



GENERAL PROVISIONS

For

Fixed Price Construction Contracts

TABLE OF CONTENTS

Core Clauses	2	<i>Dec 1996)</i>	10
1. INTRODUCTION	2	27. SUPERINTENDENCE BY THE CONTRACTOR	10
2. DEFINITIONS	2	28. OTHER CONTRACTS	10
3. ACCEPTANCE OF CONTRACT TERMS AND CONDITIONS (<i>cl 302 – October 2008</i>)	2	29. SITE ACCESS CONTROL	10
4. ORDER OF PRECEDENCE - CONSTRUCTION	2	30. PROHIBITED ARTICLES	11
5. ASSIGNMENT (<i>cl 357 - Jan 2003</i>)	2	31. WORK LIMITATIONS, RESTRICTIONS & REQUIREMENTS	12
6. PACIFIC NORTHWEST NATIONAL LABORATORY OR BATTELLE NAME (<i>cl 374 – October 2008</i>)	2	32. SITE INVESTIGATION	13
7. PERMITS AND RESPONSIBILITIES (<i>cl 358 – Nov 1991</i>)	2	33. DIFFERING SITE CONDITIONS	13
8. FEDERAL, STATE, AND LOCAL TAXES – CONSTRUCTION	3	34. CONSTRUCTION DOCUMENTS	13
9. REGISTRATION, REPRESENTATIONS & CERTIFICATIONS	3	35. SUBMITTALS, SUBSTITUTIONS AND SAMPLES	14
10. PAYMENTS – CONSTRUCTION	3	36. PROGRESS SCHEDULES	14
11. CHANGES – CONSTRUCTION	4	37. PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS	15
12. VARIATIONS IN QUANTITIES - CONSTRUCTION	4	38. OPERATIONS AND STORAGE AREAS	15
13. DISPUTES – CONSTRUCTION	4	39. LAYOUT OF WORK	15
14. DEFAULT - CONSTRUCTION	5	40. MATERIAL AND WORKMANSHIP	15
15. EXCUSABLE DELAYS (<i>cl 365f - Apr 1984</i>)	5	41. AVAILABILITY AND USE OF UTILITIES	16
16. FAILURE TO PERFORM – CONSTRUCTION	6	42. CONTRACTOR INSPECTION REQUIREMENTS	16
17. SUSPENSION OF WORK – CONSTRUCTION	6	43. INSPECTION OF CONSTRUCTION	16
18. STOP WORK (<i>cl 380b – Aug 1989</i>)	6	44. USE AND POSSESSION PRIOR TO COMPLETION	16
19. TERMINATION FOR CONVENIENCE (<i>cl 365d – May 2004</i>) ...	6	45. WARRANTY OF CONSTRUCTION	16
		46. CLEANING UP	17
Bonds, Insurance & Other Financial	8	Safety & Environmental Clauses	17
20. BONDING REQUIREMENTS – CONSTRUCTION	8	47. ENVIRONMENT, SAFETY, AND HEALTH REQUIREMENTS – PNNL WORK SITES (<i>cl. 3113a – Feb 2010</i>)	17
21. ADDITIONAL BOND SECURITY - CONSTRUCTION	8	48. ENVIRONMENT, SAFETY, AND HEALTH REQUIREMENTS – DOE SITES (OTHER THAN PNNL) (<i>cl. 3113c – Feb 2010</i>)	19
22. PRICING OF ADJUSTMENTS –CONSTRUCTION	8	49. ENVIRONMENT, SAFETY AND HEALTH REQUIREMENTS – OFFSITE (<i>cl 3113e – Feb 2010</i>)	21
23. INSURANCE - CONSTRUCTION	9	50. ACCIDENT PREVENTION	22
Construction & Related Clauses	10	51. NOTIFICATIONS AND INVESTIGATIONS	22
24. OPEN COMPETITION AND LABOR RELATIONS ON FEDERAL CONTRACTS	10	52. SOLID WASTE MANAGEMENT	22
25. LABOR HARMONY	10		
26. LIMITATIONS ON SUBCONTRACTING (<i>cl 391 -</i>			

FIXED PRICE CONSTRUCTION GENERAL PROVISIONS

Quality Clauses	23
53. QUALITY ASSURANCE	23
54. RED-LINED DRAWINGS.....	23
55. SUSPECT / COUNTERFEIT ITEMS.....	23
56. TEST REPORTS	24
Clauses Incorporated by Reference	24
57. CLAUSES/PROVISIONS INCORPORATED BY REFERENCE	24

Core Clauses

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 Contract 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) "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:

"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."
- (d) "DOE" means U. S. Department of Energy or any duly authorized representative thereof, including the Contracting Officer.
- (e) "DEAR" means Department of Energy Acquisition Regulation, including all amendments and changes thereto in effect on the date of issuance of this Contract.
- (f) "FAR" means Federal Acquisition Regulation (FAR), including all amendments and changes thereto in effect on the date of issuance of this Contract.
- (g) "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.

- (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.

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:

- (1) The Contract Agreement (excluding specifications);
- (2) Representations and other Instructions
- (2) These General Provisions;
- (3) Division 1 Administrative Requirements
- (4) The Specifications; and
- (5) The 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 BATTLELLE 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. PERMITS AND RESPONSIBILITIES *(cl 358 - Nov 1991)*

The Contractor is an independent Contractor, not an agent or employee of Battelle. The Contractor shall, without additional expense to Battelle or the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence.

FIXED PRICE CONSTRUCTION GENERAL PROVISIONS

8. FEDERAL, STATE, AND LOCAL TAXES – CONSTRUCTION

Except as may be otherwise provided in this Contract, the Contract price includes all applicable Federal, State, and local taxes and duties.

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. PAYMENTS – CONSTRUCTION

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

(b) **Progress Payments.** Battelle shall make progress payments monthly as the work proceeds 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) To ENSURE PROMPT PAYMENT, submit an electronic invoice in an acceptable format to Battelle at: ap.invoices@pnl.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, duplicate copies of the invoice and all supporting documentation will be acceptable via mail:

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.

FIXED PRICE CONSTRUCTION GENERAL PROVISIONS

(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.

11. CHANGES – CONSTRUCTION

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

- (1) In the specifications (including drawings and designs);
- (2) In the method or manner of performance of the work;

(3) In Battelle or Government-furnished facilities, equipment, materials, services, or site; or

(4) Directing acceleration in the performance of the work.

(b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from Battelle that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives Battelle 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 Battelle 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, Battelle shall make an equitable adjustment and modify the Contract in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (b) of this clause shall be made for any costs incurred more than 20 days before the Contractor gives written notice as required. In the case of defective specifications for which Battelle is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

(e) The Contractor must assert any right it may have 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 Battelle a written statement describing the general nature and amount of proposal, unless this period is extended by Battelle. The statement of proposal for adjustment may be included in the notice under paragraph (b) above.

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

12. VARIATIONS IN QUANTITIES - CONSTRUCTION

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 20 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 120 percent or below 80 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 Battelle within 10 days from the beginning of the delay, or within such further period as may be granted by Battelle before the date of final settlement of the Contract. Upon the receipt of a written request for an extension, Battelle shall ascertain the facts and make any adjustment for extending the completion date that in Battelle's judgment, the findings justify.

