



**GENERAL PROVISIONS**

**Fixed Price Construction Contracts**

For the Pacific Northwest National Laboratory  
Operated by Battelle Memorial Institute

Battelle Memorial Institute has executed and is engaged in the performance of Prime Contract DE-AC05-76RL01830 with the United States Department of Energy (DOE), for the management, operation, and maintenance of the Pacific Northwest National Laboratory (PNNL) in

Richland, Washington. This contract is entered into in furtherance of the performance of the work provided in the Prime Contract, and is subject to the following general provisions:

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**GENERAL**

**1. Introduction**

- A. The construction covered by this Contract shall be furnished subject to the terms and conditions set forth herein.
- B. This Contract is the complete and exclusive statement of the terms of the agreement between Contractor

and Battelle.

- C. No modification of this Contract (including any addition, deletion, or other modification proposed in Contractor's acceptance) shall be binding on Battelle unless agreed to by an authorized Battelle Contracts representative in writing.
- D. If any of the clauses included or incorporated into

these General Provisions do not apply to the Contract Work, such clauses are considered to be self-deleting.

## 2. Definitions

As used throughout this Contract, the following terms shall have the meaning set forth below:

- A. "Battelle" means Battelle Memorial Institute, in the performance of its prime Contract with The United States of America and includes any duly authorized representative thereof acting within authorized limits.
- B. "Contracting Officer" means the Battelle Contracts Representative.
- C. "Contractor" means the entity under Contract with Battelle responsible for execution of all construction work described within the Contract documents.
- D. "Construction worksite," "Site of the work," and "Site" are equivalent terms for purpose of this Contract and have the meaning given in 10 CFR 851 for Construction worksite as follows:
- E. "Construction worksite is the area within the limits necessary to perform the work described in the construction procurement or authorization document. It includes the facility being constructed or renovated along with all necessary staging and storage areas, as well as adjacent areas subject to project hazards."
- F. "DOE" means U. S. Department of Energy or any duly authorized representative thereof.
- G. "DEAR" means Department of Energy Acquisition Regulation, including all amendments and changes thereto in effect on the date of issuance of this Contract.
- H. "FAR" means Federal Acquisition Regulation, including all amendments and changes thereto in effect on the date of issuance of this Contract.
- I. "Government" means The United States of America, and shall include Battelle to the extent necessary to enable Battelle to administer this Contract and to perform its obligations under its Government prime Contract.
- J. "Subcontract(s)" and "Subcontractor(s)" includes this Contract when used in a FAR or DEAR clause referring to a prime and Subcontractor relationship. Otherwise, it means Contractor's lower tier Subcontract(s) and Subcontractor(s), respectively. The term "Subcontract" includes purchase orders and changes, modifications, or amendments to Subcontracts and purchase orders.

## 3. Acceptance of Contract Terms and Conditions (cl 302 – October 2008)

The Contractor, by signing this Contract or performing the services and/or delivering the supplies identified herein, agrees to comply with all the terms and conditions and all specifications and other documents that this Contract incorporates by reference or attachment. Battelle hereby objects to any terms and conditions contained in any acknowledgment of this Contract that are different from or in addition to those mentioned in this document. Failure of Battelle to enforce any of the provisions of this Contract shall not be construed as evidence to interpret the requirements of this Contract, nor a waiver of any requirements, nor of the right of Battelle to enforce each and every provision. All rights and obligations shall

survive final performance of this Contract.

## 4. Order of Precedence - Construction

Any inconsistency in this solicitation or Contract shall be resolved by giving precedence in the following order:

- A. Contract Agreement (excluding specifications)
- B. Representations and other instructions
- C. General Provisions
- D. Division 1 Administrative Requirements
- E. Specifications
- F. Drawings

## 5. Assignment (cl 357 - Jan 2003)

Battelle may assign this Contract to the U.S. Department of Energy (DOE) or a designee of DOE. Upon receipt by the Contractor of written notice that DOE or its designee has been assigned this Contract, Battelle shall be relieved of all responsibility hereunder, and the Contractor shall thereafter look solely to the assignee for performance of Battelle's obligations. The Contractor shall not assign this Contract or any interest therein, nor claims thereunder without the prior written consent of Battelle or Battelle's assignee. Any assignment, by operation of law or otherwise, without prior written consent of Battelle or Battelle's assignee shall be void.

## 6. Pacific Northwest National Laboratory or Battelle Name (cl 374 – October 2008)

The Contractor agrees not to use Pacific Northwest National Laboratory's or Battelle's name or identifying characteristics for advertising, sales promotion, raising of capital, recommending investments or other publicity purposes that implies endorsement by the Pacific Northwest National Laboratory or Battelle without the prior written consent of Battelle. This clause shall survive the termination or expiration of this contract.

## 7. Insurance - Construction

- A. The Contractor shall, at its sole cost, obtain and maintain in force for the duration of the Contract (including the Guarantee period) insurance of the following types, with limits not less than those set forth below.
- B. **Schedule of Minimum Insurance Types and Amounts.**
  - 1. Workers Compensation Insurance shall be at a minimum as indicated below or per the statutory limits of the State where the work is to be performed, whichever is higher:
    - (i) \$1,000,000 Minimum per accident;
    - (ii) \$1,000,000 minimum per employee for bodily injury and disease.
  - 2. General Liability Insurance:
    - (i) \$5,000,000 general aggregate limit;
    - (ii) \$5,000,000 per occurrence for bodily injury and property damage;
    - (iii) \$5,000,000 per occurrence for personal and advertising injury liability;
    - (iv) \$5,000,000 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:

\$2,000,000 combined single limit of liability for bodily injury and property damage per occurrence, covering the use of all owned, non-owned, and hired automobiles.

4. Tools and Equipment Insurance (Equipment Floater Insurance)

Contractor shall carry and maintain Tools and Equipment Insurance during performance of its services under the Contract, covering physical damage to or loss of all major tools and equipment, construction office trailers, and their contents, and vehicles for which Contractor is responsible.

5. Builders Risk Insurance:

Contractor shall carry and maintain Builder's Risk Insurance covering loss or damage to materials and equipment furnished by Contractor that is incorporated into the completed facility. Contractor shall be responsible for the payment of the applicable deductible (which will not exceed \$5,000 per occurrence) for each loss to such materials or equipment which are in the care, custody and control of the Contractor.

C. **Proof of Insurance.** Before commencing work, the Contractor shall furnish written proof to Battelle 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 Government or 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 30 days after the insurer or the Contractor gives written notice to Battelle, 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 either a Battelle or Government installation, and shall require Subcontractors to provide and maintain the kinds and minimum amounts of insurance required in the Schedule. 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 the Government and 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.

## 8. Labor Harmony

A. Battelle maintains a neutral position regarding Project Labor Agreements. This Contract Work does not mandate nor preclude participation in a Project Labor Agreement if said participation promotes the economy and efficiency in Federal procurement ascribed by Executive Order titled, "Use of Project Labor Agreements for Federal Construction Projects," dated 2/6/09.

B. In accordance with applicable prior labor agreements, laws, regulations, codes and standards, the Contractor shall furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work. Without limiting the generality of the foregoing, Labor Harmony shall include the provision of labor that will not cause, cause to be threatened or give rise to either directly or indirectly, any work disruption, slowdowns or stoppages by employees of other Contractors, while performing any work or activities incidental thereto.

C. Award of any construction Contract is contingent upon the Contractor having an acceptable Plan for harmonizing labor on the Battelle Work site.

D. The Contractor agrees to insert the substance of this clause, including paragraph (c), in every Subcontract issued in performance of this Contract.

## 9. Registration, Representations & Certifications

A. All Contractors shall be registered in the governments Central Contractor Registration (CCR) database. 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.

1. By submission of an offer, the offeror acknowledges the requirement to 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. Failure to register shall be grounds for rejection of Contractor bids and proposals.

B. 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.

C. In addition to registering in CCR, the offeror must also complete an annual representations and certifications electronically via the Online Representations and Certifications Application (ORCA)

website at <http://orca.bpn.gov>. The Contractor is required to review and verify prior to submission of any offer that the representations and certifications currently posted electronically have been entered or updated within the last 12 months, and are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the North American Industry Classification Code [NAICS] referenced for this solicitation), as of the date of this offer.

#### **10. Limitations on Subcontracting (FAR 52.219-14, Nov 2011)**

- A. This clause does not apply to the unrestricted portion of a partial set-aside.
- B. *Applicability*. This clause applies only to—
  - 1. Contracts that have been set aside or reserved for small business concerns or 8(a) concerns;
  - 2. Part or parts of a multiple-award contract that have been set aside for small business concerns or 8(a) concerns; and
  - 3. Orders set aside for small business or 8(a) concerns under multiple-award contracts as described in 8.405-5 and 16.505(b)(2)(i)(F).
- C. 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.

#### **11. Performance and Payment Bonds—Construction (FAR 52.228-15, Oct 2010)**

- 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 \$150,000 or less, the successful offeror shall furnish performance and payment bonds to the Contracting Officer 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 25A). 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) The Government 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) The Government may secure the additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
- C. *Furnishing executed bonds*. The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, within the time period specified in the Bid Guarantee provision of the solicitation, or otherwise specified by the Contracting Officer, 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 the Treasury  
Financial Management Service  
Surety Bond Branch  
3700 East West Highway, Room 6F01  
Hyattsville, MD 20782.  
Or via the internet at  
<http://www.fms.treas.gov/c570/>.
- E. *Notice of subcontractor waiver of protection (40 U.S.C. 3133(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.

