



CONSTRUCTION

GENERAL PROVISIONS

Commercial Terms and Conditions

.....APRIL 2004

**CONSTRUCTION GENERAL PROVISIONS
FIXED PRICE/Commercial – April 2004**

INTRODUCTION: All Work performed by Contractor (including all subcontractors and suppliers) is subject to the Terms and Conditions of these General Provisions and those set forth in the Contract Agreement. By entering into this Contract Agreement, Contractor recognizes these obligations and agrees to implement them in its lower-tier subcontracts and supplier purchase orders. For administrative purposes, these General Provisions have been grouped into PARTS and are listed in alphabetical order within each PART.

CLAUSES MADE INAPPLICABLE BY THE VALUE, STATED CONDITIONS, OR TYPE OF CONTRACT ARE SELF-DELETING.

PART 1 - ADMINISTRATIVE PROVISIONS.....	4
(ADM 1) Assignment (April 2004).....	4
(ADM 2) Central Contractor Registration (April 2004).....	4
(ADM 3) Changes (April 2004).....	5
(ADM 4) Competition in Subcontracting (April 2004).....	6
(ADM 5) Definitions (April 2004).....	6
(ADM 6) Default (Fixed-Price Construction) (April 2004).....	7
(ADM 7) Disputes (April 2004).....	8
(ADM 8) Escort Requirements (April 2004).....	9
(ADM 9) Excusable Delays (April 2004).....	10
(ADM 10) Failure to Perform (April 2004).....	10
(ADM 11) Interpretation and Intent (April 2004).....	10
(ADM 12) Federal, State and Local Laws and Regulations (April 2004).....	11
(ADM 13) Limitations on Subcontracting (April 2004).....	11
(ADM 14) Order of Precedence (April 2004).....	12
(ADM 15) Payments under Fixed-Price Construction Contracts (April 2004).....	12
(ADM 16) Pricing of Adjustments (April 2004).....	14
(ADM 17) Prohibited Articles (April 2004).....	15
(ADM 18) Right to Offset (April 2004).....	15
(ADM 19) Site Access / Badge Requirements (April 2004).....	15
(ADM 20) State and Local Taxes (April 2004).....	16
(ADM 21) Stop-Work Order (April 2004).....	17
(ADM 22) Suspension of Work (April 2004).....	17
(ADM 23) Termination for Convenience of Battelle (Fixed-Price) (April 2004).....	18
(ADM 24) Use of Battelle's Name (April 2004).....	20
PART 2 - CONSTRUCTION PROVISIONS.....	21
(CON 1) Area Limitations and Work Requirements (Jan 2004).....	21
(CON 2) Availability and Use of Utility Services (April 2004).....	22
(CON 3) Brand Name or Equal – (April 2004).....	22
(CON 4) Buy American Act-Construction Materials (April 2004).....	23
(CON 5) Care, Custody, Control and Title to Materials and Equipment (April 2004).....	25
(CON 6) Cleaning Up (April 2004).....	25
(CON 7) Differing Site Conditions (April 2004).....	25
(CON 8) Inspection of Construction (April 2004).....	25
(CON 9) Layout of Work (April 2004).....	26
(CON 10) Material and Workmanship (April 2004).....	26
(CON 11) Operations and Storage Areas (April 2004).....	27
(CON 12) Other Contracts (April 2004).....	27
(CON 13) Permits and Responsibilities (April 2004).....	27
(CON 14) Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements. (April 2004).....	28
(CON 15) Schedules for Construction Contracts (April 2004).....	28
(CON 16) Site Investigation and Conditions Affecting the Work (April 2004).....	28
(CON 17) Superintendence by the Contractor (April 2004).....	29
(CON 18) Specifications and Drawings for Construction (April 2004).....	29

**CONSTRUCTION GENERAL PROVISIONS
 FIXED PRICE/Commercial – April 2004**

(CON 19) Use and Possession Prior to Completion (April 2004)..... 30
 (CON 20) Warranty of Construction (April 2004)..... 30

PART 3 - ENVIRONMENTAL SAFETY AND HEALTH PROVISIONS..... 31

(ESH 1) Accident Prevention (April 2004) 31
 (ESH 2) Hazardous Material Identification and Material Safety Data (April 2004) 32
 (ESH 3) Integration of Environment, Safety, and Health into Work Planning and Execution (April 2004) 33
 (ESH 4) Medical Examinations (April 2004) 34
 (ESH 5) Safe Work Authority, Reporting and Obligations (April 2004)..... 35
 (ESH 6) Solid Waste Management (April 2004) 38

PART 4 - FINANCIAL, BOND and INSURANCE PROVISIONS..... 39

(FIN 1) Accounts, Records and Inspection (April 2004)..... 39
 (FIN 2) Bankruptcy (April 2004)..... 40
 (FIN 3) Bid Guarantee (April 2004) 41
 (FIN 4) Insurance (April 2004)..... 41
 (FIN 5) Insurance, Litigation and Claims (April 2004) 42
 (FIN 6) Irrevocable Letter of Credit (April 2004)..... 43
 (FIN 7) Performance and Payment Bonds- Construction (April 2004)..... 46

PART 5 - LABOR PROVISIONS 47

(LAB 1) Disputes Concerning Labor Standards (April 2004) 47
 (LAB 2) Equal Opportunity (April 2004)..... 47
 (LAB 3) Labor and Wage Standards (April 2004) 48
 (LAB 4) Open Competition and Labor Relations (April 2004) 48
 (LAB 5) Unemployment Insurance (April 2004) 49

PART 6 - QUALITY PROVISIONS 49

(QUAL 1) Quality Assurance (April 2004) 49
 (QUAL 2) Red-Lined Drawings (April 2004)..... 49
 (QUAL 3) Suspect / Counterfeit Items (April 2004) 50
 (QUAL 4) Test Reports (April 2004)..... 50

Remainder of page left blank intentionally

PART 1 - ADMINISTRATIVE PROVISIONS

(ADM 1) Assignment (April 2004)

The Contractor shall not assign this contract or any interest therein, nor claims thereunder without the prior written consent of Battelle. Any assignment, by operation of law or otherwise, without prior written consent of Battelle shall be void.

(End of clause)

(ADM 2) Central Contractor Registration (April 2004)

(a) Definitions. As used in this clause-

"Central Contractor Registration (CCR) database" means the primary Battelle repository for Contractor information required for the conduct of business with the Battelle.

"Data Universal Numbering System (DUNS) number" means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities.

"Data Universal Numbering System +4 (DUNS+4) number" means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts for the same parent concern.

"Registered in the CCR database" means that-

(1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database; and

(2) Battelle has validated all mandatory data fields and has marked the record "Active".

(b)

(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database prior to award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

(2) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" or "DUNS +4" followed by the DUNS or DUNS +4 number that identifies the offeror's name and address exactly as stated in the offer. The DUNS number will be used by the Battelle Contract Specialist to verify that the offeror is registered in the CCR database.

(c) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

(1) An offeror may obtain a DUNS number-

(i) If located within the United States, by calling Dun and Bradstreet at 1-866-705-5711 or via the Internet at <http://www.dnb.com>; or

(ii) If located outside the United States, by contacting the local Dun and Bradstreet office.

(2) The offeror should be prepared to provide the following information:

(i) Company legal business.

(ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.

(iii) Company Physical Street Address, City, State, and Zip Code.

(iv) Company Mailing Address, City, State and Zip Code (if separate from physical).

(v) Company Telephone Number.

(vi) Date the company was started.

(vii) Number of employees at your location.

CONSTRUCTION GENERAL PROVISIONS FIXED PRICE/Commercial – April 2004

- (viii) Chief executive officer/key manager.
- (ix) Line of business (industry).
- (x) Company Headquarters name and address (reporting relationship within your entity).

(d) If the Offeror does not become registered in the CCR database in the time prescribed by the Battelle Contract Specialist, the Battelle Contract Specialist will proceed to award to the next otherwise successful registered Offeror.

(e) Processing time, which normally takes 48 hours, should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of this solicitation.

(f) The Contractor is responsible for the accuracy and completeness of the data within the CCR database, and for any liability resulting from Battelle's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(g)

(1)

(i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in Subpart 42.12, the Contractor shall provide the responsible Battelle Contract Specialist a minimum of one business day's written notification of its intention to (A) change the name in the CCR database; (B) comply with the requirements of Subpart 42.12 of the FAR; and (C) agree in writing to the timeline and procedures specified by the responsible Battelle Contract Specialist. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (g)(1)(i) of this clause, or fails to perform the agreement at paragraph (g)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see FAR Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

(h) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the internet at <http://www.ccr.gov> or by calling 1-888-227-2423, or 269-961-5757.

(End of clause)

(ADM 3) Changes (April 2004)

(a) The Battelle Contract Specialist may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes-

- (1) In the specifications (including drawings and designs);
- (2) In the method or manner of performance of the work;
- (3) In Battelle-furnished facilities, equipment, materials, services, or site; or
- (4) Directing acceleration in the performance of the work.

(b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Battelle Contract Specialist that causes a change shall be treated as a change order under this clause; Provided, that the Contractor gives the Battelle Contract Specialist written notice stating-

- (1) The date, circumstances, and source of the order; and
- (2) That the Contractor regards the order as a change order.

CONSTRUCTION GENERAL PROVISIONS FIXED PRICE/Commercial – April 2004

(c) Except as provided in this clause, no order, statement, or conduct of the Battelle Contract Specialist shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any such order, the Battelle Contract Specialist shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (b) of this clause shall be made for any costs incurred more than 20 days before the Contractor gives written notice as required. In the case of defective specifications for which Battelle is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

(e) The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting to the Battelle Contract Specialist a written statement describing the general nature and amount of the proposal, unless this period is extended by Battelle. The statement of proposal for adjustment may be included in the notice under paragraph (b) of this clause.

(f) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

(g) Nothing contained in this clause shall excuse the contractor from proceeding with the prosecution of the work in accordance with the requirements of any direction hereunder.

(h) Notwithstanding the terms and conditions above, the contract price, and if this contract is incrementally funded, the funds allotted for the performance of this contract, shall not be increased or considered to be increased except by specific written modification of the contract signed by an authorized Battelle Representative indicating the new contract price, and if this contract is incrementally funded the new amount allotted to the contract.

(End of clause)

(ADM 4) Competition in Subcontracting (April 2004)

The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

(End of clause)

(ADM 5) Definitions (April 2004)

(a) "Commercial component" means any component that is a commercial item.

(b) "Commercial item" means-

(1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and that-

- (i) Has been sold, leased, or licensed to the general public; or
- (ii) Has been offered for sale, lease, or license to the general public;

(2) Any item that evolved from an item described in paragraph (c)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Battelle solicitation;

(3) Any item that would satisfy a criterion expressed in paragraphs (c)(1) or (c)(2) of this clause, but for-

- (i) Modifications of a type customarily available in the commercial marketplace; or
- (ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Battelle requirements. "Minor" modifications mean modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the

CONSTRUCTION GENERAL PROVISIONS FIXED PRICE/Commercial – April 2004

value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

(4) Any combination of items meeting the requirements of paragraphs (c)(1), (2), (3), or (5) of this clause that are of a type customarily combined and sold in combination to the general public;

(5) Installation services, maintenance services, repair services, training services, and other services if-

- (i) Such services are procured for support of an item referred to in paragraph (c)(1), (2), (3), or (4) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and
- (ii) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Battelle

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed. For purposes of these services-

- (i) "Catalog price" means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and
- (ii) "Market prices" means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.

(7) Any item, combination of items, or service referred to in paragraphs (c)(1) through (c)(6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Contractor; or

(8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments.

(c) "Component" means any item supplied to Battelle as part of an end item or of another component, except that for use in 52.225-9, and 52.225-11 see the definitions in 52.225-9(a) and 52.225-11(a).

(d) "Battelle Contract Specialist" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Battelle Contract Specialist acting within the limits of their authority as delegated by the Battelle Contract Specialist.

(e) The terms "Battelle," "Pacific Northwest National Laboratory," "PNNL," and "Laboratory" mean Battelle Memorial Institute, Pacific Northwest Division.

(i) The term "DOE" means the United States Department of Energy; "FERC" means the Federal Energy Regulatory Commission; and "NNSA" means the National Nuclear Security Administration.

(End of clause)

(ADM 6) Default (Fixed-Price Construction) (April 2004)

(a) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract including any extension, or fails to complete the work within this time, Battelle may, by written notice to the Contractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, Battelle may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to Battelle resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by Battelle in completing the work.

**CONSTRUCTION GENERAL PROVISIONS
FIXED PRICE/Commercial – April 2004**

(b) The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause, if-

(1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include-

- (i) Acts of God or of the public enemy,
- (ii) Acts of Battelle in either its sovereign or contractual capacity,
- (iii) Acts of another Contractor in the performance of a contract with Battelle,
- (iv) Fires,
- (v) Floods,
- (vi) Epidemics,
- (vii) Quarantine restrictions,
- (viii) Strikes,
- (ix) Freight embargoes,
- (x) Unusually severe weather, or
- (xi) Delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

(2) The Contractor, within 10 days from the beginning of any delay (unless extended by the Battelle Contract Specialist), notifies the Battelle Contract Specialist in writing of the causes of delay. The Battelle Contract Specialist shall ascertain the facts and the extent of delay. If, in the judgment of the Battelle Contract Specialist, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of the Battelle Contract Specialist shall be final and conclusive on the parties, but subject to appeal under the Disputes clause.

(c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Battelle.

(d) The rights and remedies of Battelle in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

(ADM 7) Disputes (April 2004)

(a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d)

(1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Battelle Contract Specialist for a written decision. A claim by Battelle against the Contractor shall be subject to a written decision by the Battelle Contract Specialist.

(2)

- (i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.
- (ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.
- (iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately

CONSTRUCTION GENERAL PROVISIONS FIXED PRICE/Commercial – April 2004

reflects the contract adjustment for which the Contractor believes Battelle is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$100,000 or less, the Battelle Contract Specialist must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Battelle Contract Specialist must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Battelle Contract Specialist's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) If the claim by the Contractor is submitted to the Battelle Contract Specialist or a claim by Battelle is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Battelle Contract Specialist, in writing, of the Contractor's specific reasons for rejecting the offer.

(h) Battelle shall pay interest on the amount found due and unpaid from (1) the date that the Battelle Contract Specialist receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Battelle Contract Specialist initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Battelle Contract Specialist receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Battelle Contract Specialist. *Added by Alternate I (Dec 1991).*

(End of clause)

(ADM 8) Escort Requirements (April 2004)

(a) **General.** Access to Battelle facilities and areas is restricted to staff members, Battelle officials, onsite contractor personnel, and visitors [including assignees] who have the appropriate level of security clearance, operational and administrative approval, and an appropriately coded security badge.

