

**Pacific Northwest
National Laboratory**

Operated by Battelle for the
U.S. Department of Energy

August 31, 2004

Prospective Offeror

SUBJECT: AMENDMENT NO. 2
REQUEST FOR PROPOSAL NO. 5381

Amendment No. 2 is hereby issued to delete the "Buy American Act-Supplies (cl. 341 - May 2002)" clause from the General Provisions in Enclosure No. 5 and delete the "Buy American Act Certification (May 2002)" from the Representation and Certifications in Enclosure No. 6. This request for proposal is exempt for these requirements because the supplies associated with this RFP are for use in Armenia which is outside the United States. No other changes shall apply.

Effective today, Tanya Smith will be the Contract Specialists for this RFP due to my extended business travel to Slavutych, Ukraine from September 1st to December 1st. Tanya Smith can be reached via email at tanya.smith@pnl.gov, via phone at (509) 375-6823, or via fax at (509) 375-6634. No other changes shall apply.

Prospective offerors shall acknowledge receipt of Amendment No. 2 via email or fax to Ms. Smith. Please contact Ms. Smith if you have any questions.

Sincerely,



Bev Jennings
Senior Contracts Specialist

Enclosures (6)

REQUEST FOR PROPOSAL NO. 5381

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ENCLOSURE 1

SOLICITATION PROVISIONS AND INSTRUCTIONS

SUBMISSION OF PROPOSALS

Proposals shall be arranged as outlined in the Instructions for the Preparation of Technical and Price Proposals, Enclosure 2. Proposals are to be prepared simply and economically, and provide a straightforward, concise delineation of the information required to be furnished. Emphasis is to be on completeness and clarity. Elaborate brochures or other presentations are neither required nor desired.

One original, signed by a representative of the Offeror authorized to enter into legally binding commitments and three (3) additional copies are required for each proposal submitted. Envelopes containing proposals are to be marked in the lower right hand corner with "Proposal to RFP No. 5381". Proposals must be received by Battelle, no later than **4:00 P.M. PST, September 10, 2004**. E-mailed proposals are acceptable, with required signature pages faxed to the attention of Bev Jennings, Contracting Officer, at (509) 375-6634, and received in time to meet the deadline, with originals sent by overnight express. The Contractor is responsible to ensure that PNNL received the e-mailed proposal/fax signature pages by requesting confirmation of receipt.

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

Battelle, Pacific Northwest Division
3320 Q Avenue, Room 112 (ISB II Building)
Richland, WA 99354
Attn: Bev Jennings (MS K7-74)

LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF PROPOSALS

- A. Any offer received by Battelle after the exact time specified for receipt will not be considered unless it is received before the award is made and it:
 - 1. Was sent by overnight mail and it is determined by Battelle that the late receipt was due solely to mishandling by Battelle after receipt by Battelle; or
 - 2. Was sent by Express Mail Next Day Service to Addressee, not later than 5:00 p.m. at the place of mailing three working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays; or
 - 3. Or if it is the only proposal received
- B. Any modification of an offer, except a modification resulting from Battelle's request for "best and final" offers, is subject to the same conditions as in Subparagraph A.1., A.2., and A.3. above.
- C. A modification resulting from Battelle's request for "best and final" offers received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by Battelle after receipt by Battelle.
- D. The only acceptable evidence to establish the time of receipt by Battelle is the time/date stamp of Battelle on the offer wrapper or other documentary evidence of receipt maintained by Battelle.
- E. The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by Express Mail Next Day Service to Addressee is the date entered by the receiving clerk on the "Express Mail Next day Service to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the Express Mail Service. Therefore, Offerors

should request the express mail clerk to place a legible hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

- F. Notwithstanding Paragraph A. above, a late modification of an otherwise successful offer that makes its terms more favorable will be considered at any time it is received and may be accepted.
- G. Proposals may be withdrawn by written notice or fax received at any time before award. Proposals may be withdrawn in person by an Offeror or an authorized representative, if the representative's identity is made known and the representative signs a receipt for the proposal before award.

TREATMENT OF PROPOSAL DATA

- A. Although not specifically requested by the RFP, the proposal may include technical data and other data, including trade secrets and/or privileged or confidential commercial or financial information, which the Offeror does not want, disclosed to the public or used by Battelle or the Government for any purpose other than proposal evaluation. To protect such data, the Offeror will specifically identify each page including each line or paragraph thereof containing the data to be protected and mark the cover sheet of the proposal with the following notice:

NOTICE

The data contained in pages ____ of this proposal have been submitted in confidence and contain trade secrets and/or privileged or confidential commercial or financial information, and such data shall be used or disclosed only for evaluation purposes. Battelle and the Government shall have the right to use or disclose the data herein to the extent provided in the contract. This restriction does not limit Battelle's and the Government's right to use or disclose data obtained without restriction from any source, including the Offeror.

Reference to this notice on the cover sheet should be placed on each page to which the notice applies. Battelle assumes no liability for disclosure or use of unmarked data and may use or disclose such data for any purpose.

- B. Should a contract be awarded based on a proposal, it is policy, in consideration of the award, to obtain unlimited rights for the Government in technical data contained in the proposal unless the prospective subcontractor marks those portions of the technical information that he asserts as "proprietary data," or specifies those portions of such technical data that are not directly related to or will not be utilized in the work to be funded under this subcontract. "Proprietary data" are defined as technical data which embody trade secrets developed at private expense, such as design procedures or techniques, chemical composition of materials, or manufacturing methods, processes, or treatments, including minor modifications thereof, provided that such data: (1) are not generally known or available from other sources without obligation concerning their confidentiality; (2) have not been made available by the owner to others without obligation concerning their confidentiality; and (3) are not already available to the Government without obligation concerning their confidentiality. An Offeror who receives a contract award shall mark the data identified as proprietary by specifying the appropriate proposal page number to be inserted in the Rights to Proposal Data clause below. Subject to the concurrence of Battelle, information unrelated to the subject may be deleted from the proposal by the Offeror. The responsibility, however, of identifying technical data as proprietary or deleting it as unrelated rests with the Offeror.
- C. The following clause shall be included in any contract based on a proposal. This clause is intended to apply only to technical data and not to other data, such as privileged or confidential commercial or financial information.

RIGHTS TO PROPOSAL DATA

Except for technical data contained on pages ___ of the contractor's proposal dated _____, which are asserted by the Contractor as being proprietary data, it is agreed that as a condition of the award of this contract, notwithstanding the provisions of any notice appearing on the proposal, the Government shall have the right to use, duplicate, and disclose and have others do so for any purpose whatsoever, the technical data contained in the proposal upon which this contract is based.