#### **12. Federal, State, and Local Taxes (FAR 52.229-3, Apr 2003)**

- A. As used in this clause—

“After-imposed Federal tax” means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the contract date, but whose exemption was later revoked or reduced during the contract period on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

“After-relieved Federal tax” means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been

payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

“All applicable Federal, State, and local taxes and duties” means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

“Contract date” means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

“Local taxes” includes taxes imposed by a possession or territory of the United States, Puerto Rico, or the Northern Mariana Islands, if the contract is performed wholly or partly in any of those areas.

- B. The contract price includes all applicable Federal, State, and local taxes and duties.
- C. The contract price shall be increased by the amount of any after-imposed Federal tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.
- D. The contract price shall be decreased by the amount of any after-relieved Federal tax.
- E. The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor’s fault, negligence, or failure to follow instructions of the Contracting Officer.
- F. No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.
- G. The Contractor shall promptly notify the Contracting Officer of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.
- H. The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

### 13. Payments – Construction

- A. **Payment of Price.** Battelle shall pay the Contractor the Contract price as provided in this Contract. Unless otherwise provided in the Contract Schedule, the terms of payment shall be thirty (30) days after receipt of the Contractor’s properly submitted invoice.
- B. **Progress Payments.** Battelle shall make progress payments monthly as the work proceeds based on estimates of work accomplished which meets the standards of quality established under the Contract, as approved by Battelle.
  - 1. The Contractor shall furnish a breakdown of the total Contract price showing the amount included therein for each principal category of the work,

consistent with the “Schedule of Values”, which shall substantiate the payment amount requested in order to provide a basis for determining progress payments, in such detail as requested by Battelle.

- 2. In the preparation of estimates Battelle 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 will not be approved for progress payments.
- 3. As part of the request for payment, the Contractor shall submit a report summarizing the month’s injuries, illnesses, property damage, fires, “near misses”, etc. The summary report should be formatted to include the following items:
  - (i) Average number of employees during the month,
  - (ii) Total Contractor hours worked on this Contract,
  - (iii) Number of sub-tier Contractors,
  - (iv) Number of sub-tier Contractor employees by sub-tier Contractor, and
  - (v) Total sub-tier Contractor hours (by sub-tier Contractor) worked on this Contract.
- 4. Submit an electronic invoice in an acceptable format to Battelle at: [ap.invoices@pnnl.gov](mailto:ap.invoices@pnnl.gov). The electronic invoice shall be integrated with the Contract scheduling requirements and tied to the Contract schedule of values. If electronic transmittal is not possible, submit the invoice and all supporting documentation via mail to:

Battelle, Pacific Northwest Division  
ATTN: ACCOUNTS PAYABLE  
PO Box 999, MSIN: J1-04  
Richland, WA 99352

- C. **Contractor Certification.** Along with each request for progress payments, the Contractor shall furnish the following certification, or payment shall not be made:

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;
  - 2. Payments to Subcontractors and suppliers have been made from previous payments received under the Contract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with sub-Contract agreements; and
  - 3. This request for progress payments does not include any amounts that the Contractor intends to withhold or retain from a Subcontractor or supplier in accordance with the terms and conditions of the sub-Contract.
- 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 Battelle of such performance deficiency; and
  2. Be obligated to pay Battelle an amount (computed by Battelle in the manner provided in 31 U.S.C. 3903 (c) (1)) equal to interest on the unearned amount from the date of receipt of the unearned amount until:
    - (i) The date the Contractor notifies Battelle 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.** In making progress payments, there shall be retained 10 percent of the estimated amount until final completion and acceptance of the Contract work. However, if Battelle finds that satisfactory progress was achieved during any period for which a progress payment is to be made, Battelle may authorize a reduction in retention. When the work is substantially complete, Battelle shall retain from previously withheld funds and future progress payments that amount it considers adequate for protection of Battelle and the Government 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.** If performance or payment bonds are required under this Contract, Battelle shall pay to the Contractor that portion of the Contract price equal to the total premiums paid by the Contractor to obtain bonds. This payment shall be paid at one time to the Contractor together with the first progress payment otherwise due after the Contractor has:
1. furnished the bonds;
  2. furnished evidence of full payment to the surety; and
  3. submitted a request for such payment. Payments for bond premiums shall not be made as increments of individual progress payments. The retainage provisions in paragraph (e) of this

clause shall not apply to that portion of a progress payment attributable to bond premiums.

- H. **Final payment.** Upon completion and acceptance of all work, the amount due the Contractor under this Contract shall be paid upon the presentation of a properly executed invoice and after the Contractor shall have furnished Battelle with a release of all claims against Battelle and the Government arising by virtue of this Contract, other than claims in stated amounts that the Contractor has specifically excepted from the operation of the release.

- 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.

#### 14. Suspension of Work (FAR 52.242-14, Apr 1984)

- A. The Contracting Officer 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 Contracting Officer determines appropriate for the convenience of the Government.
- 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 Contracting Officer in the administration of this contract, or (2) by the Contracting Officer'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 Contracting Officer 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.

#### 15. Stop-Work Order (FAR 52.242-15, Aug 1989)

- A. The Contracting Officer 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 Contracting Officer shall either—

1. Cancel the stop-work order; or
  2. Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.
- B. If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if—
1. The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
  2. The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.
- C. If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer 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 Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

#### **16. Changes (FAR 52.243-4, June 2007)**

- A. The Contracting Officer 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 the Government-furnished property or services; 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 Contracting Officer that causes a change shall be treated as a

change order under this clause; Provided, that the Contractor gives the Contracting Officer written notice stating—

1. The date, circumstances, and source of the order; and
  2. That the Contractor regards the order as a change order.
- C. Except as provided in this clause, no order, statement, or conduct of the Contracting Officer 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 Contracting Officer 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 the Government 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 Contracting Officer a written statement describing the general nature and amount of the proposal, unless this period is extended by the Government. 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.

#### **17. Pricing of Adjustments - Construction**

- 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 FAR, as supplemented or modified by 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. **Requests for Equitable Adjustment.** Contractor shall submit any request for equitable adjustment pursuant to the Changes clause within 10 working days after receipt of a notice of a change. The request for equitable adjustment shall include a detailed estimate with supporting calculations and pricing for the change together with any required adjustments in the schedule.
- C. **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.

- D. **Allowable Markups.** Allowable markup percentages on changes will not exceed the following:
1. **Changes < \$100,000.** Work performing Contractor's actual overhead rate as established by audit within the last 12 months, not-to-exceed 15 percent on total direct costs, plus a negotiated allowance for profit, not-to-exceed 10 percent;
  2. **Changes > \$100,000.** Work performing Contractor's actual overhead rate as established by audit within the last 12 months, not-to-exceed 10% on total direct costs, plus a negotiated allowance for profit using the DEAR weighted guideline method, not to exceed 5 percent;
  3. **Markups on Lower Tiers.** No more than three mark-ups, one overhead, one profit/fee applied by the Work performing Contractor, and one commission or markup inclusive of overhead and profit by the General Contractor not-to-exceed 10 percent will be allowed regardless of the number of tiers of Subcontractors or the Subcontract instrument (i.e., purchase order, Contract, etc.).
- 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 bases.
- G. **Small Tools.** Consideration for Small tools is allowable at a rate *not to exceed* 3 percent of net labor cost regardless of Contractor assertions of actual cost or independent audit determinations.
- H. **Safety.** Additional costs for safety must be supported as an actual cost necessary for performance of the changed work and will not be allowed as a percentage of net labor costs.
- I. **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.

#### **18. Termination for Convenience of the Government (Fixed-Price) (FAR 52.249-2, May 2004)**

- A. The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer 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 Contracting Officer, 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 the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government 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 Contracting Officer, 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 Contracting Officer, transfer title and deliver to the Government—
    - (i) The fabricated or un-fabricated 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 the Government.
  7. Complete performance of the work not terminated.
  8. Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.
  9. Use its best efforts to sell, as directed or authorized by the Contracting Officer, 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 Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.
- 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 Contracting Officer upon written request of the Contractor within this 120-day period.

- D. After expiration of the plant clearance period as defined in Subpart [49.001](#) of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer 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 Contracting Officer in the form and with the certification prescribed by the Contracting Officer. 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 Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer 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 Contracting Officer 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 Contracting Officer 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 Contracting Officer fail to agree on the whole amount to be paid the Contractor because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph (f) of this clause:
1. For contract work performed before the effective date of termination, the total (without duplication of any items) of—
    - (i) The cost of this work;
    - (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)(1)(i) of this clause; and
    - (iii) A sum, as profit on subdivision (g)(1)(i) of this clause, determined by the Contracting Officer 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 Contracting Officer shall allow no profit under this subdivision (g)(1)(iii) and shall reduce the settlement to reflect the indicated rate of loss.
  2. 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.
- H. Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value, as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government or to a buyer.
- I. The cost principles and procedures of [Part 31](#) of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.
- J. The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer 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 un-liquidated advance or other payments to the Contractor under the terminated portion of this contract;
  2. Any claim which the Government 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 the Government.
- L. If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer 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 Contracting Officer.

- M. (1) The Government 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 Contracting Officer 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 the Government 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 Contracting Officer because of the circumstances.
- N. Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

#### **19. Default (Fixed-Price Construction) (FAR 52.249-10, Apr 1984)**

- 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, the Government 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, the Government 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 the Government 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 the Government in completing the work.
- 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 the Government in either its sovereign or contractual capacity,
- (iii) Acts of another Contractor in the performance of a contract with the Government,
- (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 Contracting Officer), notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of the Contracting Officer 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 the Government.

- D. The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

#### **20. Failure to Perform - Construction**

- A. Subject to the Excusable Delays clause, if the Contractor fails to perform this Contract under its terms, Battelle 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 Battelle 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.