(b) **High Secure Access Areas.** Access/clearance requirements for "higher" level security areas (such as Protected Areas or Material Access Areas) are not described here because Battelle does not currently maintain such facilities.

(c) **Access Area / Clearance Requirements.** The following categories are listed in descending order of clearance requirements:

- (1) **Limited Area (LA):** A security area or facility used for the protection and/or use of classified matter and/or Category III quantities of special nuclear material (SNM). Unescorted access to a PNNL LA requires a security badge and a minimum of a DoD Secret (S on the badge) or DOE L clearance and appropriate approvals. In LAs where mere access to the area may afford access to the classified matter ("Exclusion Areas"), the clearance required will be commensurate with the highest level of classified matter contained therein. All Contractor employees assigned to perform work in a Limited Area (LA) will be required to be escorted at all times by an employee possessing an appropriate clearance level. Battelle shall inform the Contractor when an escort is required and shall make the necessary arrangement for an escort at no additional cost to the Contractor.
- (2) **Property Protection Area (PPA):** An area or facility containing DOE property. Unescorted access to a PPA (Sensitive and Non-sensitive Facility) is restricted to individuals on official business, only with appropriate operational and administrative approvals and security badge there are generally no DOE security clearance requirements in a PPA. Contact Battelle for additional requirements on foreign nationals, visitors and other non-staff access.
- (3) **Administratively Controlled Area:** These are primarily PPAs where management procedures and constraints, operational procedures, accountability procedures, training, and supplemental controls are established to provide an acceptable level of protection for DOE assets. Normal work hour access is generally controlled by means other than locks, automated access control devices, or receptionists (i.e., signs detailing access procedures are used in

CONSTRUCTION GENERAL PROVISIONS FIXED PRICE/Commercial – April 2004

place of locked gates/doors, etc.). There are generally no DOE security clearance requirements in an Administratively Controlled Area. Contact Battelle for additional requirements on foreign nationals, visitors and other non-staff access.

- (4) Public Access Area: A specifically defined area that may be entered by the general public without the constraints of a security area. No badges are required for access to designated Public Access Areas.

(End of clause)

(ADM 9) Excusable Delays (April 2004)

(a) Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of Battelle in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. "Default" includes failure to make progress in the work so as to endanger performance.

(b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless-

(1) The subcontracted supplies or services were obtainable from other sources;

(2) The Battelle Contract Specialist ordered the Contractor in writing to purchase these supplies or services from the other source; and

(3) The Contractor failed to comply reasonably with this order.

(c) Upon request of the Contractor, the Battelle Contract Specialist shall ascertain the facts and extent of the failure. If the Battelle Contract Specialist determines that any failure to perform results from one or more of the causes above, the completion time shall be revised, subject to the rights of Battelle under the termination clause of this contract.

(End of clause)

(ADM 10) Failure to Perform (April 2004)

(a) Subject to the Excusable Delays clause (if included in this contract), if the Contractor fails to perform this contract under its terms, the Battelle Contract Specialist shall give the Contractor written notice stating the failure. Thereafter, regardless of any other provision of this contract, the Contractor shall not be entitled to an equitable adjustment under either this contract or any related contract, to the extent the equitable adjustment arises from the Contractor's failure to perform or from any reasonable remedial action taken by the Battelle Contract Specialist based upon the failure.

(b) The failure of Battelle to insist, in one or more instances, upon the performance of any term of this contract is not a waiver of Battelle's right to future performance of such term, and the Contractor's obligation for future performance of such term shall continue in effect.

(c) The rights and remedies of Battelle in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

(ADM 11) Interpretation and Intent (April 2004)

(a) The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price.

(b) The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards.

CONSTRUCTION GENERAL PROVISIONS FIXED PRICE/Commercial – April 2004

(c) In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in the Article entitled "Order of Precedence".

(d) Terms, words and phrases used in the Contract Documents, including the Agreement, shall have the meanings given them in the General Provisions of the Contract.

(e) Trade custom and trade usage are superseded by this Contract and shall not be applicable in the interpretation of performance of this Contract.

(f) The Contract Documents form the entire agreement between the parties pertaining to the Work and supersedes all inquiries, proposals, agreements, negotiations and commitments, whether written or oral, prior to the date of execution of this Contract, and by incorporation herein are as fully binding on the parties as if repeated herein.

(g) The parties have made no oral representations or other agreements except as specifically stated in the Contract Documents.

(End of clause)

(ADM 12) Federal, State and Local Laws and Regulations (April 2004)

(a) In performing work under this contract, the contractor shall comply with the requirements of applicable Federal, State, and local laws and regulations, unless relief has been granted in writing by the appropriate regulatory agency. A List of Applicable Laws and regulations (List A) may be appended to this contract for information purposes. Omission of any applicable law or regulation from List A does not affect the obligation of the contractor to comply with such law or regulation pursuant to this paragraph.

(b) Except as otherwise directed by the Battelle Contract Specialist, the contractor shall procure all necessary permits or licenses required for the performance of work under this contract.

(e) Regardless of the performer of the work, the contractor is responsible for compliance with the requirements of this clause. The contractor is responsible for flowing down the requirements of this clause to subcontracts at any tier to the extent necessary to ensure the contractor's compliance with the requirements.

(End of Clause)

(ADM 13) Limitations on Subcontracting (April 2004)

(a) This clause does not apply to the unrestricted portion of a partial set-aside.

(b) By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract in the case of a contract for-

(1) *Services (except construction)*. At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern.

(2) *Supplies (other than procurement from a non-manufacturer of such supplies)*. The concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.

(3) *General construction*. The concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees.

(4) *Construction by special trade contractors*. The concern will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees.

(End of clause)

CONSTRUCTION GENERAL PROVISIONS FIXED PRICE/Commercial – April 2004

(ADM 14) Order of Precedence (April 2004)

(a) In the event of an inconsistency between provisions of this contract, the inconsistency shall be resolved by giving precedence in the following order:

- (1) All written Modifications, Amendments and Change Orders to the Agreement issued in accordance with the Contract General Provisions;
- (2) The Agreement, including all exhibits and attachments, executed by Battelle and the Contractor; Representations and other instructions;
- (3) Written Special Provisions, if any to the Terms and Conditions of Contract;
- (4) The General Provisions of Contract;
- (5) The Construction Technical Documents, Specifications, Drawings, and other design media defining the work;
- (6) Other provisions, documents, exhibits, attachments, performance requirements, and schedules of the contract, not heretofore mentioned;
- (7) The Contractor's technical proposal, if made a part of the contract.

(End of clause)

(ADM 15) Payments under Fixed-Price Construction Contracts (April 2004)

(a) *Payment of price.* Battelle shall pay the Contractor the contract price as provided in this contract.

(b) *Progress payments.* Battelle shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Battelle Contract Specialist, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Battelle Contract Specialist.

(1) The Contractor's request for progress payments shall include the following substantiation:

- (i) An itemization of the amounts requested, related to the various elements of work required by the contract covered by the payment requested.
- (ii) A listing of the amount included for work performed by each subcontractor under the contract.
- (iii) A listing of the total amount of each subcontract under the contract.
- (iv) A listing of the amounts previously paid to each such subcontractor under the contract.
- (v) Additional supporting data in a form and detail required by the Battelle Contract Specialist.

(2) In the preparation of estimates, the Battelle Contract Specialist may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site also may be taken into consideration if-

- (i) Consideration is specifically authorized by this contract; and
- (ii) The Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this contract.

(c) *Contractor certification.* Along with each request for progress payments, the Contractor shall furnish the following certification, or payment shall not be made: (However, if the Contractor elects to delete paragraph (c)(4) from the certification, the certification is still acceptable.)

I hereby certify, to the best of my knowledge and belief, that-

(1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

**CONSTRUCTION GENERAL PROVISIONS
FIXED PRICE/Commercial – April 2004**

(2) All payments due to subcontractors and suppliers from previous payments received under the contract have been made, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements and the requirements of chapter 39 of Title 31, United States Code;

(3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract; and

(4) This certification is not to be construed as final acceptance of a subcontractor's performance.

(Name)

(Title)

(Date)

(d) *Refund of unearned amounts.* If the Contractor, after making a certified request for progress payments, discovers that a portion or all of such request constitutes a payment for performance by the Contractor that fails to conform to the specifications, terms, and conditions of this contract (hereinafter referred to as the "unearned amount"), the Contractor shall-

(1) Notify the Battelle Contract Specialist of such performance deficiency; and

(2) Be obligated to pay Battelle an amount (computed by the Battelle Contract Specialist in the manner provided in paragraph (j) of this clause) equal to interest on the unearned amount from the 8th day after the date of receipt of the unearned amount until-

- (i) The date the Contractor notifies the Battelle Contract Specialist that the performance deficiency has been corrected; or
- (ii) The date the Contractor reduces the amount of any subsequent certified request for progress payments by an amount equal to the unearned amount.

(e) *Retainage.* If the Battelle Contract Specialist finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Battelle Contract Specialist shall authorize payment to be made in full. However, if satisfactory progress has not been made, the Battelle Contract Specialist may retain a maximum of 10 percent of the amount of the payment until satisfactory progress is achieved. When the work is substantially complete, the Battelle Contract Specialist may retain from previously withheld funds and future progress payments that amount the Battelle Contract Specialist considers adequate for protection of Battelle and shall release to the Contractor all the remaining withheld funds. Also, on completion and acceptance of each separate building, public work, or other division of the contract, for which the price is stated separately in the contract, payment shall be made for the completed work without retention of a percentage.

(f) *Title, liability, and reservation of rights.* All material and work covered by progress payments made shall, at the time of payment, become the sole property of Battelle, but this shall not be construed as-

(1) Relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or

(2) Waiving the right of Battelle to require the fulfillment of all of the terms of the contract.

(g) *Reimbursement for bond premiums.* In making these progress payments, Battelle shall, upon request, reimburse the Contractor for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after the Contractor has furnished evidence of full payment to the surety. The retainage provisions in paragraph (e) of this clause shall not apply to that portion of progress payments attributable to bond premiums.

(h) *Final payment.* Battelle shall pay the amount due the Contractor under this contract after-

(1) Completion and acceptance of all work;

(2) Presentation of a properly executed voucher; and

(3) Presentation of release of all claims against Battelle arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of

CONSTRUCTION GENERAL PROVISIONS FIXED PRICE/Commercial – April 2004

the assignee if the Contractor's claim to amounts payable under this contract has been assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 3727 and 41 U.S.C. 15).

(i) *Limitation because of undefinitized work.* Notwithstanding any provision of this contract, progress payments shall not exceed 80 percent on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(j) *Interest computation on unearned amounts.* In accordance with 31 U.S.C. 3903(c)(1), the amount payable under paragraph (d)(2) of this clause shall be-

(1) Computed at the rate of average bond equivalent rates of 91-day Treasury bills auctioned at the most recent auction of such bills prior to the date the Contractor receives the unearned amount; and

(2) Deducted from the next available payment to the Contractor.

(End of clause)

(ADM 16) Pricing of Adjustments (April 2004)

(a) **General.** When costs are a factor in any determination of a contract price adjustment pursuant to the "Changes" clause or any other provision of this contract, such costs shall be in accordance with the contract cost principles and procedures, in Subpart 31 of the Federal Acquisition Regulation (FAR), as supplemented or modified by Department of Energy Acquisition Regulation (DEAR) Part 931 in effect on the Effective Date of the Contract, except as otherwise provided in this contract with respect to facilities capital cost of money (CAS 414).

(b) **Net Cost of Change.** For adjustments that either increase or decrease the amount of the Contract Price, the application of markups for Overhead and Profit shall be on the net change in direct costs for the performance of the changed work.

(c) **Allowable Markups.** For parties performing the Work, allowable markup percentages on changes will not exceed the following:

(1) **Changes < \$25,000.** 15 percent overhead and 10 percent profit on total direct costs up to \$25,000.00;

(2) **Changes \$25K to \$100K.** 10 percent overhead and 7 ½ percent profit on total costs over \$25,000.00 up to \$100,000.00.

(3) **Changes > \$100,000.** For changes over \$100,000.00 the allowance for overhead shall be the contractor' or subcontractor's actual overhead rate as established by audit within the last 12 months, not to exceed 10%, with a negotiated allowance for profit using the DEAR weighted guideline method, not to exceed 5%.

(d) **Markups on Lower Tiers.**

(1) **Changes < \$100,000.** On changes less than \$100,000.00, no more than three mark-ups, one overhead, one profit/fee applied by the party performing the work, and one commission or markup by the General Contractor (not to exceed 5%) will be allowed regardless of the number of tiers of subcontractors or the subcontract instrument (i.e., purchase order, contract, etc.).

(2) **Changes > \$100,000.** On changes over \$100,000.00, overhead and profit for parties performing the Work will be determined in accordance with the schedule above. Contractor commission shall be expanded to allow for the Contractor' actual overhead rate as established by audit within the last 12 months, not to exceed 10%, with a negotiated allowance for profit using the DEAR weighted guideline method, not to exceed 5%.

(e) **Premium Adjustments.** Costs of premium adjustments, consequent upon changes ordered, for Payment and Performance Bonds are allowable for the prime contractor only.

(f) **Consumables.** Consumables shall not be considered on a percentage of cost basis.

(g) **Small Tools.** Consideration for Small tools is allowable at a rate not to exceed 3% of net labor cost.

CONSTRUCTION GENERAL PROVISIONS FIXED PRICE/Commercial – April 2004

(h) **Equipment.** Rates for rental of contractor or subcontractor owned equipment shall be fair and equitable. Actual cost data shall be used when such data can be determined for both ownership and operating costs for each piece of equipment or groups of similar equipment from the Contractor's accounting records. When such costs cannot be so determined, the "Rental Rate Blue Book for Construction Equipment" published by Dataquest, Inc. will be utilized for Contractor equipment in operation or on standby, provided such rental rate is reviewed by Battelle to ensure factors included within the rental rate exclude unallowable or unacceptable costs in accordance with FAR 31.105.

(End of clause)

(ADM 17) Prohibited Articles (April 2004)

(a) **Prohibited Articles Anywhere.** The following are Prohibited Articles anywhere on Battelle premises and offsite locations under the cognizance of Battelle:

- (1) Dangerous weapons
- (2) Explosives, ammunition, and incendiary devices
- (3) Controlled substances and drug paraphernalia
- (4) Alcoholic beverages
- (5) Contraband (includes other items prohibited by law).

