION AND CONSENT (cl. 373 - July 1995)

- A. The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent—
 1. embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract or
 2. used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with—
 - a. specifications or written provisions forming a part of this contract or

- b. specific written instructions given by the Contracting Officer directing the manner of performance.

The entire liability to Battelle or the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

- B. The Contractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed \$100,000); however, omission of this clause from any subcontract, including those at or below \$100,000, does not affect this authorization and consent.

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

A. General.

1. Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as—
 - a. Recruitment, advertising, and job application procedures;
 - b. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
 - c. Rates of pay or any other form of compensation and changes in compensation;
 - d. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
 - e. Leaves of absence, sick leave, or any other leave;
 - f. Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
 - g. Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
 - h. Activities sponsored by the Contractor, including social or recreational programs; and
 - i. Any other term, condition, or privilege of employment.
2. The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

B. Postings.

1. The Contractor agrees to post employment notices stating-
 - a. The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and
 - b. The rights of applicants and employees.
2. These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled

individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.

3. The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.
- C. Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.
- D. Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

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

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

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

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

CONTRACT ADMINISTRATION *(cl 384 - Jan 1986)*

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

CONVICT LABOR *(cl 390 - Aug 1996)*

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

violation of the laws of any of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if—

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

EQUAL OPPORTUNITY (cl 317 - Apr 2002)

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

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

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

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

SUBCONTRACTS FOR COMMERCIAL ITEMS (cl 364 - May 2002)

- A. Definitions. As used in this clause-

“Commercial item” has the meaning contained in the Federal Acquisition Regulation (FAR) 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 (Oct 2000) (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 \$500,000 (\$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 (Dec 2001) (38 U.S.C. 4212(a));
 - d. 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).
 - e. 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (June 2000) (46 U.S.C. Appx 1241) (flowdown not required for subcontracts awarded beginning May 1, 1996).
- 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 - Aug 1987)

- A. A Battelle Contracts Representative may at any time, by a 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) description of services, 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, packing, or routing; 3) place of delivery.
- B. If such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this contract, whether changed or not changed by any such order, an equitable adjustment shall be made in the contract price or delivery schedule, or both, and the contract shall be modified in writing accordingly.
- C. The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt by the Contractor 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, Battelle 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 within the meaning of the clause of this contract entitled "Disputes". Nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.
- F. No communication, written or oral, from any person other than a Battelle Contracts Representative, shall constitute a change order in accordance with this provision.
- G. Where the cost of property made obsolete or excess as a result of a change is included in the Contractor's proposal for adjustment, Battelle shall have the right to prescribe the manner of disposition of such property.

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

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

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

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

CLAUSES FOR CONTRACTS EXCEEDING \$25,000

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

- A. Definitions. As used in this clause—

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

“Executive and top management” means any employee—

1. Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;
2. Who customarily and regularly directs the work of two or more other employees;

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

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

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

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

“Special disabled veteran” means—

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

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

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

B. General.

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

employee or applicant for employment is qualified. The Contractor shall take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans without discrimination based upon their disability or veterans' status in all employment practices such as—

- a. Recruitment, advertising, and job application procedures;
 - b. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
 - c. Rate of pay or any other form of compensation and changes in compensation;
 - d. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
 - e. Leaves of absence, sick leave, or any other leave;
 - f. Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
 - g. Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
 - h. Activities sponsored by the Contractor including social or recreational programs; and
 - i. Any other term, condition, or privilege of employment.
2. The Contractor shall comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended (38 U.S.C. 4211 and 4212).
- C. Listing openings.
1. The Contractor shall immediately list all employment openings that exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract, and including those occurring at an establishment of the Contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local public employment service office of the State wherein the opening occurs. Listing employment openings with the U.S. Department of Labor's America's Job Bank shall satisfy the requirement to list jobs with the local employment service office.
 2. The Contractor shall make the listing of employment openings with the local employment service office at least concurrently with using any other recruitment source or effort and shall involve the normal obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing of employment openings does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.
 3. Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State public employment agency in each State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State agency, it need not advise the State agency of subsequent contracts. The Contractor may advise the State agency when it is no longer bound by this contract clause.
- D. Applicability. This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of

the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands of the United States, and Wake Island.

E. Postings.

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

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

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

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

- A. Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on—
1. The number of special disabled veterans, the number of veterans of the Vietnam era, and other eligible veterans in the workforce of the Contractor by job category and hiring location; and
 2. The total number of new employees hired during the period covered by the report, and of the total, the number of special disabled veterans, the number of veterans of the Vietnam era, and the number of other eligible veterans; and
 3. The maximum number and the minimum number of employees of the Contractor during the period covered by the report.
- B. The Contractor shall report the above items by completing the Form VETS-100, entitled "Federal Contractor Veterans' Employment Report (VETS-100 Report)".
- C. The Contractor shall submit VETS-100 Reports no later than September 30 of each year beginning September 30, 1988.

- D. The employment activity report required by Paragraph A.2 of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by Paragraph A.1 of this clause. Contractors may select an ending date—
1. As of the end of any pay period between July 1 and August 31 of the year the report is due; or
 2. As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).
- E. The Contractor shall base the count of veterans reported according to Paragraph A of this clause on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all special disabled veterans, veterans of the Vietnam era, and other eligible veterans who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that—
1. The information is voluntarily provided;
 2. The information will be kept confidential;
 3. Disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and
 4. The information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.
- F. The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$25,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

CLAUSES FOR CONTRACTS EXCEEDING \$100K

UTILIZATION OF SMALL BUSINESS CONCERNS *(cl 311 / Oct 2000)*

- A. It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.
- B. The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.
- C. Definitions. As used in this contract-
- “HUBZone small business concern” means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.
- “Service-disabled veteran-owned small business concern”-
1. Means a small business concern—

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

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

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

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

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

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

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

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

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

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

- A. Overtime requirements. No Contractor or subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.300) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.
- B. Violation; liability for unpaid wages; liquidated damages. The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph A. of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The liquidated damages will be assessed at the rate of \$10 per affected employee for each calendar day on which the employer

required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards Act.

