

REQUEST FOR PROPOSAL

NO. 5909/5910

for

**EMPORARY STAFFING SERVICES
BATTELLE WASHINGTON DC OFFICE**

September 9, 2004

Proposals Due: October 1, 2004

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

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

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POINT OF CONTACT

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

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

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

CONTRACT TYPE

Battelle intends to award two labor hour/time & materials contracts for this requirement.

PROPOSAL PREPARATION

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

Proposals are due by 5:00 p.m., P.S.T. on October 1, 2004 and shall be valid for a period of 90 days after the proposal due date. One original and one (1) copy of the Technical Proposal and one original copy of the Financial Proposal shall be submitted.

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 registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);
 2. Was sent by mail and it is determined by Battelle that the late receipt was due solely to mishandling by Battelle after receipt by Battelle; or
 3. Was sent by U.S. Postal Service Express Mail Next Day Service - Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays; or
 4. 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 date of mailing of a late proposal or modification sent either by U.S. Postal Service registered or certified mail is the U.S. postmark both on the envelope or wrapper and on the original receipt from the U.S. Postal Service. Both postmarks must show a legible date or the proposal, quotation, or modification shall be processed as if mailed late. "Post-mark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. Postal Service on the date of mailing. Therefore, Offerors should request the postal clerk to place a legible hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.
- E. 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.
- F. The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in Paragraph D. of this provision. Therefore, Offerors should request the postal

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

- G. 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.
- H. Proposals may be withdrawn by written notice or telegram (including mailgram) 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 PNNL 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. PNNL 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 PNNL'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. PNNL 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 contractor 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 PNNL, 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.

APPLICATION OF THE SERVICE CONTRACT ACT

The following clauses concerning the Service Contract Act of 1965, as amended (41 U.S.C. 351, et.seq.), will be used in any agreement resulting from this RFP. See the General Provisions enclosed.

STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES

In compliance with the Service Contract Act of 1965, as amended, and the regulations of the Secretary of Labor (29CFR Part 4), this clause identifies the classes of service employees expected to be employed under the agreement and states the wages and fringe benefits payable to each if they were employed by the Department of Energy subject to the provisions of 5 U.S.C. 5341 or 5332.

This statement is for Information Only: It Is Not a Wage Determination

PUBLIC LAW 95-516

Public Law 95-516 provides that small businesses which meet the criteria of the law may acquire by contract greater rights with regard to patents than was afforded under previous laws and

regulations. Under the new law, small businesses and non-profit organizations may elect to retain title to any inventions which are conceived or first actually reduced to practice in the performance of work under a funding agreement with a Federal agency for the performance of experimental, developmental, or research work. In the event you qualify as a small business or non-profit organization under Section 2 of Public Law 85-536 (15 USC 632) or Section 501 (c) (3) of the Internal Revenue Code of 1954 (26 USC 501 (c)), and so certify by executing the enclosed Patent Rights Certification, the appropriate patent rights clause for small businesses and non-profit organizations will be included in the agreement.

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, telegram, or E-mail. 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 soon enough to allow a reply to reach all prospective Offerors before the submission of their offers. 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 contract(s) resulting from this RFP to the responsible Offeror(s) whose offer(s), conforming to the RFP, will be most advantageous for Battelle, cost and other factors considered and as specified the "Evaluation Criteria" section of this RFP.

Contract award may be made on the initial offers received, without discussions. Therefore, initial proposals should contain the Offeror's best cost and technical 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, nor to enter into a contract or any other arrangement with any Offeror.

There will be no public opening of proposals. Offerors will be advised when source selection has been made. 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 scheduled or be postponed. The Offeror's notice, if originally given orally, shall be confirmed in writing.

TIMEKEEPING SYSTEM

The Contractor shall provide documentation to substantiate that it has an adequate timekeeping system. Specifically, the documentation must establish that the Contractor's timekeeping is sufficient to track hours by individual, by project, or by cost objective.

FINANCIAL RESPONSIBILITY

The Contractor shall describe its ability to furnish the financial support necessary to carry out the agreement. Current supporting documentation, such as financial statements for the last two years, indicating the financial responsibility of the Contractor must be included. If teaming is proposed, similar information relative to all team members shall be included.

INSURANCE

The Contractor shall provide documentation stating current insurance coverage. Minimum insurance requirements are: (A) commercial general liability, broad form, \$500,000 combined single limit each occurrence for bodily injury and property damage; (B) comprehensive automobile liability (owned and non-owned), \$500,000 per person, \$500,000 per occurrence for bodily injury, and \$500,000 per occurrence for property damage.

WAGE DETERMINATION NOTICE

The Service Contract Act of 1965, as amended, and the regulations of the Secretary of Labor (29 CFR Part 4) apply to this Request for Proposal and the resulting Basic Ordering Agreement. A Notice of Intention to Make a Service Contract and Response to Notice, Request for Wage Determination, has been submitted to the U.S. Department of Labor for the Labor Categories listed in the Statement of Work, Enclosure 3, and the Pricing Proposal Form, Enclosure 2. The pending Wage Determination will apply to the resulting Basic Ordering Agreement. Actual wage and fringe benefits paid under the resulting Basic Ordering Agreement are subject to the U.S. Department of Labor wage determination.

TECHNICAL PROPOSALS

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

FINANCIAL PROPOSALS

Financial proposal shall consist of the following:

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

BID AND PROPOSAL COSTS

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

EVALUATION CRITERIA

SOURCE EVALUATION PANEL

The evaluation of proposals will be conducted by a Source Evaluation Panel who will make its recommendations to a Source Selection Official (SSO). The evaluation of proposals and the selection of sources for Basic Ordering Agreement award will be in accordance with the following:

EVALUATION PROCESS

The proposal evaluation process may involve the establishment of a ‘Competitive Range.’ This process is intended to narrow the field of competition to those proposals which, either on their face or through discussions, have the potential to be selected for Basic Ordering Agreement award. Proposals admitted to the Competitive Range will be subject to further detailed evaluation.

Offerors should be prepared to respond to requests for oral and/or written discussions or requests for clarification of minor irregularities, informalities, or apparent clerical mistakes. Offerors should, however, rely exclusively on their initial written submission, because Battelle will not point out during discussions weaknesses in a proposal resulting from a Offeror’s lack of diligence, competence or inventiveness in preparing the proposal. In addition, Battelle may elect to award the Basic Ordering Agreement(s) based on the initial offers received, without discussions. Therefore, initial proposals should contain the Offeror’s best price and technical terms.

RATING AND SCORING SCHEME

TECHNICAL EVALUATION

1. Qualifications of the Proposed Personnel – Criterion Weight = 25%

Offeror’s access to a large and talented pool of qualified candidates. Offeror’s ability to provide temporary employees on short notice that match requested skills and level of expertise. Offeror’s employee screening method and requirements. The Offeror’s minimum requirements for personnel hired in each of the labor categories listed in the Statement of Work.

2. Management, Experience and Responsiveness – Criterion Weight = 25%

Offeror’s management experience and organization. Ability of administrative management to supply requested services on short notice. The Offeror’s management policy on responding to client feedback, especially with regard to personnel performance problems.

3. Understanding of the Services Required – Criterion Weight = 20%

Offeror's ability to recognize, understand and be responsive to providing temporary employment services as outlined in the Statement of Work. The Offeror's experience is providing temporary office personnel for both private industry and government agencies.

