

**INVITATION FOR BID**

**NO. 48016**

**for**

**Sale of Government Owned Property  
Excess Scrap Metal (ferrous and non-ferrous)**

**August 26, 2004**

**Bids Due: September 20, 2004**

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

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

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Invitation for Bid

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## **SPECIAL CONDITIONS**

### **TERM ORDER FOR THE REMOVAL OF SCRAP METAL INVITATION FOR BIDS 48016**

**1. INVITATION**

Battelle, Pacific Northwest Division (PNWD) operates the Pacific Northwest National Laboratory (PNNL) for the United States Department of Energy (DOE). Battelle PNWD, hereafter referred to as the Seller, accumulates and disposes of scrap metal at the Hanford Site on behalf of the DOE. It is desired that scrap metal be disposed of continuously to meet the Site's programmatic objectives. Sealed bids are invited for the purchase of government property listed on Attachment 2 of this invitation. The attached Terms and Conditions, as amended, constitute a part of the contract of sale.

**2. STATEMENT OF WORK**

The Purchaser shall furnish labor and equipment required to remove scrap metal from the designated Hanford locations. Seller reserves the right to deliver scrap directly to the Purchaser's facility or request the purchaser to remove scrap from various locations. In all instances, the Seller's and the Purchaser's vehicles used to transport scrap metal will be weighted light and heavy on a mutually agreed certified scale. The monthly billing will be based on the weight tickets and the price bid for each category of scrap. Examples of the methods to be used for the collection of scrap are as follows:

- a. The Purchaser will provide containers, trailers, or load luggers at no cost to the seller at the Seller's request. Containers will be staged in designated locations for the collection of scrap metal. Metals placed into containers by Seller's personnel will be segregated by the categories of materials listed in the invitation. Seller will attempt not to detain the Purchaser's containers for an unreasonable length of time.
- b. The Seller may also accumulate segregated scrap on the ground, in piles for removal by the Purchaser through its' own selected means.

**3. TERM OF THE ORDER**

The term of this order is for one (1) year. Upon mutual agreement between the Seller and the Purchaser, this order may be extended for up to two (2) additional one-year terms.

**4. BID DUE DATE**

**Bids for this sale are due no later than 5:00 pm on September 20, 2004 (late bids will not be considered).** Bids may be mailed to the address below in the envelope provided or hand delivered to (*insert delivery point*), Richland, WA.

Pacific Northwest National Laboratory  
Attention: Invitation for Bids 48016  
Victoria Hill, MSIN K1-21  
P.O. Box 999  
Richland, WA 99352

**5. SPLIT AWARDS**

Split awards will be contemplated for this sale.

**6. AWARD CRITERIA**

This award will be based on price and the Purchaser's technical capability in meeting the requirement of the statement of work.

**7. BID RESULTS**

Official bid results will be available after 5:00 pm on September 27, 2004.

**8. INSTRUCTIONS FOR PREPARATION OF BIDS**

- a. Bids must be written legibly in ink or typewritten. Bidder must show the unit percentage or price bid on each item for which a bid is entered. All bidders must provide a written narrative of their technical capability to provide the resources required to meet the statement of work. All Bidders must complete the Bidder Information Sheet, Attachment 2, provided with the description of the property to be sold.
  - b. Each bid must be signed by an authorized person. Bids signed by an agent must be in accordance with Condition 37 of the attached terms and conditions and accompanied by evidence of their authority.
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- c. Corrections, erasures, or changes in bids must be explained or otherwise noted over the signature of the bid.
- d. In the event you do not wish to bid, no reply is necessary.

9. **REGULATIONS** - The Purchaser understands that transportation, management, processing, resale and disposal of the materials sold under this contract may be subject to federal, state, and local laws, including but not limited to the Clean Air Act; the Clean Water Act; the Resource Conservation and Recovery Act; the Toxic Substances Control Act; the Atomic Energy Act; the Comprehensive Environmental Response, Compensation and Liability Act; the Hazardous Materials Transportation Regulations; and the Emergency Planning and Community Right-to-Know Act. The Purchaser is responsible for compliance with all applicable laws and regulations. In the event that the selected Bidder is purchasing the scrap metal for re-sale, all the terms of this paragraph will be applicable both to their facilities and to the facilities of any firms who receive PNNL-generated scrap metal from the Purchaser.

10. **SITE INSPECTION/COMPLIANCE:** Seller will perform a site visit of the facility owned and/or operated by the Bidder selected for award. Purchaser must possess the capabilities and qualifications necessary to adequately process scrap metals in compliance with federal, state and local laws and regulations. During the initial site visit, the Purchaser will provide to Seller the following information as it pertains to itself and any other firms used by the Purchaser for processing of scrap metals or to whom the Purchaser sells scrap metals for processing. The Purchaser shall ensure that any other sites or firms used for processing of the scrap metal shall allow the Seller to inspect, if necessary:

Name of Company  
Contact Name  
Licenses, certifications and permits (as applicable)

The Seller retains the right to conduct subsequent inspections of the Purchaser's site to ensure continued satisfactory compliance with federal, state, and local laws and regulations relating to material management and disposal practices. Should violations be identified during such inspections, the Seller reserves the right to terminate the sale without cost to the Seller. The final award of this contract is contingent upon an inspection of the Purchaser's site by PNNL staff to ensure satisfactory compliance with federal, state, and local laws and regulations relating to material management and disposal practices.

11. **METALS PROCESSING** - Regulated non-ferrous metal components of sale items (such as lead components, potentially regulated under RCRA), must be segregated and recycled appropriately. RCRA does not allow lead components of scrap metal to be smelted along with the ferrous material, the only exception being the lead contained in paint or protective coatings adhered to scrap metal being recycled.

The Purchaser shall be responsible for the management of all secondary wastes produced as a result of processing the scrap metal.

In the event that the Purchaser is purchasing the scrap metal for re-sale to another processor, all the terms of this paragraph will be applicable both to their facilities and to the facilities of any firms who receive PNNL-generated scrap metal from the Purchaser.