STATEMENT OF WORK

The Statement of Work is Enclosure 3.1.

AMENDMENTS TO RFP

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

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

EXPLANATION TO PROSPECTIVE OFFERORS

Any prospective Offeror desiring an explanation or interpretation of the RFP must request it in writing to Bev Jennings, Contracting Officer, and it must be received no later than **4:00 p.m., PST, September 10, 2004**. Oral explanations or instruction given before the award of the contract will not be binding. Any information given to a prospective Offeror concerning the RFP will be furnished promptly to all other prospective Offerors as an amendment of the solicitation, if that information is necessary in submitting offers or if the lack of it would be prejudicial to any other prospective Offeror.

CONTRACT AWARD

Battelle will award a contract resulting from this RFP to the responsive/responsible Offeror whose offer, conforming to the RFP, will be most advantageous for Battelle, price and other factors considered and as specified in Enclosure 4 "Evaluation Criteria". However, Battelle reserves the right to make no award if it is in the best interest of Battelle.

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

Battelle may reject any or all offers or waive informalities and minor irregularities in offers received. Battelle is not obligated to pay any cost incurred in the preparation and submission of a proposal, or to enter into a contract or any other arrangement with any Offeror.

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

AUTHORIZED NEGOTIATORS

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

TYPE OF CONTRACT

A fixed price contract is anticipated.

ENCLOSURE 2

INSTRUCTIONS FOR THE PREPARATION OF TECHNICAL AND PRICE PROPOSALS

Submit separately bound technical proposals and separately bound price proposals.

TECHNICAL PROPOSAL INSTRUCTIONS

The purpose of this competitive procurement is to select a Contractor to provide a replacement to the existing relay-based load sequencer for the emergency diesel generators at Armenia Nuclear Power Plant Unit 2 (ANPP-2) with a modern digital system. In addition, upgrades to the controls for these diesel generators are anticipated. These upgrades may be made at the same time as the load sequencer or in subsequent years as exercised options (see Statement of Work - Enclosure 3.1).

The technical proposal shall include the following elements and be organized in the following order (See also the Statement of Work and Evaluation Criteria):

1. Prior Demonstrated Experience (Not to exceed 10 pages)

Offeror's demonstrated technical experience, capabilities and qualifications for performance of the Statement of Work. Direct experience and prior successful performance of similar activities as those outlined in the Statement of Work will be the basis for this evaluation criterion. This shall include demonstrated experience with diesel generator controls and nuclear qualified software and hardware. All software and hardware should be off-the-shelf product.

2. Technical Expertise (Not to exceed 10 pages*)

Demonstrated level of technical expertise of personnel in the areas of the Statement of Work. Level of education, qualifications, direct work experience, knowledge and background of Offeror's key personnel will be evaluated. Expertise in control systems for safety related systems will be the primary focus. Emphasis will also be placed on the Offeror's ability to demonstrate that key personnel will not have conflicting work assignments that might be detrimental to the schedule of this project is also of high importance. **(*NOTE: Resumes should be attached to this section and included in the 10 pages)**

3. Project Management (Not to exceed 5 pages)

Demonstrated level of the Offeror's applicable experience, understanding of the statement of work, and demonstrate the approach for effective management of the project schedule and deliverables. The Offeror's approach to the implementation of the statement of work, exceptions to the statement of work and scheduling will be of most importance.

PRICING PROPOSAL INSTRUCTIONS

A fixed price contract is anticipated to be awarded as a result of this request for proposal. The Offeror shall provide sufficient detail to allow a cost/price analysis of its proposal. The price proposal should be priced by task with a summary page for the contractor's total price. See Enclosure 2.1 for the recommended price format.

ENCLOSURE 2.1

CONTRACT PRICING PROPOSAL FOR FIRM FIXED PRICE CONTRACTS (NOTE: The price proposal should be priced by task and options with a summary page for the contractor's total price.)

The purpose of this form to provide a standard format by which the offeror submits information in cost plus fixed fee and firm fixed price contracts.

Name of Offeror: _____

B. Home Office Address: _____

C. Division Where Work is Performed: _____

D. Detail Description of Proposal: _____

1. Direct Material

Purchased Parts		\$ _____
Subcontracted Items		\$ _____
Other - A) Raw Materials		\$ _____
B) Standard Commercial Items		\$ _____
C) Interdivisional Transfers		\$ _____
Total Materials		\$ _____

2. Materials Overhead (Rate _____ % X _____ Base) \$ _____

3. Direct Labor

Name/Labor Category	Rate	Hours			
A) _____	\$ _____	_____	\$ _____	_____	\$ _____
B) _____	\$ _____	_____	\$ _____	_____	\$ _____
C) _____	\$ _____	_____	\$ _____	_____	\$ _____
D) _____	\$ _____	_____	\$ _____	_____	\$ _____
E) _____	\$ _____	_____	\$ _____	_____	\$ _____
Total Direct Labor					\$ _____

4. Labor Overhead (Rate _____ % X _____ Base) \$ _____

5. Travel

Location To	From	Days	Nights	No. of Staff	Transport	Car	Per diem
_____	_____	_____	_____	_____	\$ _____	\$ _____	\$ _____
_____	_____	_____	_____	_____	\$ _____	\$ _____	\$ _____
_____	_____	_____	_____	_____	\$ _____	\$ _____	\$ _____
Total Travel							\$ _____

6. Consultants/Subcontractors

Name	Contract Type	Amount
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
Total Consultants/Subcontractors		\$ _____

7. Other Direct Costs

Description (including rates, volumes, etc.)	Amount
_____	\$ _____
_____	\$ _____
_____	\$ _____
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. _____

ENCLOSURE 3

SAMPLE CONTRACT

SCHEDULE

I. RECITALS

The contracting parties are Battelle Memorial Institute, Pacific Northwest Division, an Ohio Corporation with principal offices in Columbus, Ohio (hereinafter called "Battelle"), and _____ (Contractor), a _____ (Business Type) located in _____ (City and State), (hereinafter called "Contractor").

This contract is made for the procurement of services needed in connection with Battelle's management, operation and maintenance of the U.S. Department of Energy's Pacific Northwest Laboratory at Richland, Washington, under Contract DE-AC06-76RLO 1830.

The contract is a firm fixed price contract.

II. AGREEMENTS

1. Contract Period: The contract period shall be from the latter of either the Battelle Contract Representative or the Contractor representative signature dates in Article III through _____.
2. Firm Fixed Price: The firm fixed price is \$_____.
3. Allotment of Funds: \$_____ is allotted for performance of the work. It is estimated this allotment of funds shall cover work through _____.
4. Milestone Payment Schedule: Milestone payments shall be made after receipt and acceptance of the following deliverables: (To be determined).
5. Options: As of the Contract effective date, no option is exercised.