(b) **Exclusion, Limited and/or Protected Areas.** The following are Prohibited Articles within Exclusion, Limited and/or Protected Areas:

- (1) All items listed above, and
- (2) Privately owned recording equipment
- (3) Privately owned cameras (still, motion, video)
- (4) Privately owned computers and associated media (including palm pilots)
- (5) Privately owned cellular telephones
- (6) Privately owned radio transmitters.

(End of clause)

(ADM 18) Right to Offset (April 2004)

Battelle, without waiver or limitation of any rights or remedies of Battelle or Battelle, shall be entitled from time to time to deduct from any amounts due or owing by Battelle to Contractor in connection with this Contract (or any other contract with Battelle), any and all amounts owed by Contractor to Battelle in connection with this Contract.

(End of clause)

(ADM 19) Site Access / Badge Requirements (April 2004)

(a) **General.** Any person performing work for Battelle on Battelle premises is required to wear a security badge identifying himself/herself.

(1) **U.S. Citizen.** Only individuals possessing proof of valid United States Citizenship shall be issued a security badge or allowed access on Battelle premises.

(2) **Worn in Plain View.** The identification badge shall be worn in plain view above the waist, on the front of the body. If required, a dosimeter will be issued in conjunction with the security badge.

(b) **Location of Badging Office.** Battelle's Badging office is located in the Environmental Technology Building (ETB), Room 1104. The ETB Building address is 3200 Q Avenue, Richland WA 99352. Badges may be picked up between the hours of 7:30am to 4:00pm Monday through Friday (excluding holidays).

(c) **Process for Obtaining a Badge.**

(1) **Written Request.** Contractor submit a written badge request to Battelle for every prospective employee to perform contract work on the Battelle premises at least two (2) working days prior to the date the employee(s) first require the badge for work performance. On the request, Contractor shall provide Battelle the complete name (as it appears on the photo

CONSTRUCTION GENERAL PROVISIONS FIXED PRICE/Commercial – April 2004

identification to be used), place of birth, social security number and citizenship of the individual(s) requiring a security badge.

(2) **Pre-employment Drug Screen.** Every Contractor and subcontractor employee who will work on Battelle premises must present proof of a negative drug screen dated within the last three (3) months. Site access and participation in all employees training will be denied until satisfactory proof of a negative drug screen.

- i. **SAMSHA Certified.** Only drug tests by a SAMHSA certified laboratory will be considered acceptable as proof of a negative drug screen.
- ii. **Contractors Responsibility.** All testing shall be the Contractors responsibility. After receipt of a drug screen result, the Contractor shall notify Battelle as to employee's employment suitability. With the notification, Contractor shall submit a copy of the test result "Personnel Sensitive Information". A confirmed positive will deny access to Battelle premises for a minimum of one (1) year.

(3) **Suspect Behavior or Circumstances.** If Battelle, or the Contractor or subcontractor believes that a Contractor or subcontractor employee's job performance is being adversely affected by drug or substance (including alcohol) use, Battelle may direct the Contractor to remove the employee from Battelle premises and require the employee to submit to drug testing. Examples of behavior or circumstances indicating possible drug or substance abuse are possession, sale or delivery, or credible information that an individual is using drugs or abusing alcohol, or an accident or injury.

(4) Required Contractor Training.

- i. **GERT / LAB Orientation.** All Contractor employees must successfully complete General Employee Radiation Training (GERT) / Battelle Laboratory (LAB) Orientation. GERT / LAB Orientation is estimated to take 4 hours. The employee cost of the orientation shall be by the contractor.
- ii. **Other Required Training.** Other Battelle sponsored training required for performance of the Contract Work will be provided to the Contractor at no cost for the trainer or classroom time. Contractor shall be responsible for the employee cost. Contractor shall allow Battelle 2 weeks to schedule the training after proper notification.
- iii. **Failed Training / Tests and Contractor "No-Shows".** Contractor shall be responsible for the trainer / classroom costs associated with Contractor employees that have either failed to successfully complete a required training or have failed to "show up" for a scheduled training date. Costs to be charged the contractor for retaking failed training or rescheduling due to no-shows is: \$600 (each) for Radiation Worker I or II training; \$160 for Respiratory Protection Worker training; \$50 for all other Battelle sponsored training.
- iv. **Appear in Person.** Each Contractor employee requiring a badge must appear in person with photo identification (e.g. valid driver's license) to identify himself/herself to obtain a badge.

(5) **Lost Badges.** If a Contractor employee loses a badge and/or dosimeter, he/she shall report the loss immediately upon discovery to Battelle.

(6) **Employee Termination / Completion of the Work.** Upon termination of employment or completion of the Contractors work, and before final payment shall be made, all badges and dosimeters issued to Contractor employees shall be returned to the issuing office. Battelle will charge Contractor \$100 for each badge or dosimeter not returned. The charge shall be deducted from payments otherwise due the Contractor. Refund of charges, previously collected for badges and/or dosimeters subsequently found will not be made after the date of final payment to the Contractor.

(End of clause)

(ADM 20) State and Local Taxes (April 2004)

(a) The contractor agrees to notify the Battelle Contract Specialist of any State or local tax, fee, or charge levied or purported to be levied on or collected from the contractor with respect to the contract work, any transaction thereunder, or property in the custody or control of the contractor and constituting an allowable item of cost if due and payable, but which the contractor has reason to believe, or the Battelle Contract Specialist has advised the contractor, is or may be inapplicable or invalid; and the contractor further agrees to refrain from paying any such tax, fee, or charge unless authorized in writing by the Battelle Contract Specialist. Any State or local tax, fee, or charge paid with the approval of the Battelle Contract Specialist or on the basis of advice from the Battelle Contract Specialist that such tax, fee, or charge is applicable and valid, and which would otherwise be an allowable item of cost, shall not be disallowed as an item of cost by reason of any subsequent ruling or determination that such tax, fee, or charge was in fact inapplicable or invalid.

CONSTRUCTION GENERAL PROVISIONS FIXED PRICE/Commercial – April 2004

(b) The contractor agrees to take such action as may be required or approved by the Battelle Contract Specialist to cause any State or local tax, fee, or charge which would be an allowable cost to be paid under protest; and to take such action as may be required or approved by the Battelle Contract Specialist to seek recovery of any payments made, including assignment to Battelle or its designee of all rights to an abatement or refund thereof, and granting permission for Battelle to join with the contractor in any proceedings for the recovery thereof or to sue for recovery in the name of the contractor. If the Battelle Contract Specialist directs the contractor to institute litigation to enjoin the collection of or to recover payment of any such tax, fee, or charge referred to above, or if a claim or suit is filed against the contractor for a tax, fee, or charge it has refrained from paying in accordance with this clause, the procedures and requirements of the clause entitled "Insurance-Litigation and Claims" shall apply and the costs and expenses incurred by the contractor shall be allowable items of costs, as provided in this contract, together with the amount of any judgment rendered against the contractor.

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

(End of Clause)

(ADM 21) Stop-Work Order (April 2004)

(a) The Battelle Contract Specialist may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Battelle Contract Specialist shall either-

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of Battelle, clause of this contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Battelle Contract Specialist shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if-

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Battelle Contract Specialist decides the facts justify the action, the Battelle Contract Specialist may receive and act upon the claim submitted at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of Battelle, the Battelle Contract Specialist shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Battelle Contract Specialist shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(End of clause)

(ADM 22) Suspension of Work (April 2004)

(a) The Battelle Contract Specialist may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Battelle Contract Specialist determines appropriate for the convenience of Battelle.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Battelle Contract Specialist in the administration of this contract, or (2) by the Battelle Contract

CONSTRUCTION GENERAL PROVISIONS FIXED PRICE/Commercial – April 2004

Specialist's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.

(c) A claim under this clause shall not be allowed-

(1) For any costs incurred more than 20 days before the Contractor shall have notified the Battelle Contract Specialist in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and

(2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

(End of clause)

(ADM 23) Termination for Convenience of Battelle (Fixed-Price) (April 2004)

(a) Battelle may terminate performance of work under this contract in whole or, from time to time, in part if the Battelle Contract Specialist determines that a termination is in Battelle's interest. The Battelle Contract Specialist shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Battelle Contract Specialist, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to Battelle, as directed by the Battelle Contract Specialist, all right, title, and interest of the Contractor under the subcontracts terminated, in which case Battelle shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Battelle Contract Specialist, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(6) As directed by the Battelle Contract Specialist, transfer title and deliver to Battelle-

(i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and

(ii) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to Battelle.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Battelle Contract Specialist may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which Battelle has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Battelle Contract Specialist, any property of the types referred to in paragraph (b)(6) of this clause; *provided*, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Battelle Contract Specialist. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by

CONSTRUCTION GENERAL PROVISIONS FIXED PRICE/Commercial – April 2004

Battelle under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Battelle Contract Specialist.

(c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Battelle Contract Specialist upon written request of the Contractor within this 120-day period.

(d) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to the Battelle Contract Specialist a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Battelle Contract Specialist. The Contractor may request Battelle to remove those items or enter into an agreement for their storage. Within 15 days, Battelle will accept title to those items and remove them or enter into a storage agreement. The Battelle Contract Specialist may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Contractor shall submit a final termination settlement proposal to the Battelle Contract Specialist in the form and with the certification prescribed by the Battelle Contract Specialist. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Battelle Contract Specialist upon written request of the Contractor within this 1-year period. However, if the Battelle Contract Specialist determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Battelle Contract Specialist may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) of this clause, the Contractor and the Battelle Contract Specialist may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) of this clause, exclusive of costs shown in paragraph (g)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be modified, and the Contractor paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) If the Contractor and the Battelle Contract Specialist fail to agree on the whole amount to be paid because of the termination of work, the Battelle Contract Specialist shall pay the Contractor the amounts determined by the Battelle Contract Specialist as follows, but without duplication of any amounts agreed on under paragraph (f) of this clause:

(1) The contract price for completed supplies or services accepted by Battelle (or sold or acquired under paragraph (b)(9) of this clause) not previously paid for, adjusted for any saving of freight and other charges.

(2) The total of-

- (i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under paragraph (g)(1) of this clause;
- (ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (g)(2)(i) of this clause; and
- (iii) A sum, as profit on subdivision (g)(2)(i) of this clause, determined by the Battelle Contract Specialist under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Battelle Contract Specialist shall allow no profit under this subdivision (g)(2)(iii) and shall reduce the settlement to reflect the indicated rate of loss.

(3) The reasonable costs of settlement of the work terminated, including-

- (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
- (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
- (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

CONSTRUCTION GENERAL PROVISIONS FIXED PRICE/Commercial – April 2004

(h) Except for normal spoilage, and except to the extent that Battelle expressly assumed the risk of loss, the Battelle Contract Specialist shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value, as determined by the Battelle Contract Specialist, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to Battelle or to a buyer.

(i) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Battelle Contract Specialist under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (l), respectively, and failed to request a time extension, there is no right of appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted-

- (1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;
- (2) Any claim which Battelle has against the Contractor under this contract; and
- (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to Battelle.

(l) If the termination is partial, the Contractor may file a proposal with the Battelle Contract Specialist for an equitable adjustment of the price(s) of the continued portion of the contract. The Battelle Contract Specialist shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Battelle Contract Specialist.

(m)

(1) Battelle may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Battelle Contract Specialist believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to Battelle upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Battelle Contract Specialist because of the circumstances.

(n) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to Battelle, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Battelle Contract Specialist, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

(End of clause)

(ADM 24) Use of Battelle's Name (April 2004)

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

(b) The Contractor shall not make news releases, publicize or issue advertising pertaining to the Work or this Contract without first obtaining the written approval of Battelle.

(c) Battelle will exercise diligence in attempting to provide notice to the Contractor prior to preparing or releasing public information about the Laboratory that includes or reflects on the Contractors performance in or Work of this Contract; however, Battelle shall not be restricted in any way by this clause in communicating the Work of this Contract to the general public at Battelle's general discretion.

(End of clause)

**CONSTRUCTION GENERAL PROVISIONS
FIXED PRICE/Commercial – April 2004**

PART 2 - CONSTRUCTION PROVISIONS

(CON 1) Area Limitations and Work Requirements (Jan 2004)

(a) **Time.** "Time," if stated as a number of days, is calculated using calendar days, unless otherwise specified, and will include Saturdays, Sundays, and legal holidays. If the last day of the contract period of performance falls on a Saturday, Sunday, or legal holiday, then the period shall include the next working day.

(b) **Working Hours.** Normal working hours are Monday through Friday from 7:30am to 4:00pm. The Contractor shall not perform work at the Worksite other than during normal working hours without prior written approval. The Contractor shall give Battelle at least two (2) hours prior notice if its employees are to be working after the normal shift period Monday through Friday. The Contractor shall give Battelle notice on the prior working day if its employees will be working before normal shift hours, Monday through Friday, or will be working at any time on Saturday, Sunday, or holidays. The notice shall include the type of work to be performed, location of work, date and hours of work, and description of any heavy equipment to be used. Battelle advance approval is required any time work is to be performed at other than normal shift periods

(c) **Employee Orientations.** Prior to entry by the Contractor employees onto the Worksite, the Contractor's supervisory employees shall orient all its other employees, its Subcontractors and their employees, as to the working conditions and requirements.

(d) **Limiting the Work Area.** The Contractor shall restrict its personnel and operations to the limits of the construction area. Any changes and or modifications to existing installations located at the outer limits of the construction area shall be permitted only after specific approval is received from Battelle.

(e) **Overhead Work Restrictions.** Under no conditions shall the Contractor operate or move cranes, hoists or similar equipment within twenty (20) feet of overhead electrical conductors, guy wires, or substations, unless prior authorization for such operations is obtained from Battelle, giving full details of the method of equipment operations. Authorization from Battelle shall also be obtained when transporting materials, machinery, or other equipment, which establishes a height exceeding fifteen (15) feet from the road and/or ground surface.

(f) **Oversize Loads.** An Oversize Load permit is required when the vehicle or load exceeds: Width -8'-6". Height -14ft. Length -40ft, (single unit) 48ft, (single trailing unit). Contact Battelle to obtain the permit.

(g) **Moving Heavy Equipment.** The Contractor shall notify Battelle at least two (2) working days prior to the date it proposes to move any heavy equipment into or from the Worksite and shall not move any such equipment into or from the Worksite until receipt of written approval from Battelle. Heavy equipment will not be allowed to travel across existing paved roadways unless rubber tires or other adequate protection such as heavy planking protects such roadway. Movement of heavy equipment equipped with crawler-type treads on existing paved surfaces is forbidden and such equipment must be transported to the Worksite on rubber- tired trailers. Upon completion of the Work, the equipment shall be promptly removed from the Worksite.