- C. Withholding for unpaid wages and liquidated damages. The Battelle Contracts Representative will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, Battelle will withhold payments from other Federal or federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards Act.
- D. Payrolls and basic records.
 - 1. The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.
 - 2. The Contractor and its subcontractors shall allow authorized representatives of Battelle, the Department of Energy, or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph D.1. of this clause. The Contractor or subcontractor also shall allow authorized representatives of Battelle, the Department of Energy, or the Department of Labor to interview employees in the workplace during working hours.
- E. Subcontracts. The Contractor shall insert the provisions set forth in paragraphs A. through D. of this clause in subcontracts exceeding \$100,000 and require subcontractors to include these provisions in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs A. through D. of this clause.

NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (cl 368 - Aug 2002)

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

INTEREST (cl 377 - Jun 1996)

- A. Except as otherwise provided in this contract under a Price Reduction for Defective Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to Battelle under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall

bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

B. Amounts shall be due at the earliest of the following dates:

1. The date fixed under this contract.
2. The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.
3. The date Battelle transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.
4. If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.

C. The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

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

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

ANTI-KICKBACK PROCEDURES (cl 398 - Jul 1995)

A. Definitions

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

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

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

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

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

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

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

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

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

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

- A. Except as provided in Paragraph E of this clause, the Cargo Preference Act of 1954 (46 U.S.C. Appx 1241(b)) requires that Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are—
1. Acquired for a U.S. Government agency account;
 2. Furnished to, or for the account of, any foreign nation without provision for reimbursement;
 3. Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or
 4. Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.
- B. The Contractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this contract (computed separately for dry bulk carriers, dry cargo liners, and

tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in Paragraph A of this clause, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

- C. 1. The Contractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both—
- a. The Battelle Contracts Representative, and
 - b. The ... Office of Cargo Preference
Maritime Administration (MAR-590)
400 Seventh Street, S.W.
Washington, DC 20590

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

- A. The Contractor shall furnish these bill of lading copies (a) within 20 working days of the date of loading for shipments originating in the United States, or (b) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:
- a. Sponsoring U.S. Government agency.
 - b. Name of vessel.
 - c. Vessel flag of registry.
 - d. Date of loading.
 - e. Port of loading.
 - f. Port of final discharge.
 - g. Description of commodity.
 - h. Gross weight in pounds and cubic feet if available.
 - i. Total ocean freight revenue in U.S. dollars.
- D. The Contractor shall insert the substance of this clause, including this Paragraph D, in all subcontracts or purchase orders under this contract, except those described in Paragraph E.4.
- E. The requirement in Paragraph A does not apply to—
1. Cargoes carried in vessels of the Panama Canal Commission or as required or authorized by law or treaty;
 2. Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353);
 3. Shipments of classified supplies when the classification prohibits the use of non-Government vessels; and
 4. Subcontracts or purchase orders for the acquisition of commercial items unless this contract is (a) a contract or agreement for ocean transportation services; or (b) a construction contract; or if the supplies being transported are (a) Items the Contractor is reselling or distributing to the Government without adding value. (Generally, the Contractor does not add value to the items when it subcontracts items for f.o.b. destination shipment); or (b) Shipped in direct support of U.S. military—
 - a. Contingency operations;
 - b. Exercises; or
 - c. Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.

- F. Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the:

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

ADDITIONAL CLAUSES

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

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

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

- A. Government-furnished property.
1. Battelle shall deliver Government-furnished property to the Contractor, for use in connection with and under the terms of this contract, the Government-furnished property described in the Schedule or specifications together with any related data and information that the Contractor may request and is reasonably required for the intended use of the property (hereinafter referred to as “Government-furnished property”).

2. The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use (except for property furnished “as is”) will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the contract’s delivery or performance dates.
 3. If Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt of it, notify the Battelle Contracts Representative, detailing the facts, and, as directed by the Battelle Contracts Representative and at Battelle expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the Contractor, the Battelle Contracts Representative shall make an equitable adjustment as provided in Paragraph H of this clause.
 4. If Government-furnished property is not delivered to the Contractor by the required time, the Battelle contracts Representative shall, upon the Contractor’s timely written request, make a determination of the delay, if any, caused the Contractor and shall make an equitable adjustment in accordance with Paragraph H of this clause.
- B. Changes in Government-furnished property.
1. The Battelle Contracts Representative may, by written notice, (a) decrease the Government-furnished property provided or to be provided under this contract, or (b) substitute other Government-furnished property for the property to be provided by Battelle, or to be acquired by the Contractor for Battelle, under this contract. The Contractor shall promptly take such action as the Battelle Contracts Representative may direct regarding the removal, shipment, or disposal of the property covered by such notice.
 2. Upon the Contractor’s written request, the Battelle Contracts Representative shall make an equitable adjustment to the contract in accordance with Paragraph H of this clause, if Battelle has agreed in the Schedule to make the property available for performing this contract and there is any—
 - a. Decrease or substitution in this property pursuant to Paragraph B.1 of this clause; or
 - b. Withdrawal of authority to use this property, if provided under any other contract or lease.
- C. Title in Government property.
1. The Government shall retain title to all Government-furnished property.
 2. All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as “Government property”), are subject to the provisions of this clause. However, special tooling accountable to this contract is subject to the provisions of the Special Tooling clause and is not subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.
 3. Title to each item of facilities and special test equipment acquired by the Contractor for the Government under this contract shall pass to and vest in the Government when its use in performing this contract commences or when the Government has paid for it, whichever is earlier, whether or not title previously vested in the Government.
 4. If this contract contains a provision directing the Contractor to purchase material for which Battelle will reimburse the Contractor as a direct item of cost under this contract—

