



# **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

### 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.
- E. This Contract is between Battelle and Contractor and does not constitute a contract with DOE or the Government. Battelle is a prime contractor for DOE and is not a Government agency or an agent of the Government. In addition, Battelle's Contracts Representatives are not Government Contracting Officers. However, solely for purposes of flowing down the appropriate FAR and DEAR clauses to this Contract, the term "Government", as referenced in the clauses, shall be interpreted to mean Battelle and the term "Contracting Officer", as referenced in the clauses, shall be interpreted to mean the Battelle Contracts Representative for this Contract.

### 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. "Contractor" means the entity under Contract with Battelle responsible for execution of all construction work described within the Contract documents.
- C. "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:
- D. "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."
- E. "DOE" means U. S. Department of Energy or any duly authorized representative thereof.
- F. "DEAR" means Department of Energy Acquisition Regulation, including all amendments and changes thereto in effect on the date of issuance of this Contract.
- G. "FAR" means Federal Acquisition Regulation, including all amendments and changes thereto in effect on the date of issuance of this Contract.
- H. "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.

### Acceptance of Contract Terms and Conditions (cl. 302 – Oct 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.

### 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

## **Disputes** (cl. 331 - Nov 2014)

Except as otherwise provided or agreed, any dispute relating to this contract which is not disposed of by agreement shall be decided by litigation in a court of competent jurisdiction upon filing of a legal action by the aggrieved party. It is further agreed by the Contractor that litigation shall be limited and confined exclusively to Federal District Court, with venue in the U.S. District Court for Eastern Washington, located in Richland, Washington. In the event the requirements for jurisdiction in Federal District Court are not present, such litigation shall be brought in Benton County Superior Court, located in Kennewick, Washington. Resolution of any substantive issue of law shall be determined in accordance with the body of applicable Federal procurement law. If there is no applicable Federal procurement law, the law of the State of Washington shall apply in the determination of such issues. During the pendency of any dispute, the Contractor shall proceed diligently with the performance of the contract and in accordance with the direction of Battelle.

## **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.

## **Pacific Northwest National Laboratory or Battelle Name** (cl. 374 - Oct 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.

## **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.

#### **Contract Administration** (cl 384 – Feb 2015)

- A. The Contractor's progress and compliance with the technical requirements of this contract may be monitored for Battelle by a Technical Oversight Representative. The name of the Technical Oversight Representative, if one is designated, will be furnished the Contractor by the Battelle Contracts Representative.
- B. The Battelle Technical Oversight Representative is authorized to receive information, conduct inspections of work in process and witness Contractor tests. He/she has no authority to (1) change or waive any provision of this contract, including but not limited to statements of work, drawings, specifications and standards, whether attached or incorporated by reference; (2) provide interpretations of any provision or requirement of this contract; (3) direct, advise, or recommend any particular course of conduct on the part of the Contractor; or (4) create any legally binding commitment on behalf of Battelle.

The Contractor is solely responsible for strict compliance with all requirements of this contract. No notice, communication or representation in any form or from any person other than a Battelle Contracts Representative shall be effective to relieve the Contractor of such obligation or to stop Battelle from enforcing the contract exactly according to its written terms.

#### **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.
- 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.

#### **Taxes** (cl. 354b - Oct 2018)

- A. Unless this contract specifies otherwise, the contract price shall not include any duties, taxes, or fees for which Battelle has furnished a valid exemption certificate or other evidence of exemption. The contract price may include applicable sales and use taxes being collected to remit directly to a state taxing authority, but only when separately stated on Contractor's invoice. Contractor is responsible for remitting taxes collected from Battelle to the relevant tax authority.
- B. Battelle is currently exempt from sales tax on most items delivered to, and most taxable services performed in CO, CT, DC, FL, IN, KY, ME, MD, MA, MI, MO, NJ, NY, OH, RI, TN, TX, UT, VT, WV and WI. Battelle is currently exempt only for purchase of tangible personal property and not purchased services in NM and VA; and in UT, Battelle can issue an exemption certificate only if the total invoice exceeds USD \$1,000. Contractor should note that sales tax on exempt purchase orders will not be paid.
- C. If this contract contains items to be shipped to the state of Washington or taxable services to be performed in the state of Washington, the state of Washington Direct Pay Permit for sales and use tax prevails unless otherwise specified. If the Direct Pay Permit is used, Battelle will be responsible for remitting any Washington sales and use tax applicable to this purchase directly to the state taxing authority.