Battelle may, at its sole discretion, exercise Options _____. Battelle may exercise Option _____ in writing at any time up to _____. Upon such time as Battelle desires to exercise Option _____, Battelle shall notify the Contractor in writing and Option _____ will be added to this Contract via a modification to this Contract.

6. Invoices: Application for payment (invoices) may be submitted not more frequently than monthly. Invoices must be submitted in duplicate with supporting data such as time cards, travel tickets and hotel receipts for any single travel expenditure exceeding \$75.00. Invoices shall be prepared substantially in accordance with forms listed at www.pnl.gov/contracts/documents and mailed to:

Bev Jennings
Battelle, Pacific Northwest National Laboratory
P.O. Box 999, Mail Stop: K7-74
3320 Q Ave.
Richland, WA 99352
FAX: (509) 375-6634

7. Technical Administrator: The Technical Administrator for this Contract is _____. He can be reached at _____.
8. Contract Administrator: The Contract Administrator for this Contract is _____. She can be reached at _____.
9. Approval of Subcontracts: Approval of Subcontracts: Subcontracts require the prior written approval of the Battelle Contract Representative.
10. Contract Contents: In addition to this Schedule, the contract consists of:
 - Statement of Work, dated _____, entitled "_____"
 - General Provisions – Fixed Price Contract, dated _____
 - Small Business Plan, dated _____
11. Representations and Certifications: The representations and certifications as signed and submitted with the proposal for RFP 5381 on _____ by the Contractor are hereby incorporated by reference.
12. Integration: This Contract contains the entire understanding between the parties, and there are no understandings or representations set forth or incorporated by reference herein. No subsequent modifications of this Contract shall be of any force or effect unless in writing signed by the party claimed to be bound thereby. No communication, written or oral, by other than a Battelle Contract Representative shall be effective to modify or otherwise affect the provisions of the Contract.

III. SIGNATURES

BATTELLE MEMORIAL INSTITUTE
PACIFIC NORTHWEST DIVISION

(Contractor Name)

By _____

By _____

Title _____

Title _____

Date _____

Date _____

ENCLOSURE 3.1

Statement of Work

Armenia NPP Diesel Generator Upgrade Procurement Specification Diesel Generator Load Sequencer and Control Options

August 2004

Background

The U.S. Department of Energy (DOE) is assisting the Republic of Armenia in upgrading the safety of Armenia Nuclear Power Plant Unit 2 (ANPP-2). Pacific Northwest National Laboratories (PNNL) is DOE's lead laboratory for the safety upgrade program. The purpose of this scope is to replace the existing relay-based load sequencer for the emergency diesel generators at ANPP-2 with a modern digital system. In addition, a number of upgrades to the controls for these diesel generators are planned. Depending on timing and availability of adequate funding, these upgrades may either be made at the same time as the load sequencer or in subsequent years. We are requesting that these control upgrades be proposed as options.

One of the reasons for replacing the existing load sequencer and control systems at ANPP is that they are outdated and unreliable. In addition, ANPP plans to make changes to the diesel generator configuration that would double the amount of emergency coolant makeup flow in the design basis pipe break accident. In the current configuration, there are four operational diesel generators but they are not configured in two clearly independent trains with separation and dedicated support systems. Thus, only one makeup pump is available to respond to a pipebreak accident. In the planned reconfiguration, two trains of emergency power will be established, each one with two diesels providing power to two makeup pumps. In the accident, assuming that a single failure results in the loss of one train, the other train will be available with twice the coolant makeup flow as in the current configuration. The planned diesel generator upgrades at ANPP are very similar to upgrades that have been completed previously at other VVER 440 plants, including those at Bohunice NPP and Paks NPP.

Burns and Roe Enterprises, Inc. has supported PNNL in the development of the Technical Specification for the load sequencer, which is provided as "APPENDIX A". The Technical Specification incorporates requirements provided by the plant architect-engineer organization Atomenergoproekt-Nizhny Novgorod (NIAEP).

Scope of Work

Task 1: The Contractor Organization shall provide Class 1E, microprocessor-based load sequencers for each of the two trains of diesel generators. Requirements for the load sequencers are provided in the attached Technical Specification No. 7660-01 "Diesel Generator Load Sequencer with Optional Control Upgrade" (APPENDIX A). It is the goal of the Project to install the load sequencers in the summer outage of 2005.

Options

Option 1: The Contractor should propose as an option the programming of the load sequencer (with algorithms to be provided by the ANPP) or training of an Armenian contractor (Armatom), which would perform the actual programming of the system.

- Program the load sequencer with algorithms provided by others (Option 1A)
- Train American engineers to allow them to program the load sequencer (Option 1B)

Option 2 - 6: The Contractor Organization shall also propose on the following options:

- Diesel generator speed control (Option 2).
- Diesel generator load sharing (Option 3)
- Diesel generator voltage regulation (Option 4)
- Diesel generator static excitation (Option 5)
- Diesel generator automatic auxiliaries control (Option 6)

In addition to installing the load sequencer in 2005, it is our objective to also install the speed control (Option 2) and load sharing controls (Option 3) as well during this time. The other options could be exercised in whole or in part for installation in 2005 or 2006.

Contractor should provide add/delete prices for each type of input/output card.

Other Requirements

All foreign travel will be coordinated with the Technical Administrator and will be followed within one week of trip completion by a trip report documenting the activities performed on the trip and the accomplishments, agreements and resulting issues.

A written, monthly status report will be submitted by the fifth-(5th) working day of the month to the PNNL Contracting Office, which document progress against the baseline schedule and any issues affecting project performance. On all written deliverables, an original and one hard copy are required to be delivered as follows:

Original and electronic copy
Battelle PNNL
Bev Jennings, PNNL Contracting Officer
P.O. Box 999
Richland, WA 99352
bev.jennings@pnl.gov

1 copy
Battelle Columbus Operations
Richard Denning, Technical Administrator
505 King Avenue
Columbus, OH 43201
denning@battelle.org

Quality Assurance

The Contractor shall implement a quality system that provides for the control of quality affecting activities for items/services performed under this agreement. The quality system shall meet a recognized standard, such as ISO 9000, NQA-1, IEEE or similar standard and any host country quality requirements. As appropriate, the Contractor shall require their subcontractors to meet applicable portions of these same requirements.