## 21. Excusable Delays (FAR 52.249-14, Apr 1984)

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

## 22. Disputes (FAR 52.233-1, May 2014)

- 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 Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

- (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 reflects the contract adjustment for which the Contractor believes the Government 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 Contracting Officer 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 Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.
- F. The Contracting Officer'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 Contracting Officer or a claim by the Government 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 Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.
- H. The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer 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 Contracting Officer 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 Contracting Officer 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 the contract, and comply with any decision of the Contracting Officer.

## 23. Indemnity (cl. 351C – Aug 2009)

Contractor shall indemnify and save harmless Battelle

from and against any and all liabilities and losses for injury (including death) to persons (including but not limited to Contractor's employees) or damage to property to the extent caused by a negligent act or omission or willful misconduct of the Contractor, its agents, or employees that occur during the performance of this contract, including any and all expense, legal or otherwise, incurred in the investigation or defense of any claim.

This indemnification shall not include such injuries to any person or persons or damage to or destruction of any property to the extent caused by the negligence or omission of Battelle or its employees.

In no event shall either Contractor or Battelle be liable for any special, incidental, or consequential damages of any type or nature.

#### **24. Public Release of Information**

Information, data, photographs, sketches, and advertising relating to the work under this contract, which Contractor desires to release or publish, shall be submitted to Battelle for approval 60 days prior to the desired release date. As part of the approval request, Contractor shall identify the specific media to be used as well as other pertinent details of the proposed release. All releases, regardless of tier or supplier, must have Battelle's prior approval. Contractor shall include all provisions of this clause, including this sentence, in all lower-tier subcontracts under this contract.

#### **25. Prohibition on Participation in Foreign Government Talent Recruitment Programs (cl.312 – September 2019)**

*Applies to research & development (R&D) or demonstration contracts performed on or at a DOE/NNSA site/facility, including DOE/NNSA/Battelle leased space.*

- A. Contractor shall utilize due diligence to ensure that neither it nor any of its employees, applicable subcontractor employees or joint appointees, working at any level, participate in a foreign government talent recruitment program of a foreign country of risk while performing work under this contract. A "foreign government talent recruitment program" means any foreign-state-sponsored attempt to acquire U.S. scientific-funded research or technology through foreign government-run or funded recruitment programs that target scientists, engineers, academics, researchers, and entrepreneurs of all nationalities working or educated in the United States.
- B. Contractor shall file reports with Battelle on a quarterly basis stating whether it or any such employees or joint appointees are participants in a foreign government talent recruitment program of a foreign country of risk, or whether the Contractor has a reasonable basis to report such employees or joint appointees as a participant in a foreign government talent recruitment program of a foreign country of risk.
- C. Contractor shall notify Battelle and the U.S. Department of Energy (DOE) Office of Intelligence and Counterintelligence within five (5) business days upon, at any time during the term of the contract,

including options and extensions, learning that it or any of its employees, applicable subcontractor employees, or joint appointees are or are believed to be participants in a foreign government talent recruitment program of a foreign country of risk.

- D. Upon filing quarterly reports in accordance with paragraph B., or providing notifications in accordance with paragraph C., the Contractor will be notified by Battelle's Contracts Representative whether it or any of its employees, applicable subcontractor employees or joint appointees, are participants in a foreign government talent recruitment program of a foreign country of risk covered by this clause. Following notification by the Battelle Contracts Representative, the Contractor shall take appropriate action to ensure that, within thirty (30) days of notification, neither it nor any such employees or joint appointees are participants in a foreign government talent recruitment program of a foreign country of risk while performing work under this contract.
- E. Failure by the Contractor to reasonably ensure that neither it nor any of its employees participate in a foreign government talent recruitment program of a foreign country of risk may result in Battelle exercising contractual remedies in accordance with federal regulations and the terms of the contract, up to and including termination of this contract.
- F. The Contractor is responsible for flowing down the requirements of this clause to R&D or demonstration subcontracts at any tier to the extent necessary to ensure Contractor's compliance with the requirements, where the lower tier subcontractor's work under this contract is performed on or at a DOE/NNSA site/facility, including DOE/NNSA/Battelle leased space.
- G. Battelle reserves the right to direct Contractor to remove the employee(s) participating in a foreign government talent recruitment program from performing any work under this contract on or at any facility of the Pacific Northwest National Laboratory (PNNL) or from any other DOE/NNSA site/facility (including DOE/NNSA/Battelle leased facilities). To the extent Battelle requires the Contractor employee(s) participating in the foreign government talent recruitment program to be removed from performing any further work under this contract, Contractor shall do so unless such employee(s) agree to discontinue his/her/their participation in the foreign government talent recruitment program. Contractor is not entitled to any claim for equitable adjustment against Battelle as a result of direction provided under this subparagraph.

#### **26. Unclassified Foreign Visits and Assignments (cl. 3114 –October 2020)**

*This clause applies when foreign nationals will have access to DOE owned or leased sites, information, technologies, or equipment under this contract.*

All foreign national contractor personnel must be approved in writing by Battelle before being granted access to any PNNL or DOE facilities, systems, technologies or information under this contract. Contractor shall provide the following information as applicable by individual:

- A. Non-U.S. Citizen Pre-Visit Form
- B. Passport and visa documents (non-immigration documentation) or immigrant document (lawful

permanent resident card)

**Contractor shall provide a point-of-contact, through which, such information shall be provided.**

## **27. Rights to Proposal Data**

Except for the technical data contained on those pages of Contractor's proposal, which are specifically identified in this contract with specific reference to this clause and asserted by Contractor as being proprietary data, it is agreed that, as a condition of the award of this contract and notwithstanding the provisions of any notice

## **28. Bankruptcy (cl. 318 - Nov 2008)**

If the Contractor enters into any proceeding related to bankruptcy, it shall give written notice to the Battelle Contracts Representative via certified mail within five days of initiation of the proceeding. The notification shall include the date on which the proceeding was filed, the identity and location of the court, and a listing of the Battelle purchase orders, contracts, or agreements affected.

## **29. Laws, Regulations, DOE Directives, and Indemnification (cl. ci-3121 – Mar 2014)**

Contractor shall comply with all applicable federal, state, and local laws and ordinances and all pertinent orders, DOE directives, rules, and regulations (including DOE regulations) and such compliance shall be a material requirement of this Contract. Contractor shall, without additional cost to Battelle, be responsible for obtaining any necessary licenses and permits.

To the extent authorized by law, Contractor shall indemnify and hold harmless the Government, Battelle, and each of their respective officers, directors, employees, agents, and successors in interest from and against all liability, claims, suits, damages, losses, costs, fines, civil penalties, remediation, or corrective actions, and any associated expense (including, without limitation, costs of: (i) defense; (ii) settlement; (iii) reasonable attorney's fees; and (iv) costs incurred in enforcing this indemnification) arising out of Contractor's non-compliance with any such laws and regulations.

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.

## **MATERIAL REQUIREMENTS AND QUANTITIES**

### **30. Material Requirements (FAR 52.211-5, Aug 2000)**

#### *A. Definitions.*

As used in this clause—

"New" means composed of previously unused components, whether manufactured from virgin material, recovered material in the form of raw material, or materials and by-products generated from, and reused within, an original manufacturing process; *provided* that the supplies meet contract requirements, including but not

limited to, performance, reliability, and life expectancy.

"Reconditioned" means restored to the original normal operating condition by readjustments and material replacement.

"Recovered material" means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

"Remanufactured" means factory rebuilt to original specifications.

"Virgin material" means—

1. Previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore; or
  2. Any undeveloped resource that is, or with new technology will become, a source of raw materials.
- B. Unless this contract otherwise requires virgin material or supplies composed of or manufactured from virgin material, the Contractor shall provide supplies that are new, reconditioned, or remanufactured, as defined in this clause.
- C. A proposal to provide unused former Government surplus property shall include a complete description of the material, the quantity, the name of the Government agency from which acquired, and the date of acquisition.
- D. A proposal to provide used, reconditioned, or remanufactured supplies shall include a detailed description of such supplies and shall be submitted to the Contracting Officer for approval.
- E. Used, reconditioned, or remanufactured supplies, or unused former Government surplus property, may be used in contract performance if the Contractor has proposed the use of such supplies, and the Contracting Officer has authorized their use.

### **31. Brand Name or Equal (FAR 52.211-6, Aug 1999)**

- 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 the Government'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 Contracting Officer; 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 Contracting Officer will evaluate "equal" products on the basis of information furnished by the offeror or identified in the offer and reasonably available to the Contracting Officer. The Contracting Officer 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.

### **32. Variation in Estimated Quantity (FAR 52.211-18, Apr 1984)**

If the quantity of a unit-priced item in this contract is an estimated quantity and the actual quantity of the unit-priced item varies more than 15 percent above or below the estimated quantity, an equitable adjustment in the contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above 115 percent or below 85 percent of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Contractor may request, in writing, an extension of time, to be received by the Contracting Officer within 10 days from the beginning of the delay, or within such further period as may be granted by the Contracting Officer before the date of final settlement of the contract. Upon the receipt of a written request for an extension, the Contracting Officer shall ascertain the facts and make an adjustment for extending the completion date as, in the judgment of the Contracting Officer, is justified.

### **ENVIRONMENTAL SAFETY AND HEALTH**

#### **33. Environment, Safety, and Health Requirements - Offsite (cl. 3113e – May 2012)**

- A. In performing work under this contract at its own facilities or any other location that is not a DOE-owned or leased facility, the Contractor shall comply with all applicable federal, state, and local environment, safety, and health laws and regulations. The Contractor shall also 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 functions and activities becomes an integral but visible part of the Contractor's work planning and execution processes.
- B. The Contractor is responsible for its subcontractors' compliance with the environment, safety, and health requirements of this contract.