#### **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.

#### 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 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.

#### 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.

#### **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.

#### **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.

#### **Prohibition on Participation in Foreign Government-Sponsored Talent Recruitment Programs of a Foreign Country of Risk** *(cl. 312 – December 2020)*

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

- A. Contractor Personnel participation in any Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk is prohibited. Contractor shall utilize due diligence to ensure that Contractor Personnel performing work within the scope of this contract, working at any level, are not participants in a Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk.
- B. Contractor shall immediately notify the Battelle Contracts Representative if the Contractor has reason to believe that any Contractor Personnel are participants in a Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk, and shall provide the following information:
  - 1. Country;
  - 2. Description of the activity/Foreign Government-Sponsored Talent Recruitment Program;
  - 3. Funding or other value received or expected;
  - 4. Duration;
  - 5. Technical area;
  - 6. Contractor action;
  - 7. Status or disposition; and
  - 8. Any other information requested by Battelle or the U.S. Government.

Battelle is required to share this information with the U.S. Government, and the reported activity is subject to a final determination by the U.S. Government.

- C. Contractor shall take appropriate action to ensure that Contractor Personnel currently participating in a disclosed or otherwise identified Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk either stop performing work within the scope of the contract or stop participation in such activity within a reasonable period of time, not to exceed 30 days.
- D. Failure by the Contractor to reasonably ensure compliance with this contract clause, 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.
- E. 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.
- F. Battelle reserves the right to direct Contractor to remove any Contractor Personnel participating in a Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk 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 Personnel participating in the Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk to be removed from performing any further work under this contract, Contractor shall do so unless the Contractor Personnel agrees to discontinue participation in the Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk. Contractor is not entitled to any claim for equitable adjustment against Battelle as a result of direction provided under this subparagraph.

G. The following definitions shall apply:

1. "Contractor Personnel" for purposes of this clause mean:
  - i. Any Contractor employee; and
  - ii. Subcontractor employee, joint appointee from another institution, and any other individual performing R&D work, whether compensated or uncompensated, within the scope of this contract either on-site at the DOE/NNSA site/facility or in DOE/NNSA/contractor leased space.
2. "Foreign Country of Risk" refers to any foreign country determined to be of risk, following consideration of, but not limited to, the Office of the Director of National Intelligence World Wide Threat Assessment and The National Counterintelligence Strategy of the United States of America, by the Under Secretary for Science in consultation with the Under Secretary of Energy; the Under Secretary for Nuclear Security; and the Office of Intelligence and Counterintelligence.
3. "Foreign Government-Sponsored Talent Recruitment Program" refers to an effort directly or indirectly organized, managed, or funded by a foreign government to recruit science and technology professionals or students (regardless of citizenship or national origin, and whether having a full-time or part-time position). The term is more fully defined in DOE O 486.1A, Attachment 2, which is hereby incorporated by reference.

#### **Unclassified Foreign Visits and Assignments** (cl. 3114 – Oct 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.

#### **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 appearing on the proposal or elsewhere, Battelle and the Government shall have the right to use, duplicate, disclose and have others do so, for any purpose whatsoever, the technical data contained in the proposal upon which this contract is based.

#### **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.

#### **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.



## **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.

## **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.

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

## **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 -

<https://www.energystar.gov/products?s=meqa> and <https://energy.gov/eere/femp/search-energy-efficient-product>

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-

<https://www.epeat.net/>

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

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 - <https://www.epa.gov/greeningepa/guiding-principles-sustainable-federal-buildings>

## QUALITY ASSURANCE

### 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.

### 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).
- 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.

## CONSTRUCTION

### 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 it's 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 and Operations Center](#) is located at 650 Horn Rapids Road, Richland WA 99354. Badges may be picked up between the hours of 7:30 A.M. to 4:30 P.M. Monday through Friday (excluding holidays).
- 2. Employee Termination / Completion of the Work. Upon termination of employment or completion of the Contractors work, and before final payment shall be made, all badges and dosimeters issued to Contractor employees shall be returned to the issuing office.
- 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.