The Contractor shall identify to PNNL's INSP any safety, quality or regulatory issues associated with this work and the measures taken by them and/or other parties to resolve the issues.

The Contractor shall prepare and maintain records to substantiate the work activities. Records are to be legible and traceable to the originator, (signed and dated) and include results, conclusions or other pertinent information.

ENCLOSURE 4

EVALUATION CRITERIA FOR TECHNICAL PROPOSAL

The following criteria will be used to evaluate the proposals that are submitted. These criteria are used as a means of evaluating a proposal and applying a numerical score. The award will be made to the responsive/responsible Offeror whose proposal contains the combination of criteria offering the best overall value to Battelle and not necessarily to the Offeror with the lowest price or highest evaluated score. After initial completion of numerical scoring, Battelle will determine best value by trade-off analysis of comparative differences in the value of technical merit with differences in price. Battelle will not make an award at a significantly higher overall price to achieve slightly superior technical service. All evaluation factors other than price, when combined, are significantly more important than price.

1. Demonstrated Prior Experience

Offeror's demonstrated technical experience, capabilities and qualifications for performance of the Statement of Work. Direct experience and prior successful performance of similar activities as those outlined in the Statement of Work will be the basis for this evaluation criterion. This shall include demonstrated experience with diesel generator controls and nuclear qualified software and hardware. All software and hardware should be off-the-shelf product.

2. Technical Expertise

Demonstrated level of technical expertise of personnel in the areas of the Statement of Work. Level of education, qualifications, direct work experience, knowledge and background of Offeror's key personnel will be evaluated. Expertise in control systems for safety related systems will be the primary focus. Emphasis will also be placed on the Offeror's ability to demonstrate that key personnel will not have conflicting work assignments that might be detrimental to the schedule of this project is also of high importance.

3. Project Management

Demonstrated level of the Offeror's applicable experience, understanding of the statement of work, and demonstrate the approach for effective management of the project schedule and deliverables. The Offeror's approach to the implementation of the statement of work, exceptions to the statement of work, and scheduling will be of most importance.

4. Price

Price will be evaluated based upon the total fixed price.

ENCLOSURE 5

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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.

CLAUSES FOR CONTRACTS EXCEEDING \$500K

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

- A. Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.
- B. The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.
- C. In each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4, when entered into, the Contractor shall insert either—
1. The substance of this clause, including this Paragraph C, if Paragraph A of this clause requires submission of cost or pricing data for the subcontract; or
 2. The substance of the clause Subcontractor Cost or Pricing Data-Modifications.

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

- A. The requirements of Paragraphs B and C of this clause shall—
1. Become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4; and
 2. Be limited to such modifications.
- B. Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification

involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.

- C. The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under Paragraph B of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.
- D. The Contractor shall insert the substance of this clause, including this paragraph D, in each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4 on the date of agreement on price or the date of award, whichever is later.

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

- A. If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because—
 - 1. The Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;
 - 2. A subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or
 - 3. Any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.
- B. Any reduction in the contract price under Paragraph A of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which—
 - 1. The actual subcontract; or
 - 2. The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.
- C. 1. If the Battelle Contracts Representative determines under Paragraph A of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:
 - a. The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.
 - b. The Battelle Contracts Representative should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Battelle Contracts Representative.
 - c. The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.
 - d. The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.
- 2. a. Except as prohibited by subdivision C.2.b of this clause, an offset in an amount determined appropriate by the Battelle Contracts Representative based upon the facts shall be allowed against the amount of a contract price reduction if—
 - i. The Contractor certifies to the Battelle Contracts Representative that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and
 - ii. The Contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

- b. An offset shall not be allowed if—
 - i. The understated data were known by the Contractor to be understated before the “as of” date specified on its Certificate of Current Cost or Pricing Data; or
 - ii. Battelle proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the “as of” date specified on its Certificate of Current Cost or Pricing Data.
- D. If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid—
 - 1. Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date Battelle is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
 - 2. A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

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

- A. This clause shall become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, except that this clause does not apply to any modification if an exception under FAR 15.403-1 applies.
- B. If any price, including profit or fee, negotiated in connection with any modification under this clause, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor’s Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under Paragraph A of this clause.
- C. Any reduction in the contract price under Paragraph B of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which—
 - 1. The actual subcontract; or
 - 2. The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.
- D. 1. If the Battelle Contracts Representative determines under Paragraph B of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:
 - a. The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.
 - b. The Battelle Contracts Representative should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Battelle Contracts Representative.
 - c. The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.
 - d. The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

2. a. Except as prohibited by Paragraph D.2.b of this clause, an offset in an amount determined appropriate by the Battelle Contracts Representative based upon the facts shall be allowed against the amount of a contract price reduction if—
 - i. The Contractor certifies to the Battelle Contracts Representative that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and
 - ii. The Contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.
 - b. An offset shall not be allowed if—
 - i. The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or
 - ii. Battelle proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.
- E. If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay Battelle at the time such overpayment is repaid—
1. Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date Battelle is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
 2. A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

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

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

SMALL BUSINESS SUBCONTRACTING PLAN (*cl 312 - Jan 2002*)

- A. This clause does not apply to small business concerns.
- B. *Definitions.* As used in this clause-
 - "Commercial item" means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.
 - "Commercial plan" means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).
 - "Individual contract plan" means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific

contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

“Master plan” means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

“Subcontract” means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

- C. The offeror, upon request by the Battelle Contracts Representative, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Battelle Contracts Representative. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.
- D. The offeror’s subcontracting plan shall include the following:
1. Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.
 2. A statement of—
 - a. Total dollars planned to be subcontracted for an individual contract plan; or the offeror’s total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;
 - b. Total dollars planned to be subcontracted to small business concerns;
 - c. Total dollars planned to be subcontracted to veteran-owned small business concerns;
 - d. Total dollars planned to be subcontracted to service-disabled veteran-owned small business;
 - e. Total dollars planned to be subcontracted to HUBZone small business concerns;
 - f. Total dollars planned to be subcontracted to small disadvantaged business concerns; and
 - g. Total dollars planned to be subcontracted to women-owned small business concerns.
 3. A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to—
 - a. Small business concerns;
 - b. Veteran-owned small business concerns;
 - c. Service-disabled veteran-owned small business concerns;
 - d. HUBZone small business concerns;
 - e. Small disadvantaged business concerns; and
 - f. Women-owned small business concerns.
 4. A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.
 5. A description of the method used to identify potential sources for solicitation purposes (*e.g.*, existing company source lists, the Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration (SBA), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in PRO-Net as an accurate representation of a concern’s size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small,

small disadvantaged, and women-owned small business source list. Use of PRO-Net as its source list does not relieve a firm of its responsibilities (*e.g.*, outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