13. DISPUTES – CONSTRUCTION

(a) Unless otherwise provided in this Contract, any dispute arising under or relating to this Contract which is not disposed of by mutual agreement of the parties shall be resolved under this clause.

(b) "Claim," as used in this clause, means a written demand or written assertion by one of the parties to this Contract seeking, as a matter of right, the payment of money in a sum certain, the

FIXED PRICE CONSTRUCTION GENERAL PROVISIONS

adjustment or interpretation of Contract terms, or other relief arising under or relating to this Contract. A claim arising under this Contract, unlike a claim relating to this Contract, is a claim that can be resolved under a Contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim until certified as required by subparagraph (c)(2) below. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim 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.

- (c)
- (1) A claim by the Contractor shall be made in writing and submitted to Battelle for a written decision by a Contracts Specialist having appropriate delegation commensurate with the value of the claim.
 - (2) For Contractor claims exceeding \$100,000, (of any amount when the parties have agreed to a form of alternative dispute resolution per paragraph (g) below) the Contractor shall submit with the claim a certification that—
 - I. The claim is made in good faith;
 - II. Supporting data are accurate and complete to the best of the Contractor's knowledge and belief; and
 - III. The amount requested accurately reflects the purchase order/Contract adjustment for which the Contractor believes Battelle is liable; and
 - IV. A statement by the person certifying the claim that they are duly authorized to certify the claim on behalf of the Contractor.
- (d) Battelle shall, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.
- (e) The decision rendered by Battelle shall be final and conclusive and not subject to review or revision by any forum, tribunal or Government agency unless suit is filed as provided in this clause. Within one (1) year after issuance of the decision, or upon the failure to issue such a decision within a reasonable time as provided in (d) above, the claimant party may seek relief on its claim by commencing suit in the State of Washington. The parties agree that the determination of any substantive issues of law shall be based upon applicable Federal Law. Each party also agrees that any trial resulting from such suit shall be made to a court and not to a jury. Thus, as a part of the consideration in entering into this Contract, each party waives any right it may have to a trial by jury for any dispute arising under or related to this Contract.
- (f) The Contractor shall proceed diligently with performance of this Contract, pending final resolution of any request for relief, claim, or action arising under or relating to this Contract, and shall comply with any decision of Battelle.
- (g) Notwithstanding any other provision of this clause, the parties may, by mutual consent, agree to a form of alternative dispute resolution involving an impartial third party to mediate or arbitrate disputes.

14. DEFAULT - CONSTRUCTION

- (a) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this Contract including any extension, or fails to complete the work within this time, Battelle may, by written notice to the Contractor, terminate the right to

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

- (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 Battelle, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of Subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the Subcontractors or suppliers; and
- (2) The Contractor, within 10 days from the beginning of any delay (unless extended by Battelle), notifies Battelle in writing of the causes of delay. Battelle shall ascertain the facts and the extent of delay. If, in the judgment of Battelle, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of Battelle shall be final and conclusive on the parties, subject to the remedies under the Disputes clause.

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

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

15. EXCUSABLE DELAYS (cl 365f - Apr 1984)

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

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

- (1) The sub-contracted supplies or services were obtainable from other sources;

FIXED PRICE CONSTRUCTION GENERAL PROVISIONS

- (2) Battelle ordered the Contractor in writing to purchase these supplies or services from the other source; and
 - (3) The Contractor failed to comply reasonably with this order.
- (c) Upon request of the Contractor, Battelle shall ascertain the facts and extent of the failure. If Battelle determines that any failure to perform results from one or more of the causes above, the completion time shall be revised, subject to the rights of Battelle under the termination clause of this Contract.

16. 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.

17. SUSPENSION OF WORK – CONSTRUCTION

- (a) Battelle 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 Battelle determines appropriate for the convenience of Battelle or 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 Battelle in the administration of this Contract, or (2) by Battelle'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 Battelle 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.

18. STOP WORK (cl 380b – Aug 1989)

- (a) Battelle 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, Battelle 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 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. Battelle 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 Battelle decides the facts justify the action, Battelle 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 convenience, Battelle 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, Battelle shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

19. TERMINATION FOR CONVENIENCE (cl 365d – May 2004)

- (a) Battelle may terminate performance of work under this Contract in whole or, from time to time, in part if Battelle determines that a termination is in Battelle's and Government's interest. Battelle 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 Battelle, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
 - (1) Stop work as specified in the notice.
 - (2) Place no further Subcontracts or orders (referred to as Subcontracts in this Contract) for materials, services, or facilities, except as necessary to complete the continued portion of the Contract.
 - (3) Terminate all Subcontracts to the extent they relate to the work terminated.
 - (4) Assign to Battelle, as directed by Battelle, all right, title, and interest of the Contractor under the Subcontracts terminated, in which case Battelle shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

FIXED PRICE CONSTRUCTION GENERAL PROVISIONS

- (5) With approval or ratification to the extent required by Battelle, settle all outstanding liabilities and termination settlement proposals arising from the termination of Subcontracts; the approval or ratification will be final for purposes of this clause.
- (6) As directed by Battelle, transfer title and deliver to Battelle (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 Battelle.
- (7) Complete performance of the work not terminated.
- (8) Take any action that may be necessary, or that Battelle may direct, for the protection and preservation of the property related to this Contract that is in the possession of the Contractor and in which Battelle or Government has or may acquire an interest.
- (9) Use its best efforts to sell, as directed or authorized by Battelle, any property of the types referred to in subparagraph (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, Battelle. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by Battelle under this Contract, credited to the price or cost of the work, or paid in any other manner directed by Battelle.
- (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 Battelle upon written request of the Contractor within this 120-day period.
- (d) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to Battelle a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by Battelle. The Contractor may request Battelle to remove those items or enter into an agreement for their storage. Within 15 days, Battelle will accept title to those items and remove them or enter into a storage agreement. Battelle may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
- (e) After termination, the Contractor shall submit a final termination settlement proposal to Battelle in the form and with the certification prescribed by Battelle. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by Battelle upon written request of the Contractor within this 1-year period. However, if Battelle determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, Battelle may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.
- (f) Subject to paragraph (e) of this clause, the Contractor and Battelle 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) below, exclusive of costs shown in subparagraph (g)(3) below, may not exceed the total purchase order/Contract price as reduced by (1) the amount of payments previously made and (2) the purchase order/Contract price of work not terminated. The purchase order/Contract shall be modified, and the Contractor paid the agreed amount. Paragraph (g) below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
- (g) If the Contractor and Battelle fail to agree on the whole amount to be paid the Contractor because of the termination of work, Battelle shall pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph (f) above:
- (1) For purchase order/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 purchase order/Contract if not included in subdivision (i) above; and
 - III. A sum, as profit on (i) above, determined by Battelle under 49.202 of the Federal Acquisition Regulation, in effect on the date of this purchase order/Contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire purchase order/Contract had it been completed, Battelle shall allow no profit under this subdivision (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 Battelle expressly assumed the risk of loss, Battelle shall exclude from the amounts payable to the Contractor under paragraph (g) above, the fair value, as determined by Battelle, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to Battelle or to the Government.
- (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 to pursue any claim or dispute under the Disputes clause, from any determination made by Battelle under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (e) or (l), and failed to request a time extension, it shall have no such right. If Battelle has made a determination of the amount due under paragraph (e), (g), or (l) Battelle shall pay the Contractor (1) the amount determined by Battelle if there is no right to pursue a claim or dispute hereunder or if such claim or dispute has not been timely pursued, or (2) the amount finally determined under the "Disputes" clause of this Contract.
- (k) In arriving at the amount due the Contractor under this clause, there shall be deducted—