#### **34. Environment, Safety, and Health Requirements (10 CFR 851)**

Contractor shall refer to the Contract Schedule for any other Environment, Safety, and Health requirements pertaining to 10 CFR 851, and shall comply with such requirements, when performing any work under this

contract on property or facilities owned or controlled by Battelle that are identified as PNNL Work Sites or on property or facilities owned or controlled by the United States Department of Energy (DOE), other than PNNL.

### **35. Notifications and Investigations**

#### **A. Emergency Notifications**

1. For onsite emergencies (police, fire, rescue, hazmat) call 509-375-2400.
2. For offsite emergencies (police, fire, rescue, hazmat) call 911.

#### **B. Event Notification**

The Contractor shall notify the Battelle Construction Manager or Battelle Contracts Representative immediately of any OSHA-recordable injuries/illnesses, any "off-normal occurrences," or Government property damaged that the Contractor determines to have occurred in the course of operations onsite and shall furnish such further information as the Battelle Construction Manager or Battelle Contracts Representative may require. An "off-normal occurrence" is any unplanned or unexpected event, or the discovery of a deficiency in a procedure, plan, or system that has real or potentially undesirable consequences to personnel, equipment, facilities, the environment, and/or programs.

#### **C. 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.
2. When a Contractor employee is involved in a serious event or accident, the Contractor shall implement the following actions:
  - A. Secure the event scene from disturbance and unauthorized entry pending arrival of Battelle Representatives.
  - B. Keep equipment or articles involved in the event from being operated, moved, or otherwise altered or repaired.

### **36. Solid Waste Management**

- 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.
  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, DOE, State and Local regulations and requirements.

### **37. Maintenance, Service, Repair or Disposal of Refrigeration Equipment and Air Conditioners (FAR 52.223-12, June 2016)**

A. *Definitions.* As used in this clause—

"Recycling" means the series of activities, including collection, separation, and processing, by which products

or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of products other than fuel for producing heat or power by combustion.

"Waste prevention" means any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they are discarded. Waste prevention also refers to the reuse of products or materials.

"Waste reduction" means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

B. Consistent with the requirements of section 3(e) of Executive Order 13423, the Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract. The Contractor's programs shall comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act ([42 U.S.C. 6962, et seq.](#)) and implementing regulations (40 CFR Part 247).

### **38. Accident Prevention (FAR 52.236-13 Nov 1991)**

A. The Contractor shall provide and maintain work environments and procedures which will—

1. Safeguard the public and Government personnel, property, materials, supplies, and equipment exposed to Contractor operations and activities;

2. Avoid interruptions of Government 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 Contracting Officer 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 Contracting Officer 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 Government personnel, the Contracting Officer 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 Contracting Officer 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.

### 39. Sustainable Acquisition Requirements (cl. 381 – Oct 2015)

Battelle is committed to managing its operations in a sustainable manner which promotes the natural environment and protects the health and well-being of its employees and contractor service providers. In the performance of work under this contract, the Contractor shall provide products that comply with Federal law as follows (regardless of any notations on the respective websites):

Recycled Content as designated by the Environmental Protection Agency (EPA) - <http://www.epa.gov/epawaste/conserve/tools/cpg/products/index.htm>

Biobased Products as designated by the United States Department of Agriculture (USDA) - <http://www.biopreferred.gov/BioPreferred/faces/pages/ProductCategories.xhtml>

Energy-Efficient Products such as Energy Star certified and FEMP-designated products - [http://www.energystar.gov/index.cfm?c=product\\_specs\\_product\\_specs](http://www.energystar.gov/index.cfm?c=product_specs_product_specs) and [http://www1.eere.energy.gov/femp/technologies/eep\\_purchasingspecs.html](http://www1.eere.energy.gov/femp/technologies/eep_purchasingspecs.html)

Water-Efficient Products as designated by the EPA for their WaterSense® label program - <http://www.epa.gov/watersense/products/index.html>

Environmentally preferable and energy efficient electronics, including desktop computers, laptops and monitors, as specified at the Green Electronics Council's Electronic Products Environmental Assessment Tool (EPEAT) registry- <http://ww2.epeat.net/searchoptions.aspx>

Non-Ozone Depleting Alternative Products as designated by the EPA - <http://www.epa.gov/ozone/snap/index.html>

Low-Emitting Volatile Organic Compounds (VOC) Materials as designated by the Federal Leadership in High Performance and Sustainable Buildings [Guiding Principles](#) (including adhesives, sealants, paints, carpet systems, and furnishings) for building modifications, maintenance, and cleaning - <http://www.epa.gov/greeningepa/projects/requirements.htm>

## QUALITY ASSURANCE

### 40. Quality Assurance

The Contractor shall assure that all work (e.g., submittals, products, manufacture, fabrication, installation of products and components, workmanship, inspection, and testing)

performed by it or its Subcontractors and suppliers is in compliance with all contract documents (i.e., technical specifications, drawings, and Division 1). Work may include products and services (e.g., welding, nondestructive examination, soldering workmanship, manufacturer of radiation calibration standards, and equipment) that necessitate additional or special Quality Assurance / Quality Control, requirements, including the need for a documented Quality Assurance program. When such requirements are applicable to the Contractor's work, they will be identified specifically in the contract documents. The Contractor shall require, in writing, Subcontractors of all tiers to comply with all applicable contractual requirements.

### 41. Suspect/Counterfeit Items

- A. Battelle's Suspect / Counterfeit Items (S/CI) program responds to the S/CI requirements in the following documents:
1. DOE Order 414.1C, —Quality Assurance Attachment 3, addresses the requirement for the S/CI prevention process and the control of S/CIs;
  2. DOE G 414.1-3, —Suspect/Counterfeit Items Guide for Use with 10 CFR 830, Subpart A, Energy/Nuclear Safety Management/Quality Assurance Requirements and DOE O 414.1B, Quality Assurance;
  3. DOE Order 231.1A Change 1, —Environment, Safety, and Health Reporting, and DOE Order 221.1, —Reporting Fraud, Waste, and Abuse to the Office of Inspector General addresses reporting requirements for discovery of S/CIs.
- B. S/CIs may pose immediate and potential threats to the safety of Battelle, DOE and 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 DOE facilities. The most common S/CIs found at Battelle and DOE 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. S/CI Awareness Training Manual developed by DOE-Office of Corporate Safety Analysis (HS-30) that can help to identify and disposition S/CI's discovered at Battelle and DOE facilities can be accessed at the following [link](http://energy.gov/sites/prod/files/2014/06/f16/SCI_Training_Manual.pdf)[http://energy.gov/sites/prod/files/2014/06/f16/SCI\\_Training\\_Manual.pdf](http://energy.gov/sites/prod/files/2014/06/f16/SCI_Training_Manual.pdf).
- 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.

#### **42. Contractor Inspection Requirements (FAR 52.246-1, Apr 1984)**

The Contractor is responsible for performing or having performed all inspections and tests necessary to substantiate that the supplies or services furnished under this contract conform to contract requirements, including any applicable technical requirements for specified manufacturers' parts. This clause takes precedence over any Government inspection and testing required in the contract's specifications, except for specialized inspections or tests specified to be performed solely by the Government.

#### **43. Inspection of Construction (FAR 52.246-12, Aug 1996)**

- 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 the Government. All work shall be conducted under the general direction of the Contracting Officer and is subject to Government inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.
- C. Government inspections and tests are for the sole benefit of the Government 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 the Government after acceptance of the completed work under paragraph (i) of this section.
- D. The presence or absence of a Government 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 Contracting Officer'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 Contracting Officer. The Government 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 re-inspection or retest necessary. The Government 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 the Government not to conform to contract requirements, unless in the public interest the Government 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, the Government 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, the Government 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 Contracting Officer 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, the Government shall accept, as promptly as practicable after completion and inspection, all work required by the contract or that portion of the work the Contracting Officer determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the Government's rights under any warranty or guarantee.

#### **44. Responsibility for Supplies (FAR 52.246-16, Apr 1984)**

- A. Title to supplies furnished under this contract shall pass to the Government upon formal acceptance, regardless of when or where the Government takes physical possession, unless the contract specifically provides for earlier passage of title.
- B. Unless the contract specifically provides otherwise, risk of loss of or damage to supplies shall remain with the Contractor until, and shall pass to the Government upon—
  - 1. Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
  - 2. Acceptance by the Government or delivery of the supplies to the Government at the destination specified in the contract, whichever is later, if transportation is f.o.b. destination.
- C. Paragraph (b) of this clause shall not apply to supplies that so fail to conform to contract requirements as to give a right of rejection. The risk of loss of or damage to such nonconforming supplies remains with the Contractor until cure or acceptance. After cure or acceptance, paragraph (b) of this clause shall apply.
- D. Under paragraph (b) of this clause, the Contractor

shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of the Government acting within the scope of their employment.

#### **45. Warranty of Construction (FAR 52.246-21, Mar 1994)**

- 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 the Government takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the Government 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 Government-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 Contracting Officer 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, the Government shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.
- 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—
  - A. Obtain all warranties that would be given in normal commercial practice;
  - B. Require all warranties to be executed, in writing, for the benefit of the Government, if directed by the Contracting Officer; and
  - C. Enforce all warranties for the benefit of the Government, if directed by the Contracting Officer.
- H. In the event the Contractor's warranty under paragraph (b) of this clause has expired, the Government 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 the Government nor for the repair of any damage that results from any defect in Government-furnished material or design.
- J. This warranty shall not limit the Government's rights under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistakes, or fraud.