6. A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—
 - a. Small business concerns;
 - b. Veteran-owned small business concerns;
 - c. Service-disabled veteran-owned small business concerns;
 - d. HUBZone small business concerns;
 - e. Small disadvantaged business concerns; and
 - f. Women-owned small business concerns.
7. The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.
8. A description of the efforts the offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.
9. Assurances that the offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$500,000 (\$1,000,000 for construction of any public facility) to adopt a subcontracting plan that complies with the requirements of this clause.
10. Assurances that the offeror will-
 - a. Cooperate in any studies or surveys as may be required;
 - b. Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;
 - c. Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with paragraph (j) of this clause. The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with the instructions on the forms or as provided in agency regulations.
 - d. Ensure that its subcontractors agree to submit SF 294 and SF 295.
11. A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):
 - a. Source lists (*e.g.*, PRO-Net), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.
 - b. Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.
 - c. Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating—

- i. Whether small business concerns were solicited and, if not, why not;
 - ii. Whether veteran-owned small business concerns were solicited and, if not, why not;
 - iii. Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;
 - iv. Whether HUBZone small business concerns were solicited and, if not, why not;
 - v. Whether small disadvantaged business concerns were solicited and, if not, why not;
 - vi. Whether women-owned small business concerns were solicited and, if not, why not; and
 - vii. If applicable, the reason award was not made to a small business concern.
 - d. Records of any outreach efforts to contact—
 - i. Trade associations;
 - ii. Business development organizations;
 - iii. Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and
 - iv. Veterans service organizations.
 - e. Records of internal guidance and encouragement provided to buyers through-
 - i. Workshops, seminars, training, etc.; and
 - ii. Monitoring performance to evaluate compliance with the program's requirements.
 - f. On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.
- E. In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:
 1. Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.
 2. Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.
 3. Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.
 4. Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.
- F. A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided-
 1. The master plan has been approved;
 2. The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and

3. Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.
- G. A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Commercial plans are also preferred for subcontractors that provide commercial items under a prime contract, whether or not the prime contractor is supplying a commercial item.
- H. Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.
- I. The failure of the Contractor or subcontractor to comply in good faith with-
 1. The clause of this contract entitled "Utilization Of Small Business Concerns;" or
 2. An approved plan required by this clause, shall be a material breach of the contract.
- J. The Contractor shall submit the following reports:
 1. *Standard Form 294, Subcontracting Report for Individual Contracts.* This report shall be submitted to the Contracting Officer semiannually and at contract completion. The report covers subcontract award data related to this contract. This report is not required for commercial plans.
 2. *Standard Form 295, Summary Subcontract Report.* This report encompasses all of the contracts with the awarding agency. It must be submitted semi-annually for contracts with the Department of Defense and annually for contracts with civilian agencies. If the reporting activity is covered by a commercial plan, the reporting activity must report annually all subcontract awards under that plan. All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a breakout, in the Contractor's format, of subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.

ADDITIONAL CLAUSES

LIMITATION OF FUNDS (cl 349b - Dec 1985)

- A. It is estimated that the total cost to Battelle for the performance of this contract will not exceed the estimated cost set forth in the Schedule, and the Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within such estimated cost.
- B. The amount presently available for payment and allotted to this contract, the items covered thereby, the period of performance which it is estimated the allotted amount will cover, are specified in the Schedule. It is contemplated that from time to time, additional funds will be allotted to this contract up to the full estimated cost set forth in the Schedule, exclusive of any fee. The Contractor agrees to perform or have performed work on this contract up to the point at which the total amount paid and payable by Battelle pursuant to the terms of this contract approximates but does not exceed the total amount actually allotted to the contract.
- C. If, at any time, the Contractor has reason to believe that the costs which it expects to incur in the performance of this contract in the next succeeding sixty (60) days, when added to all cost previously incurred, will exceed seventy-five percent (75%) of the total amount then allotted to the contract, the Contractor shall notify Battelle in writing to that effect. The notice shall state the estimated amount of additional funds required to continue performance for the period set forth in the Schedule. Sixty (60) days prior to the end of the period specified in the Schedule, the Contractor will advise Battelle in writing as to the estimated amount of additional funds, if any, that will be required for the timely performance of the work under the contract or for such further period as may be specified in the Schedule or otherwise agreed to by the parties. If, after such notification additional funds are not allotted by the end of the period set forth in the Schedule or an agreed date substituted therefore, Battelle will, upon written request by the Contractor, terminate this contract pursuant to the provisions of the Termination clause on such date. If the Contractor, in the exercise of its reasonable judgment, estimates that the funds available will allow it to continue to discharge its obligations hereunder for a period extending beyond such date, it shall specify the later date in its request and Battelle, in its discretion, may terminate this contract on that later date.

- D. Except as required by other provisions of this contract specifically citing and stated to be an exception from this clause, Battelle shall in no event be obligated to reimburse the Contractor for costs incurred in excess of the total amount from time to time allotted to the contract, and the Contractor shall not be obligated to continue performance under the contract (including actions under the Termination clause) or otherwise to incur costs in excess of the amount allotted to the contract, unless and until a Battelle Contract Representative has notified the Contractor in writing that such allotted amount has been increased and has specified in such notice an increased amount constituting the total amount then allotted to the contract. To the extent the amount allotted exceeds the estimated cost set forth in the Schedule, such estimated cost shall be correspondingly increased. No notice, communication, or representation in any other form or from any person other than a Battelle Contract Representative shall affect the amount allotted to this contract. In the absence of such written notice from a Battelle Contract Representative, and notwithstanding the fact that the Contractor could not know, for reasons of impossibility or otherwise, that it exceeded the total amount allotted to the contract, Battelle shall not be obligated to reimburse the Contractor for any costs in excess of such allotment, whether those excess costs were incurred during the course of the contract or as a result of termination. When and to the extent that the amount allotted to the contract has been increased, any costs incurred by the Contractor in excess of the amount previously allotted shall be allowable to the same extent as if such costs had been incurred after such increase in the amount allotted; unless Battelle issues a termination or other notice and directs that the increase is solely for the purpose of covering termination or other specified expenses.
- E. Change orders issued pursuant to the Changes clause of this contract shall not be considered an authorization to the Contractor to exceed the amount allotted in the Schedule in the absence of a statement in the change order, or other contract modification, increasing the amount allotted.
- F. Nothing in this clause shall affect the right of Battelle to terminate this contract. In the event this contract is terminated, Battelle and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract based upon the share of costs incurred by each.
- G. In the event that sufficient funds are not allotted to this contract to allow completion of the work contemplated by this contract, the Contractor shall be entitled to that percentage of the fee set forth in the Schedule equivalent to the percentage of completion of the work contemplated by this contract.