FIXED PRICE CONSTRUCTION GENERAL PROVISIONS

- (1) All un-liquidated advance or other payments to the Contractor under the terminated portion of this Contract;
 - (2) Any claim which Battelle has against the Contractor under this Contract; and
 - (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to Battelle.
- (l) If the termination is partial, the Contractor may file a proposal with Battelle for an equitable adjustment of the price(s) of the continued portion of the Contract. Battelle shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by Battelle.
- (1) Battelle may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the Contract, if Battelle believes the total of these payments will not exceed the amount to which the Contractor will be entitled.
 - (2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to Battelle upon demand, together with interest computed at the rate established by the Secretary of the Treasury under Public Law 92-41 (50 U.S.C. App. 1215(b)(2)). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by Battelle because of the circumstances.
- (m) Unless otherwise provided in this Contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this Contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this Contract. The Contractor shall make these records and documents available to Battelle, at the Contractor's office, at all reasonable times, without any direct charge. If approved by Battelle, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

Bonds, Insurance & Other Financial

20. BONDING REQUIREMENTS – CONSTRUCTION

(Applicable if this Contract exceeds \$25,000.)

- (a) Bond Requirement. The Contractor shall not be allowed to begin work under this Contract until it has furnished:
 - (1) A payment bond to assure payment of all persons supplying material and labor in connection with the work hereunder; and
 - (2) A performance bond securing performance of the work and fulfillment of Contractor's other obligations under the Contract.
- (b) Penal Sums. The penal sum of bonds shall be based upon the Contract price (or estimated amount appearing on the face of

the Contract) as follows:

- (1) Payment Bond: shall be 100% of the Contract price. If the Contract price increases, an additional amount equal to 100% of the amount of the increase.
 - (2) Performance Bond: shall be 100% of the Contract price. If the Contract price increases, an amount equal to 100% of the amount of the increase.
- (c) Acceptability of Sureties. Corporate or Individual Sureties offered for payment and performance bonds by the Contractor shall meet the following requirements:
- (1) Corporate Sureties -- must appear on the list contained in the Department of Treasury Circular #570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies" in accordance with Section 28.202 of the Federal Acquisition Regulation.
 - (2) Individual Sureties -- must meet the requirements described under Section 28.203 of the Federal Acquisition Regulation.
- (d) Alternatives in lieu of Sureties. The Contractor may deposit with Battelle any of the types of security listed under Section 28.204 of the Federal Acquisition Regulation (i.e. United States bonds or notes, certified or cashiers checks, bank drafts, money orders, or currency) instead of furnishing corporate or individual sureties on payment and performance bonds. When any of these types of security are furnished, the Contractor shall execute the payment and performance bonds forms as the principal and shall incorporate a statement on the bond forms pledging the security. Additionally, where bonds or notes are deposited, the Contractor shall furnish a duly executed power of attorney and agreement authorizing the collection or sale of such bonds or notes in the event of default of the principal on the payment or performance bond.

21. ADDITIONAL BOND SECURITY - CONSTRUCTION

(Applicable if the Contractor is required to furnish payment or performance bonds under the Contract.)

The Contractor shall promptly furnish additional security required to protect Battelle, the Government and persons supplying labor or materials under this Contract if:

- (a) Any surety upon any bond furnished with this Contract becomes unacceptable to Battelle or the Government;
- (b) Any surety fails to furnish reports on its financial condition as required by Battelle or the Government; or
- (c) The Contract performance period is extended and an irrevocable letter of credit (ILC) is used as security. If the Contractor does not furnish an acceptable extension or replacement ILC, or other acceptable substitute, at least 30 days before an ILC's scheduled expiration, Battelle has the right to immediately draw on the ILC.

22. 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 Federal Acquisition Regulation (FAR), as supplemented or modified by Department of Energy Acquisition Regulation (DEAR) Part 931 in effect on the Effective Date of the Contract, except as otherwise provided in this Contract with respect to facilities capital cost of money (CAS 414).

FIXED PRICE CONSTRUCTION GENERAL PROVISIONS

- (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%;
 - (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% 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% 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.
- (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. \$2,000,000 general aggregate limit;
 - II. \$1,000,000 per occurrence for bodily injury and property damage;
 - III. \$1,000,000 per occurrence for personal and advertising injury liability;
 - IV. \$1,000,000 per occurrence for products / completed operations liability. The products / completed operations liability insurance shall be maintained in full force and effect for not less than three years following completion of Contractor's services.
 - (3) Vehicle Liability Insurance:

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

23. 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.

FIXED PRICE CONSTRUCTION GENERAL PROVISIONS

- (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.

Construction & Related Clauses

24. OPEN COMPETITION AND LABOR RELATIONS ON FEDERAL CONTRACTS

- (a) "Labor organization," as used in this clause, shall have the same meaning it has in 42 U.S.C. 2000e(d).
- (1) Battelle shall not:
- I. Require bidders, Offerors, Contractors, or Subcontractors to enter into or adhere to nor prohibit those parties from entering into or adhering to agreements with one or more labor organizations, i.e., project labor agreements, for this or other related construction project(s); or
 - II. Otherwise discriminate against bidders, Offerors, Contractors, or Subcontractors for refusing to become or to remain signatories or to otherwise adhere to project labor agreements for this or other related construction project(s).
- (2) Nothing in this clause shall limit the right of bidders, Offerors, Contractors, or Subcontractors to voluntarily enter into project labor agreements for this or related construction Projects.
- (b) When the Contractor is acting in the capacity of a constructor, i.e., performing a substantial portion of the construction with its own forces, it may use its discretion to require bidders, Offerors, Contractors, or Subcontractors to enter into a project labor agreement that the Contractor has negotiated for that individual project.
- (c) Nothing in this clause shall limit the right of bidders, Offerors, Contractors, or Subcontractors to voluntarily enter into project labor agreements.

25. 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.

26. LIMITATIONS ON SUBCONTRACTING (cl.391 - Dec 1996)

- (a) This clause does not apply to the unrestricted portion of a partial set-aside.
- (b) By submission of an offer and execution of a Contract, the Offeror/Contractor agrees that in performance of the Contract in the case of a Contract for—
- (1) *Services (except construction).* At least 50 percent of the cost of Contract performance incurred for personnel shall be expended for employees of the concern.
 - (2) *Supplies (other than procurement from a non-manufacturer of such supplies).* The concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.
 - (3) *General construction.* The concern will perform at least 15 percent of the cost of the Contract, not including the cost of materials, with its own employees.
 - (4) *Construction by special trade Contractors.* The concern will perform at least 25 percent of the cost of the Contract, not including the cost of materials, with its own employees.