(h) **System Outages.** Work, which requires any existing building utility system (including fire protection) to be taken out of service, shall be scheduled and performed so that the length of time the utility is out of service is held to a minimum. All material for the alteration and tie-in work shall be on hand when each utility service interruption is scheduled. The Contractor shall notify Battelle not less than five (5) working days prior to each required utility shutdown. All tie-in work shall be scheduled and performed so that the shutdown time will not exceed four (4) hours for water and two (2) hours for electrical or fire alarm. Battelle shall approve methods of performing the tie-in work prior to any utility system outage. Prior approval must be obtained for connection to and use of existing fire hydrants.

(i) Special Excavation Requirements.

(1) Where required, the Contractor shall provide cribbing for excavation to prevent undermining or movement of any load bearing concrete slabs or footings. All excavations shall require a special permit and comply with OSHA and WISHA regulations.

(2) In the event any underground pipe line, conduit or other object not shown on the drawings or otherwise indicated in the Specifications is encountered, the Contractor shall immediately stop work and notify Battelle.

(3) Except as otherwise specified, protection (and restoration) of existing facilities shall be as specified in section titled "Protection of Existing Utilities. All underground piping, conduits, ducts, and other utilities shall be satisfactorily shored, braced and/or guyed as specified in the above referenced section.

(k) Blind Penetration Requirements.

(1) All "Blind Penetrations" where the contractor must penetrate into or through a wall, ceiling, floor or similar obstruction and the path of the penetration is not visible requires a Battelle Permit. The Contractor shall notify Battelle 5 days in advance of any planned Blind Penetrations to allow Battelle time to issue the permit.

CONSTRUCTION GENERAL PROVISIONS FIXED PRICE/Commercial – April 2004

(2) The Contractor shall perform a sub-surface scan using penetrating radar of the surface to be blind penetrated. The contractor shall physically mark the location of any suspected embedment and do not proceed without release by Battelle if a suspected embedment is marked within 8 inches of the planned penetration.

(3) All potentially energized circuits or sources in the proximity of the penetration shall be locked out and tagged by the contractor in a de-energized condition.

(4) All energized contractor equipment used in blind penetrations shall be equipped with a "kill switch" or "drill stop" to effectively stop the contractor equipment when the drill or energized penetrating equipment comes in contact with any metallic object.

(5) Contractor shall notify Battelle immediately upon hitting an obstruction and/or the kill switch de-energizes the penetrating equipment. Disengaging the kill switch requires Battelle concurrence.

(6) In addition to whatever other PPE the contractor considers necessary for a Blind Penetration, the worker performing the penetration operation shall wear dielectric, high voltage gloves rated for at least 1000v during the penetrating activity.

(End of clause)

(CON 2) Availability and Use of Utility Services (April 2004)

(a) Battelle shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to Battelle or, where the utility is produced by Battelle, at reasonable rates determined by the Battelle Contract Specialist. The Contractor shall carefully conserve any utilities furnished without charge.

(b) The Contractor, at its expense and in a workmanlike manner satisfactory to the Battelle Contract Specialist, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by Battelle, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

(End of clause)

(CON 3) Brand Name or Equal – (April 2004)

(a) If an item in this solicitation is identified as "brand name or equal," the purchase description reflects the characteristics and level of quality that will satisfy Battelle's needs. The salient physical, functional, or performance characteristics that "equal" products must meet are specified in the solicitation.

(b) To be considered for award, offers of "equal" products, including "equal" products of the brand name manufacturer, must-

(1) Meet the salient physical, functional, or performance characteristic specified in this solicitation;

(2) Clearly identify the item by-

(i) Brand name, if any; and

(ii) Make or model number;

(3) Include descriptive literature such as illustrations, drawings, or a clear reference to previously furnished descriptive data or information available to the Battelle Contract Specialist; and

(4) Clearly describe any modifications the offeror plans to make in a product to make it conform to the solicitation requirements. Mark any descriptive material to clearly show the modifications.

(c) The Battelle Contract Specialist will evaluate "equal" products on the basis of information furnished by the offeror or identified in the offer and reasonably available to the Battelle Contract Specialist. The Battelle Contract Specialist is not responsible for locating or obtaining any information not identified in the offer.

(d) Unless the offeror clearly indicates in its offer that the product being offered is an "equal" product, the offeror shall provide the brand name product referenced in the solicitation.

(End of clause)

**CONSTRUCTION GENERAL PROVISIONS
FIXED PRICE/Commercial – April 2004**

(CON 4) Buy American Act-Construction Materials (April 2004)

(a) *Definitions.* As used in this clause-

"Component" means an article, material, or supply incorporated directly into a construction material.

"Construction material" means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by Battelle are supplies, not construction material.

"Cost of components" means-

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

"Domestic construction material" means-

(1) An unmanufactured construction material mined or produced in the United States; or

(2) A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic.

"Foreign construction material" means a construction material other than a domestic construction material.

"United States" means the 50 States, the District of Columbia, and outlying areas.

(b) *Domestic preference.*

(1) This clause implements the Buy American Act (41 U.S.C. 10a - 10d) by providing a preference for domestic construction material. The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.

(2) This requirement does not apply to the construction material or components listed by Battelle as follows:

[Battelle Contract Specialist to list applicable excepted materials or indicate "none"]

(3) The Battelle Contract Specialist may add other foreign construction material to the list in paragraph (b)(2) of this clause if Battelle determines that-

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the requirements of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or

**CONSTRUCTION GENERAL PROVISIONS
FIXED PRICE/Commercial – April 2004**

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination of inapplicability of the Buy American Act.

(1)

(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(3) of this clause shall include adequate information for Battelle evaluation of the request, including-

- (A) A description of the foreign and domestic construction materials;
- (B) Unit of measure;
- (C) Quantity;
- (D) Price;
- (E) Time of delivery or availability;
- (F) Location of the construction project;
- (G) Name and address of the proposed supplier; and
- (H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Battelle Contract Specialist need not make a determination.

(2) If Battelle determines after contract award that an exception to the Buy American Act applies and the Battelle Contract Specialist and the Contractor negotiate adequate consideration, the Battelle Contract Specialist will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(3)(i) of this clause.

(3) Unless Battelle determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.

(d) *Data*. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison			
<u>Construction Material Description</u>	<u>Unit of Measure</u>	<u>Quantity</u>	<u>Price (Dollars)*</u>
<i>Item 1:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
<i>Item 2:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material			

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]
[Include other applicable supporting information.]
[* Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]

CONSTRUCTION GENERAL PROVISIONS FIXED PRICE/Commercial – April 2004

(CON 5) Care, Custody, Control and Title to Materials and Equipment (April 2004)

(a) **Good Clear Title.** Good and clear title to all materials and equipment furnished by Contractor under this Contract for the Work shall, except as expressly provided otherwise, elsewhere in this Contract, pass to Battelle upon incorporation into the permanent plant. Contractor shall ensure that subcontractors from whom Contractor obtains materials and equipment do not retain, encumber or reserve title to such items, and Contractor shall defend, indemnify and hold Battelle harmless from any such claims by its subcontractors.

(b) **Care, Custody and Control.** Notwithstanding the provisions of this section, the care, custody and control of Contractor's Work incorporated into the permanent plant shall remain with Contractor until such Work has been accepted in writing by Battelle and shall thereupon pass to Battelle unless Battelle notifies Contractor in writing that such care, custody, and control is assumed by Battelle at an earlier date.

(End of clause)

(CON 6) Cleaning Up (April 2004)

The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Contractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of Battelle. Upon completing the work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the Battelle Contract Specialist.

(End of clause)

(CON 7) Differing Site Conditions (April 2004)

(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Battelle Contract Specialist of-

(1) Subsurface or latent physical conditions at the site which differ materially from those indicated in this contract; or

(2) Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

(b) The Battelle Contract Specialist shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.

(c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; *provided*, that the time prescribed in paragraph (a) of this clause for giving written notice may be extended by the Battelle Contract Specialist.

(d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

(End of clause)

(CON 8) Inspection of Construction (April 2004)

(a) *Definition.* "Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.

(b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. The Contractor shall maintain complete inspection records and make them available to Battelle. All work shall be conducted under the general direction of the Battelle Contract Specialist and is subject to Battelle inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.

CONSTRUCTION GENERAL PROVISIONS FIXED PRICE/Commercial – April 2004

(c) Battelle inspections and tests are for the sole benefit of Battelle and do not-

- (1) Relieve the Contractor of responsibility for providing adequate quality control measures;
- (2) Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;
- (3) Constitute or imply acceptance; or
- (4) Affect the continuing rights of Battelle after acceptance of the completed work under paragraph (i) of this section.

(d) The presence or absence of a Battelle inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without the Battelle Contract Specialist's written authorization.

(e) The Contractor shall promptly furnish, at no increase in contract price, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Battelle Contract Specialist. Battelle may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. Battelle shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.

(f) The Contractor shall, without charge, replace or correct work found by Battelle not to conform to contract requirements, unless in the public interest Battelle consents to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

(g) If the Contractor does not promptly replace or correct rejected work, Battelle may-

- (1) By contract or otherwise, replace or correct the work and charge the cost to the Contractor; or
- (2) Terminate for default the Contractor's right to proceed.

(h) If, before acceptance of the entire work, Battelle decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet contract requirements, the Battelle Contract Specialist shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

(i) Unless otherwise specified in the contract, Battelle shall accept, as promptly as practicable after completion and inspection, all work required by the contract or that portion of the work the Battelle Contract Specialist determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or Battelle's rights under any warranty or guarantee.

(End of clause)

(CON 9) Layout of Work (April 2004)

The Contractor shall lay out its work from Battelle established base lines and bench marks indicated on the drawings, and shall be responsible for all measurements in connection with the layout. The Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the work. The Contractor shall be responsible for executing the work to the lines and grades that may be established or indicated by the Battelle Contract Specialist. The Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by the Battelle Contract Specialist until authorized to remove them. If such marks are destroyed by the Contractor or through its negligence before their removal is authorized, the Battelle Contract Specialist may replace them and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

(End of clause)

(CON 10) Material and Workmanship (April 2004)

(a) All equipment, material, and articles incorporated into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any

CONSTRUCTION GENERAL PROVISIONS FIXED PRICE/Commercial – April 2004

equipment, material, article, or process that, in the judgment of the Battelle Contract Specialist, is equal to that named in the specifications, unless otherwise specifically provided in this contract.

(b) The Contractor shall obtain the Battelle Contract Specialist's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Battelle Contract Specialist the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the Battelle Contract Specialist, the Contractor shall also obtain the Battelle Contract Specialist's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(c) All work under this contract shall be performed in a skillful and workmanlike manner. The Battelle Contract Specialist may require, in writing, that the Contractor remove from the work any employee the Battelle Contract Specialist deems incompetent, careless, or otherwise objectionable.

(End of clause)

(CON 11) Operations and Storage Areas (April 2004)

(a) The Contractor shall confine all operations (including storage of materials) on Battelle premises to areas authorized or approved by the Battelle Contract Specialist. The Contractor shall hold and save Battelle, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance.

(b) Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by the Contractor only with the approval of the Battelle Contract Specialist and shall be built with labor and materials furnished by the Contractor without expense to Battelle. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Battelle Contract Specialist, the buildings and utilities may be abandoned and need not be removed.

(c) The Contractor shall, under regulations prescribed by the Battelle Contract Specialist, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Battelle Contract Specialist. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

(End of clause)

(CON 12) Other Contracts (April 2004)

Battelle may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with Battelle employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Battelle Contract Specialist. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Battelle employees.

(End of clause)

(CON 13) Permits and Responsibilities (April 2004)

The Contractor shall, without additional expense to Battelle, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that occurs as a result of the Contractor's fault or negligence. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

(End of clause)

**CONSTRUCTION GENERAL PROVISIONS
FIXED PRICE/Commercial – April 2004**

(CON 14) Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements. (April 2004)

(a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work sites, which are not to be removed and which do not unreasonably interfere with the work required under this contract. The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Battelle Contract Specialist.

(b) The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site, and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Battelle Contract Specialist may have the necessary work performed and charge the cost to the Contractor.

(End of clause)

(CON 15) Schedules for Construction Contracts (April 2004)

(a) The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Battelle Contract Specialist, prepare and submit to the Battelle Contract Specialist for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Battelle Contract Specialist may withhold approval of progress payments until the Contractor submits the required schedule.

(b) The Contractor shall enter the actual progress on the chart as directed by the Battelle Contract Specialist, and upon doing so shall immediately deliver three copies of the annotated schedule to the Battelle Contract Specialist. If, in the opinion of the Battelle Contract Specialist, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Battelle Contract Specialist, without additional cost to Battelle. In this circumstance, the Battelle Contract Specialist may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Battelle Contract Specialist deems necessary to demonstrate how the approved rate of progress will be regained.

(c) Failure of the Contractor to comply with the requirements of the Battelle Contract Specialist under this clause shall be grounds for a determination by the Battelle Contract Specialist that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Battelle Contract Specialist may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this contract.

(End of clause)

(CON 16) Site Investigation and Conditions Affecting the Work (April 2004)

(a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to:

- (1) Conditions bearing upon transportation, disposal, handling, and storage of materials;
- (2) The availability of labor, water, electric power, and roads;
- (3) Uncertainties of weather, river stages, tides, or similar physical conditions at the site;
- (4) The conformation and conditions of the ground; and

CONSTRUCTION GENERAL PROVISIONS FIXED PRICE/Commercial – April 2004

(5) The character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by Battelle, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to Battelle.

(b) Battelle assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by Battelle. Nor does Battelle assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

(End of clause)

(CON 17) Superintendence by the Contractor (April 2004)

At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the worksite a competent superintendent who is satisfactory to the Battelle Contract Specialist and has authority to act for the Contractor.

(End of clause)

(CON 18) Specifications and Drawings for Construction (April 2004)

(a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Battelle Contract Specialist access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Battelle Contract Specialist, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Battelle Contract Specialist shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

(b) Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription", of the Battelle Contract Specialist is intended and similarly the words "approved", "acceptable", "satisfactory", or words of like import shall mean "approved by," or "acceptable to," or "satisfactory to" the Battelle Contract Specialist, unless otherwise expressly stated.

(c) Where "as shown," "as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place," that is "furnished and installed".