### 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.

### 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 ensure worker safety, work or portions of work may be temporarily and incrementally shut down due to high winds, lightning, 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 past 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.

### **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.

### **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.

#### **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.

#### **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.

#### **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:**

FAR 52.204-9      Personal Identity Verification of Contractor Personnel (JAN 2011)

FAR 52.204-23      Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky

	Lab and Other Covered Entities (DEC 2023)
FAR 52.204-25	Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services and Equipment (AUG 2020)
FAR 52.211-5	Material Requirements (AUG 2000)
FAR 52.211-6	Brand Name or Equal (AUG 1999)
FAR 52.211-18	Variation in Estimated Quantity (APR 1984)
FAR 52.219-4	Notice of Price Evaluation for HUBZone Small Business Concerns (OCT 2022)
FAR 52.223-3	Hazardous Material Identification and Material Safety Data (JAN 1997) (Alt I, JUL 1995)
FAR 52.223-12	Maintenance, Service, Repair or Disposal of Refrigeration Equipment and Air Conditioners (MAY 2024)
FAR 52.225-9	Buy American Act – Construction Materials (OCT 2022) (Note: The fill-in for paragraph (b) (2) of this clause is "None.")
FAR 52.227-4	Patent Indemnity - Construction Contracts (DEC 2007)
FAR 52.228-15	Performance and Payment Bonds - Construction (JUN 2020)
FAR 52.232-39	Unenforceability of Unauthorized Obligations (JUN 2013)
FAR 52.232-40	Providing Accelerated Payments to Small Business Subcontractors (MAR 2023)
FAR 52.236-1	Performance of Work by the Contractor (APR 1984)
FAR 52.236-2	Differing Site Conditions (APR 1984)
FAR 52.236-3	Site Investigation and Conditions Affecting the Work (APR 1984)
FAR 52.236-5	Material and Workmanship (APR 1984)
FAR 52.236-6	Superintendence by the Contractor (APR 1984)
FAR 52.236-7	Permits and Responsibilities (NOV 1991)
FAR 52.236-8	Other Contracts (APR 1984)
FAR 52.236-9	Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements (APR 1984)
FAR 52.236-10	Operations and Storage Areas (APR 1984)
FAR 52.236-11	Use and Possession Prior to Completion (APR 1984)
FAR 52.236-12	Cleaning Up (APR 1984)
FAR 52.236-14	Availability and Use of Utility Services (APR 1984)
FAR 52.236-15	Schedules for Construction Contracts (APR 1984)
FAR 52.236-17	Layout of Work (APR 1984)
FAR 52.236-21	Specifications and Drawings for Construction (FEB 1997)
FAR 52.236-13	Accident Prevention (NOV 1991)
FAR 52.242-14	Suspension of Work (APR 1984)
FAR 52.242-15	Stop-Work Order (AUG 1989)
FAR 52.243-4	Changes (JUN 2007)
FAR 52.246-1	Contractor Inspection Requirements (APR 1984)
FAR 52.246-21	Warranty of Construction (MAR 1994)
FAR 52.247-64	Preference For Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)
FAR 52.249-10	Default (Fixed-Price Construction) (APR 1984)
FAR 52.249-14	Excusable Delays (APR 1984)
DEAR 952.204-71	Sensitive Foreign Nations Control (MAR 2011) – <i>applies if contractor will make unclassified information about nuclear technology available to sensitive foreign nations.</i>
DEAR 952.211-71	Priorities and Allocations (APR 2008)
DEAR 952.217-70	Acquisition of Real Property (MAR 2011)
DEAR 970.5225-1	Compliance with Export Control Laws and Regulations (NOV 2015)