27. SUPERINTENDENCE BY THE CONTRACTOR

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 work site a competent superintendent who is satisfactory to Battelle and has authority to act for the Contractor.

28. OTHER CONTRACTS

Battelle or 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 or Subcontractors and with Battelle or 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 Battelle. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other Contractor, Subcontractor, and Battelle or Government employees.

29. SITE ACCESS CONTROL

- (a) 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.

FIXED PRICE CONSTRUCTION GENERAL PROVISIONS

- (b) 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.
- (c) 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).
- (d) 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 twelve (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. 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.
- (e) **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.
- (f) **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 7:30am to 4:00pm 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 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 or classroom time. Contractor shall be responsible for the employee cost. Contractor shall allow Battelle 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: \$694 (each) for Radiation Worker I and/or II; Lock & Tag training is \$364; Respiratory Protection Worker training is \$364; Asbestos Awareness, Hot Work Fire Watch and Lock-Out-Tag-Out Gap training are all \$124, all other Battelle sponsored training is \$50.
- 30. 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).

FIXED PRICE CONSTRUCTION GENERAL PROVISIONS

(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.

31. 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 Years 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 twenty (20) feet of overhead electrical conductors, guy wires, or substations, unless prior authorization for such operations is obtained from Battelle, giving full details of the method of equipment operations. Authorization from Battelle shall also be obtained when transporting materials, machinery, or other equipment, which establishes a height exceeding fifteen (15) feet from the road and/or ground surface.

(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 rods or posts, at a depth of 12 inches or greater.

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

FIXED PRICE CONSTRUCTION GENERAL PROVISIONS

contact with any metallic object.

- (5) Contractor shall notify Battelle immediately upon hitting an obstruction and/or the kill switch de-energizes the penetrating equipment. Disengaging the kill switch requires Battelle concurrence.
- (6) In addition to whatever other PPE the Contractor considers necessary for a Blind Penetration, the worker performing the penetration operation shall wear dielectric, high voltage gloves rated for at least 1000v during the penetrating activity.

32. SITE INVESTIGATION

- (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 Battelle, as well as from the drawings and specifications made a part of this Contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to Battelle.
- (b) Battelle assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by Battelle. Nor does Battelle assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this Contract, unless that understanding or representation is expressly stated in this Contract.

33. DIFFERING SITE CONDITIONS

- (a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to Battelle 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) Battelle 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 (a) above for giving written notice may be extended by Battelle.

- (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.

34. CONSTRUCTION DOCUMENTS

- (a) The Contractor shall keep on the work site a copy of the latest revisions of the drawings and specifications issued and shall at all times give Battelle 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 Battelle, 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. Battelle shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.
- (b) Where reference is made to specifications, standards, or other publications of the Government, technical societies, or testing organizations, the latest issue of such specification, standard, or publication in effect on the effective date of this Contract shall apply.
- (c) 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 Battelle is intended and similarly the words "approved", "acceptable", "satisfactory", or words of like import shall mean "approved by", or "acceptable to", or "satisfactory to" Battelle, unless otherwise expressly stated.
- (d) 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."
- (e) Shop drawings means drawings, submitted to Battelle by the Contractor, or any lower tier Subcontractor pursuant to this Contract, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e., form, fit, and attachment details) of materials of equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the Contract. Battelle may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this Contract.
- (f) If this Contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with purchase order/Contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to Battelle without evidence of the Contractor's approval may be returned for resubmission. Battelle will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate Battelle's reasons therefore. Any work done before such approval shall be at the Contractor's risk. Approval by Battelle 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 (g) below.
- (g) If shop drawings show variations from the Contract

FIXED PRICE CONSTRUCTION GENERAL PROVISIONS

requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If Battelle approves any such variation, Battelle 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.

- (h) The Contractor shall submit to Battelle for approval six copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Four or more sets (unless otherwise indicated) of all shop drawings, will be retained by Battelle and the balance will be returned to the Contractor.
- (i) This clause shall be included in all Subcontracts at any tier.

35. SUBMITTALS, SUBSTITUTIONS AND SAMPLES

(Applicable when the specifications or drawings require the submission of descriptive submittals or samples for Battelle approval.)

- (a) Descriptive Submittals. In accordance with the clause entitled "Material and Workmanship," Contractor shall submit for Battelle's approval one electronic copy and two or more hard (paper) copies of each descriptive submittal as follows:
 - (1) Shop drawings, catalog data, equipment and materials lists, elementary diagrams, wiring diagrams, installation instructions, maintenance manuals and instructions, and operation brochures, shall be submitted for the items of equipment and materials listed in the specifications and drawings in accordance with the coded legend set forth therein within the time required by Battelle. If materials or equipment are required but are not specifically listed herein, the most closely related item listed will govern the type of descriptive submittal required. After Battelle's approval has been indicated on each copy by appropriate signature, stamp and date, one or more copies will be retained by Battelle and the balance returned to the Contractor. Approval of such submittals will not relieve the Contractor of the responsibility for correcting any errors that may exist or for meeting requirements of the specifications and drawings.
 - (2) Submittals shall include a list showing each item and manufacturer for approval and shall be submitted concurrently with all equipment that forms a system or subsystem that must be reviewed simultaneously because of coordination requirements.
 - (3) Where NFPA codes or other prescribed codes require that materials and/or fixtures shall be approved, listed, or labeled; this approval shall be that of Underwriters Laboratory, or Factory Mutual Research Corporation. Where a company has but a single product and that company is listed as approved by either of the above firms, individual material and/or fixture approval will not be required. However, for a company having a multiple line of either materials or fixtures, some of which are not approved, then individual approved notification is required.
 - (4) Catalogs for submittal shall have unrelated pages removed. Capacities and specified parameters relating to the item shall be clearly marked.
 - (5) Maintenance manuals and instructions shall indicate routine-type work, defined by step-by-step instructions that should be performed to insure long life and proper operations. The recommended frequency of performance shall also be included. Instructions should include possible trouble spots with diagnosis and correction of each. These manuals and instructions shall be turned over to Battelle

upon completion of the project.

- (6) Theory of operation brochures shall describe the function of each component or subassembly in block-diagram-type presentation to a degree that a mechanic will understand the product well enough to operate and maintain it. These brochures will be submitted to Battelle upon completion of the project.
 - (7) All items and materials requiring a fire rating shall be U.L. labeled or a certificate from the manufacturer certifying the U.L. rating shall be submitted to Battelle. The Contractor shall furnish a letter certification stating that all fire rated materials used in the construction were installed in accordance with the U.L. requirements.
- (b) Substitutions. Written authorization of Battelle is required for inclusion in the work of items proposed to be substituted in lieu of those specified or referenced in accordance with the clause entitled "Changes."
 - (c) 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.