A Plan entitled, Request For Exception to the Presumption of Destruction For Trigger List Items, shall be presented to the Purchaser for Trigger-List (i.e., Export-Controlled Items) for processing. The Plan shall detail the specific requirements for processing these property items, and shall have the prior approval of the Department of Energy Property Administrator. The Purchaser shall review the Plan. If the Purchaser is unable to perform the required tasks as prescribed in the Plan, a written notification detailing the reasons Purchaser cannot perform shall be provided within 10-working days to the PNNL Sales Administrator. If the Purchase is able to perform the tasks as prescribed in the Plan, the Purchaser shall sign the Plan and return to the PNNL Sales Administrator within 10-working days.

Seller shall not release any Trigger List items to Purchaser unless Purchaser signs the Plan. Purchaser agrees to perform all tasks prescribed in the Plan with respect to the Trigger List Items. Any failure by the Purchaser to comply with the plan shall constitute a breach of this contract.

12. **PROHIBITED ITEMS** - Galvanized fencing, source material, by-product material, special nuclear material (as defined in the Atomic Energy Act of 1954, as amended), and material classified for national defense purposes are not offered for sale herein in any form or under any circumstances, and title to any such materials shall not transfer to Purchaser. Material classified for national defense purposes is defined as any document, product, or substance on or in which information may be recorded or

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embodied which, for reasons of national security, is specifically designated by a United States agency for limited or restricted dissemination. In the event such materials come into the Purchaser's possession, the Purchaser shall notify the Sales Administrator immediately, and shall relinquish possession of such materials to PNNL personnel as directed by PNNL. The Purchaser will be reimbursed by PNNL for any actual cost or expense reasonably incurred by the Purchaser attributable to such material coming into his possession as a result of the delivery of personal property sold, hereunder, including any transportation, handling and other costs incurred in the relinquishment of such material to PNNL.

13. **QUANTITIES** - The quantities listed in the Invitation for Bid are estimated annual amounts and do not represent guaranteed minimums or maximums. The actual amounts may be significantly higher or lower. Seller shall not be responsible to Purchaser for any variation between the estimated amounts and the actual amounts. Non-metallic items may be attached to or commingled with the ferrous and non-ferrous metals. Purchaser will be invoiced at the tare weight of the entire shipment. However, for significant amounts of non-metallic materials, the Purchaser may request an adjustment from the PNNL Sales Administrator within 15 days of shipment.

If circumstances warrant the use of non-Battelle PNWD scales, the scales used shall be certified scales acceptable to both parties and shall be subject to inspection and validation by Battelle, PNWD. The Purchaser shall provide within 48-hours of pick-up the gross weight, tare weight and net weight of the shipment, to the Sales Administrator within 24 hours.

14. **TRANSPORTATION**- There will be no sizing or sorting of the metal on the PNNL site, unless required for loading metals onto the vehicle. PNNL's designated representative, Wanda McCollom (509) 375-5941, or her designated alternate, will notify the Purchaser for pick-up. Pick-up of full containers with immediate replacement with empties shall be within 48- hours of notification. When notified, Purchaser will transport the full container to its facility for processing and simultaneously provide an empty container of the same size at the same location.

15. **CONTAINERIZATION** – The Purchaser shall furnish labor and equipment required to remove scrap metal from the designated PNNL locations. At the PNNL site, a 40 cubic yard open-top container and a back-up container are required and will be furnished by the Purchaser and available at all times. These containers shall be placed at locations specified by the Seller. Additionally, the Purchaser will provide the use of a flatbed, other containers or conveyance as needed for the retrieval of scrap metals from the site, these requested shall be scheduled in advance. Should the load require the use of a vehicle not readily available to the Purchaser, the Purchaser must notify the Sales Administrator immediately. The Sales Administrator will then determine the best disposition path for the affected load. The seller reserves the right to deliver scrap directly to the Purchaser's facility. In all instances vehicles used to transport scrap metal will be weighted light and heavy on a mutually agreed certified scale.

16. **CONTRACT EXTENSION OPTION** - The Seller reserves the right to extend this contract on a year-to-year basis for a maximum of three additional years, contingent on the agreement of both the Seller and the Purchaser.

17. **CONTACTS** - The following personnel are the contacts for this contract. These individuals shall be involved in and/or direct all activities associated with this contract:

- **Victoria Hill**, Battelle Contracting Officer, e-mail: vickie.hill@pnl.gov, Phone: (509) 372-4306, Fax (509) 372-4801,
  - **Wanda McCollom**, Battelle Property Sales, e-mail: wanda.mccollom@pnl.gov, Phone: (509) 375-5941, Fax (509) 375-2126
  - **Erlan Leitz**, Battelle Property Manager, e-mail: erlan.leitz@pnl.gov, Phone: (509) 373-5369, Fax (509) 373-6857
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Attachment 2  
BID FORM

<b>PNNL INVITATION FOR BIDS 48016</b>			<b>Date:</b>	
<b>SALE OF GOVERNMENT PROPERTY</b>				
<b>Item</b>	<b>Description</b>	<b>Unit</b>	<b>Bid %</b>	<b>Bid \$</b>
1	<u>Predominately Ferrous Scrap Metal</u> (Estimated annual volume – 100,000 pounds, or 50 tons) Express your bid as a percentage of the American Metals Market daily per ton rate for No. 2 Heavy Melt, and specify the market selected _____ . Carry your bid to the fourth decimal.	Gross Ton	_____	N/A
2	<u>Predominately Non-Ferrous Scrap Metal</u> (Estimated annual volume - 50,000 pounds) Express you bid as a percentage of the American Metals Market daily rate per pound for 18-8 Bundles, and specify the market selected _____ . Carry our bid to the fourth decimal	Pound	_____	N/A
3	<u>Lead Shapes</u> (No estimate annual volume) Express your bid as a firm fixed price per pound.	Pound	N/A	_____
4	<u>Scrap Metal Office Furniture</u> (No estimated annual volume) Metal office furniture beyond repair. Seller will NOT remove vinyl, Formica tops, or particle board. Express your bid as a firm fixed price per pound.	Pound	N/A	_____