### **CONSTRUCTION**

#### **46. Site Access Control**

- A. Any person performing work in Battelle facilities is required to wear a security badge identifying him/her. Only individuals possessing proof of valid United States Citizenship may be issued a security badge. Individuals requiring a badge for access where the presentation of identification (ID) is required must either present a driver's license or ID card from a [REAL ID compliant state](#), or an alternate acceptable form of ID, before "unescorted" access will be given. If work is performed on site, but not within a facility then a security badge is not required.
- B. Contractor shall be responsible for controlling access to the Site and ensuring that all Contractor personnel including Subcontractor personnel, delivery drivers and vendors have received adequate and appropriate security and site orientation. Visible symbols such as hard hat stickers, badges, etc., shall be used to indicate the person has Contractor authorization to be on the Site.
- C. Unless Battelle issued badges are identified elsewhere in the contract documents as a condition of site access, Contractor shall have general use of areas designated in the contract documents for construction operations during the contract performance period.
- D. Personnel protective equipment (PPE) requirements shall be appropriate to the identified hazards present and shall be as indicated in the General and Administrative Requirements for the Work (Division I Requirements) and on the Contractors approved Job Safety Analysis (JSA).
- E. Contractor is responsible to ensure that its direct hired and Subcontractor employees who will work on the Site and are newly hired for the Work, present proof of a negative drug screen dated within the last three (3) months prior to authorizing initial site access. Contractor employees hired prior to the start of this Work and now assigned to this Work must present proof of a negative drug screen dated within the last 12 months.
  - 1. Only drug tests by a Substance Abuse and Mental Health Services (SAMHSA) certified laboratory will be considered acceptable as proof of a negative drug screen.
  - 2. A confirmed positive will deny employee access to the Site 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 the Site and require the employee to submit to drug testing at Contractor's expense. 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.

**F. Disciplinary Policy and Suspension of Access**

1. General. It is the Contractor's responsibility to implement a policy which provides for discipline of unacceptable behaviors. Disciplinary policy should categorize the severity of the misconduct with a graded approach to implementing the disciplinary actions that result.
2. Contractor may adopt Battelle's model disciplinary policy or submit for approval a Contractor plan.
3. If the Contractor or its Subcontractors fail to have or enforce an approved plan or fail to take appropriate disciplinary action(s) as a result of identified employee misconduct, Battelle will respond to misconduct using a graded approach, considering the nature and severity of the misconduct in accordance with the following general guidelines.
  - (i). First Infraction. A first infraction could result in actions ranging from a verbal reprimand to denying the employee further access to the site for the remainder of the work.
  - (ii). Second Infraction. A second infraction, not necessarily of the same type, could result in actions ranging from a written reprimand to denying the employee further access to the site for the remainder of the work.
  - (iii). Third Infraction. A third infraction could result in suspension from the site ranging from 3-days to 365 days, or the remainder of the work, whichever is longer.

**G. Battelle Issued Badges**

1. If a Battelle issued badge is required for persons performing work on the Site, 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 7:30 A.M. to 4:00 P.M. Monday through Friday (excluding holidays).
2. Employee Termination / Completion of the Work. Upon termination of employment or completion of the Contractor's work, and before final payment shall be made, all badges and dosimeters issued to Contractor employees shall be returned to the issuing office.
3. Lost badges and/or dosimeter shall be reported immediately upon discovery to Battelle. 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.

4. Training required for a Battelle issued Badge
  - (i). GERT / LAB Orientation. If Contractor employees are required to successfully complete General Employee Radiation Training (GERT) / Battelle Laboratory (LAB) Orientation, GERT / LAB Orientation is estimated to take four (4) hours. The employee cost of the orientation shall be by the Contractor.
  - (ii). Vendor/Contractor Orientation for non-Battelle personnel. If Contractor employees are required to successfully complete Vendor/Contractor Orientation, it is estimated to take 2 ½ hours. The employee cost of the orientation shall be by the Contractor.
  - (iii). Other Required Training. Other Battelle sponsored training identified as required for performance of the contract work will be provided to the Contractor at no cost for the trainer and/or course fees. Contractor shall be responsible for the cost of the employee's time to attend. Contractor shall allow Battelle two (2) weeks to schedule the training after proper notification.
  - (iv). 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: \$352.25 (each) for Radiation Worker I and/or II including GAP and refresher training; Lock & Tag training is \$348.85; Respiratory Protection Worker training is \$352.25; Asbestos Awareness, Hot Work Fire Watch and Lock-Out-Tag-Out Gap training are all \$350.75, all other Battelle sponsored training is \$32.11.
  - (v). Offsite Training. Contractor shall be responsible for all offsite training as required for performance of the contract work. Training offered at the HAMMER facility is considered offsite, therefore the Contractor shall be responsible for course registration and payment of any fees. Quantitative Mask-Fit or additional respiratory training conducted at the HAMMER facility is considered offsite training, therefore the Contractor shall be responsible for course registration and payment of any fees.

**47. Prohibited Articles**

- A. Prohibited Articles Anywhere. The following are Prohibited Articles anywhere on the Site and offsite locations under the cognizance of Battelle or the DOE:
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.

#### 48. Work Limitations, Restrictions & Requirements

- 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. The following holidays shall be non-work days under this Contract unless otherwise directed by Battelle:
- New Year's Day
  - Memorial Day
  - Independence Day
  - Labor Day
  - Thanksgiving Day and the day after
  - Christmas Eve and Christmas Day
- B. **Working Hours.** Unless identified otherwise in the Division 1 General Requirements for the contract work, normal working hours are Monday through Friday from 7:00am to 3:30pm. The Contractor shall not perform work at the Site 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. **Overhead Work Restrictions.** Under no conditions shall the Contractor operate or move cranes, hoists or similar equipment within 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 15 feet from the road and/or ground surface.

- D. **Oversize Loads.** An Oversize Load permit is required when the vehicle or load exceeds: Width -8'-6" x Height -14ft x Length -40ft (single unit), or 48ft (single trailing unit). Contact Battelle to obtain the permit.
- E. **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.
- F. **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.
- G. **Excavation Requirements.**
1. Definition: "Excavations include any operation in which earth, rock, or other material in the ground (below existing grade) is moved, removed, or otherwise displaced by means or use of any hand tools, mechanical equipment or explosives."
  2. Excavation permitting is required when grading, trenching, digging, ditching, drilling, tunneling, scraping, pipe plowing, and driving ground rods or posts, at a depth of 12 inches or greater.
  3. Where required, the Contractor shall provide an adequate supporting mechanism to prevent undermining or movement of any load bearing concrete slabs or footings. All excavations shall comply with OSHA and DOSH regulations.
  4. 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.
  5. 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.
  6. Contractors shall hand-dig within five (5) feet of

all known utilities.

H. **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 five (5) days in advance of any planned Blind Penetrations to allow Battelle time to issue the permit.
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 class 00, 500 volt rated, insulated gloves or insulated gloves rated for the voltage potential during the penetrating activity.

I. **Adverse Weather Conditions.** To insure worker safety, work or portions of work may be temporarily and incrementally shut down due to high winds, lighting, or other inclement weather as determined by Battelle. Contractor will not be additionally compensated in terms of cost or schedule for weather related shutdowns. Battelle will issue weather warnings via radio, telephone, public announcement, or in person. The Contractor shall ensure that all contractor and subcontractor personnel are apprised of the warnings and take the required actions as stated below.

1. Sustained winds greater than 15 mph – the necessity for crane operations will be closely scrutinized
2. Sustained winds greater than 25 mph and/or gusts greater than 40 mph – all crane activities must cease and be secured. All loose outdoor material shall be secured. The Contractor's Safety Supervisor shall evaluate work on roofs or elevated work surfaces before continuing. All personnel working outdoors are required to wear safety goggles. Depending on dust hazards, work may be stopped. Personnel may be directed to shelter.

3. Sustained winds greater than 30 mph and/or gusts greater than 45 mph – all outdoor work activities may be stopped. Personnel may be directed to shelter.
4. Sustained winds greater than 50 mph – outdoor work activities will be curtailed and limited to those approved by Battelle and Contractor's Safety Supervisor. Personnel will be directed to shelter. Site closure may be implemented and all work activities ceased.
5. Thunderstorm/lighting advisory based on lighting activity within a 30 mile radius of the site – Contractor personnel shall not work on roofs or elevated surfaces. Personnel shall stay away from equipment such as drilling rigs, cranes, boom trucks, or elevated work platforms. The "30-30 Rule" states, when you see lightning, count the time until you hear thunder. If this time is 30 seconds or less go immediately to a safe location. These protective measures shall remain in place until Battelle cancels the warning. The Hanford Weather Station (373-2716) or the National Weather Service Office (NWSO) located in Pendleton (541 276-7832) can be used to detect, locate, and determine if the hazardous weather pattern has dissipated or moved pass the 30 mile radius.
6. Contractor shall be responsible to provide snow removal and ensure safe walking and transfer conditions for walkways and access points around all site offices and work areas and the job-site within the project boundaries.
7. In response to winter storm conditions, Battelle may close or delay the site operation. If so, Battelle will make appropriate announcements and coordinate closures or early dismissals. Battelle's inclement weather hotline phone number is 509 375-2124.
8. Access to PNNL facility roofs during inclement weather may be restricted or delayed until the appropriate mitigation of snow, ice, or frost can be eliminated. Authorization to access facility roofs are controlled by the Building Manager.

**49. Performance of Work by the Contractor (FAR 52.236-1, Apr 1984)**

The Contractor shall perform on the site, and with its own organization, work equivalent to at least fifteen percent [15%] of the total amount of work to be performed under the contract. This percentage may be reduced by a supplemental agreement to this contract if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the Government.