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

FAR 52.203-19	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017)
FAR 52.204-21	Basic Safeguarding of Covered Contractor Information Systems (NOV 2021) – <i>applies when FAR 52.244-6 applies.</i>
FAR 52.222-55	Minimum Wages under Executive Order 14026 (JAN 2022) – <i>applies when FAR 52.244-6 applies.</i>
FAR 52.222-62	Paid Sick Leave Under Executive Order 13706 (JAN 2022) – <i>applies when FAR 52.244-6 applies.</i>
FAR 52.223-15	Energy Efficiency in Energy-Consuming Products (MAY 2020)
FAR 52.224-3	Privacy Training (JAN 2017), with Alternate I – <i>applies when FAR 52.244-6 applies.</i>
FAR 52.225-26	Contractors Performing Private Security Functions Outside the United States (OCT 2016) – <i>applies when FAR 52.244-6 applies.</i>
FAR 52.244-6	Subcontracts For Commercial Products and Commercial Services (FEB 2024)

**C. Applicable to CONTRACTS COVERED BY CONSTRUCTION WAGE RATE REQUIREMENTS over \$2,000**

FAR 52.222-6	Wage Rate Requirements (AUG 2018) <a href="https://www.dol.gov/whd/programs/dbra/wh1321.htm">https://www.dol.gov/whd/programs/dbra/wh1321.htm</a>
FAR 52.222-7	Withholding of Funds (MAY 2014)
FAR 52.222-8	Payrolls and Basic Records (AUG 2018)
FAR 52.222-9	Apprentices and Trainees (JUL 2005)
FAR 52.222-10	Compliance with Copeland Act Requirements (FEB 1988)
FAR 52.222-11	Subcontracts (Labor Standards) (MAY 2014)
FAR 52.222-12	Contract Termination – Debarment (MAY 2014)
FAR 52.222-13	Compliance with Construction Wage Rate Requirements and Related Act Regulations (MAY 2014)
FAR 52.222-14	Disputes Concerning Labor Standards (FEB 1988)
FAR 52.222-15	Certification of Eligibility (MAY 2014)
FAR 52.203-13	Compliance with Contractor Code of Business Ethics and Conduct (JUN 2020)

**D. 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.**

FAR 52.225-8	Duty-Free Entry (OCT 2010)
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**E. Applicable if Contract Exceeds \$2,500:**

FAR 52.225-13	Restrictions on Certain Foreign Purchases (FEB 2021)
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**F. Applicable if Contract Exceeds \$3,500:**

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.
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**G. Applicable if Contract Exceeds \$10,000:**

FAR 52.222-21	Prohibition of Segregated Facilities (APR 2015)
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.)
FAR 52.222-26	Equal Opportunity (SEP 2016) - <i>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 <a href="http://www.dol.gov/elaws/posters.htm">www.dol.gov/elaws/posters.htm</a></i>
FAR 52.222-27	Affirmative Action Compliance Requirements for Construction (FEB 1999)
FAR 52.222-29	Notification of Visa Denial (APR 2015) – <i>applies when the Equal Opportunity clause is used and when the work is required to be performed in a foreign country.</i>

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.*

FAR 52.223-18 Encouraging Contractor Policies to Ban Text Messaging While Driving (JUN 2020)

**H. Applicable if Contract Exceeds \$15,000:**

FAR 52.222-36 Equal Opportunity for Workers with Disabilities (JUN 2020)

**I. Applicable if Contract Exceeds \$30,000:**

FAR 52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards (JUN 2020) – *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.*

**J. Applicable if Contract Exceeds \$35,000:**

FAR 52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (JUN 2020)

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

FAR 52.203-7 Anti-Kickback Procedures, (JUN 2020) – excluding paragraph (c)(1)

FAR 52.222-35 Equal Opportunity for Veterans (JUN 2020)

FAR 52.222-37 Employment Reports on Veterans (JUN 2020)

DEAR 970.5227-5 Notice and Assistance Regarding Patent and Copyright Infringement (AUG 2002)

**L. Applicable if Contract Exceeds \$150,000 Unless Exempt per the Provisions of FAR 22.305:**

FAR 52.222-4 Contract Work Hours and Safety Standards Act - Overtime Compensation (MAY 2018)

**M. Applicable if Contract Exceeds \$250,000:**

FAR 52.203-6 Restrictions on Subcontractor Sales to the Government (JUN 2020)

FAR 52.203-17 Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights (JUN 2020)

FAR 52.219-8 Utilization of Small Business Concerns (FEB 2024)

FAR 52.219-14 Limitations on Subcontracting (NOV 2022)

FAR 52.223-99 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors (OCT 2021) (DEVIATION) – *applies if contract is for services, including construction, performed in whole or in part within the U.S. or its outlying areas.*

FAR 52.227-1 Authorization and Consent (JUN 2020) – 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.