# GENERAL SALE TERMS AND CONDITIONS FOR THE SALE OF GOVERNMENT PROPERTY

## 1. DEFINITIONS

- A) "**Seller**" shall mean the United States Department of Energy (DOE), acting on its own behalf, and Battelle PNWD, its employees and agents acting pursuant to Contract No. DE-AC06-76RL01830 with DOE.
- B) "**Days**" is defined as calendar days.
- C) "**Government**" as used herein shall mean the United States of America, and includes the U.S. DOE and any duly authorized representative.
- D) "**DOE**" means the U.S. Department of Energy
- E) "**Installation**" as used herein shall mean any properties owned by the United States Department of Energy and operated or occupied by Battelle PNWD personnel.
- F) "**Invitation**" the Invitation for Bids issued with respect to the Property.
- G) "**Property**" is defined as material, equipment, assets or possessions of any kind, which is owned, leased, or rented by the government and in the custody of PNNL, and is the subject of the sales Subcontract or is described in the Invitation to Bid.
- H) "**Purchaser**" shall mean the successful Bidder hereunder to whom award is made.
- I) "**Subcontract**" shall include the Invitation completed by Seller awarding a sale to Purchaser, any Special Conditions, and the General Sale Terms and Conditions. Any inconsistencies shall be resolved in accordance with the following descending order of precedence: (1) Invitation; (2) Sale of Government Property Special Conditions; and (3) General Sale Terms and Conditions.

## 2. INSPECTION

Bidders are invited and urged to inspect the Property to be sold prior to submitting bids. Property will be available for inspection at the places and times specified in the Invitation. Seller will not be obligated to furnish any labor for such purpose. In no case will failure to inspect constitute grounds for a claim for the withdrawal of a bid after opening, or rescission of this Subcontract.

## 3. CONDITION OF PROPERTY

Unless otherwise provided in this Subcontract, all Property is offered for sale "as is" and "where is" without recourse against the Seller or Government. Unless otherwise provided in this Subcontract, neither the Seller nor the Government make any guaranty, warranty, or representation, express or implied, as to quantity, kind, character, quality, weight, size, or description of any of the Property, or its fitness for any use or purpose. Except as provided in Conditions No. 10 and 17 or other special conditions of the Subcontract, no request by Purchaser for adjustment in price or for rescission of the sale will be considered. This is not a sale by sample.

## 4. CONSIDERATION OF BIDS

Unless otherwise provided in the Invitation, telephonic bids will not be considered. The acceptance of electronic or facsimile bids is valid only when the bidder has received a verification of receipt of the bid from the PNNL Contracting Officer.

The Bidder agrees that his/her bid will not be withdrawn for 30 days following the opening of bids or such other time as specified in the Invitation to Bid and that during such period his/her bid would remain firm and irrevocable. The Seller or Government reserves the right to reject any or all bids, including bids under which a Bidder could take unfair advantage of the Seller, Government or other Bidders, to waive any technical defects in bids, and unless otherwise specified by the Seller, Government or by the Bidder, to accept any one item or group of items in the bid, as may be in the best interest of the Government. Unless otherwise provided in the Invitation, a bid covering any listed items must be submitted on the basis of the unit specified for that item and must cover the total number of units designated for that item.

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## 5. FORMS OF BID DEPOSITS AND PAYMENTS

Unless otherwise provided in the Invitation, bid deposits (when required by the Invitation) and all payments shall be in U.S. currency or any form of credit instruments other than promissory notes, made payable to Battelle PNWD. Personal or business checks must be first party instruments. If during any prior sale, the Bidder tendered an instrument, which was not paid by the drawee for any reason, and the Bidder was notified in writing by the Seller; Battelle, PNWD and Government reserves the right to reject and/or debar the buyer from future sales transactions with Battelle PNWD.

Deposits accompanying bids (when required by the Invitation), which are not accepted, will be refunded to the Bidder. Deposits of successful Bidders may be applied against the Subcontract price.

## 6. BID PRICE DETERMINATION

When bids are solicited on a unit price basis, Bidders will insert their unit prices and total prices in the space provided on the Bid sheet for each item.

(a) In the event the Bidder inserts a total price on the item but fails to insert a unit price; the Seller will determine the unit price by dividing the total price by the quantity of the item set out in the Invitation. The unit price so determined shall be used for the purpose of bid evaluation, award and all phases of Subcontract administration.

(b) When bids are solicited on a "lot" basis, Bidders should submit a single total price on the bid sheet.

The prices bid for Items 1 and 2 are to be expressed as a percentage of the American Metal Market Daily (AMM) publication for the 20<sup>th</sup> day of each month. Prices will be for the area market, i.e., Los Angeles, Houston, etc., for ferrous and non-ferrous metals as required on the bid sheet. **Bidders must specify the area market in which pricing will be determined.** Items 2 and 3 are a fixed price bid per pound.

## 7. REMOVAL OF PROPERTY

(a) Purchasers presenting paid invoices to the Seller at the Seller's designated operation within the times and dates specified in the Invitation or extensions thereof may remove their property from the place where the property is located.

(b) The Purchaser shall make arrangements for and bear the cost of packing, handling, loading and transporting the property from the Seller's premises. The seller will not act a liaison, in any fashion between the Purchaser and the Carrier; nor will the Seller recommend a specific common carrier. The term "SELLER WILL LOAD" if used in the invitation, means that the Seller will provide facilities, equipment and labor to load materials to a specified point on the Purchaser's vehicle. Unless specifically provided for in the Invitation, the term "SELLER WILL LOAD" does not mean that the Seller will provide for the selective placing of items on a truck or car or for blocking, tying down or securing of the property purchased, or for the performance by Seller of any other service incident to loading. When property is described as being boxed, packed, crated, skidded or in containers, the Government and the Seller do not warrant that the property, as packaged, is suitable for shipment. The Purchaser shall reimburse the Seller for any damage to Government property caused during the removal operations performed by the Purchaser or his authorized representatives.

(c) If property hereunder is not removed within the time specified in the Invitation, or any extension thereof agreed to in writing by the Seller, such property will be stored at the Purchaser's expense and the Purchaser shall pay the Seller a fee of Fifty Dollars (\$50.00) as the cost of storage. Such charges must be paid prior to the removal of property.

(d) Segregation, culling or selection of property for the purpose of effecting partial or incremental removals will not be permitted except as specifically authorized in writing by the Seller.