(d) Shop drawings means drawings, submitted to Battelle by the Contractor, subcontractor, or any lower tier subcontractor pursuant to a construction contract, showing in detail

(1) The proposed fabrication and assembly of structural elements, and

(2) The installation (*i.e.*, fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the contractor to explain in detail specific portions of the work required by the contract. Battelle may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Battelle Contract Specialist without evidence of the Contractor's approval may be returned for resubmission. The Battelle Contract Specialist will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate Battelle's reasons therefor. Any work done before such approval shall be at the Contractor's risk. Approval by the Battelle Contract Specialist shall not relieve the Contractor from responsibility for any

CONSTRUCTION GENERAL PROVISIONS FIXED PRICE/Commercial – April 2004

errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) of this clause.

(f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Battelle Contract Specialist approves any such variation, the Battelle Contract Specialist shall issue an appropriate contract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(g) The Contractor shall submit to the Battelle Contract Specialist for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the Battelle Contract Specialist and one set will be returned to the Contractor. *Alternate 1 (Apr 1984)*. Upon completing the work under this contract, the Contractor shall furnish a complete set of all shop drawings as finally approved. These drawings shall show all changes and revisions made up to the time the equipment is completed and accepted.

(End of clause)

(CON 19) Use and Possession Prior to Completion (April 2004)

(a) Battelle shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Battelle Contract Specialist shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that Battelle intends to take possession of or use. However, failure of the Battelle Contract Specialist to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. Battelle's possession or use shall not be deemed an acceptance of any work under the contract.

(b) While Battelle has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the work resulting from Battelle's possession or use, notwithstanding the terms of the clause in this contract entitled "Permits and Responsibilities." If prior possession or use by Battelle delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

(End of clause)

(CON 20) Warranty of Construction (April 2004)

(a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (i) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

(b) This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If Battelle takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date Battelle takes possession.

(c) The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Battelle-owned or controlled real or personal property, when that damage is the result of-

- (1) The Contractor's failure to conform to contract requirements; or
- (2) Any defect of equipment, material, workmanship, or design furnished.

(d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.

(e) The Battelle Contract Specialist shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

(f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, Battelle shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

CONSTRUCTION GENERAL PROVISIONS FIXED PRICE/Commercial – April 2004

(g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall-

- (1) Obtain all warranties that would be given in normal commercial practice;
- (2) Require all warranties to be executed, in writing, for the benefit of Battelle, if directed by the Battelle Contract Specialist; and
- (3) Enforce all warranties for the benefit of Battelle, if directed by the Battelle Contract Specialist.

(h) In the event the Contractor's warranty under paragraph (b) of this clause has expired, Battelle may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

(i) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by Battelle nor for the repair of any damage that results from any defect in Battelle-furnished material or design.

(j) This warranty shall not limit Battelle's rights under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistakes, or fraud.

(k) Defects in design or manufacture of equipment specified by Battelle on a "brand name and model" basis, shall not be included in this warranty. In this event, the Contractor shall require any subcontractors, manufacturers, or suppliers thereof to execute their warranties, in writing, directly to Battelle.

(End of clause)

PART 3 - ENVIRONMENTAL SAFETY AND HEALTH PROVISIONS

(ESH 1) Accident Prevention (April 2004)

(a) The Contractor shall provide and maintain work environments and procedures which will-

- (1) Safeguard the public and Battelle personnel, property, materials, supplies, and equipment exposed to Contractor operations and activities;
- (2) Avoid interruptions of Battelle operations and delays in project completion dates; and
- (3) Control costs in the performance of this contract.

(b) For these purposes on contracts for construction or dismantling, demolition, or removal of improvements, the Contractor shall-

- (1) Provide appropriate safety barricades, signs, and signal lights;
- (2) Comply with the standards issued by the Secretary of Labor at 29 CFR part 1926 and 29 CFR part 1910; and
- (3) Ensure that any additional measures the Battelle Contract Specialist determines to be reasonably necessary for the purposes are taken.

(c) If this contract is for construction or dismantling, demolition or removal of improvements with any Department of Defense agency or component, the Contractor shall comply with all pertinent provisions of the latest version of U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1, in effect on the date of the solicitation.

(d) Whenever the Battelle Contract Specialist becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or Battelle personnel, the Battelle Contract Specialist shall notify the Contractor orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the Contractor or the Contractor's representative at the work site, shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to promptly take corrective action, the Battelle Contract Specialist may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any stop work order issued under this clause.

(e) The Contractor shall insert this clause, including this paragraph (e), with appropriate changes in the designation of the parties, in subcontracts.

(f) Before commencing the work, the Contractor shall-

**CONSTRUCTION GENERAL PROVISIONS
FIXED PRICE/Commercial – April 2004**

(1) Submit a written proposed plan for implementing this clause. The plan shall include an analysis of the significant hazards to life, limb, and property inherent in contract work performance and a plan for controlling these hazards; and

(2) Meet with representatives of the Battelle Contract Specialist to discuss and develop a mutual understanding relative to administration of the overall safety program.

(End of clause)

(ESH 2) Hazardous Material Identification and Material Safety Data (April 2004)

(a) "Hazardous material," as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

(b) The offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

Material <i>(If none, insert "None")</i>	Identification No.
_____	_____
_____	_____
_____	_____

(c) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.

(d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered non-responsible and ineligible for award.

(e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Contractor shall promptly notify the Battelle Contract Specialist and resubmit the data.

(f) Neither the requirements of this clause nor any act or failure to act by Battelle shall relieve the Contractor of any responsibility or liability for the safety of Battelle, Contractor, or subcontractor personnel or property.

(g) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(h) Battelle's rights in data furnished under this contract with respect to hazardous material are as follows:

- (1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to-
 - (i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;
 - (ii) Obtain medical treatment for those affected by the material; and
 - (iii) Have others use, duplicate, and disclose the data for Battelle for these purposes.
- (2) To use, duplicate, and disclose data furnished under this clause, in accordance with paragraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.
- (3) Battelle is not precluded from using similar or identical data acquired from other sources.

CONSTRUCTION GENERAL PROVISIONS FIXED PRICE/Commercial – April 2004

(i) Except as provided in paragraph (i)(2), the Contractor shall prepare and submit a sufficient number of Material Safety Data Sheets (MSDS's), meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous materials identified in paragraph (b) of this clause.

(1) For items shipped to consignees, the Contractor shall include a copy of the MSDS's with the packing list or other suitable shipping document which accompanies each shipment. Alternatively, the Contractor is permitted to transmit MSDS's to consignees in advance of receipt of shipments by consignees, if authorized in writing by the Battelle Contract Specialist.

(2) For items shipped to consignees identified by mailing address as agency depots, distribution centers or customer supply centers, the Contractor shall provide one copy of the MSDS's in or on each shipping container. If affixed to the outside of each container, the MSDS's must be placed in a weather resistant envelope.

(End of clause)

(ESH 3) Integration of Environment, Safety, and Health into Work Planning and Execution (April 2004)

(a) For the purposes of this clause,

(1) Safety encompasses environment, safety and health, including pollution prevention and waste minimization; and

(2) Employees include subcontractor employees.

(b) In performing work under this contract, the contractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The contractor shall exercise a degree of care commensurate with the work and the associated hazards. The contractor shall ensure that management of environment, safety and health (ES&H) functions and activities becomes an integral but visible part of the contractor's work planning and execution processes. The contractor shall, in the performance of work, ensure that:

(1) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those contractor and subcontractor employees managing or supervising employees performing work.

(2) Clear and unambiguous lines of authority and responsibility for ensuring (ES&H) are established and maintained at all organizational levels.

(3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.

(4) 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.

(5) Before work is performed, the associated hazards are evaluated and an agreed-upon 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.

(6) 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.

(7) The conditions and requirements to be satisfied for operations to be initiated and conducted are established and agreed-upon by BATTELLE and the contractor. These agreed-upon conditions and requirements are requirements of the contract and binding upon the contractor. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work and shall be established in a Safety Management System.

(c) The contractor shall manage and perform work in accordance with a documented Safety Management System (System) that fulfills all conditions in paragraph (b) of this clause at a minimum. Documentation of the System shall describe how the contractor will:

CONSTRUCTION GENERAL PROVISIONS FIXED PRICE/Commercial – April 2004

- (1) Define the scope of work;
- (2) Identify and analyze hazards associated with the work;
- (3) Develop and implement hazard controls;
- (4) Perform work within controls; and
- (5) Provide feedback on adequacy of controls and continue to improve safety management.

(d) The System shall describe how the contractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to BATTELLE program and budget execution guidance while maintaining the integrity of the System. The System shall also describe how the contractor will measure system effectiveness.

(e) The contractor shall submit to the Battelle Contract Specialist documentation of its System for review and approval. Dates for submittal, discussions, and revisions to the System will be established by the Battelle Contract Specialist. Guidance on the preparation, content, review, and approval of the System will be provided by the Battelle Contract Specialist. On an annual basis, the contractor shall review and update, for BATTELLE approval, its safety performance objectives, performance measures, and commitments consistent with and in response to BATTELLE's program and budget execution guidance and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire System. Accordingly, the System shall be integrated with the contractor's business processes for work planning, budgeting, authorization, execution, and change control.

(f) The contractor shall comply with, and assist Battelle in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives identified in the clause of this contract. The contractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this contract.

(g) The contractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements and the System. If the contractor fails to provide resolution or if, at any time, the contractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the Battelle Contract Specialist may issue an order stopping work in whole or in part. Any stop work order issued by a Battelle Contract Specialist under this clause (or issued by the contractor to a subcontractor in accordance with paragraph (i) of this clause) shall be without prejudice to any other legal or contractual rights of Battelle. In the event that the Battelle Contract Specialist issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the Battelle Contract Specialist. The contractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.

(h) Regardless of the performer of the work, the contractor is responsible for compliance with the ES&H requirements applicable to this contract. The contractor is responsible for flowing down the ES&H requirements applicable to this contract to subcontracts at any tier to the extent necessary to ensure the contractor's compliance with the requirements.

(i) The contractor shall include a clause substantially the same as this clause in subcontracts involving complex or hazardous work on site at a BATTELLE-owned or-leased facility. Such subcontracts shall provide for the right to stop work under the conditions described in paragraph (g) of this clause. Depending on the complexity and hazards associated with the work, the contractor may choose not to require the subcontractor to submit a Safety Management System for the contractor's review and approval.

(End of Clause)

(ESH 4) Medical Examinations (April 2004)

(a) **General.** The Contractor shall endeavor to employ only those persons who are physically qualified to perform work to which they are assigned at Battelle premises. If the Contractor or Battelle determines that there may be a question of the person's physical fitness to safely perform work to be assigned, the Contractor shall, with the approval of Battelle, require such employee to undergo a medical examination.

(b) **Battelle's Rights.** In any case where it is determined that an employee is physically impaired, Battelle reserves the right to determine whether or not the employee may be assigned to work at Battelle premises and to determine any work assignment limitations to be imposed, and the Contractor shall be responsible for enforcing Battelle's decision.

(d) **Examinations Provided without Charge.** If medical examinations are required, they will be provided without charge to the Contractor for the cost of medical examination. All time spent by Contractor's employees for medical examinations shall be

CONSTRUCTION GENERAL PROVISIONS FIXED PRICE/Commercial – April 2004

at the expense of the Contractor. Battelle will arrange for medical examinations through the Hanford Environmental Health Foundation.

(d) **Post Work Examinations.** Each person may be required to undergo a medical examination at the conclusion of his assignment of work under the Contract.

(End of Clause)

(ESH 5) Safe Work Authority, Reporting and Obligations (April 2004)

(a) **Worker Safety and Health Program.** All contractors responsible for one or more workplaces at a Battelle site must establish, implement and maintain a worker safety and health program for those workplaces. The goal of the Contractor Worker Safety and Health Program is to enhance and protect the safety and health of workers at Battelle facilities by fostering a culture that actively seeks to attain and sustain compliance with applicable worker safety and health regulations and requirements.

(1) The worker safety and health program must:

- (i) Provide for eliminating, limiting or mitigating the identified workplace hazards in a manner that is necessary and sufficient to provide adequate protection of workers; and
- (ii) Be tailored to reflect the activities and hazards in particular work environments.

(2) In establishing a worker safety and health program, the contractor must:

- (i) Identify and analyze, as appropriate at the site, facility, activity and workplace level:
 - (A) The work to be performed;
 - (B) The work environment, including designs and features of facilities, equipment, operations and procedures important to a safe and healthful workplace;
 - (C) Existing and potential workplace hazards; and
 - (D) The risk of worker injury or illness associated with the identified workplace hazards.
- (ii) Select and document the included set of workplace safety and health standards that are necessary and sufficient to provide adequate protection of workers.
- (iii) Describe in sufficient detail how work will be performed in accordance with the set of selected workplace safety and health standards, including:
 - (A) Selection process and use of procedures, controls, and work processes in a tailored manner for particular covered workplaces;
 - (B) Preference for implementation on the basis of the following hierarchy in descending order: engineering controls, administrative controls, work practices, and personal protective equipment; and
 - (C) Integration of the program on site, facility, activity and workplace levels, taking into account differences and similarities between the work, hazards, and workplace safety and health standards and, if applicable, coordination with other worker safety and health programs at the site;
- (iv) Describe how feedback and continuous improvement will be provided for elements of the worker safety and health program.
- (v) Prioritize the abatement of hazards on the basis of risks to workers;
- (vi) Address how the following features will be incorporated into the worker safety and health program:
 - (A) Line management commitment;
 - (B) Information and training;
 - (C) Ongoing workplace monitoring and observation;
 - (D) Medical surveillance; and
 - (E) Applicability to subcontractors.

(b) **Multiple Contractors or covered workplaces.**

(1) If a contractor is responsible for more than one covered workplace at a Battelle site, the contractor must establish and maintain a single worker safety and health program for the workplaces at the site for which the contractor is responsible.

CONSTRUCTION GENERAL PROVISIONS FIXED PRICE/Commercial – April 2004

(2) If more than one contractor is responsible for covered workplaces at a Battelle site, each contractor must:

- (i) Establish and maintain a worker safety and health program for the workplaces for which the contractor is responsible; and
- (ii) Coordinate with the other contractors responsible for covered workplaces at the site to ensure that the worker safety and health programs at the site are integrated and consistent.
- (iii) Provide sufficient flexibility in the program to take into account the special circumstances of transitional workplaces; and
- (iv) In the case of a National security workplaces, it must provide sufficient flexibility to achieve national security missions in an efficient and timely manner in those workplaces.

(c) Battelle Acceptance of Contractor Program.

