



GENERAL PROVISIONS – FIXED-PRICE CONTRACTS
Commercial Items - Supplies
For the Pacific Northwest National Laboratory
Operated by Battelle Memorial Institute
Applicable to Request for Proposal No. 5431

Battelle Memorial Institute has executed and is engaged in the performance of Prime Contract DE-AC06-76RL01830 with the United States Department of Energy (DOE), for the management, operation, and maintenance of the Pacific Northwest National Laboratory (PNNL) in Richland, Washington. This contract is entered into in furtherance of the performance of the work provided in the Prime Contract, and is subject to the following general provisions:

<u>GENERAL PROVISIONS</u>	2
DEFINITIONS (cl. 301 – Apr 2000)	2
DISPUTES (cl. 331 - Oct 1979)	2
PATENT INDEMNITY (cl. 367a / Apr 1984)	2
USE OF BATTELLE NAME (cl. 374 – Jan 2003)	2
CHANGES - FIXED PRICE (cl. 346b - Aug 1987)	2
PAYMENTS - FIXED PRICE (cl. 350 – Aug 1984)	3
FEDERAL, STATE, AND LOCAL TAXES – FIXED PRICE (cl. 354b - Apr 1984)	3
INSPECTION OF SERVICES –FIXED-PRICE (cl. 379b - Aug 1996)	3
DEFAULT - FIXED PRICE SUPPLY AND SERVICE (cl. 365c - Dec 1985)	4
TERMINATION FOR CONVENIENCE OF THE GOVERNMENT – FIXED PRICE (cl. 365d - Sep 1996)	5
WARRANTY OF SERVICES (cl. 383a - May 2001)	7
<u>CLAUSES INCORPORATED BY REFERENCE</u>	8
FAR 52.222-26 Equal Opportunity (Apr 2002)	8
FAR 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001)	8
FAR 52.222-36 Affirmative Action for Workers with Disabilities (June 1998)	8
FAR 52.222-41 Service Contract Act of 1965, as Amended (May 1989)	8
DEAR 952.204-2 Security (May 2002)	8
DEAR 952.250-70 Nuclear Hazards Indemnity Agreement (June 1996)	8

GENERAL PROVISIONS

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.

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.

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.

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.

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.

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.

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.)

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.

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 within 30 days from the date of acceptance by Battelle. 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.

CLAUSES INCORPORATED BY REFERENCE

The following additional Federal Acquisition Regulation (FAR) and Department of Energy Acquisition Regulation (DEAR) clauses may also apply to this contract as specified on the contract schedule and are, therefore, incorporated by reference:

FAR 52.222-26 Equal Opportunity (Apr 2002)

FAR 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001)

FAR 52.222-36 Affirmative Action for Workers with Disabilities (June 1998)

FAR 52.222-41 Service Contract Act of 1965, as Amended (May 1989)

DEAR 952.204-2 Security (May 2002)

DEAR 952.250-70 Nuclear Hazards Indemnity Agreement (June 1996)