## 8. SAFETY AND SECURITY

While on the Seller's premises, Purchaser's employees or representatives shall strictly comply with all safety requirements, badging and security requirements and the rules and regulations specified as attached to the Invitation. Definitive requirements pertaining to Safety and Security will be provided in the Invitation as applicable. **BOTH PARTIES SHALL HAVE THE AUTHORITY TO "STOP WORK" WHENEVER A SAFETY CONCERN IS IDENTIFIED.**

Purchaser's employees may be required to obtain employee and vehicle passes. Such badges shall be issued at no charge to the Purchaser. The Purchaser's employees or representatives will not be admitted to the Site unless they are citizens of the United States in the final degree. Naturalized citizens must produce proof of citizenship inclusive of certificate number, date, and place of

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naturalization. Purchaser shall provide employee's full name, Social Security number, date of birth, place of birth and citizenship for employees or representatives 48 hours in advance of requiring access to the Site. Seller will provide further information on the processing procedure. Purchaser's employees and representatives requiring access to the Hanford Site must have proper identification consisting of organizational identification card, valid state or Government driver's license, or military identification card. Purchaser shall notify Seller in writing of badged personnel who no longer require access to the Hanford Site. Upon termination of activities at the Hanford Site, all security badges shall be returned to the Seller. Retention of security badges after termination may constitute illegal possession of Government property.

## 9. ASSUMPTION OF RISK

Persons entering the Seller's premises to inspect or remove property or for any other purpose related to this sale assume all risk while thereon of injury to themselves and damage to or loss of their property.

Purchaser shall, at its sole expense, maintain in effect at all times during the performance of the work, insurance coverage with limits not less than those set forth below with insurers and under forms of policies satisfactory to Seller. Purchaser shall deliver to Seller no later than ten (10) calendar days after subcontract award, but in any event prior to commencing the Work or entering the jobsite, certificates of insurance as evidence that policies providing such coverage and limits of insurance are in full force and effect. Certificates shall be issued in the form acceptable to Seller and provide that not less than thirty (30) calendar days advance written notice will be given to Seller prior to cancellation, termination or material alteration of said policies of insurance. Following are the minimum insurance requirements:

- **Workers Compensation** as required by any applicable law or regulation.
- **Employer's Liability** of not less than \$500,000 each accident.
- **General Liability Insurance:**  
Purchaser shall carry Commercial General Liability Insurance covering all operations by or on behalf of Purchaser providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below:
  - \$500,000 – Combined single limit for Bodily Injury and Property Damage each occurrence;
  - \$500,000 – Personal Injury Limit each occurrence;
  - \$500,000 – General Annual Aggregate Limit.

Insurance shall include coverage for Automobile Contractual Liability Automobile Liability Insurance including coverage for the operation of any vehicle to include, but not limited to, owned, hired and non-vehicles. The combined single limit for Bodily Injury and Property Damage Liability shall be not less than \$500,000 for any one accident or loss. Seller's Automobile Liability.

## 10. PAYMENT

The American Metal Market Daily (AMM) publication for the 20<sup>th</sup> working day of the month will be used to establish the sale price for Items 1 and 2. On or about the 21<sup>st</sup> working day of each month, the weight tickets for Items 1 and 2 will be added by category and the Purchaser will be billed for the total weight received at the current AMM rate times the percentage of the price bid. The weight tickets for Items 2 & 3 will be added and multiplied by the fixed unit price and the Purchaser will be billed for the total weight received. Copies of the relevant weight tickets will be provided with each payment. Payment will be on a Net 30 basis, made payable to Battelle PNWD by certified check, cashiers check, bank draft, or postal money orders. The Purchaser's company check will be accepted if accompanied by an irrevocable letter of guarantee from the Purchaser's financial institution. **All payments will be in U.S. Funds.** Payments will be sent to:

Battelle Treasury Services (P1-09)  
PO Box 999  
Richland, WA 99352

## 11. 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.

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## **12. TITLE**

Unless otherwise provided in the Invitation, title to the Property sold hereunder shall vest in the Purchaser as and when full payment is received and removal of Property has been achieved. On all motor vehicles and motor-propelled or motor-drawn equipment requiring licensing by the State motor vehicle regulator agency, a certificate of release, Standard form 97, will be furnished for each vehicle and piece of equipment unless otherwise provided in the Invitation.

## **13. TIE BIDS**

In the case of tie bids (two or more identical bids on one item) the item will be awarded to the bidder whose bid was received first, as determined by the number assigned to the bid.

## **14. DELIVERY, LOADING AND REMOVAL OF PROPERTY**

(a) Unless otherwise provided in the Invitation, the Purchaser shall be entitled to obtain the Property upon full payment therefore with removal of the Property being made only from the exact place where the Property is located within the installation and by the time specified in the Invitation. The Purchaser must make and pay for all arrangements necessary for packing, removal, and transportation of Property. Neither UT-Battelle, LLC nor the Government will act as liaison in any fashion between the Purchaser and carrier, nor will the Seller or Government recommend a specific common carrier. Loading will only be performed as set forth in the Invitation, and unless otherwise provided in the Invitation, loading will not be performed on Saturdays, Sundays, Company holidays, or any day that the installation where the Property is located is closed. Where it is provided that the Seller will load, the Seller will make the initial placement of the Property on conveyance (s) furnished by the Purchaser and the initial placement on the Purchaser's conveyance shall be as determined by the Seller. Unless otherwise provided in the Invitation, the Seller will not block, chock, brace, lash, band, or in any other manner secure the Property on such conveyance(s) furnished by the Purchaser. Any details regarding removal of the Property as may not be provided for herein or in the Invitation, shall be arranged with the authorized representative of the Seller, which arrangements shall be reduced to writing.

(b) Where it is provided in the Invitation that the Seller will not load or that the Purchaser will load, the Purchaser will make all arrangements and perform all work necessary to effect removal of the Property. The Purchaser shall remove the Property at his/her expense within the period of time allowed in the Invitation.

(c) If the Seller determines that the failure to remove the Property within the period of time specified in the Invitation arose out of causes beyond the control and without the fault or negligence of the Purchaser, such determination shall be reduced to writing, and a reasonable extension of time for removal shall be allowed. Such causes may include, but are not restricted to acts of God or of the public enemy, acts of the Government in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather. If the Purchaser is permitted to remove the Property after the expiration of the time originally allowed for removal, the Seller, without limiting any other rights which it may have, may require the Purchaser to pay a reasonable storage charge for storage on Government or non Government property, and Purchaser shall pay all costs incident to such storing including handling and moving charges. The Purchaser shall reimburse the Seller for any damage to Government property caused during the removal operations by the Purchaser or his authorized representative including any common carrier. These rights are in addition to the rights specified in Condition 15. Default.