(1) Within 10 days after Contract Award, the contractor must submit for Battelle acceptance a worker safety and health program that meets the requirements of this clause or adopt by written confirmation, the Battelle pre-accepted worker safety and health program as their own.

(2) A contractor must maintain their approved worker safety and health program by:

- (i) Evaluating and updating the worker safety and health program to reflect changes in the activities and hazards;
- (ii) Annually submitting to Battelle either an updated worker safety and health program for approval or a letter stating that no changes are necessary in the currently approved worker safety and health program; and
- (iii) Incorporating in the worker safety and health program any changes, conditions, or workplace safety and health standards directed by Battelle, regulation or statute.

(d) Designated Site Safety Representative. Prior to start of on-site work, the contractor shall designate a site safety representative. During periods of active construction the designated representative shall be on site at all times to conduct and document daily inspections of the workplace and to identify and correct hazards and instances of noncompliance with project safety and health requirements. If immediate corrective action is not possible or the hazard falls outside of the project scope, the designated representative shall immediately notify affected workers, post appropriate warning signs, implement needed interim control measures, and notify Battelle of actions taken.

(e) Stop Work Authority

(1) Every employee has the responsibility and authority to stop work immediately, without fear of reprisal, when they are convinced a situation exists which places themselves, their coworker(s), or the environment in danger. "Stop Work" is defined as stopping the specific task or activity that poses danger to human health or the environment. Rights and responsibilities.

(2) Battelle Representatives may issue an order stopping work in whole or in part under the following conditions:

- i. Identification of "serious" safety and health noncompliance's, defined as: Situations where there is a substantial probability that death or serious physical harm could result from a condition that exists.
- ii. Identification of a build-up of uncorrected unsafe conditions, which independently are not an imminent hazard but together create a serious hazard.
- iii. Identification of repeated or willful violations of a similar nature.
- iv. Identification of "imminent danger" safety and health hazards.

(3) The Contractor shall be liable for the delay and any costs thereby incurred. Any stop-work order issued by Battelle under this clause (or issued by the Contractor to a subcontractor in accordance with this clause) shall be without prejudice to any other legal or contractual rights of Battelle. In the event that the Battelle Contract Representative issues a stop-work order, an order authorizing the resumption of the work may be issued at the discretion of the Battelle Contract Representative. The Contractor shall not be entitled to an extension of time, or additional cost or fee, or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.

(f) Worker rights. Every worker at a covered workplace has the right, without reprisal, to:

(1) Participate in activities described in this section on official time;

(2) Have access to:

- (i) Battelle or safety and health publications;

CONSTRUCTION GENERAL PROVISIONS FIXED PRICE/Commercial – April 2004

- (ii) The Battelle pre-approved worker safety and health program for the covered workplace; and
 - (iii) The standards, controls and procedures applicable to the covered workplace;
- (3) Observe monitoring or measuring of hazardous agents;
- (4) Have access to monitoring and measuring results and be notified when such results indicate the worker was overexposed to hazardous materials;
- (5) Accompany Battelle personnel during an inspection of the workplace;
- (6) Request and receive results of inspections and accident investigations;
- (7) Express concerns related to worker safety and health;
- (8) Decline to perform an assigned task because of a reasonable belief that, under the circumstances, the task poses an imminent risk of death or serious bodily harm to the worker coupled with a reasonable belief that there is insufficient time to seek effective redress through the normal hazard reporting and abatement procedures;
- (9) Stop work, through the worker's supervisor, when the worker discovers employee exposures to imminently dangerous conditions or other serious hazards; provided that any stop work authority must be exercised in a justifiable and responsible manner in accordance with established procedures; and
- (10) Have access to an appropriate safety and health poster that informs the worker of relevant ri

(g) **Suspension of Access**

(1) **General.** If the Contractor fails to take appropriate disciplinary action(s) with its employees, or fails to assure that its subcontractors take appropriate disciplinary action(s) with their employees then Battelle will formally notify the Contractor of its employee's noncompliance with environmental safety or health requirements and, upon continued failure by the Contractor or its subcontractors to take appropriate disciplinary action, Battelle will take action to suspend the Contractor or subcontractors employees access to Battelle premises in accordance with the following general guidelines.

(2) **Guidelines for Suspension of Access:** Depending on individual circumstances and the severity of the infractions, Battelle may take disciplinary action to suspend the Contractors access to Battelle premises at any point in the disciplinary process.

- i. **First Infraction.** First infraction may result in the removal of the individual's badge for up to one (1) week.
- ii. **Second Infraction.** A second infraction, not necessarily of the same type, may result in the removal of the individual's badge for up to three (3) months.
- iii. Battelle may take more serious action as deemed appropriate.

(h) **Event Notification**

(1) The Contractor shall notify the Battelle Construction Manager immediately of any OSHA-recordable injuries/illnesses, any "off-normal occurrences," or Battelle property damaged that the Contractor determines to have occurred in the course of operations onsite and shall furnish such further information as the Battelle Construction Manager 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.

(2) The Contractor shall notify Battelle not less than 24 hours prior to bringing to Battelle premises any equipment of the type indicated below so Battelle may arrange for safety checks, if desired.

- i. Cranes, derricks, forklifts, hoists, and aerial lifts;
- ii. Earth moving equipment;
- iii. Drilling equipment;
- iv. Powder-actuated tools.

(i) **Accident Investigation**

(1) The Contractor shall cooperate in the conduct of accident investigations which result in recordable injury/illness, property damage, fire, radiation event, and fatality.

CONSTRUCTION GENERAL PROVISIONS FIXED PRICE/Commercial – April 2004

(2) When a Contractor employee is involved in a serious event or accident, the Contractor shall implement the following actions:

- i. Secure the event scene from disturbance and unauthorized entry pending arrival of Battelle Representatives.
- ii. Keep equipment or articles involved in the event from being operated, moved, or otherwise altered or repaired.

(j) **Equipment Certification.** The Contractor shall certify in writing that all construction equipment to be used in the performance of this contract complies with the applicable OSHA and ANSI requirements and that their employees are qualified to operate or use said equipment. The Contractor shall provide through the submittal process such certification prior to using any equipment.

(k) **Periodic Inspections.** The Contractor's onsite ES&H activities will be subject to review by Battelle's ES&H Organization. Battelle may conduct periodic inspections of the Contractor's equipment, work and storage areas for compliance with the applicable ES&H requirements. Battelle will notify the Contractor of any observed noncompliance with applicable ES&H requirements. The Contractor shall immediately take appropriate corrective action. The Contractor shall advise Battelle, in writing, within five (5) working days of the corrective action taken on any safety noncompliance noted on the written Notice of Noncompliance. If the Contractor fails or refuses to correct the safety noncompliance, Battelle may perform, or cause to be performed, the necessary corrective work, which may include stopping work and unilaterally charge the Contractor for the cost thereof. Such charges will be deducted from payments otherwise due the Contractor under this contract.

(l) **Reporting Hours Worked.** The Contractor shall submit to Battelle a summary report (including injuries, illnesses, property damage, fires, "near misses", etc.) on the 5th day following the end of the calendar month. The summary report will include the following items:

- (1) Average number of employees during the month,
- (2) Total contractor hours worked on this contract,
- (3) Number of sub-tier contractors,
- (4) Number of sub-tier contractor employees by sub-tier contractor, and
- (5) Total sub-tier contractor hours (by sub-tier contractor) worked on this contract.

(m) **Additional Obligations.** When the work will be performed for Battelle at its area Battelle facility in Richland Washington, or it's private facilities in Richland or Sequim Washington, the Contractor shall be obligated to the following additional tasks:

(1) The Contractor shall be responsible for identifying all potential exposures that their employees and the employees of their lower-tier subcontractors will be exposed to while performing any work under this contract.

(2) The Contractor shall assure that its employees and those of any lower-tiered subcontractor are medically qualified to perform work associated with any potential exposures that have been identified. Medical qualification and medical surveillance programs are the sole responsibility of the Contractor. In addition, the Contractor is responsible for maintaining any historical records associated with the administration of these programs. In the event that the contractor that the contractor or lower-tiered subcontract employee requires a medical qualification examination or medical surveillance program, at the discretion of the Contractor, these services may be acquired by contracting with Battelle premises Occupational Medical Provider.

(3) For each of its employees and each of its lower-tier subcontract employees that the Contractor has identified to be at risk of potential exposure, if the individual will be on site for duration of more than 14 days, the Contractor shall complete an "Employee Job Task Analysis" (EJTA) form. Completed EJTA forms shall be submitted to the Battelle Contract Representative and approved by Battelle before any of these employees begin work under this contract.

(End of clause)

(ESH 6) Solid Waste Management (April 2004)

(a) **Solid Waste Management.** The Contractor is responsible to manage solid waste in accordance with all applicable Federal, State and local laws. The contractor shall follow Battelle's Standards Based Management System requirements for accumulation, interim storage and final disposal of the following types of solid waste:

- (1) Hazardous waste including soil or debris contaminated with hazardous waste.
- (2) Radioactive contaminated waste, materials and equipment.

CONSTRUCTION GENERAL PROVISIONS FIXED PRICE/Commercial – April 2004

(3) Materials containing asbestos.

(4) Materials containing polychlorinated biphenyls (PCBs).

(5) Unused residual construction materials, not the property of Battelle, may be retained by the contractor for future use or disposal by the Contractor. Such materials must otherwise be managed in accordance with Battelle's SBMS requirements while on Battelle managed property.

(b) **Environmental Permits / Notifications.** The Contractor shall coordinate the preparation of environmental permit applications / notifications with Battelle's ES&H Organization for the purpose of integrating new and existing environmental approvals. The Contractor shall Notify Battelle, prior to commencing construction, in the following circumstances:

(1) **Clean Air Act Permits.**

- i. Notice of Intent to Remove Asbestos. The Contractor shall contact Battelle before proceeding with work that could disturb asbestos and materials containing asbestos. A representative from Battelle's ES&H organization will assist the contractor in preparing the Notice of Intent to remove asbestos for submittal to the appropriate regulatory agency.
- ii. Construction / Demolition activities which could disturb / disperse radioactive contamination (e.g. excavation of contaminated soils or demolition of contaminated structures)

(2) **Clean Water Act Permits.** The contractor shall notify Battelle prior to commencing construction activities which may require clean water act permits including but not limited to:

- i. Disturbing greater than one acre of land
- ii. Construction of ground water wells
- iii. Discharge of liquid effluent (to ground; or existing sewer systems)
- iv. Installation of temporary or permanent septic systems
- v. Placement or installation of above-ground tanks for fuel storage

(3) **Underground Storage Tanks.** The contractor shall notify Battelle prior to commencing construction activities to install or remove any underground storage tank.

(c) **Spills and Releases.** The contractor shall manage hazardous substances (as defined by State of Washington regulations, including petroleum) in accordance with regulatory requirements and in a manner that prevents accidental spillage or release to the environment. In the event of a spill or release, the contractor shall immediately:

(1) Notify the Battelle Construction Manager of the spill; and

(2) Respond to, control, and remediate any spill or release of hazardous substances or hazardous waste, managing spill residues in accordance with applicable Federal, State and Local regulations and requirements.

(End of clause)

PART 4 - FINANCIAL, BOND and INSURANCE PROVISIONS

(FIN 1) Accounts, Records and Inspection (April 2004)

(a) Accounts. The contractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting: all allowable costs incurred; collections accruing to the contractor in connection with the work under this contract, other applicable credits, negotiated fixed amounts, and fee accruals under this contract; and the receipt, use, and disposition of all Battelle property coming into the possession of the contractor under this contract. The system of accounts employed by the contractor shall be satisfactory to Battelle and in accordance with generally accepted accounting principles consistently applied.

(b) Inspection and audit of accounts and records. All books of account and records relating to this contract shall be subject to inspection and audit by Battelle or its designees in accordance with the provisions of Clause "Access To and Ownership of Records," at all reasonable times, before and during the period of retention provided for in Paragraph D of this clause, and the contractor shall afford Battelle, or it's designee proper facilities for such inspection and audit.

CONSTRUCTION GENERAL PROVISIONS FIXED PRICE/Commercial – April 2004

(c) Audit of subcontractors' records. The contractor also agrees, with respect to any subcontracts (including fixed-price or unit-price subcontracts or purchase orders) where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor of any tier, to either conduct an audit of the subcontractor's costs or arrange for such an audit to be performed by the cognizant Battelle audit agency through the contracting officer.

(d) Disposition of records. Except as agreed upon by Battelle and the contractor, all financial and cost reports, books of account and supporting documents, system files, data bases, and other data evidencing costs allowable, collections accruing to the contractor in connection with the work under this contract, other applicable credits, and fee accruals under this contract, shall be the property of Battelle, and shall be delivered to Battelle or otherwise disposed of by the contractor either as the Battelle Contracts Representative may from time to time direct during the progress of the work or, in any event, as the Battelle Contracts Representative shall direct upon completion or termination of this contract and final audit of accounts hereunder. Except as otherwise provided in this contract, including provisions of Clause "Access To and Ownership of Records," all other records in the possession of the contractor relating to this contract shall be preserved by the contractor for a period of three years after final payment under this contract or otherwise disposed of in such manner as may be agreed upon by Battelle and the contractor.

(e) Reports. The contractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this contract as the contracting officer may from time to time require.

(f) Inspections. Battelle or its designee shall have the right to inspect the work and activities of the contractor under this contract at such time and in such manner as it shall deem appropriate.

(g) Subcontracts. The contractor further agrees to require the inclusion of provisions similar to those in Paragraphs A through G and Paragraph H of this clause in all subcontracts (including fixed-price or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.

(h) Comptroller General.

(1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.

(2) This paragraph may not be construed to require the contractor or subcontractor to create or maintain any record that the contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(3) Nothing in this contract shall be deemed to preclude an audit by the General Accounting Office of any transaction under this contract.

(i) Internal audit (applicable to cost-reimbursement contracts with an estimated cost exceeding \$5 million and expected to run for more than 2 years). The contractor agrees to conduct an internal audit and examination satisfactory to Battelle of the records, operations, expenses, and the transactions with respect to costs claimed to be allowable under this contract annually and at such other times as may be mutually agreed upon. The results of such audit, including the working papers, shall be submitted or made available to the Battelle Contracts Representative. The contractor shall include this Paragraph I in all cost-reimbursement subcontracts with an estimated cost exceeding \$5 million and expected to run for more than 2 years, and any other cost-reimbursement subcontract determined by the Battelle Contracts Representative.