- a. Title to material purchased from a vendor shall pass to and vest in the Government upon the vendor's delivery of such material; and
 - b. Title to all other material shall pass to and vest in the Government upon—
 - i. Issuance of the material for use in contract performance;
 - ii. Commencement of processing of the material or its use in contract performance; or
 - iii. Reimbursement of the cost of the material by the Government, whichever occurs first.
- D. Use of Government property. The Government property shall be used only for performing this contract, unless otherwise provided in this contract or approved by the Battelle Contracts Representative.
- E. Property administration.
1. The Contractor shall be responsible and accountable for all Government property provided under this contract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5, as in effect on the date of this contract.
 2. The Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound industrial practice and the applicable provisions of Subpart 45.5 of the FAR.
 3. If damage occurs to Government property, the risk of which has been assumed by the Government under this contract, the Government shall replace the items or the Contractor shall make such repairs as the Government directs. However, if the Contractor cannot effect such repairs within the time required, the Contractor shall dispose of the property as directed by the Battelle Contracts Representative. When any property for which the Government is responsible is replaced or repaired, the Battelle Contracts Representative shall make an equitable adjustment in accordance with Paragraph H of this clause.
 4. The Contractor represents that the contract price does not include any amount for repairs or replacement for which the Battelle is responsible. Repair or replacement of property for which the Contractor is responsible shall be accomplished by the Contractor at its own expense.
- F. Access. Battelle shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.
- G. Risk of loss. Unless otherwise provided in this contract, the Contractor assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, Government property upon its delivery to the Contractor or upon passage of title to the Government under Paragraph C of this clause. However, the Contractor is not responsible for reasonable wear and tear to Government property or for Government property properly consumed in performing this contract.]
- H. Equitable adjustment. When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Battelle Contracts Representative may initiate an equitable adjustment in favor of Battelle. The right to an equitable adjustment shall be the Contractor's exclusive remedy. Battelle shall not be liable to suit for breach of contract for-
1. Any delay in delivery of Government-furnished property;
 2. Delivery of Government-furnished property in a condition not suitable for its intended use;
 3. A decrease in or substitution of Government-furnished property; or
 4. Failure to repair or replace Government property for which the Government is responsible.
- I. Final accounting and disposition of Government property. Upon completing this contract, or at such earlier dates as may be fixed by the Battelle Contracts Representative, the Contractor shall submit, in a form

acceptable to Battelle, inventory schedules covering all items of Government property (including any resulting scrap) not consumed in performing this contract or delivered to Battelle. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the Battelle Contracts Representative. The net proceeds of any such disposal shall be credited to the contract price or shall be paid to Battelle as the Battelle Contracts Representative directs.

- J. Abandonment and restoration of Contractor's premises. Unless otherwise provided herein, the Government—
1. May abandon any Government property in place, at which time all obligations of Battelle regarding such abandoned property shall cease; and
 2. Has no obligation to restore or rehabilitate the Contractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon contract completion). However, if the Government-furnished property (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under Paragraph H of this clause may properly include restoration or rehabilitation costs.
- K. Communications. All communications under this clause shall be in writing.

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

A. Definitions.

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

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

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

“Patent Counsel”, as used in this clause, means the Department of Energy Patent Counsel assisting the procuring activity.

“DOE patent waiver regulations”, as used in this clause, means the Department of Energy patent waiver regulations at 41 CFR 9-9.109- 6 or successor regulations. See 10 CFR part 784.

“Agency licensing regulations” and “applicable agency licensing regulations”, as used in this clause, mean the Department of Energy patent licensing regulations at 10 CFR Part 781.

B. Allocations of principal rights.

1. Assignment to the Government. The Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention, except to the extent that rights are retained by the Contractor under subparagraph B.2 and Paragraph D of this clause.
2. Greater rights determinations.
 - a. The contractor, or an employee-inventor after consultation with the Contractor, may request greater rights than the nonexclusive license and the foreign patent rights provided in Paragraph D of this clause on identified inventions in accordance with the DOE patent waiver regulations. A request for a determination of whether the Contractor or the employee-inventor is entitled to acquire such greater rights must be submitted to the Patent Counsel with a copy to the Contracting Officer at the

time of the first disclosure of the invention pursuant to subparagraph E.2 of this clause, or not later than 8 months thereafter, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. Each determination of greater rights under this contract shall be subject to Paragraph C of this clause, unless otherwise provided in the greater rights determination, and to the reservations and conditions deemed to be appropriate by the Secretary of Energy or designee.