(d) The Property will be released only to the Purchaser or his authorized representative. The authorized representative must furnish authorization from the Purchaser before any delivery or release of the Property will be made. When Property is described as being boxed, packed, crated, skidded, or in containers, the Seller does not warrant that the Property, as packaged, is suitable for shipment.

(e) Segregation, culling or selection of Property for the purpose of affecting partial or increment removals will not be permitted except as specifically authorized and prescribed by the Seller.

## **15. DEFAULT**

If the Purchaser breaches the Subcontract by failure to make payment within the time allowed by the Subcontract, by failure to remove the Property as required by the Subcontract, or by breach of one or more of the other conditions of this Subcontract, including any Special Conditions, then the Seller may send the Purchaser a written notice of default giving Purchaser 10 days from the date the notice was mailed to cure the default.

Upon Purchaser's failure to cure such default within that period, the Purchaser shall lose all right, title and interest, which he might otherwise have acquired in and to such Property. Upon default the Seller shall have the right to resale the Property by any method or

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dispose of the Property. The Purchaser shall be responsible for all cost of storage of the Property until resale or disposal, including handling and moving charges and all cost of resale or disposal that are not recovered by Seller from the proceeds of any resale. Seller reserves the right to reject and/or debar the defaulting Purchaser from any future sales transactions.

To the extent Seller has received payment from the Purchaser for the Property, in the event of default, Seller shall be entitled to retain any amounts received until resale or disposal, and Seller shall be entitled to apply said amounts received against the costs of storage, including handling and moving charges, and cost of resale or disposal.

If Purchaser fails to pay amounts due for cost incurred by Seller for storage, resale, or disposal, as described herein, Purchaser shall be liable for interest, late payment handling charges, and penalty charges as described in Condition 47 and all Sellers' attorneys fees and costs to recover said amounts.

Seller may exercise any remedies available at law or in equity for a default by Purchaser occurring at any time under this Subcontract and shall be entitled to recover attorneys' fees and costs incurred to enforce this Subcontract.

## **16. INTEREST**

Notwithstanding any other provision of this Subcontract, all payments not received within 30 days of the invoice date including payments due in case of default will be assessed interest at an annual rate of 6% on the amount due from the invoice date until the date of payment. A late payment handling charge of \$18.15 per month shall be imposed on delinquent invoices for each 30-day period of delinquency or portion thereof. A penalty charge assessed at an annual rate of 6% on any principal amount not paid within 90 days of the due date will be assessed from the date the debt becomes delinquent until the date of payment.

## **17. ADJUSTMENT FOR VARIATION IN QUANTITY OR WEIGHT**

Quantities listed in the Invitation to Bid are estimated annual amounts and do not represent guaranteed minimums or maximums. The actual annual amounts may be significantly higher or lower. Seller shall not be responsible to Purchaser for any variation between the estimated amounts and the actual amounts.

## **18. WEIGHING, SWITCHING, AND SPOTTING**

Where weighing is necessary to determine the exact purchase price, the Seller or Government shall arrange for weighing the Property on available Government scales. If circumstances warrant the use of non Battelle PNWD scales, the scales used shall be certified scales acceptable to both parties and shall be subject to inspection and validation by Seller. The Purchaser shall pay all switching and spotting charges unless such services are performed with Government-owned or Government-operated locomotives on Government Property.

## **19. RISK OF LOSS**

The risk of loss or damage shall pass to the Purchaser when possession of the Property is transferred from the Seller to the Purchaser or its authorized representative including a common carrier. The Seller and/or Government will be responsible for the care and protection of the Property prior to the risk of loss passing to the Purchaser. If any loss, damage, or destruction to the Property occurs during such period the Seller will make necessary adjustments to the purchase price, to the extent the loss was not caused directly or indirectly by the Purchaser or its authorized representatives. At the discretion of the Seller, the adjustment may consist of rescission of the Subcontract and Purchaser agrees that it shall have no cause of action or claim against Seller for any damage whatsoever arising from such rescission. In the event of a rescission under this condition, the Seller shall be liable only for the refund of any amount of the Subcontract price paid by Purchaser. No adjustment will be authorized under this provision unless the Seller or Government is notified of the loss, damage or destruction prior to removal from the Installation of the Property or any portion of the lot to which a loss is claimed.

## **20. ORAL STATEMENTS AND MODIFICATIONS**

Any oral statement or representation by any representative of the Seller or Government, changing, or supplementing the Invitation or Subcontract or any Condition thereof, is unauthorized and shall confer no right upon the Bidder or Purchaser. Further, no interpretation of any provision of the Subcontract, including applicable performance requirements, shall be binding on the Seller or Government unless furnished or agreed to, in writing, by the Seller or his/her designated representative.

## **21. OFFICIALS NOT TO BENEFIT**

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No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Subcontract or to any benefit that may arise there from, unless it is made with a corporation for its general benefit.

## **22. CERTIFICATE OF INDEPENDENT PRICE DETERMINATION**

(a) By submission of this bid or proposal, the Bidder certifies, and in the case of a joint bid or proposal each party thereto certifies as to its own organization, that in connection with this sale:

(1) The prices in this bid or proposal have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices, with any other Bidder or with any competitor;

(2) Unless otherwise required by law, the prices which have been quoted in this bid or proposal have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, in the case of a bid, or prior to award, in the case of a proposal, directly or indirectly to any other Bidder or to any competitor, and

(3) No attempt has been made or will be made by the Bidder to induce any other person or firm to submit or not to submit a bid or proposal for the purpose of restricting competition.

(b) Each person signing this bid or proposal certifies that:

(1) He is the person in the Bidder's organization responsible within that organization for the decision as to the prices being bid or offered therein and that he has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3), above; or

(2) (i) He is not the person in the Bidder's organization responsible within that organization for the decision as to the prices being bid or offered herein but that he has been authorized in writing to act as Agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to (a)(1) through (a)(3), above, as their Agent does hereby so certify; and

(ii) He has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3), above and

(iii) As an Agent, has not personally participated and will not participate, in any action contrary to subparagraphs (a) (1) through (a) (3) above.

(3) This certification is not applicable to a foreign Bidder submitting a bid or proposal for a Subcontract, which requires performance or delivery outside the United States, its possessions, and Puerto Rico.