**50. Differing Site Conditions (FAR 52.236-2, Apr 1984)**

- A. The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer 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 Contracting Officer 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 Contracting Officer.
- 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.

**51. Site Investigation and Conditions Affecting the Work (FAR 52.236-3, Apr 1984)**

- 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 (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 the Government, 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 the Government.
- B. The Government assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Government. Nor does the Government 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.

**52. Physical Data (FAR 52.236-4, Apr 1984)**

Data and information furnished or referred to below is for the Contractor's information. The Government shall not be

responsible for any interpretation of or conclusion drawn from the data or information by the Contractor.

**53. Material and Workmanship (FAR 52.236-5, Apr 1984)**

- 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 equipment, material, article, or process that, in the judgment of the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.
- B. The Contractor shall obtain the Contracting Officer'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 Contracting Officer 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 Contracting Officer, the Contractor shall also obtain the Contracting Officer'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 Contracting Officer may require, in writing, that the Contractor remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

**54. Superintendence by the Contractor (FAR 52.236-6, Apr 1984)**

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 Contracting Officer and has authority to act for the Contractor.

**55. Permits and Responsibilities (FAR 52.236-7, Nov 1991)**

The Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence. 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.

#### **56. Other Contracts (FAR 52.236-8, Apr 1984)**

The Government 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 Government 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 Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Government employees.

#### **57. Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements (FAR 52.236-9, Apr 1984)**

- A. The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, 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 Contracting Officer.
- 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 Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

#### **58. Operations and Storage Areas (FAR 52.236-10, Apr 1984)**

- A. The Contractor shall confine all operations (including storage of materials) on Government premises to areas authorized or approved by the Contracting Officer. The Contractor shall hold and save the Government, 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 Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the Government. 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 Contracting Officer, the buildings and utilities may be abandoned

and need not be removed.

- C. The Contractor shall, under regulations prescribed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. 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.

#### **59. Use and Possession Prior to Completion (FAR 52.236-11, Apr 1984)**

- A. The Government 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 Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the Government intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The Government's possession or use shall not be deemed an acceptance of any work under the contract.
- B. While the Government has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the work resulting from the Government's possession or use, notwithstanding the terms of the clause in this contract entitled "Permits and Responsibilities." If prior possession or use by the Government 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.

#### **60. Cleaning Up (FAR 52.236-12 Apr 1984)**

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 the Government. Upon completing the work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer.

#### **61. Availability and Use of Utility Services (FAR 52.236-14, Apr 1984)**

- A. The Government 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 the Government or, where the utility is produced by the Government, at reasonable rates determined by the Contracting Officer. The Contractor shall carefully conserve any utilities furnished without charge.
- B. The Contractor, at its expense and in a workmanlike



manner satisfactory to the Contracting Officer, 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 the Government, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

#### **62. Schedules for Construction Contracts (FAR 52.236-15, Apr 1984)**

- A. The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer 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 Contracting Officer 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 Contracting Officer, and upon doing so shall immediately deliver three copies of the annotated schedule to the Contracting Officer. If, in the opinion of the Contracting Officer, 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 Contracting Officer, without additional cost to the Government. In this circumstance, the Contracting Officer 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 Contracting Officer 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 Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer 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 Contracting Officer 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.

#### **63. Layout of Work (FAR 52.236-17, Apr 1984)**

The Contractor shall lay out its work from Government 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 Contracting Officer. The

Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by the Contracting Officer until authorized to remove them. If such marks are destroyed by the Contractor or through its negligence before their removal is authorized, the Contracting Officer may replace them and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

#### **64. Organization and Direction of the Work (FAR 52.236-19, Apr 1984)**

- A. When this contract is executed, the Contractor shall submit to the Contracting Officer a chart showing the general executive and administrative organization, the personnel to be employed in connection with the work under this contract, and their respective duties. The Contractor shall keep the data furnished current by supplementing it as additional information becomes available.
- B. Work performance under this contract shall be under the full-time resident direction of (1) the Contractor, if the Contractor is an individual; (2) one or more principal partners, if the Contractor is a partnership; or (3) one or more senior officers, if Contractor is a corporation, association, or similar legal entity. However, if the Contracting Officer approves, the Contractor may be represented in the direction of the work by a specific person or persons holding positions other than those identified in this paragraph.

#### **65. Specifications and Drawings for Construction (FAR 52.236-21, Feb 1997)**

- A. The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer 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 Contracting Officer, 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 Contracting Officer 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 Contracting Officer is intended and similarly the words "approved," "acceptable," "satisfactory," or words of like import shall mean "approved by," "acceptable to," or "satisfactory to" the Contracting Officer, 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 the Government 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. The Government 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 Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the Government's reasons therefor. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any 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 Contracting Officer approves any such variation, the Contracting Officer 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 Contracting Officer 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 Contracting Officer and one set will be returned to the Contractor. 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.

## 66. Back-Charges

- A. When costs are sustained by Battelle or the Government as a result of Contractor failure in whole or in part to execute its responsibility under the terms of this Agreement, such costs are considered the responsibility of the Contractor and will be "back-charged." Contractor actions having potential to result in back-charges include:
  - 1. Environmental, safety, health, or quality assurance violations;

- 2. Rework necessary to meet Contract requirements;
- 3. Support of Contractor's recovery schedule;
- 4. Inspections by Battelle not performed, as scheduled, due to incomplete or inadequate status of the work for which Contractor is at fault;
- 5. Inspections that must be repeated by Battelle due to errors, omissions, mismanagement or any fault of Contractor;
- 6. Vendor data review and processing as a result of re-submittals in excess of three (3), which are attributable to inadequate Contractor coordination or preparation;
- 7. Contractor's failure to restore all Battelle and/or Government-owned property, facilities, utilities, or systems, including replacement of survey stakes, to "like-for-like" condition after use or damage by Contractor;
- 8. Contractor's failure to adequately repair and/or replace property of a third party damaged by Subcontractor;
- 9. Subcontractor's failure to maintain the cleanliness and orderly arrangement of the work site during construction and at final acceptance, within reason, to the satisfaction of Contractor;
- 10. Subcontractor's failure to return or transfer to another project all security badges will result in a charge to the Subcontractor in the amount of \$250.00 per badge; and
- 11. Hazardous or environmentally detrimental spills caused by Subcontractor with clean-up performed by Contractor will be charged to Subcontractor.

## B. Notification

Upon identification of an actual or anticipated back-charge, Battelle will provide Contractor a written notice which shall describe the work to be performed, the schedule for performance, and the cost to be charged the Contractor. The cost may include:

- 1. actual labor cost,
- 2. actual material cost including transportation, and
- 3. taxes, levies, duties and assessments.

## C. Contractor Acceptance

Contractor is required to accept the back-charge or re-perform work at Contractor's cost. In the event Contractor refuses to accept or agrees to performance of the work within 24 hours after receipt of Battelle's notice, Battelle may elect to proceed with the back-charge work and withhold (set-off) the cost from Contractor's payment. Battelle has the right to set-off such cost against any amount payable to the Contractor whether or not in connection with this Agreement.

## 67. Vendor Data Requirements

- A. Contractor shall furnish to Battelle copies of required data for disposition sufficiently in advance of the date that the material/equipment is required to be installed to meet the accepted construction schedule. The

Vendor Data Schedule (VDS) (also called a "submittal log") summarizes the submittal requirements of the Subcontract and generally specifies the timing for each required submittal. Vendor data for all material and equipment requiring a disposition shall be submitted, reviewed, assigned a disposition code by Battelle and returned to Contractor.

- B. Contractor shall perform no work for which the vendor data has not been reviewed and dispositioned. Any delay caused by Contractor's failure to submit vendor data in a timely manner for Battelle review will not be excusable or compensable. If submitted vendor data items are unacceptable, no excusable delay shall accrue there from, regardless of the number of re-submittals made by Contractor or lower- tiers.
- C. Battelle's vendor data disposition will not affect or relieve Contractor from responsibility for performance of work in compliance with the Contract. Vendor data causing any change to design details, layouts, calculations, analyses, test methods, procedures or any other Contract requirement shall be submitted with a written description of the affected change.
- D. Contractor shall submit, concurrent with each invoice, an updated Construction Vendor Data Submittal Log (CVDSL). Failure to submit the CVDSL may result in withholding of payment until CVDSL receipt. Information provided on the CVDSL shall correlate with Contractor's accepted construction schedule to assure prosecution of the work in accordance with the said construction schedule. The CVDSL shall clearly indicate expected or actual submittal dates and the disposition status of all submitted data.
- E. Substitutions require Battelle approval. Refer to the clause title "Brand Name or Equal."
- F. Samples.
  - 1. When samples are required, they shall be furnished at Contractor's expense in accordance with the clause entitled "Material and Workmanship." Samples shall be submitted within the time specified, or if no time is specified, within a reasonable time before use to permit inspection and testing. Samples shall be shipped prepaid, delivered as directed by Battelle, and shall be properly marked to show the name of the material, trademark of manufacturer, place of origin, number and name of work where the material represented by the sample will be used, and the name of the Contractor submitting the sample.
  - 2. Samples not subject to destructive testing may be retained by Battelle until completion of the construction. If requested in writing by the Contractor at the time of submission, samples will be returned at Contractor's expense upon completion of the construction. Failure of any samples to pass specified requirements will be sufficient cause for refusal to consider further any samples from the same manufacturer whose materials failed to pass testing requirements.