(End of clause)

(FIN 2) Bankruptcy (April 2004)

In the event the contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Battelle Contract Specialist responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Battelle contract numbers and contracting offices for all Battelle contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

(End of clause)

CONSTRUCTION GENERAL PROVISIONS FIXED PRICE/Commercial – April 2004

(FIN 3) Bid Guarantee (April 2004)

(a) Failure to furnish a bid guarantee in the proper form and amount, by the time set for opening of bids, may be cause for rejection of the bid.

(b) The bidder shall furnish a bid guarantee in the form of a firm commitment, e.g., bid bond supported by good and sufficient surety or sureties acceptable to Battelle, postal money order, certified check, cashier's check, irrevocable letter of credit, or, under Treasury Department regulations, certain bonds or notes of the United States. The Battelle Contract Specialist will return bid guarantees, other than bid bonds-

(1) To unsuccessful bidders as soon as practicable after the opening of bids; and

(2) To the successful bidder upon execution of contractual documents and bonds (including any necessary coinsurance or reinsurance agreements), as required by the bid as accepted.

(c) The amount of the bid guarantee shall be 10% percent of the bid price or \$2,500.00, whichever is less.

(d) If the successful bidder, upon acceptance of its bid by Battelle within the period specified for acceptance, fails to execute all contractual documents or furnish executed bond(s) within 10 days after receipt of the forms by the bidder, the Battelle Contract Specialist may terminate the contract for default.

(e) In the event the contract is terminated for default, the bidder is liable for any cost of acquiring the work that exceeds the amount of its bid, and the bid guarantee is available to offset the difference.

(End of clause)

(FIN 4) Insurance (April 2004)

(a) The Contractor shall provide and maintain during the entire period of performance of this contract at least the kinds and minimum amounts of insurance required in the Schedule of Minimum Insurance Amounts.

(b) Schedule of Minimum Insurance Amounts:

(1) Workers Compensation Insurance:

- i. \$1,000,000 Minimum per accident;
- ii. \$1,000,000 minimum per employee for bodily injury and disease.

(2) General Liability Insurance:

- i. \$2,000,000 general aggregate limit;
- ii. \$1,000,000 per occurrence for bodily injury and property damage;
- iii. \$1,000,000 per occurrence for personal and advertising injury liability;
- iv. \$1,000,000 per occurrence for products / completed operations liability. The products / completed operations liability insurance shall be maintained in full force and effect for not less than three years following completion of Contractor's services.

(3) Vehicle Liability Insurance:

- i. \$1,000,000 combined single limit of liability for bodily injury and property damage per occurrence, covering the use of all owned, non-owned, and hired automobiles.

(c) Proof of Insurance. Before commencing work the Contractor shall furnish to the Battelle Contract Representative written proof that the required insurance has been obtained. The policies evidencing the required insurance shall contain an endorsement to the effect that any cancellation or material change affecting Battelle's interests shall not be effective for such period as the laws of the State in which this contract is to be performed specify or until thirty (30) days after the insurer or the Contractor gives written notice to the Battelle Contract Representative, whichever period is longer.

(d) Subcontractor's Commercial General Liability Insurance and Vehicle Liability Insurance. The Contractor shall insert the substance of this clause, including this paragraph, in subcontracts under this contract that require work on a Battelle installation, and shall require subcontractors to provide and maintain the kinds and minimum amounts of insurance required in the Schedule.

CONSTRUCTION GENERAL PROVISIONS FIXED PRICE/Commercial – April 2004

The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to Battelle upon request.

(e) Waiver of Subrogation. The Contractor hereby releases Battelle, including their directors and employees, and shall cause Contractor's Insurers to waive their rights of subrogation against such released parties, for losses or claims for bodily injury, property damage or other insured claims arising out of Contractor's performance under the Contract.

(f) Claims. In the event that claims in excess of the insured amounts provided are filed by reason of any operations under the services provided by the Contractor, the amount of excess of such claims, or any portion thereof, may be withheld from payment due until such time as the Contractor shall furnish such additional security covering such claims as may be determined by Battelle.

(End of clause)

(FIN 5) Insurance, Litigation and Claims (April 2004)

(a) 3rd Party Litigation. The contractor may, with the prior written authorization of the Battelle Contract Specialist, and shall, upon the request of Battelle, initiate litigation against third parties, including proceedings before administrative agencies, in connection with this contract. The contractor shall proceed with such litigation in good faith and as directed from time to time by the Battelle Contract Specialist.

(b) Written Notice. The contractor shall give the Battelle Contract Specialist immediate notice in writing of any legal proceeding, including any proceeding before an administrative agency, filed against the contractor arising out of the performance of this contract. Except as otherwise directed by the Battelle Contract Specialist, in writing, the contractor shall furnish immediately to the Battelle Contract Specialist copies of all pertinent papers received by the contractor with respect to such action. The contractor, with the prior written authorization of the Battelle Contract Specialist, shall proceed with such litigation in good faith and as directed from time to time by the Battelle Contract Specialist.

(c) Bonds and Insurance:

(1) Except as provided below, the contractor shall procure and maintain such bonds and insurance as required by law or approved in writing by the Battelle Contract Specialist.

(2) The contractor may, with the approval of the Battelle Contract Specialist, maintain a self-insurance program; provided that, with respect to workers' compensation, the contractor is qualified pursuant to statutory authority.

(3) All bonds and insurance required by this clause shall be in a form and amount and for those periods as the Battelle Contract Specialist may require or approve and with sureties and insurers approved by the Battelle Contract Specialist.

(d) Submit for Approval. The contractor agrees to submit for the Battelle Contract Specialist's approval, to the extent and in the manner required by the Battelle Contract Specialist, any other bonds and insurance that are maintained by the contractor in connection with the performance of this contract and for which the contractor seeks reimbursement. If an insurance cost (whether a premium for commercial insurance or related to self-insurance) includes a portion covering costs made unallowable elsewhere in the contract, and the share of the cost for coverage for the unallowable cost is determinable, the portion of the cost that is otherwise an allowable cost under this contract is reimbursable to the extent determined by the Battelle Contract Specialist.

(e) Notwithstanding any other provision of this contract, the contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities, including litigation costs, counsel fees, judgment and settlements):

(1) Which are otherwise unallowable by law or the provisions of this contract; or

(2) For which the contractor has failed to insure or to maintain insurance as required by law, this contract, or by the written direction of the Battelle Contract Specialist.

(f) In addition to the cost reimbursement limitations contained in 48 CFR Part 31, as supplemented by 48 CFR 970.31, and notwithstanding any other provision of this contract, the contractor's liabilities to third persons, including employees but excluding costs incidental to worker's compensation actions, (and any expenses incidental to such liabilities, including litigation costs, counsel fees, judgments and settlements) shall not be reimbursed if such liabilities were caused by contractor managerial personnel's:

(1) Willful misconduct,

CONSTRUCTION GENERAL PROVISIONS FIXED PRICE/Commercial – April 2004

(2) Lack of good faith, or

(3) Failure to exercise prudent business judgment, which means failure to act in the same manner as a prudent person in the conduct of competitive business; or, in the case of a non-profit educational institution, failure to act in the manner that a prudent person would under the circumstances prevailing at the time the decision to incur the cost is made.

(g) Burden of Proof. The burden of proof shall be upon the contractor to establish that costs covered by clause are allowable and reasonable if, after an initial review of the facts, the Battelle Contract Specialist challenges a specific cost or informs the contractor that there is reason to believe that the cost results from willful misconduct, lack of good faith, or failure to exercise prudent business judgment by contractor managerial personnel.

(h) Litigation Costs and Damages:

(1) All litigation costs, including counsel fees, judgments and settlements shall be differentiated and accounted for by the contractor so as to be separately identifiable. If the Battelle Contract Specialist provisionally disallows such costs, then the contractor may not use funds advanced by BATTELLE under the contract to finance the litigation.

(2) Punitive damages are not allowable unless the act or failure to act which gave rise to the liability resulted from compliance with specific terms and conditions of the contract or written instructions from the Battelle Contract Specialist.

(3) The portion of the cost of insurance obtained by the contractor that is allocable to coverage of liabilities (and expenses incidental to such liabilities, including litigation costs, counsel fees, judgment and settlements) referred to above is not allowable.

(4) The term "contractor's managerial personnel" is defined in clause paragraph (j) of 48 CFR 970.5245-1.

(i) The contractor may at its own expense and not as an allowable cost procure for its own protection insurance to compensate the contractor for any unallowable or unreimbursable costs incurred in connection with contract performance.

(j) If any suit or action is filed or any claim is made against the contractor, the cost and expense of which may be reimbursable to the contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the contractor shall:

(1) Immediately notify the Battelle Contract Specialist and promptly furnish copies of all pertinent papers received;

(2) Authorize Department representatives to collaborate with: in-house or BATTELLE-approved outside counsel in settling or defending the claim; or counsel for the insurance carrier in settling or defending the claim if the amount of the liability claimed exceeds the amount of coverage, unless precluded by the terms of the insurance contract; and

(3) Authorize Department representatives to settle the claim or to defend or represent the contractor in and/or to take charge of any litigation, if required by the Department, if the liability is not insured or covered by bond. In any action against more than one Department contractor, the Department may require the contractor to be represented by common counsel. Counsel for the contractor may, at the contractor's own expense, be associated with the Department representatives in any such claim or litigation.

(End of clause)

(FIN 6) Irrevocable Letter of Credit (April 2004)

(a) "Irrevocable letter of credit" (ILC), as used in this clause, means a written commitment by a federally insured financial institution to pay all or part of a stated amount of money, until the expiration date of the letter, upon presentation by Battelle (the beneficiary) of a written demand therefor. Neither the financial institution nor the offeror/Contractor can revoke or condition the letter of credit.

(b) If the offeror intends to use an ILC in lieu of a bid bond, or to secure other types of bonds such as performance and payment bonds, the letter of credit and letter of confirmation formats in paragraphs (e) and (f) of this clause shall be used.

(c) The letter of credit shall be irrevocable, shall require presentation of no document other than a written demand and the ILC (including confirming letter, if any), shall be issued/confirmed by an acceptable federally insured financial institution as provided in paragraph (d) of this clause, and-

**CONSTRUCTION GENERAL PROVISIONS
FIXED PRICE/Commercial – April 2004**

(1) If used as a bid guarantee, the ILC shall expire no earlier than 60 days after the close of the bid acceptance period;

(2) If used as an alternative to corporate or individual sureties as security for a performance or payment bond, the offeror/Contractor may submit an ILC with an initial expiration date estimated to cover the entire period for which financial security is required or may submit an ILC with an initial expiration date that is a minimum period of one year from the date of issuance. The ILC shall provide that, unless the issuer provides the beneficiary written notice of non-renewal at least 60 days in advance of the current expiration date, the ILC is automatically extended without amendment for one year from the expiration date, or any future expiration date, until the period of required coverage is completed and the Battelle Contract Specialist provides the financial institution with a written statement waiving the right to payment. The period of required coverage shall be:

(i) For contracts subject to the Miller Act, the later of-

- (A) One year following the expected date of final payment;
- (B) For performance bonds only, until completion of any warranty period; or
- (C) For payment bonds only, until resolution of all claims filed against the payment bond during the one-year period following final payment.

(ii) For contracts not subject to the Miller Act, the later of-

- (A) 90 days following final payment; or
- (B) For performance bonds only, until completion of any warranty period.

(d) Only federally insured financial institutions rated investment grade or higher shall issue or confirm the ILC. The offeror/Contractor shall provide the Battelle Contract Specialist a credit rating that indicates the financial institution has the required rating(s) as of the date of issuance of the ILC. Unless the financial institution issuing the ILC had letter of credit business of at least \$25 million in the past year, ILCs over \$5 million must be confirmed by another acceptable financial institution that had letter of credit business of at least \$25 million in the past year.

(e) The following format shall be used by the issuing financial institution to create an ILC:

[Issuing Financial Institution's Letterhead or Name and Address]
Issue Date _____
Irrevocable Letter of Credit No. _____
Account party's name _____
Account party's address _____
For Solicitation No. _____ (for reference only)
To: [Battelle]
[Battelle's address]

1. We hereby establish this irrevocable and transferable Letter of Credit in your favor for one or more drawings up to United States \$_____. This Letter of Credit is payable at [issuing financial institution's and, if any, confirming financial institution's] office at [issuing financial institution's address and, if any, confirming financial institution's address] and expires with our close of business on _____, or any automatically extended expiration date.

2. We hereby undertake to honor your or the transferee's sight draft(s) drawn on the issuing or, if any, the confirming financial institution, for all or any part of this credit if presented with this Letter of Credit and confirmation, if any, at the office specified in paragraph 1 of this Letter of Credit on or before the expiration date or any automatically extended expiration date.

3. [This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.] It is a condition of this Letter of Credit that it is deemed to be automatically extended without amendment for one year from the expiration date hereof, or any future expiration date, unless at least 60 days prior to any expiration date, we notify you or the transferee by

**CONSTRUCTION GENERAL PROVISIONS
FIXED PRICE/Commercial – April 2004**

registered mail, or other receipted means of delivery, that we elect not to consider this Letter of Credit renewed for any such additional period. At the time we notify you, we also agree to notify the account party (and confirming financial institution, if any) by the same means of delivery.

4. This Letter of Credit is transferable. Transfers and assignments of proceeds are to be effected without charge to either the beneficiary or the transferee/assignee of proceeds. Such transfer or assignment shall be only at the written direction of Battelle (the beneficiary) in a form satisfactory to the issuing financial institution and the confirming financial institution, if any.

5. This Letter of Credit is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, and to the extent not inconsistent therewith, to the laws of _____ [state of confirming financial institution, if any, otherwise state of issuing financial institution].

6. If this credit expires during an interruption of business of this financial institution as described in Article 17 of the UCP, the financial institution specifically agrees to effect payment if this credit is drawn against within 30 days after the resumption of our business.

Sincerely,

[Issuing financial institution]

(f) The following format shall be used by the financial institution to confirm an ILC:

[Confirming Financial Institution's Letterhead or Name and Address]	
(Date)	_____
Our Letter of Credit Advice Number _____	
Beneficiary: _____ [Battelle]	
Issuing Financial Institution: _____	
Issuing Financial Institution's LC No.: _____	

Gentlemen:

1. We hereby confirm the above indicated Letter of Credit, the original of which is attached, issued by _____ [name of issuing financial institution] for drawings of up to United States dollars _____/U.S. \$_____ and expiring with our close of business on _____ [the expiration date], or any automatically extended expiration date.