## **23. ASSIGNMENT OF SUBCONTRACTS**

Purchaser shall not assign rights or obligations to third parties without prior written consent of Seller. Administration of this Subcontract may be transferred, in whole or in part, to DOE or its designee(s) and to the extent of such transfer and notice thereof to Purchaser, Battelle PNWD shall have no further responsibility.

## **24. CLAIMS LIABILITY**

Neither the Government, the Seller, nor their officers, agents, and employees will be responsible for any injury to or death of persons or other living things, or damage to or destruction or loss of property, or for any other loss, damage or injury of any kind whatsoever resulting from the performance of this Subcontract by the Government, or the Seller to the extent such injury, death, damage, destruction, or loss is not caused by the negligence or willful misconduct of the Government or the Seller. The Bidder or Purchaser agrees to indemnify and hold harmless the Government, the Seller and their officers, agents, and employees, from and against any and all liabilities, penalties, fines, forfeitures, claims, causes of action, and costs and expenses (including the costs of defense and/or settlement, including, but not limited to, attorney's fees), caused by, resulting from or arising out of, in whole or in part, the performance of this Subcontract, to the extent the liability is not caused by the negligence or willful misconduct of the Government or the Seller.

## **25. WITHDRAWAL OF PROPERTY AFTER AWARD**

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The Seller or Government reserves the right to withdraw for its use any or all of the Property covered by this agreement, if a bona fide requirement for the Property develops or exists prior to actual removal of the Property from Government or Seller possession. In the event of a withdrawal under this condition, the Seller shall be liable only for the refund of the Subcontract price of the withdrawn Property or such portion of the Subcontract price, as it may have received. Purchaser agrees it shall have no cause of action or claim against Seller for any damage whatsoever arising from said withdrawal of Property.

## **26. ELIGIBILITY OF BIDDERS**

The Bidder warrants that he/she is not: (a) under 18 years of age; (b) an employee of an agency of the Federal Government (either as a civilian or as a member of the Armed Forces of the United States, including the United States Coast Guard, on active duty) prohibited by the regulations of that agency from purchasing Property sold hereunder; (c) an agent or immediate member of the household of the employee in (b) above. For breach of this warranty, this Subcontract shall be deemed in default under Condition 6.

## **27. PERSONS PROHIBITED FROM OR LIMITED IN BIDDING**

If the Bidder is an employee of the Pacific Northwest National Laboratory, the U.S. Department of Energy, or a Subcontractor of the U.S. Department of Energy, he hereby represents that he (1) has not participated in the Seller's determination to dispose of the Property; (2) has not participated in the preparation of the Property for sale; (3) has not participated in determining the method of this sale; and (4) has not acquired information not otherwise available to the general public regarding usage, condition, quality, or value of the Property.

## **28. LATE BIDS, MODIFICATIONS OF BIDS, OR WITHDRAWAL OF BIDS**

- (a) Any bid received at the address designated in Condition 25, or a different address if specified in the invitation, after the exact time specified for receipt may not be considered.
- (b) Any modification or withdrawal of a bid received at the address designated in Condition 25, or a different address if specified in the invitation, after the exact time specified for receipt will not be considered. A Bidder or his authorized representative may also withdraw a bid in person prior to the exact time set for receipt of bids. The acceptance of electronic or facsimile modifications or withdrawal of bids are valid only when the bidder has received a verification of receipt of the modification or withdrawal from the PNNL Property Management organization prior to the exact time set for receipt of bids.
- (c) Notwithstanding (a) and (b) of this provision, a late modification of an otherwise successful bid, which makes it terms more favorable to the Government, will be considered at any time it is received and may be accepted.

## **29. REQUIREMENTS TO COMPLY WITH APPLICABLE LAWS AND REGULATIONS**

It is the Bidder's responsibility to ascertain and comply with all applicable Federal, State, Local and multi-jurisdictional laws, ordinances, orders and regulations pertaining to the registration, licensing, handling, possession, transportation, transfer, export, processing, manufacture, sale use or disposal of the Property, and provide written proof of registration, licensing, or other requirements. Purchasers or users of this Property are not excused from any violation of such laws or regulations either because the United States is a party to this sale or has had any interest in the Property at any time.

## **30. EXPORT CONTROLLED PROPERTY**

Personal Property purchased from the Seller may or may not be authorized for export/ import from/to the country where the personal Property is located. If export/import is allowed, the Purchaser is solely responsible for obtaining required clearances, licenses, or approvals. The Purchaser also is required to pass on DOE's export control guidance if the Property is resold or otherwise disposed.

The use, disposition, export and re-export of this Property is subject to all applicable U.S. laws and regulations, including the Atomic Energy Act of 1954, as amended; the Arms Export Control Act (22 USC 2751 et seq.); the Export Administration Act of 1979 (560 USC Append 2401 et seq.); Doe Regulations (10 CFR Part 810); International Traffic in Arms Regulations (22 CFR 120 et seq.); Export Administration Regulations (15 CFR 730 et seq.); Foreign Assets Control Regulations (31 CFR 500 et seq.); and the Espionage Act (37 USC 791 et seq.) which, among other things, prohibit:

- a) The making of false statements and concealment of any material information regarding the use or disposition of export or re-export of the Property; and
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- b) Any use or disposition, export or re-export of the Property, which is not authorized in accordance with the provisions of this agreement.

### **31. PROLIFERATION SENSITIVE PROPERTY ACKNOWLEDGEMENT**

In the event that proliferation sensitive Property, as identified on the U.S. Munitions List (22 CFR 121) or the International Atomic Energy Agency Information Circular (INFCIRC) 254 Part I (the Trigger List), is inadvertently included in this sale, the Purchaser agrees that that portion of the sale covering proliferation sensitive property is void, and, if such Property has been received by Purchaser, the Purchaser will return the Property to Battelle, PNWD or DOE. If payment has been made, the purchase price only shall be refunded to the Purchaser.

### **32. INDEMNIFICATION**

The Purchaser agrees to indemnify and hold harmless Battelle PNWD, DOE, the Government, and their officers, agents, and employees, from any and all claims, liabilities, costs, and other detriments (including but not limited to reasonable attorney fees, settlements, fines and penalties, and damages for personal injury, property damage or destruction, environmental remediation, and natural resources damages) that arise out of any loading, unloading, transportation, use, management, processing, disposal and/or sale or other disposition by the Purchaser, its contractors, and customers of material obtained under this contract.