PRICE EVALUATION

4. Price – Criterion Weight = 30%

The proposer with the lowest evaluated total composite price for temporary employee services will receive the maximum points. The number of points to be received by those offerors submitting a higher evaluated proposed total composite price, will be in accordance with their relationship to the lowest evaluated total composite price.

Example: If the lowest evaluated total composite price is \$100.00, the offeror will receive the maximum amount of points, 200 in this case. If the next offeror's evaluated price is \$125.00, the proposer would receive:

$$\$100.00/\$125.00 \times 200 = 160 \text{ points}$$

STATEMENT OF WORK

**RFP 5909
TEMPORARY STAFFING SERVICES
BATTELLE WASHINGTON DC OFFICE**

September 9, 2004

Background

Battelle Memorial Institute (Battelle), an international technology firm with a major laboratory located in Richland, Washington, has a field office in Washington, DC and College Park, MD to support the activities of its client, the Department of Energy. This facility, known as Battelle, Washington Operations, is located at 901 D Street SW, Suite 900, Washington, DC 20024-2115 and 8400 Baltimore Avenue, Suite 201, College Park, MD 20740. Research, technical, administrative and clerical staff are located at this site to support both DOE and non-DOE clients.

Objective

From time to time it will be necessary for Battelle to engage the services of a temporary employee services or to assist with performing various functions in support of BWO. Temporary employees are needed to meet peak load requirements and/or fill in for ill or vacationing permanent BWO employees. These needs are intermittent in nature, and often develop on very short notice. The Contractor shall be responsible for providing qualified temporary support employees to best match job specifications at the time of each request. Job specifications will span a wide range of administrative, clerical, and other labor categories.

Requests for temporary employee services shall be initiated via a telephone call from the authorized BWO Operations Manager (Technical Administrator) or his/her designated representative. Each request shall include the job specifications, proficiency level required on equipment and software, date(s) for which the temporary support employee is required, duration of assignment, and hours during which the individual is to work.

The Contractor shall be responsible for reviewing job specifications with the temporary employee prior to the start of work, and providing them with assignment details. The Contractor must be responsive to feedback from Battelle on performance of the temporary employees, and promptly supply a replacement if a problem cannot be resolved.

Battelle has staff located in various sites throughout the Metropolitan Washington, DC area. The Contractor must be able to supply temporary employees at sites in Washington, DC; College Park, MD as well as Arlington, VA; and Alexandria, VA.

Labor Categories and Requirements

The labor categories listed below represent the labor mix which Battelle currently anticipates using.

SECRETARY/CLERK

Provides principal secretarial support in an office, usually to one individual, and in some cases, also to the subordinate staff of that individual. Maintains a close and highly responsive relationship to the day-to-day activities of the management and staff. Works fairly independently, receiving a minimum of detailed supervision and guidance. Performs varied clerical and secretarial duties requiring knowledge of office routine and an understanding of the organization, programs, and procedures related to the work of the office. Files, classifies, and retrieves material in an established filing system. May perform clerical and manual tasks required to maintain files. Ability to proficiently operate Windows 2000; MS Word; PowerPoint; Excel; Access, and MS Outlook/Exchange.

EXECUTIVE SECRETARY/ADMINISTRATIVE ASSISTANT

Uses greater judgment and initiative to determine the approach or action to take in non-routine situations. Interprets and adapts guidelines, including unwritten policies, precedents, and practices, which are not always completely applicable to changing situations. Duties include, but are not limited to the following: composing correspondence; preparing materials needed for appointments, meetings, telephone calls, etc.; and preparing reports, summaries or replies to inquiries, selecting relevant information from a variety of sources such as reports, documents, correspondence. Proficient in the use of the English language; advanced functions of Windows 2000; MS Word; PowerPoint; Access; Excel; MS Outlook/Exchange.

TEXT PROCESSOR

Primary duty is to operate word-processing equipment to enter, store, retrieve, change, and present text or tabulations. Reproduces a variety of printed copy such as letters, documents, or reports. May enter regularly used formats or stored paragraphs that are organized and coded for future use. Recorded texts can be changed by rearranging paragraphs, replacing words, shifting lines, etc. Ability to operate Windows 2000; MS Word; PowerPoint; Excel, Access and MS Outlook/Exchange.

RECEPTIONIST

Greets visitors, determines nature of visits, and directs visitors to appropriate persons. Receptionist duties may also include providing information, making appointments, answering a telephone (other than switchboard or console) keeping a log of visitors, and issuing visitor passes. May also perform typing of other routine clerical duties which may occupy a major portion of time, and are usually performed at the reception desk. Ability to operate Windows 2000, MS Word, Excel, PowerPoint and MS Outlook/Exchange.

ACCOUNTING CLERK

Applies principles of accounting to devise and implement system for general accounting. Ability to monitor accounts and records of performing such bookkeeping activities as recording disbursements, and expenses. Prepare division or consolidated balance sheets to reflect assets and liabilities. Audit orders and vouchers, and prepares reports to substantiate individual transactions prior to settlement. Interprets accounts and records to management. Ability to use manual electronic systems; Windows 2000; PowerPoint; MS Word; and financial spreadsheet including Excel, Lotus and MS Outlook/Exchange.

LIGHT INDUSTRIAL/LABORER

Performs tasks which require mainly physical abilities and effort involving little or not specialized skill or prior work experience. The following tasks are typical of this occupation: Packing materials/equipment for shipping via FedEx, UPS, Airborne or US Mail; loads and unloads trucks, and other conveyances; moves supplies and materials to proper location by carts or hand trucks; stacks materials for storage or binning; collects refuse and salvageable materials. Moves and arranges pieces of machinery and equipment.

SPECIAL PROJECT CLERK

Classifies and indexes file material such as correspondence, reports, technical documents, etc., in an established filing system containing a number of varied subject matter files. May also file this material. May keep records of various types in conjunction with the files. Locates identified material in files and forwards material. May perform related clerical tasks required to maintain and service files. Ability to operate Windows 2000; MS Word; Powerpoint; Excel, Access and MS Outlook/Exchange.

EDITOR

Develops, writes, and edits material for reports, manuals, briefs, proposals, instruction books, catalogs, and related technical and administrative publications. Organizes material and completes writing assignment according to set standards regarding order, clarity, conciseness, style and terminology. Reviews published materials and methods of reproduction and binding. May maintain graphs, drawings, sketches, diagrams, and charts to illustrate material. May assist in laying out material for publication. May arrange for typing, duplication and public or employee relations releases. May edit, standardize, make changes to material prepared by others. Proficient in the use of the English language; advanced functions of Windows 2000; MS Word; PowerPoint; Access; Excel and MS Outlook/Exchange.

SYSTEMS ANALYST

Analyses business or scientific problems for resolution through electronic data processing. Gathers information from users, defines work problems, designs a system of computer programs and procedures to resolve the problems, and develops computer programmers to prepare required programs. May write basic computer programs. This does not require the employee to have an advanced computer science college degree. Proficient in Information Technology.

COMPUTER PROGRAMMER

Converts specifications (precise descriptions) of business or scientific problems into a sequence of detailed instructions to solve problems by digital computer. Draws program flow charts to describe the processing of data and develops the precise steps and processing logic which, when entered into the computer in coded language, cause the manipulation of data to achieve desired results. Tests and corrects programs and prepares instructions for operators who control the computer during productions runs. Modifies programs to increase operating efficiency or to respond to changes in work processes; maintains records to document program development and revisions. This includes basic office support for small computer workstations. This does not require the employee to hold an advanced college degree in computer science. Proficient in Information Technology.