36. PROGRESS SCHEDULES

- (a) Within 10 days after Notice of Award, the Contractor shall submit to Battelle, a progress schedule bar chart depicting major construction activities, submittals, procurements, key deliverables, permits and utility tie in dates. The progress schedule shall correlate back to a monetary schedule of values and form the minimal basis for progressing Contractor work and analyzing earned value. The Contractor shall revise the progress schedule as needed to reflect downtime, delays, Contractor work-a-rounds and any changes to the work. At Battelle's discretion, additional detailed Critical Path Method (CPM) schedules may be required to support earned value analysis of Contractor progress. If the Contractor fails to submit an initial or revised progress schedule within the time prescribed, Battelle may withhold approval of progress payments until the Contractor submits the required schedule.
- (b) The Contractor shall submit periodic reports of actual progress at the intervals and in the form, detail, and number of copies, directed by Battelle. If, in the opinion of Battelle, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by Battelle, without additional cost to Battelle. In this circumstance, Battelle 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

FIXED PRICE CONSTRUCTION GENERAL PROVISIONS

approval any supplementary schedule or schedules in chart form as Battelle deems necessary to demonstrate how the approved rate of progress will be regained. Where extended working hours are not attributable to an excusable delay under the Default clause of this Contract, the Contractor shall be liable for any increased costs to Battelle for administering the Contract (i.e. additional security forces, project engineer superintendence, or utilities) during such periods.

- (c) Failure of the Contractor to comply with the requirements of Battelle under this clause constitutes grounds for a determination by Battelle 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, Battelle 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.

37. PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS

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

38. OPERATIONS AND STORAGE AREAS

- (a) The Contractor shall confine all operations (including storage of materials) on Battelle premises to areas authorized or approved by Battelle. The Contractor shall hold and save Battelle and the Government, their 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 Battelle and shall be built with labor and materials furnished by the Contractor without expense to Battelle. Such temporary buildings and utilities shall only be used for purposes directly related to the performance of Contract work. 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. After removal, the site or sites of temporary buildings and utilities shall be cleaned to the satisfaction of Battelle. With the written consent of Battelle, the buildings and utilities may be abandoned and need not be removed.
- (c) The Contractor shall, under regulations prescribed by Battelle, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by Battelle. 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.

39. LAYOUT OF WORK

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

40. MATERIAL AND WORKMANSHIP

- (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 Battelle, is equal to that named in the specifications, unless otherwise specifically provided in this Contract.
- (b) The Contractor shall obtain Battelle's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to Battelle 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 Battelle, the Contractor shall also obtain Battelle's approval of materials or articles that 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. Battelle may require, in writing, that Contractor remove from the work any employee Battelle deems incompetent, careless, or otherwise objectionable.
- (d) Unless otherwise specified in this Contract, Contractor shall be responsible for all quality assurance measures necessary to ensure that only items and services conforming to the requirements of this Contract are tendered to Battelle for acceptance. This shall include such testing, in-process inspections and other verification measures as are customary in the industry to ensure that parts, components, and materials furnished by suppliers of the Contractor and incorporated into end items furnished to Battelle are not counterfeit or of suspect quality.

FIXED PRICE CONSTRUCTION GENERAL PROVISIONS

41. AVAILABILITY AND USE OF UTILITIES

- (a) Battelle shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the Contract. Unless otherwise provided in the Contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to Battelle. The Contractor shall carefully conserve any utilities furnished without charge.
- (b) The Contractor, at its expense and in a workmanlike manner satisfactory to Battelle, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by Battelle, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

42. CONTRACTOR INSPECTION REQUIREMENTS

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

- (a) Definition. "Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.
- (b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the Contract conforms to Contract requirements. The Contractor shall maintain complete inspection records and make them available to Battelle. All work shall be conducted under the general direction of Battelle and is subject to Battelle inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the Contract.
- (c) Battelle inspections and tests are for the sole benefit of Battelle and do not:
 - (1) Relieve the Contractor of responsibility for providing adequate quality control measures;
 - (2) Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;
 - (3) Constitute or imply acceptance; or
 - (4) Affect the continuing rights of Battelle after acceptance of the completed work under paragraph (i) below.
- (d) The presence or absence of Battelle's project engineer or inspector does not relieve the Contractor from any Contract requirement, nor is the project engineer or inspector authorized to change any requirement of the Contract, including the specifications and drawings, unless authorized in writing by Battelle's Purchasing Representative.
- (e) The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by Battelle. Battelle may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for

inspection or test, or when prior rejection makes re-inspection or retest necessary. Battelle shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size and performance tests shall be performed as described in the Contract.

- (f) The Contractor shall, without charge, replace or correct work found by Battelle not to conform to Contract requirements, unless in the public interest Battelle or 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, Battelle may (1) by Contract or otherwise, replace or correct the work and charge the cost to the Contractor or (2) terminate the Contractor's right to proceed in accordance with the "Default" clause of this Contract.
- (h) If, before acceptance of the entire work, Battelle decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its Subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet Contract requirements, Battelle shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.
- (i) Unless otherwise specified in the Contract, Battelle shall accept, as promptly as practicable after completion and inspection, all work required by the Contract or that portion of the work Battelle determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or Battelle's rights under any warranty or guarantee.

44. USE AND POSSESSION PRIOR TO COMPLETION

- (a) Battelle or 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, Battelle shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that Battelle or Government intends to take possession of or use. However, failure of Battelle to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the Contract. Battelle's or Government's possession or use shall not be deemed an acceptance of any work under the Contract.
- (b) While Battelle or 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 Battelle's or Government's possession or use, notwithstanding the terms of the clause in this Contract entitled "Permits and Responsibilities." If prior possession or use by Battelle or 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.

45. WARRANTY OF CONSTRUCTION

- (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

FIXED PRICE CONSTRUCTION GENERAL PROVISIONS

any tier.

- (b) This warranty shall continue for a period of 1-year (2 years for roofing and flashing work) from the date of final acceptance of the work. If Battelle takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1-year (2 years for roofing and flashing work) from the date Battelle takes possession.
- (c) The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Battelle-owned or controlled real or personal property, when that damage is the result of:
 - (1) The Contractor's failure to conform to purchase order/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) Battelle shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.
- (f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, Battelle shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.
- (g) With respect to all warranties, express or implied, from Subcontractors, manufacturers, or suppliers for work performed and materials furnished under this Contract, the Contractor shall:
 - (1) Obtain all warranties that would be given in normal commercial practice;
 - (2) Require all warranties to be executed, in writing, for the benefit of Battelle, if directed by Battelle; and
 - (3) Enforce all warranties for the benefit of Battelle, if directed by Battelle.
- (h) In the event the Contractor's warranty under paragraph (b) of this clause has expired, Battelle may bring suit at its expense to enforce a Subcontractor's, manufacturer's, or supplier's warranty.
- (i) Unless a defect is caused by the negligence of the Contractor or Subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by Battelle or for the repair of any damage that result from any defect in Battelle-furnished material or design.
- (j) This warranty shall not limit Battelle's rights under the Inspection clause of this Contract with respect to latent defects, gross mistakes, or fraud.
- (k) Defects in design or manufacture of equipment specified by Battelle on a "brand name and model" basis shall not be included in this warranty. In this event, the Contractor shall require any Subcontractors, manufacturers, or suppliers thereof to execute their warranties, in writing, directly to Battelle.