### **33. TERMINATION FOR CONVENIENCE**

The Seller may, by 30 days written notice, terminate this agreement in whole or in part when it is in the Seller's interest. If this agreement is terminated, the rights, duties and obligations of the Seller and the Purchaser shall be in accordance with the terms and conditions of sale.

### **34. PROHIBITION OF SEGREGATED FACILITIES** *(cl 319 - Feb 1999)(MODIFIED)*

- 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 Purchaser 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 Purchaser 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.

### **35. ASSIGNMENT** *(cl 357 - Jan 2003) (MODIFIED)*

Battelle may assign this contract to the U.S. Department of Energy (DOE) or a designee of DOE. Upon receipt by the Purchaser of written notice that DOE or its designee has been assigned this contract, Battelle shall be relieved of all responsibility hereunder, and the Purchaser shall thereafter look solely to the assignee for performance of Battelle's obligations. The Purchaser 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.

### **36. PERMITS AND RESPONSIBILITIES** *(cl 358 - Nov 1991)*

The Purchaser is an independent contractor, not an agent or employee of Battelle. The Purchaser 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 Purchaser shall also be responsible for all damages to persons or property that occur as a result of the Purchaser's fault or negligence.

### **37. COVENANT AGAINST CONTINGENT FEES** *(cl 339 - Apr 1984)(MODIFIED)*

- A. The Purchaser 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.
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- B. "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a Purchaser 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 Purchaser and subject to the Purchaser'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.

**38. USE OF BATTELLE NAME** (*cl 374 – Jan 2003*) (*MODIFIED*)

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

**39. AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES** (*cl 321 - June 1998*)(*MODIFIED*)

A. General.

1. Regarding any position for which the employee or applicant for employment is qualified, the Purchaser shall not discriminate against any employee or applicant because of physical or mental disability. The Purchaser 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 Purchaser;
  - 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 Purchaser, including social or recreational programs; and
  - i. Any other term, condition, or privilege of employment.
2. The Purchaser 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 Purchaser agrees to post employment notices stating-
    - a. The Purchaser'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 Purchaser shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Purchaser 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.
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3. The Purchaser shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Purchaser 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 Purchaser 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 Purchaser 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 Purchaser shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

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

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

**41. WORKERS' COMPENSATION** (cl 323 - Nov 1983) (MODIFIED)

The Purchaser 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.

**42. CONVICT LABOR** (cl 390 - Aug 1996) (MODIFIED)

The Purchaser 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 Purchaser 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 Purchaser 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.

**43. EQUAL OPPORTUNITY** (cl 317 - Apr 2002)(MODIFIED)

- 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 Purchaser has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Purchaser 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 Purchaser shall provide information necessary to determine the applicability of this clause.
    1. The Purchaser 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 Purchaser 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 Purchaser 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;
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- 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 Purchaser 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 Purchaser shall, in all solicitations or advertisements for employees placed by or on behalf of the Purchaser, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
  5. The Purchaser 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 Purchaser's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
  6. The Purchaser shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
  7. The Purchaser 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 Purchaser shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Purchaser has filed within the 12 months preceding the date of contract award, the Purchaser 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 Purchaser 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 Purchaser 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 Purchaser 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 Purchaser 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 Purchaser 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 Purchaser 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 Purchaser 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 Purchaser becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Purchaser 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.

**44. CHANGES - FIXED PRICE** (*cl 346b - Aug 1987*)(MODIFIED)

- A. A Battelle Contracts Representative may at any time, by a written order, and without notice to the sureties, if any, make changes within the general scope of this contract, in any one or more of the following: 1) description of services, drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for Battelle in accordance with the drawings, designs, or specifications; 2) method of shipment, packing, or routing; 3) place of delivery.
  - B. If such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this contract, whether changed or not changed by any such order, an equitable adjustment shall be made in the contract price or delivery schedule, or both, and the contract shall be modified in writing accordingly.
  - C. The Purchaser must assert its right to an adjustment under this clause within 30 days from the date of receipt by the Purchaser 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.
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- D. If the Purchaser's proposal includes the cost of property made obsolete or excess by the change, Battelle shall have the right to prescribe the manner of the disposition of the property.
- E. Failure to agree to any adjustment shall be a dispute within the meaning of the clause of this contract entitled Disputes". Nothing in this clause shall excuse the Purchaser from proceeding with the contract as changed.
- F. No communication, written or oral, from any person other than a Battelle Contracts Representative, shall constitute a change order in accordance with this provision.
- G. Where the cost of property made obsolete or excess as a result of a change is included in the Purchaser's proposal for adjustment, Battelle shall have the right to prescribe the manner of disposition of such property.