NOTE TAKER FOR MEETINGS (STENOGRAPHER)

Takes and transcribes dictation, receiving specific assignments along with detailed instructions on such requirements as form and presentation. May also type from written copy. The transcribed material is typically revised as rough draft, and the final transcription is reviewed for conformance with the rough draft. May maintain files, keep simple records, or perform other relatively routine clerical tasks. Ability to operate Windows 2000 MS Word, Word Perfect for Windows, PowerPoint; Excel; and Harvard Graphics.

Office Systems

The office systems listed below are utilized at BWO. The application of these systems will vary with the particular job category/requirements.

- Computers running Microsoft Windows; Apple Macintosh computers
- HP LaserJet II, III, and IV printers
- Xerox Copiers
- Ricoh, Cannon, HP and Brothers fax (plain paper and thermal)
- Software
 - MS Office
 - Word
 - Excel
 - PowerPoint
 - Access
 - Windows 2000 & NT
 - MS Outlook/Exchange
 - MS Project
 - Paradox
 - dBase
 - PageMaker
 - Harvard Graphics

BATTELLE MEMORIAL INSTITUTE
PACIFIC NORTHWEST DIVISION

CONTRACT NO.

SAMPLE

SCHEDULE

I. RECITALS

The contracting parties are Battelle Memorial Institute, Pacific Northwest Laboratories, an Ohio Corporation with principal offices in Columbus, Ohio (hereinafter called "Battelle"), and (name) located in _____ (hereinafter called Contractor').

This Agreement 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 DE-ACO6-76RLO 1830.

This contract is labor hour/indefinite quantity.

II. AGREEMENTS

1. Contract Date: The agreement date shall be the latter of either the Battelle representative or the contractor representative signature dates in Article III.
2. Ordering Period: Task Orders may be issued from the agreement date through December 31, 2005.
3. Labor Categories and Fixed Labor Hour Rates:

A.	<u>Labor Category</u>	<u>Hourly Rate</u>
	Executive Secretary	
	Secretary	
	Text Processor	
	Receptionist	
	Light Industrial	
	Graphics Artist/Illustrator	
	Accounting Clerk	
	Special Projects Clerk	
	Editor	
	Systems Analyst	
	Computer Programmer	
	Notetaker for Meetings (Stenographer)	

- B. The specified labor rates applicable shall remain firm through the entire term of this contract.
 - C. The labor rates of other personnel which may be used by the Contractor in the performance of the work required herein shall have prior written approval by a Battelle Contract Representative.
4. Ceiling Price: A ceiling price shall be specified in each Work Order.
 5. Indefinite Quantity and Ordering: The following procedures shall apply to task orders issued under this Basic Ordering Agreement:

- A. This is an indefinite quantity contract for temporary personnel services as specified in the Statement of Work. Ordering of services shall be authorized verbally by Battelle's Technical Administrator (TA), Wavery Brown, or her delegate.
 - B. Battelle shall order a minimum of \$_____ in services under this Contract.
 - C. Battelle shall order a maximum of \$_____ in services under this Contract..
 - D. Services initiated during the ordering period of this Contract and not completed within that time shall be completed by the Contractor within the time specified by the TA, and the rights and obligations of the Contractor and Battelle respecting those orders shall be governed by the terms of the Contract to the same extent as if completed during the ordering period.
6. Employment: Battelle reserve the right to hire any temporary service agency employee on a permanent basis, without financial penalty to either the temporary service agency employee contractor Battelle, if the temporary service agencies voluntarily applies for an open permanent position.
7. Request for Services: The following procedures shall apply to services initiated under this Contract:
- A. A request for services may be issued at any time within the ordering period stated above. (Reference II. Agreements, 2. Ordering Period)
 - B. Services shall be requested verbally by the Battelle Technical Administrator
 - C. Battelle will identify the scope of work, period of performance, and the required labor category.
 - D. Labor Categories and labor rates shall be in accordance with those labor categories and fixed unit rates listed in this Basic Ordering Agreement.
 - E. The Contractor's employee providing temporary services shall have the Battelle Technical Administrator sign their time sheet upon completion of the task order. The signature of the Battelle Technical Administrator shall serve as concurrence of the satisfactory completion of the service.
 - F. Signed time sheets shall be attached to task order invoices being submitted to Battelle for payment.
8. Option to Extend Ordering Period: Battelle shall have the option to extend the ordering period of this Contract for two (2) additional successive terms of one (1) year each by given written notice of its election to so extend the Contract to the contractor at least thirty (30) days prior to expiration of the preceding term. The annual fixed unit labor rates for each additional exercised option shall be negotiated, based on the submission of current pricing information and the current governing Wage Determination provided by the U.S. Department of Labor and limited to a maximum adjustment factor based on the following: Currently fully burdened fixed unit labor rates listed in the Contract, multiplied by the most current Consumer Price Index (CPI) as published by the United States Department of Labor. Should the CPI be replaced and replaced by a new federal government statistic which is intended to, and does take the place of the foregoing statistic, then said statistic shall govern and control in connection herewith. All other provisions of this Contract shall remain in full force and effect during such extension(s).
9. Invoices: Applications for payment (invoices) may be submitted not more frequently than monthly. Invoices must be submitted in triplicate with supporting data such as time cards, copies of payroll journals, travel tickets and hotel receipts to the extent required by Battelle. Applications shall reference the agreement number and be mailed, in triplicate to:
- Attn: Accounts Payable, Mail Stop J1-04
Battelle Pacific Northwest Division
P.O. Box 999
Richland, WA 99352
10. Insurance: Minimum insurance requirements are: (A) comprehensive general liability, broad form, \$500,000 combined single limit each occurrence for bodily injury and property damage; (B) comprehensive automobile liability (owned and non-owned), \$500,000 per person, \$500,000 per occurrence for bodily injury, and \$500,000 per occurrence for property damage. Certificates of insurance shall be delivered to Battelle prior to the Contractor's first visit to the installation site.

11. Service Act: A minimum wage determination has been issued for this agreement, it applies from the Basic Ordering Agreement date. If the Offerors costs are thereby increased, an adjustment (excluding profit) shall be made in the hourly rates.
12. Wage Determination: Actual wage and fringe benefits paid under this agreement are subject to the U.S. Department of Labor wage determination, No. _____ and any future revisions.
13. Basic Ordering Agreement Contents In addition to this Schedule, the agreement consists of:
 - Statement of Work, dated September 2004
 - — General Provisions
 - Wage Determination No.
14. Representations and Certifications: The Representations and Certifications signed and submitted by the contractor in response to the RFP which resulted in the award of this agreement are hereby incorporated by reference.
15. Integration: This Agreement contains the entire understanding between the parties, and there are no understandings or representations not set forth or incorporated by reference herein. No communication, written or oral, by other than a Battelle Representative shall be effective to modify or otherwise affect the provisions of the agreement.