46. CLEANING UP

The Contractor shall at all times keep the work area, including

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

Safety & Environmental Clauses

47. ENVIRONMENT, SAFETY, AND HEALTH REQUIREMENTS – PNNL WORK SITES (cl. 3113a – Feb 2010)

- (a) In performing any work under this contract on property or facilities owned or controlled by Battelle that are identified as PNNL Work Sites (hereinafter "onsite"), the Contractor shall comply with all applicable federal, state and local environment, safety, and health laws and regulations. The Contractor shall also comply with 10 CFR 851, DOE Worker Safety and Health Program, and DEAR 970.5223-1, Integration of Environment, Safety and Health (ES&H) into Work Planning and Execution (Dec. 2000). In order to comply with the requirements of 10 CFR 851 and DEAR 970.5223-1, the Contractor shall be guided by the principles set forth below.
- (b) The Contractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The Contractor shall exercise a degree of care commensurate with the work and the associated hazards. The Contractor shall ensure that management of ES&H functions and activities becomes an integral but visible part of the Contractor's work planning and execution processes. The Contractor shall, in the performance of work, ensure that:
 - (1) Line management is responsible for the protection of employees, public, and the environment. Line management includes those contractor and subcontractor employees managing and supervising employees performing work.
 - (2) Clear and unambiguous lines of authority and responsibility for ensuring (ES&H) are established and maintained at all organizational levels.
 - (3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities, and shall retain records respecting such competency and qualifications, making them available upon request.
 - (4) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.
 - (5) Before work is performed, the associated hazards are evaluated and a set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.
 - (6) Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate

FIXED PRICE CONSTRUCTION GENERAL PROVISIONS

the hazards and to prevent accidents and unplanned releases and exposures.

- (c) The Contractor, relative to the Statement of Work and contract specifications, shall be able to demonstrate through documentation and work practices that its performance of work under this contract-
- (1) Fulfilled the scope of work as outlined in this contract
 - (2) Identified and analyzed specific, task-level hazards associated with the work
 - (3) Developed and implemented hazard controls related to the hazards
 - (4) Allowed the performance of work within the controls
 - (5) Provided feedback to Battelle and Contractor employees on adequacy of hazard controls
- (d) The Contractor shall perform work in accordance with a DOE-approved Worker Safety and Health Program (also referred to in the DEAR as a Safety Management Plan) as described below:
- (1) The Contractor shall demonstrate well-established safety protocols applicable to the scope of work and consistent with the required elements stated in this clause. Prior to the initiation of any onsite work, the Contractor shall either:
 - I. Accept and incorporate Battelle's PNNL **Contractor Environment Safety and Health Manual** (<http://www.pnl.gov/contracts/esh-procedures/>) as its own. The Battelle Contracts Representative can provide a hard copy of the manual upon request. In those cases where the Contractor's onsite activities are limited to an office or meeting environment, with no additional or unusual hazards, the CES&H Manual requirements can be met through review of the Visitor Orientation Pamphlet, available on-line at <http://www.pnl.gov/contracts/esh-procedures/>.
 - II. Submit its own 10 CFR 851 and DEAR 970.5223-1 compliant Worker Safety and Health Program (WSHP) document to the Battelle Contracts Representative. The Battelle Contracts Representative will coordinate the review and approval of the program document by DOE. The Contractor will be notified by the Battelle Contracts Representative of the program document's approval by DOE. Acceptance of the Contractor's program document will be at the sole discretion of DOE.
 - (2) The Contractor will be provided a Preliminary Hazard Assessment (PHA) checklist by Battelle Contracts Representative. Prior to the initiation of any onsite work, the Contractor shall submit a completed PHA for review and approval by Battelle. The PHA incorporates elements of effective job planning. Elements include identifying: the scope of work to be performed; potential hazards to Battelle and Contractor staff the public and environment created by the work performed; hazard control methods and mitigation; and mechanism to evaluate the adequacy of those controls. The PHA is a key control process in the safe conduct of work at Battelle. The Contractor is expected to possess the completed PHA in order to access Battelle property or facilities and initiate work. The PHA Procedures and Form can be accessed at <http://www.pnl.gov/contracts/esh-procedures/>, or a hard copy provided by the Battelle Contracts Representative when requested.
- (e) The Contractor shall perform the following additional hazard identification tasks consistent with an approved WSHP:
- (1) The Contractor shall be responsible for identifying all potential occupational exposures that its employees and the employees of its lower-tier subcontractors will be exposed to while performing any work under this contract.
 - (2) The Contractor shall assure that its employees and those of any lower-tiered subcontractor are medically qualified to perform work associated with any potential occupational exposures that have been identified. Medical qualification and medical surveillance programs are the sole responsibility of the Contractor. In addition, the Contractor is responsible for maintaining any records associated with the administration of these programs.
 - (3) For each of its employees and each of its lower-tier subcontract employees that the Contractor has identified as having potential occupational exposures that require enrollment in a medical surveillance or medical qualification program, the Contractor shall provide its Occupational Medical provider with the following information:
 - I. Current information about actual or potential work-related site hazards (chemical, radiological, physical, biological, or ergonomic);
 - II. Employee job-task and hazard analysis information, including essential job functions;
 - III. Actual or potential work-site exposures of each employee; and
 - IV. Personnel actions resulting in a change of job functions such that a change of hazards, or exposures results.
 - (4) For each of its employees and each of its lower-tier subcontract employees, a copy of the exposure information provided to the Contractor's occupational medical provider shall be submitted to the Battelle Contracts Representative and approved by Battelle before any of these employees begin work under this contract.
- (f) The Contractor shall notify the 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 Contracts Representative may require. An "off-normal occurrence" is any unplanned or unexpected event, including near misses, 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.
- (g) The Contractor's onsite ES&H activities will be subject to review by the Technical Administrator of this contract. Other

FIXED PRICE CONSTRUCTION GENERAL PROVISIONS

representatives of Battelle may conduct periodic inspections of the Contractor's equipment, work and storage areas for compliance with the applicable ES&H requirements. The Battelle Contracts Representative will notify the Contractor by a written Notice of Non-compliance of any observed non-compliance with applicable ES&H requirements. The Contractor shall immediately take appropriate corrective action. The Contractor shall advise the Battelle Contracts Representative, in writing, within five (5) working days of the corrective action taken on any safety non-compliance noted on the written Notice of Non-compliance. If the Contractor fails or refuses to correct the safety non-compliance, Battelle may perform, or cause to be performed, the necessary corrective work and unilaterally charge the Contractor for the cost thereof. Such charges will be deducted from payments otherwise due the Contractor under this contract.

- (h) The Contractor shall promptly evaluate and resolve any non-compliance with applicable ES&H requirements. If the Contractor fails to provide resolution or if, at any time, the Contractor's acts or failure to act causes substantial harm or an imminent danger to the environment, or health and safety of employees or the public, the Battelle Contracts Representative may issue an order stopping work in whole or in part and the Contractor shall be liable for the delay and any costs thereby incurred. Any stop-work order issued by Battelle under this clause (or issued by the Contractor to a subcontractor in accordance with this clause) shall be without prejudice to any other legal or contractual rights of Battelle. In the event that the Battelle Contracts Representative issues a stop-work order, an order authorizing the resumption of the work may be issued at the discretion of the Battelle Contracts Representative. The Contractor shall not be entitled to an extension of time, or additional cost or fee, or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.