**45. ENVIRONMENT, SAFETY AND HEALTH REQUIREMENTS** (cl 3113b – Jan 2004)(MODIFIED)

- A. In performing work under this contract, the Purchaser 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 Purchaser shall exercise a degree of care commensurate with the work and the associated hazards. The Purchaser shall ensure that management of environment, safety, and health (ES&H) functions and activities becomes an integral but visible part of the Purchaser's work planning and execution processes. The Purchaser 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 and a set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.
    - 4. Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.
  - B. The Purchaser, 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 Purchaser employees on adequacy of hazard controls
  - C. The Purchaser is responsible for its subcontractors' compliance with the ES&H requirements of this contract. The Purchaser 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 Purchaser shall perform work in accordance with a Safety Management Plan as described below:
    - 1. The Purchaser shall demonstrate well-established safety protocols applicable to the scope of work and consistent with the required elements stated in this clause. Prior to the initiation of any onsite work, the Purchaser shall submit a copy of its Safety Management Plan to the Battelle Contract Representative for Battelle's review and acceptance of the plan. The Purchaser will be notified by the Battelle Contract Representative of the plan's acceptance by Battelle. Acceptance of the Purchaser's Safety Management Plan will be at the sole discretion of Battelle.
    - 2. The Purchaser's Safety Management Plan may, as appropriate, incorporate applicable Battelle Standards Based Management System (SBMS) procedures and guidelines, as specified in the Statement of Work or specifications incorporated in this contract, where Hanford-specific safety requirements differ from state and federal requirements. The Battelle Contract Representative or Technical Administrator will provide applicable hard copy SBMS Subject Area sections upon request or prior to the initiation of the work onsite.
    - 3. [For construction-related activities only] Elements of the applicable Job Planning Package, including hazard mitigation, shall be incorporated directly, or by reference, into the Purchaser's Safety Management Plan.
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- E. The Purchaser shall notify the Battelle Contract Representative immediately of any OSHA-recordable injuries/illnesses, any “off-normal occurrences,” or Government property damaged that the Purchaser 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 Purchaser’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 Purchaser’s equipment, work and storage areas for compliance with the applicable ES&H requirements. The Battelle Contract Representative will notify the Purchaser by a written Notice of Noncompliance of any observed noncompliance with applicable ES&H requirements. The Purchaser shall immediately take appropriate corrective action. The Purchaser 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 Purchaser fails or refuses to correct the safety noncompliance, Battelle may perform, or cause to be performed, the necessary corrective work and unilaterally charge the Purchaser for the cost thereof. Such charges will be deducted from payments otherwise due the Purchaser under this contract.
- G. The Purchaser shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements. If the Purchaser fails to provide resolution or if, at any time, the Purchaser’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 Purchaser 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 Purchaser 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 Purchaser 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 Purchaser shall be obligated to the following additional tasks:
1. The Purchaser 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 Purchaser 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 Purchaser. In addition, the Purchaser is responsible for maintaining any historical records associated with the administration of these programs. In the event that the Purchaser or lower-tiered subcontract employee requires a medical qualification examination or medical surveillance program, at the discretion of the Purchaser, 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 Purchaser has identified to be at risk of potential exposure, if the individual will be on site for duration of more than 14 days, the Purchaser 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 Purchaser’s work involves operations on Battelle or Government premises at the Hanford Site, Richland, Washington, the Purchaser, 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 Purchaser 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.

**46. INSURANCE** (*cl 378a - Jan 1997*)(*MODIFIED*)

- A. The Purchaser 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 Purchaser 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 Purchaser gives written notice to the Battelle Contracts Representative, whichever period is longer.
- C. The Purchaser 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 Purchaser shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Battelle Contracts Representative upon request.

**47. WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES** (*cl 396 - Dec 2000*) (*MODIFIED*)

- A. The Purchaser 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 Purchaser 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.

**48. WARRANTY OF SERVICES** (*cl 383a - May 2001*)(*MODIFIED*)

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

**48. SALES TO STATE AND LOCAL GOVERNMENTS**

If the bidder is a State or Local Government, or an instrumentality of either, the official warrant of such Bidder, made payable to Pacific Northwest National Laboratory, may be used for the bid deposit and the payment of the purchase price. The requirements of a bid deposit and payment for property prior to removal will be waived if such a Bidder provides the Seller with a written representation by an authorized official of the Bidder that compliance with such requirements is precluded by law.

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# REPRESENTATIONS AND CERTIFICATIONS

For the Pacific Northwest National Laboratory  
Operated by Battelle Memorial Institute

1. The following representations and certifications must be completed, and this form must be signed and returned with the Offeror's proposal.
2. Taxpayer Identification
3. Small Business Program Representation
4. Affirmative Action Compliance
5. Previous Contracts and Compliance Reports
6. Royalty Payment Certification
7. Buy American Act Certification
8. Patents Rights Representation
9. Technical Data Certification
10. Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters
11. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions
12. Cost Accounting Standards Notice and Certification

## 1. TAXPAYER IDENTIFICATION (Oct 1998)

### (a) Definitions.

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

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

(b) All offerors must submit the information required in paragraphs (d) through (f) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M and implementing regulations issued by the IRS. If the resulting contract is subject to the reporting requirements described in Federal Acquisition Regulation (FAR) 4.904, the failure or refusal by the offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.

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

### (d) Taxpayer Identification Number (TIN).

- TIN: \_\_\_\_\_
- TIN has been applied for.
- TIN is not required because \_\_\_\_\_
- Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States.
- Offeror is an agency or instrumentality of a foreign government
- Offeror is an agency or instrumentality of a Federal Government
- Other. State basis. \_\_\_\_\_

### (e) Type of organization

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

(f) *Common Parent.*

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

**2. SMALL BUSINESS PROGRAM REPRESENTATIONS (Apr 2002)**

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

- (a) (1) The North American Industry Classification System (NAICS) code for this acquisition is \_\_\_\_\_>
- (2) The small business size standard is \_\_\_\_\_.
- (3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

(b) *Representations.*

- (1) The offeror represents as part of its offer that it  is,  is not a **small business concern**.  
*(Complete (2), (3), and (4) below, as applicable, only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.)*
- (2) The offeror represents, for general statistical purposes, that it  is,  is not, a **small disadvantaged business concern** as defined in 13 CFR 124.1002. *(If so, also complete the Small Disadvantaged Business Status representation, below.)*
- (3) The offeror represents as part of its offer that it  is,  is not a **women-owned small business concern**.
- (4) The offeror represents as part of its offer that it  is,  is not a **veteran-owned small business concern**.
- (5) The offeror represents as part of its offer that it  is,  is not a **service-disabled veteran-owned small business concern**.
- (6) The offeror represents, as part of its offer, that—
  - a. It  is,  is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office of ownership, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR part 126; and
  - b. It  is,  is not a joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (b)(5)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture.

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

\_\_\_\_\_ ]

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

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

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

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

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

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

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

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

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

(d) *Notice.*

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

**3. AFFIRMATIVE ACTION COMPLIANCE (Apr 1984)**

The offeror represents that it

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

**4. PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (Feb 1999)**

Offeror represents that it

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

**5. ROYALTY PAYMENT CERTIFICATION (Jan 1986)**

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

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

**6. BUY AMERICAN ACT CERTIFICATION (May 2002)**

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

(b) Foreign End Products:

Line Item No.	Country of Origin

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

**7. TECHNICAL DATA CERTIFICATION (Jan 1986)**

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

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

**8. PATENT RIGHTS REPRESENTATION (Jan 1986)**

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

**9. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (Dec 2001)**  
(Applicable to proposals exceeding \$25,000)

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

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

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

Have  have not  within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust

statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

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

(ii) The Offeror has 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 \_\_\_\_\_