## 68. Cooperation with Others

- A. Contractor may undertake or award other subcontracts at or near the site of the work under the Subcontract. Subcontractor shall fully cooperate with

the other Subcontractors and with Contractor employees and shall carefully adapt scheduling and performing the work under the Subcontract to accommodate the work by others, heeding any direction that may be provided by Contractor. Subcontractor shall not commit or permit any act that shall interfere with the performance of work by any other Subcontractor or Contractor employees.

- B. Concurrent Work and Interface Responsibilities
  - 1. When portions of the construction work under the Subcontract are performed near active operating areas, Subcontractor shall plan its construction work so as not to interfere with the operation of these facilities and shall maintain free and clear access to same for routine operational and maintenance activities performed by Contractor.
  - 2. In addition, Subcontractor shall carefully coordinate all construction activities with Contractor so as to avoid conflicts and unnecessary delays in construction. Except for authorized shutdowns for the tie-in of newly constructed facilities, construction activities shall not disrupt normal operation of existing plant facilities.

## CLAUSES INCORPORATED FOR CONTRACTS COVERED BY CONSTRUCTION WAGE RATE REQUIREMENTS – LABOR STANDARDS

### 69. Contract Work Hours and Safety Standards – Overtime Compensation (FAR 52.222-4, Mar 2018)

- A. *Overtime requirements.* No Contractor or subcontractor employing laborers or mechanics (see Federal Acquisition Regulation [22.300](#)) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.
- B. *Violation; liability for unpaid wages; liquidated damages.* The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate specified at 29 CFR [5.5\(b\)\(2\)](#) per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards statute (found at [40 U.S.C. chapter 37](#)). In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 ([28 U.S.C. 2461 Note](#)), the Department of Labor adjusts this civil monetary penalty for inflation no later than January 15 each year.
- C. *Withholding for unpaid wages and liquidated damages.* The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or federally assisted contracts held by the same Contractor that are subject to the Contract

Work Hours and Safety Standards statute.

D. Payrolls and basic records.

(1) The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Construction Wage Rate Requirements statute.

(2) The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.

E. *Subcontracts.* The Contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts that may require or involve the employment of laborers and mechanics and require subcontractors to include these provisions in any such lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

**70. Construction Wage Rate Requirements (FAR 52.222-6, Aug 2018)**

A. Definition.—“Site of the work”—

1. Means—

(i). The primary site of the work. The physical place or places where the construction called for in the contract will remain when work on it is completed; and

(ii). The secondary site of the work, if any. Any other site where a significant portion of the building or work is constructed, provided that such site is—

a. Located in the United States; and

b. Established specifically for the performance of the contract or project;

2. Except as provided in paragraph (3) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided—

(i). They are dedicated exclusively, or nearly so, to performance of the contract or project; and

(ii). They are adjacent or virtually adjacent to the “primary site of the work” as defined in paragraph (a)(1)(i), or the “secondary site of the work” as defined in paragraph (a)(1)(ii)

of this definition;

3. Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the “site of the work.” Such permanent, previously established facilities are not a part of the “site of the work” even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a contract.

B. (1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the first day on which work under the contract was performed at that site and shall be incorporated without any adjustment in contract price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.

(2) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Construction Wage Rate Requirements statute on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

(3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided that the employer’s payroll

records accurately set forth the time spent in each classification in which work is performed.

(4) The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this clause) and the Construction Wage Rate Requirements (Davis-Bacon Act) poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the primary site of the work and the secondary site of the work, if any, in a prominent and accessible place where it can be easily seen by the workers.

- C. (1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:
- (i). The work to be performed by the classification requested is not performed by a classification in the wage determination.
  - (ii). The classification is utilized in the area by the construction industry.
  - (iii). The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:
- Wage and Hour Division
- U.S. Department of Labor  
Washington, DC 20210
- The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
- (3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to paragraphs (c)(2) and (c)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

- D. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- E. If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Construction Wage Rate Requirements statute have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

#### **71. Withholding of Funds (FAR 52.222-7, May 2014)**

The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other federally assisted contract subject to prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

#### **72. Payrolls and Basic Records (FAR 52.222-8, Aug 2018)**

- A. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 40 U.S.C. 3141 [2] [B] {Construction Wage Rate Requirement statute}), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Construction Wage Rate Requirements, that the wages of any laborer or mechanic include the amount of any costs

reasonably anticipated in providing benefits under a plan or program described in 40 U.S.C. 3141[2][B], the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- B. (1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause, except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be obtained from the U.S. Department of Labor Wage and Hour Division website at <http://www.dol.gov/whd/forms/wh347.pdf>. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Contracting Officer, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a Prime Contractor to require a subcontractor to provide addresses and social security numbers to the Prime Contractor for its own records, without weekly submission to the Contracting Officer.
2. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify—
- (i). That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;
  - (ii). That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and

(iii). That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

3. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (b)(2) of this clause.
  4. The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.
- C. The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

### **73. Apprentices and Trainees (FAR 52.222-9, July 2005)**

- A. Apprentices.
1. An apprentice will be permitted to work at less than the predetermined rate for the work performed when employed—
    - A. Pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS) or with a State Apprenticeship Agency recognized by the OATELS; or
    - B. In the first 90 days of probationary employment as an apprentice in such an apprenticeship program, even though not individually registered in the program, if certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.
  2. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program.
  3. Any worker listed on a payroll at an apprentice

wage rate, who is not registered or otherwise employed as stated in paragraph (a)(1) of this clause, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

4. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.
5. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.
6. In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

B. Trainees.

1. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS). The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by OATELS.
2. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is

an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the OATELS shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed.

3. In the event OATELS withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- C. Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

**74. Compliance with Copeland Act Requirements (FAR 52.222-10, Feb 1988)**

The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

**75. Subcontracts (Labor Standards) (FAR 52.222-11, May 2014)**

- A. Definition. "Construction, alteration or repair," as used in this clause, means all types of work done by laborers and mechanics employed by the construction Contractor or construction subcontractor on a particular building or work at the site thereof, including without limitation—
  1. Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;
  2. Painting and decorating;
  3. Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work;
  4. Transportation of materials and supplies between the site of the work within the meaning of paragraphs (a)(1)(i) and (ii) of the "site of the work" as defined in the FAR clause at 52.222-6, Construction Wage Rate Requirements of this contract, and a facility which is dedicated to the construction of the building or work and is deemed part of the site of the work within the meaning of paragraph (2) of the "site of work" definition; and
  5. Transportation of portions of the building or work between a secondary site where a significant portion of the building or work is constructed, which is part of the "site of the work" defined in paragraph (a)(1)(ii) of the FAR clause at 52.222-6, Construction Wage Rate Requirements, and the physical place or places where the building or

work will remain (paragraph (a)(1)(i) of the FAR clause at 52.222-6, in the "site of the work" definition).

- B. The Contractor shall insert in any subcontracts for construction, alterations and repairs within the United States the clauses entitled—
1. Construction Wage Rate Requirements;
  2. Contract Work Hours and Safety Standards — Overtime Compensation (if the clause is included in this contract);
  3. Apprentices and Trainees;
  4. Payrolls and Basic Records;
  5. Compliance with Copeland Act Requirements;
  6. Withholding of Funds;
  7. Subcontracts (Labor Standards);
  8. Contract Termination—Debarment;
  9. Disputes Concerning Labor Standards;
  10. Compliance with Construction Wage Rate Requirements and Related Regulations; and
  11. Certification of Eligibility.
- C. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor performing construction within the United States with all the contract clauses cited in paragraph (b).
- D. (1) Within 14 days after award of the contract, the Contractor shall deliver to the Contracting Officer a completed Standard Form (SF) 1413, Statement and Acknowledgment, for each subcontract for construction within the United States, including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (b) of this clause have been included in the subcontract.
- (2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.
- E. The Contractor shall insert the substance of this clause, including this paragraph (e) in all subcontracts for construction within the United States.

**76. Contract Termination—Debarment (FAR 52.222-12, May 2014)**

A breach of the contract clauses entitled Construction Wage Rate Requirements, Contract Work Hours and Safety Standards Act—Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Construction Wage Rate Requirements and Related Act Regulations, or Certification of Eligibility may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

**77. Compliance with Construction Wage Rate Requirements and Related Act Regulations (FAR 52.222-13, May 2014)**

All rulings and interpretations of the Construction Wage Rate Requirements and related statutes contained in

29 CFR parts 1, 3, and 5 are hereby incorporated by reference in this contract.

**78. Disputes Concerning Labor Standards (FAR 52.222-14, Feb 1988)**

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.

**79. Notice of Labor Disputes (cl. 359 - Feb 1997)**

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

**80. Certification of Eligibility (FAR 52.222-15, May 2014)**

- A. By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of 40 U.S.C. 3144(b)(2) or 29 CFR 5.12(a)(1).
- B. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 40. U.S. C. 3144[b](2) or 29 CFR 5.12(a)(1).
- C. The penalty for making false statements is prescribed in the U.S. Criminal Code, [18 U.S.C. 1001](#).

**81. Compliance with Contractor Code of Business Ethics and Conduct (FAR 52.203-13 Oct 2015)**

The Contractor shall comply with the requirements of FAR 52.203-13 (Apr 2010), which are hereby incorporated by reference in this contract. This clause applies if the contract value exceeds \$5,000,000 and the performance period is more than 120 days.

**CLAUSES INCORPORATED BY REFERENCE**

This Contract incorporates one or more FAR and DEAR provisions/clauses by reference with the same force and effect as if they were given in full text. Such provisions/clauses are identified below and elsewhere in this Contract by their title, effective date, and reference where they appear in the FAR and/or DEAR. The FAR and DEAR may be obtained from the Superintendent of Documents, US Government Printing Office and is available for viewing/downloading at <http://www.acquisition.gov/far/> and <http://farsite.hill.af.mil>.