(i) Employee Concerns Program

- (1) The Contractor, its agents, employees or subcontractors, are entitled to use the Battelle Employee Concerns Program and Hotline (509) 375-3999. The Hotline operates 24 hours per day, 7 days a week. Messages may be left anonymously, and all concerns are handled with confidentiality to the maximum extent possible. Employee concerns may also be submitted in writing to the Battelle Employee Concerns Office, Battelle, Pacific Northwest National Laboratory, P.O. Box 999, K1-42, Richland, Washington, 99352, or in person at the Staff Concerns Office, Battelle's Research Operation Building (ROB) during normal business hours, Monday through Friday 7:30 a.m. to 4:30 p.m.
- (2) For the purpose of this document, allegations, concerns, and complaints are handled in a like manner and are referred to collectively as "employee concerns." A concern can consist of a declaration, statement, or assertion of impropriety or inadequacy on the part of one's employer or others at a DOE Site that has affected (or threatens to affect) aspects of operations, such as the environment, health, safety, quality, or security, and may include fraud, mismanagement, waste, or abuse of authority.

- (3) No retaliation or retribution shall be taken toward any individual as a result of filing an employee concern consistent with 10 CFR 708.

(j) Civil Penalties and Indemnification

- (1) The 2002 Bob Stump National Defense Authorization Act amended the Atomic Energy Act by adding section 234C "Worker Health and Safety Rules for Department of Energy Nuclear Facilities." It required DOE to promulgate a worker safety and health rule, published in the Federal Register on February 9, 2006 as 10 CFR 851. It establishes worker safety and health requirements that govern the conduct of contractor activities at both nuclear and non-nuclear DOE Sites. Contractors that fail to comply with the Rule are subject to civil penalties or contract penalties.

- (2) The Contractor assumes full responsibility and shall indemnify, hold harmless, and defend Battelle, its directors, officers, and employees from any civil or contractual liability under section 234C of the Atomic Energy Act of 1954, as amended, or the implementing regulations, arising out of the activities of the Contractor, its subcontractors, suppliers, agents, employees, and their officers, or directors. The Contractor's obligation to indemnify and hold harmless shall expressly include attorney fees and other reasonable costs of defending any action or proceeding instituted under section 234C or DOE's implementing regulations.

- (k) The Contractor is responsible for its subcontractors' compliance with the ES&H requirements of this contract. The Contractor shall include a clause substantially the same as this clause in lower-tier subcontracts involving work at on property or facilities owned or controlled by Battelle that are identified as PNNL Work Sites,.. Such subcontracts shall provide for the right to stop work under the conditions described herein.

48. ENVIRONMENT, SAFETY, AND HEALTH REQUIREMENTS – DOE SITES (OTHER THAN PNNL) (cl. 3113c – Feb 2010)

- (a) In performing any work under this contract on property or facilities owned or controlled by the United States Department of Energy (DOE), other than Pacific Northwest National Laboratory, the Contractor shall comply with all applicable federal, state and local environment, safety, and health laws and regulations. The Contractor shall also comply with 10 CFR 851, DOE Worker Safety and Health Program, and DEAR 970.5223-1, Integration of Environment, Safety and Health (ES&H) into Work Planning and Execution (Dec. 2000). In order to comply with the requirements of 10 CFR 851 and DEAR 970.5223-1, the Contractor shall be guided by the principles set forth below.
- (b) The Contractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The Contractor shall exercise a degree of care commensurate with the work and the associated hazards. The Contractor shall ensure that management of ES&H functions and activities becomes an integral but visible part of the Contractor's work planning and execution processes. The Contractor shall, in the performance of work, ensure that:

FIXED PRICE CONSTRUCTION GENERAL PROVISIONS

- (1) Line management is responsible for the protection of employees, public, and the environment. Line management includes those contractor and subcontractor employees managing and supervising employees performing work.
 - (2) Clear and unambiguous lines of authority and responsibility for ensuring (ES&H) are established and maintained at all organizational levels.
 - (3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities, and shall retain records respecting such competency and qualifications, making them available upon request.
 - (4) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.
 - (5) Before work is performed, the associated hazards are evaluated and a set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.
 - (6) Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.
- (c) The Contractor, relative to the Statement of Work and contract specifications, shall be able to demonstrate through documentation and work practices that its performance of work under this contract-
- (1) Fulfilled the scope of work as outlined in this contract
 - (2) Identified and analyzed specific, task-level hazards associated with the work
 - (3) Developed and implemented hazard controls related to the hazards
 - (4) Allowed the performance of work within the controls
 - (5) Provided feedback to Battelle and Contractor employees on adequacy of hazard controls
- (d) The Contractor shall perform work in accordance with a DOE-approved Worker Safety and Health Program (also referred to in the DEAR as a Safety Management Plan) as described below:
- (1) The Contractor shall demonstrate well-established safety protocols applicable to the scope of work and consistent with the required elements stated in this clause. Prior to the initiation of any DOE Site work, the Contractor shall either—
 - I. accept and incorporate the cognizant DOE Site Contractor(s) approved Worker Safety and Health Program as its own. The Battelle Contracts Representative can assist in providing access to the controlling WSHP upon request, as well as a cognizant Point of Contact for the DOE Site where the work is being performed.
- II. submit its own 10 CFR 851 and DEAR 970.5223-1-compliant Worker Safety and Health Program (WSHP) document to the Battelle Contracts Representative. The Battelle Contracts Representative will coordinate the review and approval of the program document by the cognizant DOE Field Office(s). The Contractor will be notified by the Battelle Contracts Representative of the program document's approval by DOE. Acceptance of the Contractor's program document will be at the sole discretion of DOE.
- (e) The Contractor shall perform the following additional hazard identification tasks consistent with the applicable DOE-approved WSHP:
- (1) The Contractor shall be responsible for identifying all potential occupational exposures that its employees and the employees of its lower-tier subcontractors will be exposed to while performing any work under this contract.
 - (2) The Contractor shall assure that its employees and those of any lower-tiered subcontractor are medically qualified to perform work associated with any potential occupational exposures that have been identified. Medical qualification and medical surveillance programs are the sole responsibility of the Contractor. In addition, the Contractor is responsible for maintaining any records associated with the administration of these programs.
 - (3) For each of its employees and each of its lower-tier subcontract employees that the Contractor has identified as having potential occupational exposures that require enrollment in a medical surveillance or medical qualification program, the Contractor shall provide its Occupational Medical provider with the following information:
 - I. Current information about actual or potential work-related site hazards (chemical, radiological, physical, biological, or ergonomic);
 - II. Employee job-task and hazard analysis information, including essential job functions;
 - III. Actual or potential work-site exposures of each employee; and
 - IV. Personnel actions resulting in a change of job functions such that a change of hazards, or exposures results.
 - (4) For each of its employees and each of its lower-tier subcontract employees, a copy of the exposure information provided to the Contractor's Occupational Medical provider shall be submitted to the Battelle Contracts Representative and approved by Battelle before any of these employees begin work under this contract.
- (f) The Contractor shall notify the 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 on any DOE Site and shall furnish such further information as the Battelle Contracts Representative may require. An "off-normal occurrence" is any

FIXED PRICE CONSTRUCTION GENERAL PROVISIONS

unplanned or unexpected event, including near misses, 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.