FAR 52.246-12 Inspection of Construction (AUG 1996)

FAR 52.246-16 Responsibility for Supplies (APR 1984)

FAR 52.247-63 Preference for U.S.-Flag Air Carriers (JUN 2003)

FAR 52.249-2 Termination for Convenience of the Government (Fixed-Price) (MAY 2004)

DEAR 970.5223-7 Sustainable Acquisition Program (OCT 2010)

**N. Applicable if Work is Performed on DOE Site:**

DEAR 952.203-70 Whistleblower Protection For Contractor Employees (DEC 2000)

DEAR 970.5223-1 Integration of Environment, Safety, and Health into Work Planning and Execution (DEC 2000)

DEAR 970.5223-4 Workplace Substance Abuse Programs at DOE Sites (DEC 2010)

**O. Applicable if Work is Performed on DOE Site or if Contractor or its Subcontractors Have Access to Classified Information:**

DEAR 952.204-2 Security (MAR 2011)

DEAR 952.204-70 Classification/Declassification (SEP 1997)

DEAR 952.204-73 Facility Clearance (MAY 2002)

**P. Applicable if This Contract Exceeds \$150,000 and is for Advisory and Assistance Services as Those Terms are Defined at FAR 37.201:**

DEAR 952.209-72 Organizational Conflicts of Interest, Alt. I, (AUG 2009)

**Q. Applicable if This Contract Exceeds \$500,000:**

FAR 52.204-14 Service Contract Reporting Requirements (OCT 2016) - applies when the estimated award of service contracts or orders is \$500,000 or greater except for actions entirely funded by DoD or classified contracts or contracts awarded with a generic entity identifier.

DEAR 952.226-74 Displaced Employee Hiring Preference (JUN 1997)

DEAR 970.5226-2 Workforce Restructuring Under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 (DEC 2000)

**R. Applicable if This Contract Exceeds \$550,000:**

FAR 52.222-50 Combating Trafficking in Persons (OCT 2020) 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.*

**S. Applicable if This Contract Exceeds \$1,500,000:**

FAR 52.219-9 Small Business Subcontracting Plan (SEP 2023) – applies if the Contractor is a large business concern.

**T. Applicable to Contracts Which Require Printing (as That Term is Defined in Title I of the U.S. Government Printing Regulations):**

DEAR 970.5208-1 Printing (DEC 2000)

**U. 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:**

FAR 52.224-1 Privacy Act Notification (APR 1984)

FAR 52.224-2 Privacy Act (APR 1984)

**V. 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:**

FAR 52.215-10 Price Reduction for Defective Certified Cost or Pricing Data (AUG 2011)

FAR 52.215-11 Price Reduction for Defective Certified Cost or Pricing Data - Modifications (AUG 2011)

FAR 52.215-12 Subcontractor Certified Cost or Pricing Data (JUN 2020)

FAR 52.215-13 Subcontractor Certified Cost or Pricing Data - Modifications (JUN 2020)

**W. 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:**

DEAR 970.5232-3 Accounts, Records, and Inspection (DEC 2010)

**X. 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:**

FAR 52.245-1 Government Property (SEP 2021)

**Y. Applicable if royalties exceeding \$250 were included in the price of This Contract:**

DEAR 970.5227-8 Refund of Royalties (AUG 2002)

**Z. Applicable if Foreign Travel is Required in the Performance of This Contract.**

DEAR 952.247-70 Foreign Travel (JUN 2010)

**AA. Applicable to all Contracts Which Include the Design or Operation of any Plants or Facilities or Specially Designed Equipment for Such Plants or Facilities.**

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.]