III. SIGNATURES

BATTELLE MEMORIAL INSTITUTE
PACIFIC NORTHWEST DIVISION

NAME OF CONTRACTOR

By:

Victoria Hill

Title: Contract Specialist

Date: _____

By:

Title: _____

Date: _____

PRICING PROPOSAL FORM

The purpose of this form is to provide a standard format by which the offeror submits the required pricing information to be used for pricing purposes and proposal evaluation. The Order Quantities stated below are for evaluation purposes only. To be considered responsive, the offeror must provide a proposed rate for every labor category listed below.

Labor Category	Order Quantities (Stated in Hours)	Fully Burdened Rate	Total
1. Accounting Clerk	200	\$	\$
2. Executive Secretary	200	\$	\$
3. Secretary/Clerk	200	\$	\$
4. Text Processor	200	\$	\$
5. Receptionist	2000	\$	\$
6. Light Industrial	40	\$	\$
7. Graphics Artist/Illustrator	40	\$	\$
8. Special Projects Clerk	200	\$	\$
9. Editor	40	\$	\$
10. Systems Analyst	200	\$	\$
11. Computer Programmer	40	\$	\$
12. Notetaker for Meetings/Stenographer	40	\$	\$
Composite Price		\$	

- Fully burdened labor rate is defined as a rate inclusive of wage or salary rate, fringe, all applicable overhead(s) and profit. For those organizations utilizing composite rates as their normal accounting practice, or as the Government approved accounting practice, the applicable fully burdened composite rate for each job category should be entered in the Fully Burdened Labor Hour Rate column, above.
- The fully burdened labor hour rate entered above for each labor category shall be the fully burdened labor hour rate entered into any resultant Basic Ordering Agreement, since the Basic Ordering Agreement may be awarded without discussions.
- The Composite Price shall be calculated by summing the totals for each labor category

REPRESENTATIONS AND CERTIFICATIONS
For the Pacific Northwest National Laboratory
Operated by Battelle Memorial Institute

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

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

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*

- | | |
|--|---|
| <input type="checkbox"/> Sole proprietorship | <input type="checkbox"/> Government entity (Federal, State, or local) |
| <input type="checkbox"/> Partnership | <input type="checkbox"/> Foreign government |
| <input type="checkbox"/> Corporate entity (not tax-exempt) | <input type="checkbox"/> International organization per 26 CFR 1.6049-4 |
| <input type="checkbox"/> Corporate entity (tax-exempt) | <input type="checkbox"/> Other |
-

(f) *Common Parent.*

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

Name _____ TIN _____

2. SMALL BUSINESS PROGRAM REPRESENTATIONS (Apr 2002)

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

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

(2) The small business size standard is _____.

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

(b) *Representations.*

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

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

(2) The offeror represents, for general statistical purposes, that it is, is not, a **small disadvantaged business concern** as defined in 13 CFR 124.1002. *(If so, also complete the Small Disadvantaged Business Status representation, below.)*

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

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

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

_____]

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

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

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

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

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

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

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

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

- (1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(d) *Notice.*

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

3. AFFIRMATIVE ACTION COMPLIANCE (Apr 1984)

The offeror represents that it

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

4. PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (Feb 1999)

Offeror represents that it

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

5. ROYALTY PAYMENT CERTIFICATION (Jan 1986)

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

- The Contract price includes no amount representing the payment of royalty by the Offeror directly to others in connection with the performance of the contract.
- The Contract price includes an amount for royalty payment expected to be made in connection with the proposed award set forth below:
 - A. the amount of each payment,
 - B. the names of the licensor, and

- C. either the patent numbers involved or such other information as will permit identification of the patents and patent applications and the basis on which royalties will be paid.

6. BUY AMERICAN ACT CERTIFICATION (May 2002)

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

(b) Foreign End Products:

Line Item No.	Country of Origin

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

7. TECHNICAL DATA CERTIFICATION (Jan 1986)

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

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

8. PATENT RIGHTS REPRESENTATION (Jan 1986)

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

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

(Applicable to proposals exceeding \$25,000)

- (a) (1) The Offeror certifies, to the best of its knowledge and belief, that-
 - (i) The Offeror and/or any of its Principals-

- Are are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;
- Have have not within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and
- Are are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision.

- (ii) The Offeror has or has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.
- (2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

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

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

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

(Applicable to proposals exceeding \$100,000)

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

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

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

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

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

I. Disclosure Statement-Cost Accounting Practices and Certification

- (a) Any contract in excess of \$500,000 resulting from this solicitation will be subject to the requirements of the Cost Accounting Standards Board (48 CFR Chapter 99), except for those contracts which are exempt as specified in 48 CFR 9903.201-1.
- (b) Any offeror submitting a proposal which, if accepted, will result in a contract subject to the requirements of 48 CFR Chapter 99 must, as a condition of contracting, submit a Disclosure Statement as required by 48 CFR 9903.202. When required, the Disclosure Statement must be submitted as a part of the offeror's proposal under this solicitation unless the offeror has already

submitted a Disclosure Statement disclosing the practices used in connection with the pricing of this proposal. If an applicable Disclosure Statement has already been submitted, the offeror may satisfy the requirement for submission by providing the information requested in paragraph (c) of Part I of this provision.

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

(c) Check the appropriate box below:

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

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

(ii) One copy to the cognizant Federal auditor.

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

Date of Disclosure Statement: _____

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

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

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

Date of Disclosure Statement: _____

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

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

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

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

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

II. Cost Accounting Standards-Eligibility for Modified Contract Coverage

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

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

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

III. Additional Cost Accounting Standards Applicable to Existing Contracts

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

Yes No

SIGNATURE

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

Company Name _____

Signature _____

Signer's Name (Printed) _____

Title _____

Date _____

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GENERAL PROVISIONS – LABOR HOUR / TIME & MATERIAL 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 UNDER TIME-AND-MATERIALS AND LABOR-HOUR CONTRACTS (cl 350a - Dec 2002)

Battelle will pay the Contractor as follows upon the submission of invoices or vouchers approved by Battelle:

A. Hourly rate.

1. The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the Schedule by the number of direct labor hours performed. The rates shall include wages, indirect costs, general and administrative expense, and profit. Fractional parts of an hour shall be payable on a prorated basis. Vouchers may be submitted once each month (or at more frequent intervals, if approved by Battelle), to the Battelle Contracts Representative or designee. The Contractor shall substantiate vouchers by evidence of actual payment and by individual daily job timecards, or other substantiation approved by the Battelle Contracts Representative. Promptly after receipt of each substantiated voucher, Battelle shall, except as otherwise provided in this contract, and subject to the terms of Paragraph E of this section, pay the voucher as approved by Battelle.
2. Unless otherwise prescribed in the Schedule, the Battelle shall withhold 5 percent of the amounts due under this Paragraph A, but the total amount withheld shall not exceed \$50,000. The amounts withheld shall be retained until the execution and delivery of a release by the Contractor as provided in Paragraph F of this section.
3. Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis. If no overtime rates are provided in the Schedule and overtime work is approved in advance by Battelle, overtime rates shall be negotiated. Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes clause of this contract. If the Schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by Battelle.

B. Materials and subcontracts.

1. Battelle will determine allowable costs of direct materials in accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract. Direct materials, as used in this clause, are those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product.
2. The Contractor may include reasonable and allocable material handling costs in the charge for material to the extent they are clearly excluded from the hourly rate. Material handling costs are comprised of indirect costs, including, when appropriate, general and administrative expense allocated to direct materials in accordance with the Contractor's usual accounting practices consistent with Subpart 31.2 of the FAR.