- b. Within two (2) months after the filing of a patent application, the Contractor shall provide the filing date, serial number and title, a copy of the patent application (including an English-language version if filed in a language other than English), and, promptly upon issuance of a patent, provide the patent number and issue date for any subject invention in any country for which the Contractor has been granted title or the right to file and prosecute on behalf of the United States by the Department of Energy.
 - c. Not less than thirty (30) days before the expiration of the response period for any action required by the Patent and Trademark Office, notify the Patent Counsel of any decision not to continue prosecution of the application.
 - d. Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.
- C. Minimum rights acquired by the Government.
- 1. With respect to each subject invention to which the Department of Energy grants the Contractor principal or exclusive rights, the Contractor agrees as follows:
 - e. The Contractor hereby grants to the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced each subject invention throughout the world by or on behalf of the Government of the United States (including any Government agency).
 - f. The Contractor agrees that with respect to any subject invention in which DOE has granted it title, DOE has the right in accordance with the procedures in the DOE patent waiver regulations (10 CFR part 784) to require the Contractor, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if it determines that-- (A) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use; (B) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees; (C) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or (D) Such action is necessary because the agreement required by paragraph (i) of this clause has neither been obtained nor waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.
 - g. The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as DOE may reasonably specify. The Contractor also agrees to provide additional

reports as may be requested by DOE in connection with any march-in proceedings undertaken by that agency in accordance with subparagraph (c)(1)(ii) of this clause. To the extent data or information supplied under this section is considered by the Contractor, its licensee, or assignee to be privileged and confidential and is so marked, the Department of Energy agrees that, to the extent permitted by law, it will not disclose such information to persons outside the Government.

- h. The Contractor agrees, when licensing a subject invention, to arrange to avoid royalty charges on acquisitions involving Government funds, including funds derived through a Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on a subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the invention to any party.
- i. The Contractor agrees to provide for the Government's paid-up license pursuant to subparagraph (c)(1)(i) of this clause in any instrument transferring rights in a subject invention and to provide for the granting of licenses as required by subparagraph (c)(1)(ii) of this clause, and for the reporting of utilization information as required by subparagraph (c)(1)(iii) of this clause, whenever the instrument transfers principal or exclusive rights in a subject invention. (2) Nothing contained in this paragraph (c) shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention.

D. Minimum rights to the Contractor.

- 3. The Contractor is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government obtains title, unless the Contractor fails to disclose the subject invention within the times specified in subparagraph E.2 of this clause. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of that part of the Contractor's business to which the invention pertains.
- 4. The Contractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in 37 CFR Part 404 and agency licensing regulations. This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical applications and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.
- 5. Before revocation or modification of the license, DOE will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by DOE for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable agency licensing regulations and 37 CFR Part 404 concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.
- 6. The Contractor may request the right to acquire patent rights to a subject invention in any foreign country where the Government has elected not to secure such rights, subject to the conditions in subparagraphs D.4.a through D.4.f of this clause. Such request must be made in writing to the Patent Counsel as part of the disclosure required by subparagraph E.2 of this clause, with a copy to the DOE

Contracting Officer. DOE approval, if given, will be based on a determination that this would best serve the national interest.

- a. The recipient of such rights, when specifically requested by DOE, and three years after issuance of a foreign patent disclosing the subject invention, shall furnish DOE a report stating:
 - i. The commercial use that is being made, or is intended to be made, of said invention, and
 - ii. The steps taken to bring the invention to the point of practical application or to make the invention available for licensing.
- b. The Government shall retain at least an irrevocable, nonexclusive, paid-up license to make, use, and sell the invention throughout the world by or on behalf of the Government (including any Government agency) and States and domestic municipal governments, unless the Secretary of Energy or designee determines that it would not be in the public interest to acquire the license for the States and domestic municipal governments.
- c. If noted elsewhere in this contract as a condition of the grant of an advance waiver of the Government's title to inventions under this contract, or, if no advance waiver was granted but a waiver of the Government's title to an identified invention is granted pursuant to subparagraph B.2. of this clause upon a determination by the Secretary of Energy that it is in the Government's best interest, this license shall include the right of the Government to sublicense foreign governments pursuant to any existing or future treaty or agreement with such foreign governments.
- d. Subject to the rights granted in subparagraphs D.1, D.2, and D.3 of this clause, the Secretary of Energy or designee shall have the right to terminate the foreign patent rights granted in this subparagraph D.4 in whole or in part unless the recipient of such rights demonstrates to the satisfaction of the Secretary of Energy or designee that effective steps necessary to accomplish substantial utilization of the invention have been taken or within a reasonable time will be taken.
- e. Subject to the rights granted in subparagraphs D1, D.2. and D.3 of this clause, the Secretary of Energy or designee shall have the right, commencing four years after foreign patent rights are accorded under this subparagraph D.4, to require the granting of a nonexclusive or partially exclusive license to a responsible applicant or applicants, upon terms reasonable under the circumstances, and in appropriate circumstances to terminate said foreign patent rights in whole or in part, following a hearing upon notice thereof to the public, upon a petition by an interested person justifying such hearing:
 - i. If the Secretary of Energy or designee determines, upon review of such material as he deems relevant, and after the recipient of such rights or other interested person has had the opportunity to provide such relevant and material information as the Secretary or designee may require, that such foreign patent rights have tended substantially to lessen competition or to result in undue market concentration in any section of the United States in any line of commerce to which the technology relates; or
 - ii. Unless the recipient of such rights demonstrates to the satisfaction of the Secretary of Energy or designee at such hearing that the recipient has taken effective steps, or within a reasonable time thereafter is expected to take such steps, necessary to accomplish substantial utilization of the invention.
- f. If the Contractor is to file a foreign patent application on a subject invention, the Government agrees, upon written request, to use its best efforts to withhold publication of such invention disclosures for

such period of time as specified by Patent Counsel, but in no event shall the Government or its employees be liable for any publication thereof.