COST ACCOUNTING STANDARDS (*cl. 328 - Apr 1998*)

- A. If the contract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR Part 9903 are incorporated herein by reference and the Contractor, in connection with this contract, shall—
1. (CAS-covered Contracts Only) By submission of a Disclosure Statement, disclose in writing its cost accounting practices as required by 48 CFR 9903.202-1 through 48 CFR 9903.2025 including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and that contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Battelle Contracts Representative that the Disclosure Statement contains trade secrets, and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.
 2. Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for purposes of any contract or subcontract subject to Cost Accounting Standards (CAS) requirements, the change must be applied prospectively to this contract, and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with Paragraph A.4 or A.5 of this clause, as appropriate.

3. Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR Part 9904, in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter becomes applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.
 4.
 - a. Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph A.3 above, the Contractor is required to make to Contractor's established cost accounting practices.
 - b. Negotiate with the Battelle Contracts Representative to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph A.4 of this clause; provided, that no agreement may be made under this provision that will increase costs paid by Battelle.
 - c. When the parties agree to a change to a cost accounting practice, other than a change under subparagraph A.4.a. of this clause, negotiate with Battelle an equitable adjustment as provided in the Changes clause of this contract.
 5. Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by Battelle. Such adjustment shall provide for recovery of the increased costs to Battelle together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C 6621) for such period, from the time the payment by Battelle was made to the time the adjustment is effected. In no case shall Battelle recover costs greater than the increased cost to Battelle, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to Battelle.
- B. The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.
- C. The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause and shall require such inclusion in all other subcontracts of any tier, including the obligation to comply with all CAS in effect on the subcontract's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of \$500,000 except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

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

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Contractor shall take the steps outlined in paragraphs A. through G. of this clause:

- A. Submit to the Battelle Contracts Representative a description of any cost accounting practice change, the total potential impact of the change on contracts containing a CAS clause, and a general dollar magnitude of the change which identifies the potential shift of costs between CAS-covered contracts by contract type (i.e., firm-fixed-price, incentive, cost-plus-fixed fee, etc.) and other contractor business activity. As related to CAS-covered contracts, the analysis should identify the potential impact on funds of the various Agencies/Departments (i.e., Department of Energy, National Aeronautics and Space Administration, Army, Navy, Air Force, other Department of Defense, other Government) as follows:
 1. For any change in cost accounting practices required in accordance with paragraph A.3. and subdivision (a)(4)(i) of the clause at FAR 52.230-2, Cost Accounting Standards; or paragraph (a)(3) and subdivisions (a)(4)(i) or (a)(4)(iv) of

- the clause at FAR 52.230-5, Cost Accounting Standards-Educational Institution; within 60 days (or such other date as may be mutually agreed to) after award of a contract requiring this change.
2. For any change in cost accounting practices proposed in accordance with subdivision (a)(4)(ii) or (iii) of the clauses at FAR 52.230-2, Cost Accounting Standards, and FAR 52.230-5, Cost Accounting Standards-Educational Institution; or with paragraph (a)(3) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, not less than 60 days (or such other date as may be mutually agreed to) before the effective date of the proposed change.
 3. For any failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by paragraph (a)(5) at FAR 52.230-2, Cost Accounting Standards, and FAR 52.230-5, Cost Accounting Standards-Educational Institution; or by paragraph (a)(4) at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices):
 - a. Within 60 days (or such other date as may be mutually agreed to) after the date of agreement with the initial finding of noncompliance, or
 - b. In the event of Contractor disagreement with the initial finding of noncompliance, within 60 days of the date the Contractor is notified by the Battelle Contracts Representative of the determination of noncompliance.
- B. After an ACO, or cognizant Federal agency official, determination of materiality, submit a cost impact proposal in the form and manner specified by the Battelle Contracts Representative within 60 days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to paragraph A. of this clause. The cost impact proposal shall be in sufficient detail to permit evaluation, determination, and negotiation of the cost impact upon each separate CAS-covered contract and subcontract.
1. Cost impact proposals submitted for changes in cost accounting practices required in accordance with paragraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230-2, Cost Accounting Standards; or paragraph (a)(3) and subdivisions (a)(4)(i) or (a)(4)(iv) of the clause at FAR 52.230-5, Cost Accounting Standards-Educational Institution; shall identify the applicable standard or cost principle and all contracts and subcontracts containing the clauses entitled Cost Accounting Standards or Cost Accounting Standards-Educational Institution, which have an award date before the effective date of that standard or cost principle.
 2. Cost impact proposals submitted for any change in cost accounting practices proposed in accordance with subdivisions (a)(4)(ii) or (iii) of the clauses at FAR 52.230-2, Cost Accounting Standards, and FAR 52.230-5, Cost Accounting Standards-Educational Institution; or with paragraph (a)(3) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices; shall identify all contracts and subcontracts containing the clauses at FAR 52.230-2, Cost Accounting Standards, FAR 52.230-5, Cost Accounting Standards-Educational Institution, and FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices.
 3. Cost impact proposals submitted for failure to comply with an applicable CAS or to follow a disclosed practice as contemplated by paragraph (a)(5) of the clauses at FAR 52.230-2, Cost Accounting Standards, and FAR 52.230-5, Cost Accounting Standards-Educational Institution; or by paragraph (a)(4) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, shall identify the cost impact on each separate CAS-covered contract from the date of failure to comply until the noncompliance is corrected.
- C. If the submissions required by paragraphs A. and B. of this clause are not submitted within the specified time, or any extension granted by the Battelle Contracts Representative, an amount not to exceed 10 percent of each subsequent amount determined payable related to the Contractor's CAS-covered prime contracts, up to the estimated general dollar magnitude of the cost impact, may be withheld until such time as the required submission has been provided in the form and manner specified by the Battelle Contracts Representative.
- D. Agree to appropriate contract and subcontract amendments to reflect adjustments established in accordance with paragraphs (a)(4) and (a)(5) of the clauses at FAR 52.230-2 and 52.230-5; or with paragraphs (a)(3) or (a)(4) of the Disclosure and Consistency of Cost Accounting Practices clause at FAR 52.230-3.
- E. For all subcontracts subject to the clauses at FAR 52.230-2, 52.230-3, or 52.230-5-
1. So state in the body of the subcontract, in the letter of award, or in both (self-deleting clauses shall not be used);
 2. Include the substance of this clause in all negotiated subcontracts; and