3. Battelle will reimburse the Contractor for supplies and services purchased directly for the contract when the Contractor—
 - a. Has made payments of cash, checks, or other forms of payment for these purchased supplies or services; or
 - b. Will make these payments determined due—
 - i. In accordance with the terms and conditions of a subcontract or invoice; and
 - ii. Ordinarily within 30 days of the submission of the Contractor's payment request to Battelle.
4. a. Battelle will reimburse the Contractor for costs of subcontracts that are authorized under the subcontracts clause of this contract, provided that the costs are consistent with Paragraph B.5. of this clause.
 - b. Battelle will limit reimbursable costs in connection with subcontracts to the amounts paid for supplies and services purchased directly for the contract when the Contractor has made or will make payments determined due of cash, checks, or other forms of payment to the subcontractor—
 - i. In accordance with the terms and conditions of a subcontract or invoice; and
 - ii. Ordinarily within 30 days of the submission of the Contractor's payment request to Battelle.
 - c. Battelle will not reimburse the Contractor for any costs arising from the letting, administration, or supervision of performance of the subcontract, if the costs are included in the hourly rates payable under Paragraph A.1. of this clause.
5. To the extent able, the Contractor shall—
 - a. Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and
 - b. Take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the Contractor shall promptly notify the Battelle Contracts Representative and give the reasons. The Contractor shall give credit to Battelle for cash and trade discounts, rebates, scrap, commissions, and other amounts that have accrued to the benefit of the Contractor, or would have accrued except for the fault or neglect of the Contractor. The Contractor shall not deduct from gross costs the benefits lost without fault or neglect on the part of the Contractor, or lost through fault of Battelle.
- C. Total cost. It is estimated that the total cost to Battelle for the performance of this contract shall not exceed the ceiling price 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 ceiling price. If at any time the Contractor has reason to believe that the hourly rate payments and material costs that will accrue in performing this contract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling price in the Schedule, the Contractor shall notify the Battelle Contracts Representative giving a revised estimate of the total price to Battelle for performing this contract with supporting reasons and documentation. If at any time during performing this contract, the Contractor has reason to believe that the total price to Battelle for performing this contract will be substantially greater or less than the then stated ceiling price, the Contractor shall so notify the Battelle Contracts Representative, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. If at any time during performing this contract, Battelle has reason to believe that the work to be required in performing this contract will be substantially greater or less than the stated ceiling price,

the Battelle Contracts Representative will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the contract.

- D. Ceiling price. Battelle shall not be obligated to pay the Contractor any amount in excess of the ceiling price in the Schedule, and the Contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until the Battelle Contracts Representative shall have notified the Contractor in writing that the ceiling price has been increased and shall have specified in the notice a revised ceiling that shall constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.
- E. Audit. At any time before final payment under this contract Battelle may request audit of the invoices or vouchers and substantiating material. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices or vouchers, that are found by Battelle not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the voucher or invoice designated by the Contractor as the "completion voucher" or "completion invoice" and substantiating material, and upon compliance by the Contractor with all terms of this contract (including, without limitation, terms relating to patents and the terms of (f) and (g) of this section), Battelle shall promptly pay any balance due the Contractor. The completion invoice or voucher, and substantiating material, shall be submitted by the Contractor as promptly as practicable following completion of the work under this contract, but in no event later than 1 year (or such longer period as the Battelle Contracts Representative may approve in writing) from the date of completion.
- F. Assignment. The Contractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging Battelle, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:
1. Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible of exact statement by the Contractor.
 2. Claims, together with reasonable incidental expenses, based upon the liabilities of the Contractor to third parties arising out of performing this contract, that are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to the Battelle Contracts Representative not more than 6 years after the date of the release or the date of any notice to the Contractor that Battelle is prepared to make final payment, whichever is earlier.
 3. Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of Battelle against patent liability), including reasonable incidental expenses, incurred by the Contractor under the terms of this contract relating to patents.
- G. Refunds. The Contractor agrees that any refunds, rebates, or credits (including any related interest) accruing to or received by the Contractor or any assignee, that arise under the materials portion of this contract and for which the Contractor has received reimbursement, shall be paid by the Contractor to Battelle. The Contractor and each assignee, under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to

final payment under this contract, an assignment to Battelle of such refunds, rebates, or credits (including any interest) in form and substance satisfactory to the Battelle Contracts Representative.

H. Interim payments.

1. Interim payments made prior to the final payment under the contract are contract financing payments. Contract financing payments are not subject to the interest penalty provisions of the Prompt Payment Act.
2. The designated payment office will make interim payments for contract financing on the 30th day after the designated billing office receives a proper payment request, unless otherwise specified in the contract schedule. In the event that Battelle or the Department of Energy requires an audit or other review of a specific payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date.

CHANGES – TIME AND MATERIALS OR LABOR HOURS (cl 346c - Sept 2000)

- A. The Battelle Contracts Representative may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:
1. Description of services to be performed.
 2. Time of performance (i.e., hours of the day, days of the week, etc.).
 3. Place of performance of the services.
 4. Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.
 5. Method of shipment or packing of supplies.
 6. Place of delivery.
 7. Amount of Government-furnished property.
- B. If any change causes an increase or decrease in any hourly rate, the ceiling price, or the time required for performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this contract, the Battelle Contracts Representative will make an equitable adjustment in any one or more of the following and will modify the contract accordingly:
1. Ceiling price.
 2. Hourly rates.
 3. Delivery schedule.
 4. Other affected terms.
- C. The Contractor shall assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Battelle Contracts Representative decides that the facts justify it, the Battelle Contracts Representative may receive and act upon a proposal submitted before final payment of the contract.
- D. Failure to agree to any adjustment will be a dispute under the Disputes clause. However, nothing in this clause excuses the Contractor from proceeding with the contract as changed.

STOP-WORK ORDER – COST REIMBURSEMENT (cl 380a - 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 Termination 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.

STATE AND LOCAL TAXES (cl 355 - Dec 2000)

- A. The contractor agrees to notify the Battelle Contracts Representative of any State or local tax, fee, or charge levied or purported to be levied on or collected from the contractor with respect to the contract work, any transaction thereunder, or property in the custody or control of the contractor and constituting an allowable item of cost if due and payable, but which the contractor has reason to believe, or the Battelle Contracts Representative has advised the contractor, is or may be inapplicable or invalid; and the contractor further agrees to refrain from paying any such tax, fee, or charge unless authorized in writing by the Battelle Contracts Representative. Any State or local tax, fee, or charge paid with the approval of the Battelle Contracts Representative or on the basis of advice from the Battelle Contracts Representative that such tax, fee, or charge is applicable and valid, and which would otherwise be an allowable item of cost, shall not be disallowed as an item of cost by reason of any subsequent ruling or determination that such tax, fee, or charge was in fact inapplicable or invalid.
- B. The contractor agrees to take such action as may be required or approved by the Battelle Contracts Representative to cause any State or local tax, fee, or charge which would be an allowable cost to be paid under protest; and to take such action as may be required or approved by the Battelle Contracts Representative to seek recovery of any payments made, including assignment to Battelle or its designee of all rights to an abatement or refund thereof, and granting permission for Battelle to join with the contractor in any proceedings for the recovery thereof or to sue for recovery in the name of the contractor. If the Battelle Contracts Representative directs the contractor to institute litigation to enjoin the collection of or to recover payment of any such tax, fee, or charge referred to above, or if a claim or suit is filed against the

contractor for a tax, fee, or charge it has refrained from paying in accordance with this clause, and the costs and expenses incurred by the contractor shall be allowable items of costs, as provided in this contract, together with the amount of any judgment rendered against the contractor.