2. Draft(s) drawn under the Letter of Credit and this Confirmation are payable at our office located at _____.

3. We hereby undertake to honor sight draft(s) drawn under and presented with the Letter of Credit and this Confirmation at our offices as specified herein.

4. [This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.] It is a condition of this confirmation that it be deemed automatically extended without amendment for one year from the expiration date hereof, or any automatically extended expiration date, unless:

(a) At least 60 days prior to any such expiration date, we shall notify the Battelle Contract Specialist, or the transferee and the issuing financial institution, by registered mail or other receipted means of delivery, that we elect not to consider this confirmation extended for any such additional period; or

(b) The issuing financial institution shall have exercised its right to notify you or the transferee, the account party, and ourselves, of its election not to extend the expiration date of the Letter of Credit.

**CONSTRUCTION GENERAL PROVISIONS
FIXED PRICE/Commercial – April 2004**

5. This confirmation is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, and to the extent not inconsistent therewith, to the laws of _____ [state of confirming financial institution].

6. If this confirmation expires during an interruption of business of this financial institution as described in Article 17 of the UCP, we specifically agree to effect payment if this credit is drawn against within 30 days after the resumption of our business.

Sincerely,

[Confirming financial institution]

(g) The following format shall be used by the Battelle Contract Specialist for a sight draft to draw on the Letter of Credit:

Sight Draft

[City, State]

(Date) _____
[Name and address of financial institution]

Pay to the order of _____ [Beneficiary Agency] _____ the sum of United States \$ _____. This draft is drawn under Irrevocable Letter of Credit No. _____.

[Beneficiary Agency]

[By]

(End of clause)

(FIN 7) Performance and Payment Bonds- Construction (April 2004)

(a) *Definitions.* As used in this clause-

"Original contract price" means the award price of the contract; or, for requirements contracts, the price payable for the estimated total quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

(b) *Amount of required bonds.* Unless the resulting contract price is \$100,000 or less, the successful offeror shall furnish performance and payment bonds to the Battelle Contract Specialist as follows:

(1) *Performance bonds (Standard Form 25).* The penal amount of performance bonds at the time of contract award shall be 100 percent of the original contract price.

(2) *Payment Bonds (Standard Form 25-A).* The penal amount of payment bonds at the time of contract award shall be 100 percent of the original contract price.

(3) *Additional bond protection.*

- (i) Battelle may require additional performance and payment bond protection if the contract price is increased. The increase in protection generally will equal 100 percent of the increase in contract price.
- (ii) Battelle may secure the additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

CONSTRUCTION GENERAL PROVISIONS FIXED PRICE/Commercial – April 2004

(c) *Furnishing executed bonds.* The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Battelle Contract Specialist, within the time period specified in the Bid Guarantee provision of the solicitation, or otherwise specified by the Battelle Contract Specialist, but in any event, before starting work.

(d) *Surety or other security for bonds.* The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the *Federal Register* or may be obtained from the:

U.S. Department of Treasury
Financial Management Service
Surety Bond Branch
401 14th Street, NW, 2nd Floor, West Wing
Washington, DC 20227.

(e) *Notice of subcontractor waiver of protection (40 U.S.C. 270b(c)).* Any waiver of the right to sue on the payment bond is void unless it is in writing, signed by the person whose right is waived, and executed after such person has first furnished labor or material for use in the performance of the contract.

(End of clause)

PART 5 - LABOR PROVISIONS

(LAB 1) Disputes Concerning Labor Standards (April 2004)

The United States Department of Labor has set forth in 29 CFR parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(End of clause)

(LAB 2) Equal Opportunity (April 2004)

(a) The Contractor shall comply with the Equal Employment Opportunity (EEO) laws of the United States, including, but not limited to:

(1) [Title VII of the Civil Rights Act of 1964](#) (Title VII), which prohibits employment discrimination based on race, color, religion, sex, or national origin;

(2) The [Equal Pay Act of 1963](#) (EPA), which protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination;

(3) [Title I and Title V of the Americans with Disabilities Act of 1990](#) (ADA), which prohibit employment discrimination against qualified individuals with disabilities in the private sector, and in state and local governments;

(4) The [Civil Rights Act of 1991](#), which, among other things, provides monetary damages in cases of intentional employment discrimination.

(b) The EEO Laws of the United States are enforced by the Equal Employment Opportunity Commission (EEOC) (<http://www.eeoc.gov/>).

CONSTRUCTION GENERAL PROVISIONS FIXED PRICE/Commercial – April 2004

(LAB 3) Labor and Wage Standards (April 2004)

(a) **General.** A business in the construction industry having two or more employees and an annual sales volume of \$500,000 or more are subject to the FAIR LABOR STANDARDS ACT OF 1938, AS AMENDED (29 U.S.C. 201). The FLSA sets basic minimum wage and overtime pay standards and regulates the employment of minors.

(b) **Basic Wage Standards.** Covered nonexempt workers are entitled to a minimum wage in accordance with the FLSA and the laws of the State of Washington (www.dol.gov). Overtime compensation is required for all hours worked over 40 in a workweek, at a rate of not less than one and one-half times the employee's regular rate of pay. Wages required by FLSA are due on the regular payday for the pay period covered. Deductions made from wages for such items as cash or merchandise shortages, employer-required uniforms, and tools of the trade, are not legal to the extent that they reduce the wages of employees below the minimum rate required by FLSA or reduce the amount of overtime pay due under FLSA.

(c) **Locally Prevailing Wages.** Contractors and their subcontractors are to pay workers employed directly upon the site of the work no less than the locally prevailing wages and fringe benefits paid on projects of a similar character.

Definition: The "prevailing wage" shall be the wage paid to the majority (more than 50 percent) of the laborers or mechanics in the classification on similar projects in the area during the period in question. If the same wage is not paid to a majority of those employed in the classification, the prevailing wage shall be the average of the wages paid, weighted by the total employed in the classification.

(d) **Preservation and Inspection of Records.** Each contractor or subcontractor shall preserve his weekly payroll records for a period of three years from date of completion of the contract. The payroll records shall set out accurately and completely the name and address of each laborer and mechanic, his correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Such payroll records shall be made available at all times for inspection by Battelle.

(e) **Weekly Statement with Respect to Payment of Wages.** Each contractor or subcontractor engaged in on-site Work shall furnish a statement each week with respect to the wages paid each of its employees engaged in work during the preceding weekly payroll period. A form acceptable to Battelle for recording and reporting work hours and the payment of wages is a Department of Labor (DOL) Form WH-347.

(End of clause)

(LAB 4) Open Competition and Labor Relations (April 2004)

(a) "Labor organization," as used in this clause, shall have the same meaning it has in 42 U.S.C. 2000e(d).

(1) Battelle maintains a position of neutrality with regards to project labor agreements. Battelle shall not:

- i. Require bidders, offerors, contractors, or subcontractors to enter into or adhere to nor prohibit those parties from entering into or adhering to agreements with one or more labor organizations, i.e., project labor agreements, for this or other related construction project(s); or
- ii. Otherwise discriminate against bidders, offerors, contractors, or subcontractors for refusing to become or to remain signatories or to otherwise adhere to project labor agreements for this or other related construction project(s).

(2) Nothing in this clause shall limit the right of bidders, offerors, contractors, or subcontractors to voluntarily enter into project labor agreements for this or related construction Projects.

(b) Labor Harmony.

(1) *General.* Contractor agrees that all labor employed by it, its agents, and/or subcontractor's for Work on the jobsite shall be in harmony with and be compatible with all other labor used by Battelle, the Contractor and it's Subcontractors. Whenever Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of the Work, Contractor shall immediately give notice thereof including all relevant information to Battelle.

(2) *Strategic Plan.* Award of any contract is contingent upon the Bidder and Bidder's subcontractors having a Strategic Plan for harmonizing labor on Battelle premises.

(End of clause)

CONSTRUCTION GENERAL PROVISIONS FIXED PRICE/Commercial – April 2004

(LAB 5) Unemployment Insurance (April 2004)

Contractor shall comply with Title 50 of the Revised Code of Washington (RCW), Title 192 of the Washington Administrative Code (WAC) and all other applicable State of Washington laws, rules and policies defining benefits to eligible workers who are unemployed through no fault of their own (as determined under State law), and meet other eligibility requirements of State law (<http://fortress.wa.gov/esd/portal/>).

(End of clause)

PART 6 - QUALITY PROVISIONS

(QUAL 1) Quality Assurance (April 2004)

(a) The Contractor shall assure that all Work (including submittals, products, manufacture, fabrication, and installation of products and components, workmanship, inspection, testing, etc.) performed by it or its subcontractors and suppliers is in compliance with Contract Documents. This includes taking measures to assure that suspect/counterfeit products are not incorporated into the work.

(b) The Contractor shall use a management system that helps ensure proper control of the special processes (e.g., welding, nondestructive examination, soldering workmanship, manufacturer of radiation calibration standards and equipment, etc.). The Contractor shall require, in writing, subcontractors of all tiers to comply with all applicable contractual requirements. The management system of the contractor and subcontractors of all tiers shall be subject to audit by Battelle to the extent practicable at all times and places. The management system shall include the following:

1. Qualified personnel/processes, calibrated equipment traceable to a national standard, document control
2. Written procedures
3. Control of nonconforming items.

(c) Work may include products and services that necessitate additional or special Quality Assurance / Quality Control, requirements, including the need for a documented Quality Assurance / Quality Control program. When such requirements are applicable to the Contractor's work, they will be identified specifically in the Contract.

(d) A pre-award evaluation shall be conducted of a prospective contractor's technical and quality assurance / quality control capability. Evaluation, when required, shall be performed of the required documented Quality Assurance / Quality Control program(s) / system(s) and their implementation applicable to work to be performed by the prospective contractor or subcontractor(s).

(e) The Contractor shall comply with manufacturer's recommendations for product installation or application when instructions are not given in the Specifications. The Contractor shall notify Battelle if such compliance will result in violation of imposed codes and standards, or other specified requirements.

(End of clause)

(QUAL 2) Red-Lined Drawings (April 2004)

Prior to submission of its final payment invoice, the Contractor shall deliver to Battelle three revised copies of all Battelle furnished or Contractor-generated design drawings and specifications necessary to depict accurately all delivered supplies; provided, however, that if the supplies delivered conform exactly to all such design drawings and specifications, the Contractor shall instead so certify in writing. Such certification shall clearly specify all applicable design drawings and specifications (red-lined drawings are acceptable). Contractor's failure to deliver all required "As-Built" design drawings and specifications, or the delivery of "As-Built" design drawings and specifications that are deficient, shall be deemed a failure to make delivery within the meaning of the Default clause of this contract.

(End of clause)

CONSTRUCTION GENERAL PROVISIONS FIXED PRICE/Commercial – April 2004

(QUAL 3) Suspect / Counterfeit Items (April 2004)

(a) Battelles Suspect / Counterfeit Items program responds to the S/CI requirements in the following documents:

- (1) DOE Order 440.1A, "Worker Protection Management for DOE Federal and Contractor Employees" addresses requirements for the control of S/CIs;
- (2) DOE G 440.1-6, "Implementation Guide for use with Suspect/Counterfeit Items Requirements of DOE O 440.1 WORKER PROTECTION MANAGEMENT;
- (3) 10CFR 830.120; and DOE 5700.6C, "QUALITY ASSURANCE," provides guidance on implementing the requirements of DOE Order 440.1A; and
- (4) DOE Order 232.1A, "Occurrence Reporting and Processing of Operations Information" addresses reporting requirements for discovery of S/CIs.

(b) S/CIs may pose immediate and potential threats to the safety of Battelle, contractor workers, the public, and the environment. Failure of a safety or mission critical system due to an S/CI could also have security implications at BATTELLE facilities. The most common S/CIs found at Battelle facilities have been threaded fasteners fraudulently marked as high-strength bolts, and refurbished electrical circuit breakers sold and distributed under false certifications. Falsified documentation has also misled purchasers into accepting S/CIs that do not conform to specified requirements. Forms of misrepresentation include the following:

- (1) Falsified product sources (counterfeits);
- (2) Falsified or modified quality records;
- (3) False marking as to class, type, or grade;
- (4) Mixing of unmarked with marked materials;
- (5) False labeling as to qualification or acceptance by testing/certifying organizations; and
- (6) Used products misrepresented as new products.

(c) Documents developed by the DOE Quality Assurance Working Group that can help to identify and disposition S/CI's discovered at Battelle facilities can be accessed at the following link <http://www.qmo.bnl.gov/DOESCI/DOESCI.htm>.

(d) The Contractor shall assure that all products delivered on this contract do not contain S/CI parts. If S/CI parts are discovered, notify Battelle for further direction. All discrepant part(s) / product(s) will be replaced at the Contractor's expense.

(End of clause)

(QUAL 4) Test Reports (April 2004)

(a) Contractor shall submit Test Reports as specified and required by this contract. Each report shall be legible, reproducible, and contain, in addition to any other requirements as specified by this contract, the following:

- (1) The contract number;
- (2) A clear identification of the supplies covered, including, but not limited to, the use of serial, lot, batch, heat, or mill numbers;
- (3) The date and title of the person signing

(b) Test Reports contemplated by this clause include but are not limited to the following:

- (1) Pressure and/or Leak Test Report(s) containing the testing requirements, acceptance criteria, and actual results of all pressure and/or leak tests required by this contract.
- (2) Functional Test Report(s) of the actual test results, specifying what was tested, the requirements/parameters tested, and the acceptance criteria, all as required by this contract.
- (3) Inspection Data Report(s) of actual inspection results, specifying what was inspected, the characteristics inspected, and the acceptance criteria, all as required by this contract.
- (4) ASTM Manufacturers' Certification and Test Report, certifying the actual results of all tests and inspections required by ASTM Standard Specification(s) stated in this contract.

**CONSTRUCTION GENERAL PROVISIONS
FIXED PRICE/Commercial – April 2004**

(5) Mechanical/Physical Properties Test Report(s) containing the actual results of all tests required by the Standard specification(s).

(6) Chemical Analytical Report(s) (or Certificate of Analysis) containing the actual results of a chemical analysis performed on the specific chemicals or supplies tendered for acceptance.

(7) Reference or Standard Materials Report(s) specifying (1) the measurements made; (2) the results of such measurements; (3) an estimate of the uncertainties of each measurement recorded (such as random and systematic errors); and (4) the basis for the validity of each measurement recorded, consisting of either a description of the methods and sources used to make the measurements or a certification that the measurements are traceable to a nationally recognized standard or derived from accepted values of natural physical constants.

(c) Submission of a certification constitutes Contractor's express warranty that the identified supplies conform to all of the requirements of this contract.

(End of clause)