3. Within 30 days after award of the subcontract, submit the following information to the Contractor's cognizant contract administration office for transmittal to the contract administration office cognizant of the subcontractor's facility:
 - a. Subcontractor's name and subcontract number.
 - b. Dollar amount and date of award.
 - c. Name of Contractor making the award.
- F. Notify the Battelle Contracts Representative in writing of any adjustments required to subcontracts under this contract and agree to an adjustment, based on them, to this contract price or estimated cost and fee. This notice is due within 30 days after proposed subcontract adjustments are received and shall include a proposal for adjusting the higher tier subcontract or the prime contract appropriately.
- G. For subcontracts containing the clauses at FAR 52.230-2 or 52.230-5, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

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

- A. The Contractor, in connection with this contract, shall-
 1. Comply with the requirements of 48 CFR 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs; 48 CFR 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose; 48 CFR 9904.405, Accounting for Unallowable Costs; and 48 CFR 9904.406, Cost Accounting Standard-Cost Accounting Period, in effect on the date of award of this contract as indicated in 48 CFR part 9904.
 2. (*CAS-covered Contracts Only*) If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5. If the Contractor has notified the Battelle Contracts Representative that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.
 3.
 - a. Follow consistently the Contractor's cost accounting practices. A change to such practices may be proposed, however, by either the Government or the Contractor, and the Contractor agrees to negotiate with the Contracting Officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to this contract, and the Disclosure Statement, if affected, must be amended accordingly.
 - b. The Contractor shall, when the parties agree to a change to a cost accounting practice and the Battelle Contracts Representative has made the finding required in 48 CFR 9903.201-6(b), that the change is desirable and not detrimental, negotiate an equitable adjustment as provided in the Changes clause of this contract. In the absence of the required finding, no agreement may be made under this contract clause that will increase costs paid by Battelle.
 4. Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, and such failure results in any increased costs paid by Battelle. Such adjustment shall provide for recovery of the increased costs to Battelle together with interest thereon computed at the annual rate of interest established under the Internal Revenue Code of 1986 (26 U.S.C. 6621), from the time the payment by Battelle was made to the time the adjustment is effected.
- B. If the parties fail to agree whether the Contractor has complied with an applicable CAS, rule, or regulation as specified in 48 CFR 9903 and 9904 and as to any cost adjustment demanded by Battelle, such failure to agree will constitute a dispute within the meaning of the Disputes clause of this contract.
- C. The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this clause.

- D. The Contractor shall include in all negotiated subcontracts, which the Contractor enters into, the substance of this clause, except Paragraph B, and shall require such inclusion in all other subcontracts of any tier, except that—
1. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted.
 2. This requirement shall apply only to negotiated subcontracts in excess of \$500,000.
 3. The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

INSPECTION OF 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.

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

- A. Definition. “Supplies,” as used in this clause, includes but is not limited to raw materials, components, intermediate assemblies, end products, and lots of supplies.
- B. The Contractor shall provide and maintain an inspection system acceptable to Battelle covering supplies under this contract and shall tender to Battelle for acceptance only supplies that have been inspected in accordance with the inspection system and have been found by the Contractor to be in conformity with contract requirements. As part of the system, the Contractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to Battelle during contract performance and for as long afterwards as the contract requires. Battelle may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly delay the contract work. The right of review, whether exercised or not, does not relieve the Contractor of the obligations under the contract.

- C. Battelle has the right to inspect and test all supplies called for by the contract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. Battelle shall perform inspections and tests in a manner that will not unduly delay the work. Battelle assumes no contractual obligation to perform any inspection and test for the benefit of the Contractor unless specifically set forth elsewhere in this contract.
- D. If Battelle performs inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the contract, Battelle shall bear the expense of inspections or tests made at other than the Contractor's or subcontractor's premises; provided, that in case of rejection, Battelle shall not be liable for any reduction in the value of inspection or test samples.
- E. 1. When supplies are not ready at the time specified by the Contractor for inspection or test, the Battelle Contracts Representative may charge to the Contractor the additional cost of inspection or test.
2. The Battelle Contracts Representative may also charge the Contractor for any additional cost of inspection or test when prior rejection makes reinspection or retest necessary.
- F. Battelle has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with contract requirements. Battelle may reject nonconforming supplies with or without disposition instructions.
- G. The Contractor shall remove supplies rejected or required to be corrected. However, the Battelle Contracts Representative may require or permit correction in place, promptly after notice, by and at the expense of the Contractor. The Contractor shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and, when required, shall disclose the corrective action taken.
- H. If the Contractor fails to promptly remove, replace, or correct rejected supplies that are required to be removed or to be replaced or corrected, Battelle may either (1) by contract or otherwise, remove, replace, or correct the supplies and charge the cost to the Contractor or (2) terminate the contract for default. Unless the Contractor corrects or replaces the supplies within the delivery schedule, the Battelle Contracts Representative may require their delivery and make an equitable price reduction. Failure to agree to a price reduction shall be a dispute.
- I. 1. If this contract provides for the performance of Battelle quality assurance at source and if requested by Battelle, the Contractor shall furnish advance notification of the time—
- a. When Contractor inspection or tests will be performed in accordance with the terms and conditions of the contract; and
- b. When the supplies will be ready for Battelle inspection.
2. Battelle's request shall specify the period and method of the advance notification and the Battelle representative to whom it shall be furnished. Requests shall not require more than 2 workdays of advance notification if the Battelle representative is in residence in the Contractor's plant, nor more than 7 workdays in other instances.
- J. Battelle shall accept or reject supplies as promptly as practicable after delivery, unless otherwise provided in the contract. Battelle's failure to inspect and accept or reject the supplies shall not relieve the Contractor from responsibility, nor impose liability on Battelle, for nonconforming supplies.
- K. Inspections and tests by Battelle do not relieve the Contractor of responsibility for defects or other failures to meet contract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.
- L. If acceptance is not conclusive for any of the reasons in Paragraph K hereof, Battelle, in addition to any other rights and remedies provided by law, or under other provisions of this contract, shall have the right to require the Contractor—
1. At no increase in contract price, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the Contractor's plant at Battelle's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and the Battelle Contracts Representative; provided, that the Battelle

Contracts Representative may require a reduction in contract price if the Contractor fails to meet such delivery schedule, or

2. Within a reasonable time after receipt by the Contractor of notice of defects or nonconformance, to repay such portion of the contract as is equitable under the circumstances if Battelle elects not to require correction or replacement.