- C. Battelle shall hold the contractor harmless from penalties and interest incurred through compliance with this clause. All recoveries or credits in respect of the foregoing taxes, fees, and charges (including interest) shall inure to and be for the sole benefit of Battelle.

FEDERAL, STATE, AND LOCAL TAXES - LABOR HOUR/TIME AND MATERIAL (cl 354a - Apr 1984)

Except as may be otherwise provided in this contract, the direct labor hour rate(s) specified in the Contract Schedule include 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.)

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.

ADDITIONAL CLAUSES

INSPECTION—TIME-AND-MATERIAL AND LABOR-HOUR (cl.379e - May 2001)

- A. As used in this clause, “Contractor’s managerial personnel” means any of the Contractor’s directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of—
1. All or substantially all of the Contractor’s business;
 2. All or substantially all of the Contractor’s operation at any one plant or separate location where the contract is being performed; or
 3. A separate and complete major industrial operation connected with the performance of this contract.
- “Materials” includes data when the contract does not include the Warranty of Data clause.
- B. The Contractor shall provide and maintain an inspection system acceptable to Battelle covering the material, fabricating methods, work, and 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 materials furnished and services performed under this contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. Battelle may also inspect the plant or plants of the Contractor or any subcontractor engaged in contract performance. Battelle shall perform inspections and tests in a manner that will not unduly delay the work.
- 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 all reasonable facilities and assistance for the safe and convenient performance of these duties.
- E. Unless otherwise specified in the contract, Battelle shall accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they shall be presumed accepted 60 days after the date of delivery, unless accepted earlier.
- F. At any time during contract performance, but not later than 6 months (or such other time as may be specified in the contract) after acceptance of the services or materials last delivered under this contract, Battelle may require the Contractor to replace or correct services or materials that at time of delivery failed to meet contract requirements. Except as otherwise specified in Paragraph H of this clause, the cost of replacement or correction shall be determined under the Payments Under Time-and-Materials and Labor-Hour Contracts clause, but the “hourly rate” for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. The Contractor shall not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.

- G. 1. If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed within the ceiling price (or the ceiling price as increased by Battelle), Battelle may—
- a. By contract or otherwise, perform the replacement or correction, charge to the Contractor any increased cost, or deduct such increased cost from any amounts paid or due under this contract; or
 - b. Terminate this contract for default.
2. Failure to agree to the amount of increased cost to be charged to the Contractor shall be a dispute.
- H. Notwithstanding Paragraphs F and G of this clause, Battelle may at any time require the Contractor to remedy by correction or replacement, without cost to Battelle, any failure by the Contractor to comply with the requirements of this contract, if the failure is due to—
1. Fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel; or
 2. The conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.
- I. This clause applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under this contract.
- J. The Contractor has no obligation or liability under this contract to correct or replace materials and services that at time of delivery do not meet contract requirements, except as provided in this clause or as may be otherwise specified in the contract.
- K. Unless otherwise specified in the contract, the Contractor's obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government-owned property.

GOVERNMENT PROPERTY (COST-REIMBURSEMENT, TIME-AND-MATERIAL, OR LABOR-HOUR CONTRACTS)

(cl 352a - Jun 2003)

- A. Government-furnished property.
1. The term "Contractor's managerial personnel," as used in paragraph G of this clause, means any of the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of –
 - a. All or substantially all of the Contractor's business;
 - b. All or substantially all of the Contractor's operation at any one plant, or separate location at which the contract is being performed; or
 - c. A separate and complete major industrial operation connected with performing this contract.
 2. Battelle shall deliver to the Contractor, for use in connection with and under the terms of this contract, the Government-furnished property described in the Schedule or specifications, together with such related data and information as the Contractor may request and as may be reasonably required for the intended use of the property (hereinafter referred to as "Government-furnished property").
 3. The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the contract's delivery or performance dates.

4. If Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt, notify the Battelle Contracts Representative, detailing the facts, and, as directed by the Battelle Contracts Representative and at Battelle expense, either effect repairs or modification or return or otherwise dispose of the property. After completing the directed action and upon written request of the Contractor, the Battelle Contracts Representative shall make an equitable adjustment as provided in paragraph H of this clause.
5. If Government-furnished property is not delivered to the Contractor by the required time or times, the Battelle Contracts Representative shall, upon the Contractor's timely written request, make a determination of the delay, if any, caused the Contractor and shall make an equitable adjustment in accordance with paragraph H of this clause.

B. Changes in Government-furnished property.

1. The Battelle Contracts Representative may, by written notice, (i) decrease the Government-furnished property provided or to be provided under this contract or (ii) substitute other Government-furnished property for the property to be provided by Battelle or to be acquired by the Contractor for Battelle under this contract. The Contractor shall promptly take such action as the Battelle Contracts Representative may direct regarding the removal, shipment, or disposal of the property covered by this notice.
2. Upon the Contractor's written request, the Battelle Contracts Representative shall make an equitable adjustment to the contract in accordance with paragraph H of this clause, if Battelle has agreed in the Schedule to make such property available for performing this contract and there is any –
 - a. Decrease or substitution in this property pursuant to paragraph B.1. of this clause; or
 - b. Withdrawal of authority to use property, if provided under any other contract or lease.

C. Title.

1. The Government shall retain title to all Government-furnished property.
2. Title to all property purchased by the Contractor for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract shall pass to and vest in the Government upon the vendor's delivery of such property.
3. Title to all other property, the cost of which is reimbursable to the Contractor, shall pass to and vest in the Government upon—
 - a. Issuance of the property for use in contract performance;
 - b. Commencement of processing of the property for use in contract performance; or
 - c. Reimbursement of the cost of the property by the Government, whichever occurs first.
4. All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

- D. Use of Government property.** The Government property shall be used only for performing this contract, unless otherwise provided in this contract or approved by the Battelle Contracts Representative

E. Property administration.

1. The Contractor shall be responsible and accountable for all Government property provided under the contract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5, as in effect on the date of this contract.
2. The Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound business practice and the applicable provisions of FAR Subpart 45.5.
3. If damage occurs to Government property, the risk of which has been assumed by the Government under this contract, the Government shall replace the items or the Contractor shall make such repairs as the Battelle Contracts Representative directs. However, if the Contractor cannot effect such repairs within the time required, the Contractor shall dispose of the property as directed by the Battelle Contracts Representative. When any property for which the Government is responsible is replaced or repaired, the Contracting Officer shall make an equitable adjustment in accordance with paragraph H of this clause.