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

E. Invention identification, disclosures, and reports.

1. The Contractor shall establish and maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Contractor personnel responsible for patent matters within 6 months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.
2. The Contractor shall disclose each subject invention to the DOE Patent Counsel with a copy to the Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters or, if earlier, within 6 months after the Contractor becomes aware that a subject invention has been made, but in any event before any on sale, public use, or publication of such invention known to the Contractor. The disclosure to DOE shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to DOE, the Contractor shall promptly notify Patent Counsel of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor. The report should also include any request for a greater rights determination in accordance with subparagraph B.2 of this clause. When an invention is disclosed to DOE under this paragraph, it shall be deemed to have been made in the manner specified in Sections (a)(1) and (a)(2) of 42 U.S.C. 5908, unless the Contractor contends in writing at the time the invention is disclosed that it was not so made.
3. The Contractor shall furnish the Battelle Contracts Representative the following:
 - a. Interim reports every 12 months (or such longer period as may be specified by the Battelle Contracts Representative) from the date of the contract, listing all subject inventions during that period, and including a statement that all subject inventions have been disclosed (or that there are not such inventions), and that such disclosure has been made in accordance with the procedures required by Paragraph E.1. of this clause.

2. Such reserve or balance shall be withheld until the Battelle Contracts Representative has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.
3. Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of subject inventions required by subparagraph E.2 of this clause, and acceptable final report pursuant to subparagraph E.3.b of this clause, and the Patent Counsel has issued a patent clearance certification to the Battelle Contracts Representative.
4. The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government rights.

H. Subcontracts.

1. The Contractor shall include the clause at 48 CFR 952.227-11 (suitably modified to identify the parties) in all subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work to be performed by a small business firm or domestic nonprofit organization, except where the work of the subcontract is subject to an Exceptional Circumstances Determination by DOE. In all other subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work, the contractor shall include this clause (suitably modified to identify the parties). The Contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.
 2. In the event of a refusal by a prospective subcontractor to accept such a clause the Contractor—
 - a. Shall promptly submit a written notice to the Battelle Contracts Representative setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and
 - b. Shall not proceed with such subcontract without the written authorization of the Battelle Contracts Representative.
 3. In the case of subcontracts at any tier, DOE, the subcontractor, and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to those matters covered by this clause.
 4. The Contractor shall promptly notify the Battelle Contracts Representative in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Battelle Contracts Representative, the Contractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.
 5. The Contractor shall identify all subject inventions of the subcontractor of which it acquires knowledge in the performance of this contract and shall notify the Patent Counsel, with a copy to the Battelle Contracts Representative, promptly upon identification of the inventions.
- I. Preference United States industry. Unless provided otherwise, no Contractor that receives title to any subject invention and no assignee of any such Contractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the Government upon a showing by the Contractor or assignee that

reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

J. Atomic energy.

6. No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted with respect to any invention or discovery made or conceived in the course of or under this contract.
7. Except as otherwise authorized in writing by the Battelle Contracts Representative, the Contractor will obtain patent agreements to effectuate the provisions of subparagraph E.1 of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.

K. Background Patents.

8. Background Patent means a domestic patent covering an invention or discovery which is not a subject invention and which is owned or controlled by the Contractor at any time through the completion of this contract:
 - a. Which the Contractor, but not the Government, has the right to license to others without obligation to pay royalties thereon, and
 - b. Infringement of which cannot reasonably be avoided upon the practice of any specific process, method, machine, manufacture, or composition of matter (including relatively minor modifications thereof) which is a subject of the research, development, or demonstration work performed under this contract.
2. The Contractor agrees to and does hereby grant to the Government a royalty-free, nonexclusive license under any background patent for purposes of practicing a subject of this contract by or for the Government in research, development, and demonstration work only.
3. The Contractor also agrees that upon written application by DOE, it will grant to responsible parties, for purposes of practicing a subject of this contract, nonexclusive licenses under any background patent on terms that are reasonable under the circumstances. If, however, the Contractor believes that exclusive rights are necessary to achieve expeditious commercial development or utilization, then a request may be made to DOE for DOE approval of such licensing by the Contractor.
4. Notwithstanding subparagraph K.3 of this clause, the contractor shall not be obligated to license any background patent if the Contractor demonstrates to the satisfaction of the Secretary of Energy or designee that:
 - a. a competitive alternative to the subject matter covered by said background patent is commercially available or readily introducible from one or more other sources; or
 - b. the Contractor or its licensees are supplying the subject matter covered by said background patent in sufficient quantity and at reasonable prices to satisfy market needs, or have taken effective steps or within a reasonable time are expected to take effective steps to so supply the subject matter.

L. Publication. It is recognized that during the course of the work under this contract, the Contractor or its employees may from time to time desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract. In order that public disclosure of such information will not adversely affect the patent interests of DOE or the

Contractor, patent approval for release of publication shall be secured from Patent Counsel prior to any such release or publication.

M. Forfeiture of rights in unreported subject inventions.

1. The Contractor shall forfeit and assign to the Government, at the request of the Secretary of Energy or designee, all rights in any subject invention which the Contractor fails to report to Patent Counsel within six months after the time the Contractor:
 - a. Files or causes to be filed a United States or foreign patent application thereon; or
 - b. Submits the final report required by subparagraph E.2.b of this clause, whichever is later.
2. However, the Contractor shall not forfeit rights in a subject invention if, within the time specified in subparagraph M.1 of this clause, the Contractor:
 - a. Prepares a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the contract and delivers the decision to Patent Counsel, with a copy to the Battelle Contracts Representative; or
 - b. Contending that the invention is not a subject invention, the Contractor nevertheless discloses the invention and all facts pertinent to this contention to the Patent Counsel, with a copy to the Battelle Contracts Representative; or
 - c. Establishes that the failure to disclose did not result from the Contractor's fault or negligence.
3. Pending written assignment of the patent application and patents on a subject invention determined by the Secretary of Energy or designee to be forfeited (such determination to be a final decision under the Disputes clause of this contract), the Contractor shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this Paragraph M shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to subject inventions.