When supplies are returned to the Contractor, the Contractor shall bear the transportation cost from the original point of delivery to the Contractor's plant and return to the original point when that point is not the Contractor's plant. If the Contractor fails to perform or act as required in Paragraph L.1. or L.2. of this clause and does not cure such failure within a period of 10 days (or such longer period as the Battelle Contracts Representative may authorize in writing) after receipt of notice from Battelle specifying such failure, Battelle shall have the right by contract or otherwise to replace or correct such supplies and charge to the Contractor the cost occasioned Battelle thereby.

RIGHTS IN TECHNICAL DATA (LONG FORM) (cl 371a - 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 contract data except as otherwise provided below with respect to proprietary data.
 - b. The right to remove, cancel, correct or ignore any marking not authorized by the terms of this contract on any technical data furnished hereunder, if in response to a written inquiry by DOE concerning the propriety of the markings, the Contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE will notify the Contractor of the action taken.
 - c. No rights under this contract in any technical data that are not contracting data.
2. The Contractor shall have:
 - a. The right to withhold proprietary data in accordance with the provisions of this clause,

- b. The right to use for its private purposes, subject to patent, security or other provisions of this contract, contract 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 Battelle.
 3. Nothing contained in this “Rights in Technical Data” clause shall imply a license to the Government under any patent or be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.
- C. Copyrighted Material
1. The Contractor shall not, without prior written authorization of Battelle or DOE, establish a claim to statutory copyright in any contract data first produced in the performance of the contract. To the extent such authorization is granted, the Government reserves for itself and others acting on its behalf a royalty free, nonexclusive, irrevocable, world-wide license for Governmental purposes to publish, distribute, translate, duplicate, exhibit and perform any such data copyrighted by the Contractor.
 2. The Contractor agrees not to include in the technical data delivered under the contract any material copyrighted by the Contractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in Paragraph C.1 above. If such royalty-free license is unavailable and the Contractor nevertheless determines that such copyrighted material must be included in the technical data to be delivered, rather than merely incorporated therein by reference, the Contractor shall request the written authorization of Battelle to include such copyrighted material in the technical data prior to its delivery.
- D. Subcontracting. It is the responsibility of the Contractor to obtain from its subcontractor’s technical data and rights therein, on behalf of the Government, necessary to fulfill the Contractor’s obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government such rights, the Contractor shall:
1. Promptly submit written notice to Battelle setting forth reasons for the subcontractor refusal and other pertinent information which may expedite disposition of the matter; and
 2. Not proceed with the subcontract without the written authorization of Battelle.
- E. Withholding of Proprietary Data. Notwithstanding the inclusion of the “Additional Technical Data Requirements” clause in this contract or any provision of this contract specifying the delivery of technical data, the Contractor may withhold proprietary data from delivery, provided that the Contractor furnishes in lieu of any such proprietary data so withheld technical data disclosing the source, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements (“Form, Fit and Function” data, e.g., specification control drawings, catalog sheets, envelope drawings, etc.) or a general description of such proprietary data where “Form, Fit and Function” data are not applicable. The Government shall acquire no rights to any proprietary data so withheld except that such data shall be subject to the “inspection rights” provisions of Paragraph F, and, if included, the “Limited rights in proprietary data” provisions of Paragraph G and the “Contractor licensing” provisions of Paragraph H.
- F. Inspection Rights. Except as may be otherwise specified in this contract for specific items of proprietary data which are not subject to this paragraph, the Government’s representatives, at all reasonable times up to three (3) years after final payment under this contract, may inspect at the Contractor’s facility any proprietary data withheld under Paragraph E and not furnished under Paragraph G for the purposes of verifying that such data properly fell within the withholding provision of Paragraph E, or for evaluating work performance.

ADDITIONAL TECHNICAL DATA REQUIREMENTS (cl 371b - Oct 1983)

- A. In addition to the technical data specified elsewhere in this contract to be delivered, Battelle may at any time during the contract performance or within one year after final payment call for the Contractor to deliver any technical data first produced or specifically used in the performance of this contract except technical data pertaining to items of standard commercial design.
- B. The provisions of the "Rights in Technical Data" clause included in this contract are applicable to all technical data called for under this "Additional Technical Data Requirements" clause. Accordingly, nothing contained in this clause shall require the Contractor to actually deliver any technical data, the delivery of which is excused by Paragraph E of the "Rights in Technical Data" clause.
- C. When technical data are to be delivered under this clause, the Contractor will be compensated for appropriate costs for converting such data into the prescribed form, for reproduction, and for delivery.

RIGHTS TO PROPOSAL DATA (cl 376 - Apr 1994)

Except for technical data contained on the pages defined in the proposal which are asserted by the Contractor as being proprietary data, it is agreed that, as a condition of the award of this contract, and notwithstanding the provisions of any notice appearing on the proposal, the Government shall have the right to use, duplicate, disclose and have others do so for any purpose whatsoever, the technical data contained in the proposal upon which this contract is based.

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

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

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

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

(State reasons):

(End of statement)

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

FOREIGN TRAVEL (cl 366 - Apr 1984)

- A. Foreign travel means any travel outside the United States, its territories and possessions, and Canada.
- B. Foreign travel in connection with the performance of this contract shall be subject to the prior approval of DOE. Requests for approval of each separate trip shall be submitted to the Battelle Contracts Representative no later than sixty days prior to a planned departure date. The Contractor shall provide information for and sign a Form DOE 1512.1 (Request for Approval of Foreign Travel), which may be obtained from the Battelle Contracts Representative.

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 365]. 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.

NOTIFICATION OF VISA DENIAL (cl 389 - June 2003)

It is a violation of Executive Order 11246 for a Contractor to refuse to employ any applicant or not to assign any person hired in the United States, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, or Wake

Island, on the basis that the individual's race, color, religion, sex, or national origin is not compatible with the policies of the country where or for whom the work will be performed (41 CFR 60-1.10). The Contractor shall notify the Battelle Contracts Representative and U.S. Department of State, Assistant Secretary, Bureau of Political-Military Affairs (PM), 2201 C Street NW, Room 6212, Washington, DC 20520, and the U.S. Department of Labor, Deputy Assistant Secretary for Federal Contract Compliance, when it has knowledge of any employee or potential employee being denied an entry visa to a country where this contract will be performed, and it believes the denial is attributable to the race, color, religion, sex, or national origin of the employee or potential employee. Copy of the notification will also be sent to the Battelle Contracts Representative.

ENCLOSURE 6

REPRESENTATION AND CERTIFICATION: 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. Patent 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:
 1. the amount of each payment,
 2. the names of the licensor, and
 3. 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. 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.

8. 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.

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 _____