F. Access. Battelle and all its designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

G. Limited risk of loss.

1. The Contractor shall not be liable for loss or destruction of, or damage to, the Government property provided under this contract or for expenses incidental to such loss, destruction, or damage, except as provided in paragraphs G.2. and G.3. of this clause.
2. The Contractor shall be responsible for loss or destruction of, or damage to, the Government property provided under this contract (including expenses incidental to such loss, destruction, or damage)—
 - a. That results from a risk expressly required to be insured under this contract, but only to the extent of the insurance required to be purchased and maintained or to the extent of insurance actually purchased and maintained, whichever is greater;
 - b. That results from a risk that is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;
 - c. For which the Contractor is otherwise responsible under the express terms of this contract;
 - d. That results from willful misconduct or lack of good faith on the part of the Contractor's managerial personnel; or
 - e. That results from a failure on the part of the Contractor, due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel, to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of Government property as required by paragraph E of this clause.
3. a. If the Contractor fails to act as provided by subdivision G.2.e. of this clause, after being notified (by certified mail addressed to one of the Contractor's managerial personnel) of Battelle's disapproval, withdrawal of approval, or nonacceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

the lost, destroyed, or damaged Government property or shall otherwise credit the proceeds to, or equitably reimburse, the Government, as directed by the Battelle Contracts Representative.

9. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of the Battelle Contracts Representative, the Contractor shall, at Battelle's expense, furnish to Battelle all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Contractor shall enforce for the benefit of the Government the liability of the subcontractor for such loss, destruction, or damage.
- H. Equitable adjustment. When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Battelle Contracts Representative may initiate an equitable adjustment in favor of the Government. The right to an equitable adjustment shall be the Contractor's exclusive remedy. Neither Battelle nor the Government shall be liable to suit for breach of contract for—
 1. Any delay in delivery of Government-furnished property;
 2. Delivery of Government-furnished property in a condition not suitable for its intended use;
 3. A decrease in or substitution of Government-furnished property; or
 4. Failure to repair or replace Government property for which the Government is responsible.
- I. Final accounting and disposition of Government property. Upon completing this contract, or at such earlier dates as may be fixed by the Battelle Contracts Representative, the Contractor shall submit, in a form acceptable to the Battelle Contracts Representative, inventory schedules covering all items of Government property not consumed in performing this contract or delivered to the Government. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the Battelle Contracts Representative. The net proceeds of any such disposal shall be credited to the cost of the work covered by this contract or paid to Battelle as directed by the Battelle Contracts Representative. The foregoing provisions shall apply to scrap from Government property; provided, however, that the Battelle Contracts Representative may authorize or direct the Contractor to omit from such inventory schedules any scrap consisting of faulty castings or forgings or of cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants, and to dispose of such scrap in accordance with the Contractor's normal practice and account for it as a part of general overhead or other reimbursable costs in accordance with the Contractor's established accounting procedures.
- J. Abandonment and restoration of Contractor premises. Unless otherwise provided herein, the Government—
 1. May abandon any Government property in place, at which time all obligations of the Government regarding such abandoned property shall cease; and
 2. Has no obligation to restore or rehabilitate the Contractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or contract completion). However, if the Government-furnished property (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.
- K. Communications. All communications under this clause shall be in writing.

- L. Overseas contracts. If this contract is to be performed outside the United States and its outlying areas, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

SERVICE CONTRACT ACT OF 1965, AS AMENDED (cl 381a - May 1989)

- A. Definitions. "Act," as used in this clause, means the Service Contract Act of 1965, as amended (41 U.S.C. 351, *et seq.*).

"Contractor," as used in this clause or in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government Prime Contractor."

"Service employee," as used in this clause, means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in Part 541 of Title 29, Code of Federal Regulations, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.

- B. Applicability. This contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, as interpreted in Subpart C of 29 CFR part 4.

- C. Compensation.

1. Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this contract.

2. a. If a wage determination is attached to this contract, the Contractor shall classify any class of service employee which is not listed therein and which is to be employed under the contract (*i.e.*, the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (*i.e.*, appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this Paragraph C.

- b. This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee. The Contractor shall submit Standard Form (SF) 1444, Request For Authorization of Additional Classification and Rate, to the Battelle Contracts Representative no later than 30 days after the unlisted class of employee performs any contract work. The Battelle Contracts Representative shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify Battelle within 30 days of receipt that additional time is necessary.

- c. The final determination of the conformance action by the Wage and Hour Division shall be transmitted to Battelle who shall promptly notify the Contractor of the action taken. Each affected

employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

- d. i. The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.
 - i. In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds a contract under which the classification in question was previously conformed pursuant to Paragraph C of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (*i.e.*, adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Battelle Contracts Representative of the action taken but the other procedures in subdivision C.2.b of this clause need not be followed.
 - ii. No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.
 - e. The wage rate and fringe benefits finally determined under this Paragraph C.2 of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.
 - f. Upon discovery of failure to comply with Paragraph C.2 of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.
3. Adjustment of compensation. If the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by the Wage and Hour Division.
- D. Obligation to furnish fringe benefits. The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under Paragraph C.2 of this clause by

furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR part 4.

- E. Minimum wage. In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under this contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause shall relieve the Contractor or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.
- F. Successor contracts. If this contract succeeds a contract subject to the Act under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.
- G. Notification to employees. The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.
- H. Safe and sanitary working conditions. The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary, hazardous, or dangerous to the health or safety of the service employees. The Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR part 1925.

I. Records.

1. The Contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:
 - b. For each employee subject to the Act—
 - i. Name and address and social security number;
 - ii. Correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;
 - iii. Daily and weekly hours worked by each employee; and
 - iv. Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.
 - c. For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of Paragraph C of this clause. A copy of the report required by subdivision C.2.b of this clause will fulfill this requirement.
 - d. Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by Paragraph N of this clause.
2. The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.
3. Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, Battelle, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.
4. The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

J. Pay periods. The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

K. Withholding of payments and termination of contract. Battelle shall withhold or cause to be withheld from the Contractor under this or any other Government contract with the Prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as Battelle decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, Battelle may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of

the right to proceed with the contract work. In such event, Battelle may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

- L. Subcontracts. The Contractor agrees to insert this clause in all subcontracts subject to the Act.
- M. Collective bargaining agreements applicable to service employees. If wages to be paid or fringe benefits to be furnished any service employees employed by the Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Contractor shall report such fact to the Battelle Contracts Representative, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance such agreements shall be reported promptly after negotiation thereof.
- N. Seniority list. Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (29 CFR 4.173), the incumbent Contractor shall furnish the Battelle Contracts Representative a certified list of the names of all service employees on the Contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service employee. The Battelle Contracts Representative shall turn over such list to the successor Contractor at the commencement of the succeeding contract.
- O. Rulings and interpretations. Rulings and interpretations of the Act are contained in Regulations, 29 CFR part 4.
- P. Contractor's certification.
 - 1. By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed under section 5 of the Act.
 - 2. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract under section 5 of the Act.
 - 3. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.
- Q. Variations, tolerances, and exemptions involving employment. Notwithstanding any of the provisions in Paragraphs B through O of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:
 - 1. Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency, or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and

- handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR parts 520, 521, 524, and 525).
2. The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR parts 520, 521, 524, and 525).
 3. The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR parts 525 and 528.
- R. Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program.
- S. Tips. An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR part 531. However, the amount of credit shall not exceed \$1.34 per hour beginning January 1, 1981. To use this provision—
1. The employer must inform tipped employees about this tip credit allowance before the credit is utilized;
 2. The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);
 3. The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; and
 4. The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.
- T. Disputes concerning labor standards. The U.S. Department of Labor has set forth in 29 CFR parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