RIGHTS IN TECHNICAL DATA (SHORT FORM) *(cl 371c - Apr 1990)*

A. Definitions

1. "Technical Data" means recorded information regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental, or demonstration, or engineering work, or be usable or used to define a design or process, or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineation's in media such as drawings or photographs, text in specifications or related performance or design type documents or computer software (including computer programs, computer software data bases, and computer software documentation). Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identification, and related information. Technical data as used herein does not include financial reports, cost analyses, and other information incidental to contract administration.
2. "Proprietary Data" means technical data which embody trade secrets developed at private expense, such as design procedures or techniques, chemical composition of materials, or manufacturing methods, processes, or treatments, including minor modifications thereof, provided that such data:
 - a. Are not generally known or available from other sources without obligation concerning their confidentiality,

- b. Have not been made available by the Owner to others without obligation concerning its confidentiality, and
 - c. Are not already available to the Government without obligation concerning their confidentiality.
3. “Contract Data” means technical data first produced in the performance of the contract, technical data which are specified to be delivered in the contract, technical data that may be called for under the “Additional Technical Data Requirements” clause of the contract, if any, or technical data actually delivered in connection with the contract.
4. “Unlimited Rights” means rights to use, duplicate, or disclose technical data, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so.

B. Allocation of Rights

1. The Government shall have:
 - a. Unlimited rights in technical data first produced or specifically used in the performance of this contract,
 - b. The right to inspect at all reasonable times up to three years after final payment under this contract all technical data first produced or specifically used in the contract (for which inspection the Contractor or its subcontractor shall afford proper facilities to DOE), and
 - c. The right to have any technical data first produced or specifically used in the performance of this contract delivered to the Government as DOE may from time to time direct during the progress of the work, or in any event DOE shall direct upon completion or termination of this contract.
2. The Contractor shall have the right to use for its private purposes, subject to patent, security or other provisions of this contract, technical data it first produces in the performance of this contract provided the data requirements of this contract have been met as of the date of the private use of such data. The Contractor agrees that to the extent it receives or is given access to proprietary data or other technical, business or financial data in the form of recorded information from DOE or a DOE contractor or subcontractor, the Contractor shall treat such data in accordance with any restrictive legend contained thereon, unless use is specifically authorized by prior written approval of the contracting officer.
3. Copyrighted material
 - a. The Contractor agrees to, and does hereby grant to the Government, and to its officers, agents, servants and employees acting within the scope of their duties:
 - i. A royalty-free, nonexclusive, irrevocable license to reproduce, translate, publish, use, and dispose of and to authorize others to do so, all copyrightable material first produced or composed in the performance of this contract by the Contractor, its employees or any individual or concern specifically employed or assigned to originate and prepare such material,
 - ii. A license as aforesaid under any and all copyrighted or copyrightable works not first produced or composed by the Contractor in the performance of this contract but which are incorporated in the material furnished under the contract, provided that such license shall be only to the extent the Contractor now has, or prior to completion or final settlement of the contract may acquire, the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

b. The Contractor agrees that it will not knowingly include any material copyrighted by others in any written or copyrightable material furnished or delivered under this contract without a license as provided for in Paragraph 3.a(2) hereof, or without the consent of the copyright owner, unless it obtains specific written approval of the Battelle Contract Representative for the inclusion of such copyrighted material.

ENVIRONMENT, SAFETY AND HEALTH REQUIREMENTS *(cl 3113a – Jan 2004)*

- A. In performing work under this contract, the Contractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The Contractor shall exercise a degree of care commensurate with the work and the associated hazards. The Contractor shall ensure that management of environment, safety, and health (ES&H) functions and activities becomes an integral but visible part of the Contractor's work planning and execution processes. The Contractor shall, in the performance of work, ensure that:
1. Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.
 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 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.
- B. 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
- C. The Contractor is responsible for its subcontractors' compliance with the ES&H requirements of this contract. The Contractor shall include a clause substantially the same as this clause in lower-tier subcontracts involving complex or hazardous work onsite at Government installations or Battelle-owned or -operated facilities or premises. Such subcontracts shall provide for the right to stop work under the conditions described herein.
- D. The Contractor shall perform work in accordance with a Safety Management Plan. The Contractor shall demonstrate well-established safety protocols applicable to the scope of work and consistent with the required elements stated in this clause. Upon the request of Battelle, the Contractor shall submit a copy of its Safety Management Plan to Battelle for review prior to the initiation of any onsite work.
- E. The Contractor shall notify the Battelle Contract Representative immediately of any OSHA-recordable injuries/illnesses, any "off-normal occurrences," or Government property damaged that the Contractor

determines to have occurred in the course of operations onsite and shall furnish such further information as the Battelle Contract Representative may require. An “off-normal occurrence” is any unplanned or unexpected event, or the discovery of a deficiency in a procedure, plan, or system that has real or potentially undesirable consequences to personnel, equipment, facilities, the environment, and/or programs.