**A. Applicable to all Contracts:**

1. FAR 52.223-3, Hazardous Material Identification and Material Safety Data (JAN 1997) (Alt I, JUL 1995)
2. DEAR 952.211-71, Priorities and Allocations (APR 2008)
3. FAR 52.204-9 Personal Identity Verification of



Contractor Personnel (JAN 2011)

4. FAR 52.227-4, Patent Indemnity—Construction Contracts (DEC 2007)
5. FAR 52.247-64, Preference For Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)
6. DEAR 952.204-71 Sensitive Foreign Nations Control (MAR 2011) – *applies if contractor will make unclassified information about nuclear technology available to sensitive foreign nations.*
7. DEAR 952.217-70 Acquisition of Real Property (MAR 2011)
8. FAR 52.232-39 Unenforceability of Unauthorized Obligations (JUN 2013)
9. FAR 52.232-40 Providing Accelerated Payments to Small Business Subcontractors (DEC 2013)
10. FAR 52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services and Equipment (AUG 2019)

**B. Applicable to Subcontracts Under This Contract For Commercial Items:**

1. FAR 52.244-6, Subcontracts For Commercial Items (JUN 2016)
2. FAR 52.223-15 Energy Efficiency in Energy-Consuming Products (DEC 2007)

**C. Applicable if Contract identifies specific items to be accorded duty-free entry into a customs territory of the United States. Also applicable where other foreign supplies in excess of \$15,000 may be imported to a customs territory of the United States.**

1. FAR 52.225-8, Duty-Free Entry (OCT 2010)

**D. Applicable if Contract exceeds \$2,500:**

1. FAR 52.225-9, Buy American Act—Construction Materials (MAY 2014)  
  
(Note: The fill-in for paragraph (b) (2) of this clause is "None.")
2. FAR 52.225-13, Restrictions on Certain Foreign Purchases (JUNE 2008)

**E. Applicable if Contract Exceeds \$3,500:**

1. FAR 52.222-54, Employment Eligibility Verification (OCT 2015) – applies for (a) commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item) and (b) construction services; only applies for work performed in the United States.
2. FAR 52.223-18 Encouraging Contractor Policies to Ban Text Messaging While Driving (AUG 2011)

**F. Applicable if Contract exceeds \$10,000:**

1. FAR 52.222-21, Prohibition of Segregated Facilities (APR 2015)
2. FAR 52.222-23, Notice of Requirement for Affirmative Action to Ensure Equal Employment

Opportunity for Construction (FEB 1999) (The term "Covered Area" referred to in this FAR clause includes the Missouri Counties of Clay, Platte, Jackson, Ray, and Cass; and the Kansas Counties of Wyandotte and Johnson. Goals for minority and female participation in each trade are 12.7% and 6.9%, respectively.)

3. FAR 52.222-26, Equal Opportunity (APR 2015) - The Equal Employment Opportunity Act Poster referenced in paragraph (c)(3) of the above clause may be downloaded from the U.S. Department of Labor website at [www.dol.gov/elaws/posters.htm](http://www.dol.gov/elaws/posters.htm)
4. FAR 52.222-27, Affirmative Action Compliance Requirements for Construction (FEB 1999)
5. FAR 52.222-29, Notification of Visa Denial (APR 2015) – *applies when the Equal Opportunity clause is used and when the work is required to be performed in a foreign country.*
6. FAR 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) – *applies if performance is wholly or partially in the United States.*

**G. Applicable if Contract exceeds \$15,000:**

1. FAR 52.222-36, Equal Opportunity for Workers with Disabilities (JUL 2014)

**H. Applicable if Contract exceeds \$30,000:**

1. FAR 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards (Jul 2013) – *Contractor agrees to provide such information to Battelle or to maintain it for a period of not less than three years following contract completion and to provide it to the Government upon request.*

**I. Applicable if Contract exceeds \$35,000:**

1. FAR 52.209-6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Oct 2015)

**J. Applicable if Contract exceeds \$100,000 and its performance involves international air transportation of personnel, including their personal effects or property.**

1. FAR 52.227-1, Authorization and Consent (DEC 2007) – applies without Alternate I if this Contract is for supplies or services, including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services.
2. FAR 52.247-63, Preference for U.S.-Flag Air Carriers (Feb 2006)

**K. Applicable if Contract exceeds \$150,000:**

1. DEAR 970.5227-5, Notice and Assistance Regarding Patent and Copyright Infringement (AUG 2002)
1. FAR 52.203-7, Anti-Kickback Procedures, (May 2014) – excluding paragraph (c)(1)
2. FAR 52.222-35, Equal Opportunity for Veterans (JULY 2014)

3. FAR 52.222-37, Employment Reports on Veterans (FEB 2016)
- L. Applicable if Contract exceeds \$100,000 and its performance involves international air transportation of personnel, including their personal effects or property.**
3. FAR 52.247-63, Preference for U.S.-Flag Air Carriers (JUN 2003)
- M. Applicable if Contract exceeds \$150,000 unless exempt per the provisions of FAR 22.305:**
1. FAR 52.222-4, Contract Work Hours and Safety Standards Act--Overtime Compensation (MAY 2014)
- N. Applicable if Contract exceeds \$250,000:**
1. FAR 52.203-6, Restrictions on Subcontractor Sales to the Government (SEP 2006)
  2. FAR 52.203-17, Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights (APR 2014)
  3. FAR 52.219-8, Utilization of Small Business Concerns (OCT 2014)
- O. Applicable if Contractor, as a part of its' quote or proposal, submitted the certification entitled "Certification of Toxic Chemical Release Reporting," and the amount of this Contract, inclusive of option amounts, exceeds \$100,000:**
1. FAR 52.223-14, Acquisition of EPEAT Registered Televisions (JUN 2014)
- P. Applicable If Work Is Performed On DOE Site:**
1. DEAR 952.203-70, Whistleblower Protection For Contractor Employees (DEC 2000)
  2. DEAR 970.5223-1, Integration of Environment, Safety, and Health into Work Planning and Execution (DEC 2000)
  3. DEAR 970.5223-4, Workplace Substance Abuse Programs at DOE Sites, (DEC 2010)
- Q. Applicable if work is performed on DOE site or if Contractor or its Subcontractors have access to classified information:**
1. DEAR 952.204-2, Security (Mar 2011)
  2. DEAR 952.204-70, Classification/Declassification (SEP 1997)
  3. DEAR 952.204-73, Facility Clearance (MAY 2002)
- R. Applicable if this Contract exceeds \$150,000 and is for advisory and assistance services as those terms are defined at FAR 37.201:**
1. DEAR 952.209-72, Organizational Conflicts of Interest, Alt. I, (AUG 2009)
- S. Applicable if this Contract exceeds \$500,000:**
1. FAR 52.222-50 Combating Trafficking in Persons (MAR 2015) including Alternate I. *Alternate I applies when work will be performed outside the U.S. and when specific U.S. directives or notices regarding combating trafficking in persons apply to contractor employees at the contract place of performance.*
2. DEAR 952.226-74 Displaced Employee Hiring Preference (JUN 1997)
  3. DEAR 970.5226-2, Workforce Restructuring Under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 (DEC 2000)
- T. Applicable if this Contract exceeds \$700,000:**
1. FAR 52.219-9, Small Business Subcontracting Plan (Oct 2015) – applies if the Contractor is a large business concern
- U. Applicable to Contracts which require printing (as that term is defined in Title I of the U.S. Government Printing Regulations):**
1. DEAR 970.5208-1, Printing (DEC 2000)
- V. Applicable if this Contract involves the design, development, or operation of a system of records on individuals to accomplish a DOE function per the requirements of FAR 24.1:**
1. FAR 52.224-1, Privacy Act Notification (APR 1984)
  2. FAR 52.224-2, Privacy Act (APR 1984)
- W. Applicable if Battelle requires a Certificate of Current Cost or Pricing Data in connection with the initial award or subsequent modification of this Contract pursuant to the requirements of FAR 15.403-1 through 15.403-5:**
1. FAR 52.215-10, Price Reduction for Defective Cost or Pricing Data (AUG 2011)
  2. FAR 52.215-11, Price Reduction for Defective Cost or Pricing Data—Modifications (AUG 2011)
  3. FAR 52.215-12, Subcontractor Cost or Pricing Data (OCT 2010)
  4. FAR 52.215-13, Subcontractor Cost or Pricing Data—Modifications (OCT 2010)
- X. Applicable if costs incurred are a factor in determining the amount payable to Contractor under this Contract, or if the Contractor furnished Battelle a Certificate of Current Cost or Pricing Data as specified above:**
1. DEAR 970.5232-3, Accounts, Records, and Inspection (DEC 2010)
- Y. Applicable if Battelle furnishes Government property to the Contractor in the performance of this purchase order/Contract, including Contractor acquired property to which title vests in the government under this purchase order/Contract:**
1. FAR 52.245-1, Government Property (AUG 2010)
- Z. Applicable if royalties exceeding \$250 were included in the price of this Contract:**
1. DEAR 970.5227-8, Refund of Royalties (AUG 2002)
- AA. Applicable if foreign travel is required in the performance of this Contract.**
1. DEAR 952.247-70, Foreign Travel (JUN 2010)

**BB. Applicable to all Contracts which include the design or operation of any plants or facilities or specially designed equipment for such plants or facilities.**

1. DEAR 970.5227-1 Rights in Data – Facilities (DEC

2000) [included in Contracts for support services, involving the design or operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated under an M&O Contract under 48 CFR 970 with DOE.]