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

- A. In performing work under this contract, the Contractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The Contractor shall exercise a degree of care commensurate with the work and the associated hazards. The Contractor shall ensure that management of environment, safety, and health (ES&H) functions and activities becomes an integral but visible part of the Contractor's work planning and execution processes. The Contractor shall, in the performance of work, ensure that:
1. Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.
 2. Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.
 3. Before work is performed, the associated hazards are evaluated a set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.
 4. Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.
- B. The Contractor, relative to the Statement of Work and contract specifications, shall be able to demonstrate through documentation and work practices that its performance of work under this contract-
1. Fulfilled the scope of work as outlined in this contract
 2. Identified and analyzed specific, task-level hazards associated with the work
 3. Developed and implemented hazard controls related to the hazards
 4. Allowed the performance of work within the controls
 5. Provided feedback to Battelle and Contractor employees on adequacy of hazard controls
- C. The Contractor is responsible for its subcontractors' compliance with the ES&H requirements of this contract. The Contractor shall include a clause substantially the same as this clause in lower-tier subcontracts involving complex or hazardous work onsite at Government installations or Battelle-owned or -operated facilities or premises. Such subcontracts shall provide for the right to stop work under the conditions described herein.
- D. The Contractor shall perform work in accordance with a Safety Management Plan. The Contractor shall demonstrate well-established safety protocols applicable to the scope of work and consistent with the required elements stated in this clause. Upon the request of Battelle, the Contractor shall submit a copy of its Safety Management Plan to Battelle for review prior to the initiation of any onsite work.
- E. The Contractor shall notify the Battelle Contract Representative immediately of any OSHA-recordable injuries/illnesses, any "off-normal occurrences," or Government property damaged that the Contractor determines to have occurred in the course of operations onsite and shall furnish such further information as the Battelle Contract Representative may require. An "off-normal occurrence" is any unplanned or unexpected event, or the discovery of a deficiency in a procedure, plan, or system that has real or potentially undesirable consequences to personnel, equipment, facilities, the environment, and/or programs.

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

Battelle Employee Concerns Program and Hotline (509) 375-3999. The Hotline operates 24 hours per day, 7 days a week. Messages may be left anonymously, and all concerns are handled with confidentiality to the maximum extent possible. Employee concerns may also be submitted in writing to the Battelle Employee Concerns Office, Battelle, Pacific Northwest National Laboratory, P.O. Box 999, K1-42, Richland, Washington, 99352, or in person to Battelle's Research Operation Building (ROB) during normal business hours, Monday through Friday 7:30 a.m. to 4:30 p.m.

2. For the purpose of this document, allegations, concerns, and complaints are handled in a like manner and are referred to collectively as "employee concerns." A concern can consist of a declaration, statement, or assertion of impropriety or inadequacy on the part of one's employer or others at the Hanford Site that has affected (or threatens to affect) aspects of Hanford operations, such as the environment, health, safety, quality, or security, and may include fraud, mismanagement, waste, or abuse of authority.
3. No retaliation or retribution shall be taken toward any individual as a result of filing an employee concern consistent with 10 CFR 708.
4. The Contractor agrees to incorporate the substance of this clause in all subcontracts under this contract which involve operations on Battelle or Government premises at the Hanford Site, Richland, Washington.

INSURANCE (cl 378a - Jan 1997)

- A. The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract.
- B. Before commencing work under this contract, the Contractor shall notify the Battelle Contracts Representative in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting Battelle's or the Government's interest shall not be effective—
 1. For such period as the laws of the State in which this contract is to be performed prescribe; or
 2. Until 30 days after the insurer or the Contractor gives written notice to the Battelle Contracts Representative, whichever period is longer.
- C. The Contractor shall insert the substance of this clause, including this Paragraph C, in subcontracts under this contract that require work at either a Battelle or a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Battelle Contracts Representative upon request.

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

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

TERMINATION (TIME AND MATERIALS OR LABOR HOUR) *(cl 365a - Sept 1996)*

- A. Battelle may terminate performance of work under this contract in whole or, from time to time, in part, if—
1. Battelle determines that a termination is in the Government's interest; or
 2. The Contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by Battelle) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.
- B. The Battelle Contracts Representative shall terminate by delivering to the Contractor a Notice of Termination specifying whether termination is for default of the Contractor or for convenience of the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Contractor was not in default or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Government.
- C. 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), 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 cost of which would be reimbursable in whole or in part, under this contract; approval or ratification will be final for purposes of this clause.
 6. Transfer title to the Government (if not already transferred) and, deliver to as directed by Battelle—
 - a. The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated;
 - 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; and
 - c. The jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this contract, the cost of which the Contractor has been or will be reimbursed under this contract.
 7. Complete performance of the work not terminated.
 8. Take any action that may be necessary, or that Battelle 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 C.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 under this contract, credited to the price or cost of the work, or paid in any other manner directed by Battelle.
- D. 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.
- E. 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 accept the items and remove them 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.
- F. 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 Battelle 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.
- G. Subject to Paragraph F of this clause, the Contractor and Battelle may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The contract shall be amended, and the Contractor paid the agreed amount.
- H. If the Contractor and Battelle fail to agree in whole or in part on the amount to be paid because of the termination of work, Battelle shall determine, subject to any review required by the Department of Energy's procedures and on the basis of information available, the amount, if any, due the Contractor and shall pay the amount determined as follows:
1. If the termination is for the convenience of the Government, include—
 - a. An amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the Schedule, less any hourly rate payments already made to the Contractor;
 - b. An amount (computed under the provisions for payment of materials) for material expenses incurred before the effective date of termination, not previously paid to the Contractor;
 - c. An amount for labor and material expenses computed as if the expenses were incurred before the effective date of termination, if they are reasonably incurred after the effective date, with the approval of or as directed by Battelle; however, the Contractor shall discontinue these expenses as rapidly as practicable;

- d. If not included in subdivision H.1.a, b, or c of this clause, the cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract; and
- e. The reasonable costs of settlement of the work terminated, including—
 - i. Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - ii. The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - iii. Storage, transportation, and other costs incurred, reasonably necessary for the protection or disposition of the termination inventory.
- 2. If the termination is for default of the Contractor, include the amounts computed under Paragraph H.1 of this clause but omit—
 - a. Any amount for preparation of the Contractor's termination settlement proposal; and
 - b. The portion of the hourly rate allocable to profit for any direct labor hours expended in furnishing materials and services not delivered to and accepted by Battelle.
- I. The cost principles and procedures in 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 F, H, or L of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in Paragraph F and failed to request a time extension, there is no right of appeal. If Battelle has made a determination of the amount due under Paragraph F, H, or L of this clause, Battelle shall pay the Contractor—
 - 1. The amount determined by Battelle if there is no right of appeal or if no timely appeal has been taken; or
 - 2. The amount finally determined on an 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 this clause and not recovered by or credited to Battelle.
- L. If the termination is partial, the Contractor may file with Battelle a proposal for an equitable adjustment of price(s) for 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 Battelle.
- 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. The provisions of this clause relating to fee are inapplicable if this contract does not include a fee.

EXCUSABLE DELAYS *(cl 365f - Apr 1984)*

- A. Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. "Default" includes failure to make progress in the work so as to endanger performance.
- B. If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless—
1. The subcontracted supplies or services were obtainable from other sources;
 2. The Battelle Contracts Representative ordered the Contractor in writing to purchase these supplies or services from the other source; and
 3. The Contractor failed to comply reasonably with this order.
- C. Upon request of the Contractor, Battelle shall ascertain the facts and extent of the failure. If Battelle determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of Battelle under the termination clause of this contract.