- F. The Contractor’s onsite ES&H activities will be subject to review by the Technical Administrator of this contract. Other representatives of Battelle may conduct periodic inspections of the Contractor’s equipment, work and storage areas for compliance with the applicable ES&H requirements. The Battelle Contract Representative will notify the Contractor by a written Notice of Noncompliance of any observed noncompliance with applicable ES&H requirements. The Contractor shall immediately take appropriate corrective action. The Contractor shall advise the Battelle Contract Representative, in writing, within five (5) working days of the corrective action taken on any safety noncompliance noted on the written Notice of Noncompliance. If the Contractor fails or refuses to correct the safety noncompliance, Battelle may perform, or cause to be performed, the necessary corrective work and unilaterally charge the Contractor for the cost thereof. Such charges will be deducted from payments otherwise due the Contractor under this contract.
- G. The Contractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements. If the Contractor fails to provide resolution or if, at any time, the Contractor’s acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the Battelle Contract Representative may issue an order stopping work in whole or in part and the Contractor shall be liable for the delay and any costs thereby incurred. Any stop-work order issued by Battelle under this clause (or issued by the Contractor to a subcontractor in accordance with this clause) shall be without prejudice to any other legal or contractual rights of Battelle. In the event that the Battelle Contract Representative issues a stop-work order, an order authorizing the resumption of the work may be issued at the discretion of the Battelle Contract Representative. The Contractor shall not be entitled to an extension of time, or additional cost or fee, or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.
- H. When the work will be performed for Battelle at its Richland, WA area government or private facilities, the Contractor shall be obligated to the following additional tasks:
1. The Contractor shall be responsible for identifying all potential exposures that their employees and the employees of their lower-tier subcontractors will be exposed to while performing any work under this contract.
 2. The Contractor shall assure that its employees and those of any lower-tiered subcontractor are medically qualified to perform work associated with any potential exposures that have been identified. Medical qualification and medical surveillance programs are the sole responsibility of the Contractor. In addition, the Contractor is responsible for maintaining any historical records associated with the administration of these programs. In the event that the contractor or lower-tiered subcontract employee requires a medical qualification examination or medical surveillance program, at the discretion of the Contractor, these services may be acquired by contracting with the Hanford Site Occupational Medical Provider.
 3. For each of its employees and each of its lower-tier subcontract employees that the Contractor has identified to be at risk of potential exposure, if the individual will be on site for duration of more than 14 days, the Contractor shall complete an “Employee Job Task Analysis” (EJTA) form. Completed EJTA forms shall be submitted to the Battelle Contract Representative and approved by Battelle before any of these employees begin work under this contract.
- I. Subcontractor Employee Concerns

1. If the Contractor's work involves operations on Battelle or Government premises at the Hanford Site, Richland, Washington, the Contractor, its agents, employees or subcontractors, are entitled to use the Battelle Employee Concerns Program and Hotline (509) 375-3999. The Hotline operates 24 hours per day, 7 days a week. Messages may be left anonymously, and all concerns are handled with confidentiality to the maximum extent possible. Employee concerns may also be submitted in writing to the Battelle Employee Concerns Office, Battelle, Pacific Northwest National Laboratory, P.O. Box 999, K1-42, Richland, Washington, 99352, or in person to Battelle's Research Operation Building (ROB) during normal business hours, Monday through Friday 7:30 a.m. to 4:30 p.m.
2. For the purpose of this document, allegations, concerns, and complaints are handled in a like manner and are referred to collectively as "employee concerns." A concern can consist of a declaration, statement, or assertion of impropriety or inadequacy on the part of one's employer or others at the Hanford Site that has affected (or threatens to affect) aspects of Hanford operations, such as the environment, health, safety, quality, or security, and may include fraud, mismanagement, waste, or abuse of authority.
3. No retaliation or retribution shall be taken toward any individual as a result of filing an employee concern consistent with 10 CFR 708.
4. The Contractor agrees to incorporate the substance of this clause in all subcontracts under this contract which involve operations on Battelle or Government premises at the Hanford Site, Richland, Washington.

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

- A. Government-Owned Records. Except as provided in Paragraph B of this clause, all records acquired or generated by the contractor in its performance of this contract shall be the property of the Government and shall be delivered to Battelle or otherwise disposed of by the Contractor either as the Battelle Contracts Representative may from time to time direct during the progress of the work or, in any event, as the Battelle Contracts Representative shall direct upon completion or termination of the contract.
- B. Contractor-Owned Records. The following records are considered the property of the Contractor and are not within the scope of Paragraph A of this clause:
 1. Employment-related records (such as workers' compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns, and other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/ health-related records and similar files), and non-employee patient medical/health related records, except for those records described by the contract as being maintained in Privacy Act systems of records.
 2. Confidential contractor financial information, and correspondence between the contractor and other segments of the contractor located away from the DOE facility (i.e., the contractor's corporate headquarters);
 3. Records relating to any procurement action by the Contractor, except for records that under 48 CFR 970.5232-3, Accounts, Records, and Inspection, are described as the property of the Government; and
 4. Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges; and
 5. The following categories of records maintained pursuant to the technology transfer clause of this contract:

- a. Executed license agreements, including exhibits or appendices containing information on royalties, royalty rates, other financial information, or commercialization plans, and all related documents, notes and correspondence.
 - b. The contractor's protected Cooperative Research and Development Agreement (CRADA) information and appendices to a CRADA that contain licensing terms and conditions, or royalty or royalty rate information.
 - c. Patent, copyright, mask work, and trademark application files and related contractor invention disclosures, documents and correspondence, where the contractor has elected rights or has permission to assert rights and has not relinquished such rights or turned such rights over to the Government.
- C. **Contract Completion or Termination.** In the event of completion or termination of this contract, copies of any of the contractor-owned records identified in Paragraph B of this clause, upon the request of Battelle, shall be delivered to Battelle, DOE or its designees, including successor contractors. Upon delivery, title to such records shall vest in Battelle, DOE or its designees, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act), as appropriate.
- D. **Inspection, Copying, and Audit of Records.** All records acquired or generated by the Contractor under this contract in the possession of the Contractor, including those described at Paragraph B of this clause, shall be subject to inspection, copying, and audit by Battelle, DOE, or its designees at all reasonable times, and the Contractor shall afford Battelle, DOE, or its designees reasonable facilities for such inspection, copying, and audit; provided, however, that upon request by the Battelle Contracts Representative, the Contractor shall deliver such records to a location specified by the Battelle Contracts Representative for inspection, copying, and audit. Battelle, DOE, or its designees shall use such records in accordance with applicable federal laws (including the Privacy Act), as appropriate.
- E. **Applicability.** Paragraphs B, C, and D of this clause apply to all records without regard to the date or origination of such records.
- F. **Records Retention Standards.** Special records retention standards, described at DOE Order 200.1, Information Management Program (version in effect on effective date of contract), are applicable for the classes of records described therein, whether or not the records are owned by the Government or the contractor. In addition, the Contractor shall retain individual radiation exposure records generated in the performance of work under this contract until Battelle or DOE authorizes disposal. Battelle may waive application of these record retention schedules, if, upon termination or completion of the contract, Battelle exercises its right under Paragraph C of this clause to obtain copies and delivery of records described in Paragraphs A and B of this clause.

INSURANCE *(cl 378a - Jan 1997)*

- A. The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract.
- B. Before commencing work under this contract, the Contractor shall notify the Battelle Contracts Representative in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting Battelle's or the Government's interest shall not be effective—
 1. For such period as the laws of the State in which this contract is to be performed prescribe; or

2. Until 30 days after the insurer or the Contractor gives written notice to the Battelle Contracts Representative, whichever period is longer.
- C. The Contractor shall insert the substance of this clause, including this Paragraph C, in subcontracts under this contract that require work at either a Battelle or a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Battelle Contracts Representative upon request.

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

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

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

- A. Battelle may, subject to the provisions of Paragraph C of this clause, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances:
 1. If the Contractor fails to perform the work called for by this contract within the time(s) specified herein or any extension thereof; or
 2. If the Contractor fails to perform any of the other provisions of this contract, or so fails to prosecute the work as to endanger performance of this contract; or
 3. If the Contractor ceases to conduct its operations in the normal course of business (including inability to meet its obligations as they mature); or
 4. If any proceeding for bankruptcy or insolvency is brought by or against the Contractor under bankruptcy or insolvency laws.
- B. In the event Battelle terminates this contract in whole or in part as provided in Paragraph A of this clause, Battelle may procure, upon such terms and in such manner as it may deem appropriate, work similar to the work so terminated and the Contractor shall be liable for any excess costs for such similar work: provided, that the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.
- C. Except with respect to defaults of subcontractors, the Contractor shall not be terminated for default if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor and without the fault or negligence of either of them, the Contractor shall not be terminated for default for failure to perform unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule or other performance requirement.

- D. If this contract is terminated as provided in Paragraph A of this clause, Battelle, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver, in the manner and to the extent directed by Battelle, any of the completed or partially completed work not theretofore delivered to, and accepted by, Battelle and any other property, including contract rights, specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon the direction of Battelle, protect and preserve property in the possession of the Contractor in which Battelle has an interest. Battelle shall pay to the Contractor the contract price, if separately stated, for completed work accepted by Battelle and the amount agreed upon by the Contractor and Battelle for 1) completed work for which no separate price is stated, 2) partially completed work, 3) other property described above which is accepted by Battelle, and 4) the protection and preservation of property. Failure to agree shall be a dispute within the meaning of the clause entitled "Disputes." Battelle may withhold from amounts otherwise due the Contractor for such completed supplies or manufacturing materials such sum as Battelle determines to be necessary to protect Battelle against loss because of outstanding liens or claims of former lien holders.
- E. If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of Paragraph C of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the Government, be the same as if the notice of termination had been issued pursuant to such clause. If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, and if this contract does not contain a clause providing for termination for convenience of the Government, the contract shall be equitably adjusted to compensate for such termination and the contract modified accordingly. Failure to agree to any such adjustment shall be a dispute within the meaning of the clause of this contract entitled "Disputes."
- F. The rights and remedies of Battelle provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.
- G. As used in Paragraph C of this clause, the terms "subcontractor" and "subcontractors" mean subcontractor(s) at any tier.

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT – FIXED PRICE (cl 365d - Sep 1996)

- 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 45.6 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 SERVICES (cl 383a - May 2001)

- A. Definition. "Acceptance," as used in this clause, means the act of an authorized representative of Battelle by which the Government assumes for itself, or as an agent of another, ownership of existing and identified supplies, or approves specific services, as partial or complete performance of the contract.
- B. Notwithstanding inspection and acceptance by Battelle or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this contract. The Contracting Officer shall give written notice of any defect or nonconformance to the Contractor 90]. This notice shall state either—
1. That the Contractor shall correct or reperform any defective or nonconforming services; or
 2. That Battelle does not require correction or reperformance.
- C. If the Contractor is required to correct or reperform, it shall be at no cost to Battelle, and any services corrected or reperformed by the Contractor shall be subject to this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or reperform, the Battelle Contracts Representative may, by contract or otherwise, correct or replace with similar services and charge to the Contractor the cost occasioned to Battelle thereby, or make an equitable adjustment in the contract price.

- D. If Battelle does not require correction or reperformance, the Battelle Contracts Representative shall make an equitable adjustment in the contract price.

NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE (cl 392 - June 2003)

- A. Definition. "Small business concern," as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.
- B. General.
1. Offers are solicited only from small business concerns. Offers received from concerns that are not small business concerns shall be considered nonresponsive and will be rejected.
 2. Any award resulting from this solicitation will be made to a small business concern.
- C. Agreement. A small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.