- (g) The Contractor's ES&H activities on any DOE Site will be subject to review by the Technical Administrator of this contract. Other representatives of Battelle, DOE, or other DOE Site contractors may conduct periodic inspections of the Contractor's equipment, work and storage areas for compliance with the applicable DOE Site ES&H requirements. The Battelle Contracts Representative will notify the Contractor by a written Notice of Non-compliance of any observed non-compliance with applicable ES&H requirements. The Contractor shall immediately take appropriate corrective action. The Contractor shall advise the Battelle Contracts Representative, in writing, within five (5) working days of the corrective action taken on any safety non-compliance noted on the written Notice of Non-compliance. If the Contractor fails or refuses to correct the safety non-compliance, Battelle may perform, or cause to be performed, the necessary corrective work and unilaterally charge the Contractor for the cost thereof. Such charges will be deducted from payments otherwise due the Contractor under this contract.
- (h) The Contractor shall promptly evaluate and resolve any non-compliance with the applicable DOE Site ES&H requirements. If the Contractor fails to provide resolution or if, at any time, the Contractor's acts or failure to act causes substantial harm or an imminent danger to the environment, or health and safety of employees or the public, the Battelle Contracts Representative may issue an order stopping work in whole or in part and the Contractor shall be liable for the delay and any costs thereby incurred. Any stop-work order issued by Battelle under this clause (or issued by the Contractor to a subcontractor in accordance with this clause) shall be without prejudice to any other legal or contractual rights of Battelle. In the event that the Battelle Contracts Representative issues a stop-work order, an order authorizing the resumption of the work may be issued at the discretion of the Battelle Contracts Representative. The Contractor shall not be entitled to an extension of time, or additional cost or fee, or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.
- (i) Employee Concerns Program
- (1) The Contractor, its agents, employees or subcontractors, are entitled to use the Battelle Employee Concerns Program and Hotline (509) 375-3999. The Hotline operates 24 hours per day, 7 days a week. Messages may be left anonymously, and all concerns are handled with confidentiality to the maximum extent possible. Employee concerns may also be submitted in writing to the Battelle Employee Concerns Office, Battelle, Pacific Northwest National Laboratory, P.O. Box 999, K1-42, Richland, Washington, 99352, or in person at the Staff Concerns Office, Battelle's Research Operation Building (ROB) during normal business hours, Monday through Friday 7:30 a.m. to 4:30 p.m.
 - (2) For the purpose of this document, allegations, concerns, and complaints are handled in a like manner and are referred to collectively as "employee concerns." A

concern can consist of a declaration, statement, or assertion of impropriety or inadequacy on the part of one's employer or others at a DOE Site that has affected (or threatens to affect) aspects of operations, such as the environment, health, safety, quality, or security, and may include fraud, mismanagement, waste, or abuse of authority.

- (3) No retaliation or retribution shall be taken toward any individual as a result of filing an employee concern consistent with 10 CFR 708.
- (j) Civil Penalties and Indemnification
- (1) The 2002 Bob Stump National Defense Authorization Act amended the Atomic Energy Act by adding section 234C "Worker Health and Safety Rules for Department of Energy Nuclear Facilities." It required DOE to promulgate a worker safety and health rule, which was published in the Federal Register on February 9, 2006 as 10 CFR 851. It establishes worker safety and health requirements that govern the conduct of contractor activities at both nuclear and non-nuclear DOE Sites. Contractors that fail to comply with the Rule are subject to civil penalties or contract penalties.
 - (2) The Contractor assumes full responsibility and shall indemnify, hold harmless, and defend Battelle, its directors, officers, and employees from any civil or contractual liability under section 234C of the Atomic Energy Act of 1954, as amended, or the implementing regulations, arising out of the activities of the Contractor, its subcontractors, suppliers, agents, employees, and their officers, or directors. The Contractor's obligation to indemnify and hold harmless shall expressly include attorney fees and other reasonable costs of defending any action or proceeding instituted under section 234C or DOE's implementing regulations.
- (k) The Contractor is responsible for its subcontractors' compliance with the ES&H requirements of this contract. The Contractor shall include a clause substantially the same as this clause in lower-tier subcontracts involving work at any DOE Site. Such subcontracts shall provide for the right to stop work under the conditions described herein.
- 49. ENVIRONMENT, SAFETY AND HEALTH REQUIREMENTS - OFFSITE** *(cl 3113e – Feb 2010)*
- (a) In performing work under this contract, 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.

FIXED PRICE CONSTRUCTION GENERAL PROVISIONS

50. ACCIDENT PREVENTION

- (a) The Contractor shall provide and maintain work environments and procedures which will—
 - (1) Safeguard the public and Battelle personnel, property, materials, supplies, and equipment exposed to Contractor operations and activities;
 - (2) Avoid interruptions of Battelle operations and delays in project completion dates; and
 - (3) Control costs in the performance of this Contract.
- (b) For these purposes on Contracts for construction or dismantling, demolition, or removal of improvements, the Contractor shall—
 - (1) Provide appropriate safety barricades, signs, and signal lights;
 - (2) Comply with the standards issued by the Secretary of Labor at 29 CFR Part 1926 and 29 CFR Part 1910; and
 - (3) Ensure that any additional measures Battelle determines to be reasonably necessary for the purposes are taken.
- (c) Whenever Battelle becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or Battelle personnel, Battelle 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, Battelle 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.
- (d) Before commencing the work, the Contractor shall—
 - (1) Submit a written proposed plan for implementing this clause. The plan shall include an analysis of the significant hazards to life, limb, and property inherent in Contract work performance and a plan for controlling these hazards; and
 - (2) Meet with representatives of Battelle to discuss and develop a mutual understanding relative to administration of the overall safety program.
- (e) The Contractor shall insert this clause, including this paragraph in all Subcontracts.

51. 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 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 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.

52. 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)

FIXED PRICE CONSTRUCTION GENERAL PROVISIONS

- (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.

Quality Clauses

53. QUALITY ASSURANCE

- (a) The Contractor shall assure that all Work (including submittals, products, manufacture, fabrication, and installation of products and components, workmanship, inspection, testing, etc.) performed by it or its Subcontractors and suppliers is in compliance with Contract Documents. This includes taking measures to assure that suspect/counterfeit products are not incorporated into the work.
- (b) The Contractor shall use a management system that helps ensure proper control of the special processes (e.g., welding, nondestructive examination, soldering workmanship, manufacturer of radiation calibration standards and equipment, etc.). The Contractor shall require, in writing, Subcontractors of all tiers to comply with all applicable Contractual requirements. The management system of the Contractor and Subcontractors of all tiers shall be subject to audit by Battelle to the extent practicable at all times and places. The management system shall include the following:
- (1) Qualified personnel/processes, calibrated equipment traceable to a national standard, document control
 - (2) Written procedures
 - (3) Control of nonconforming items.
- (c) Work may include products and services that necessitate additional or special Quality Assurance / Quality Control, requirements, including the need for a documented Quality Assurance / Quality Control program. When such requirements are applicable to the Contractor's work, they will be identified

specifically in the Contract.

- (d) A pre-award evaluation shall be conducted of a prospective Contractor's technical and quality assurance / quality control capability. Evaluation, when required, shall be performed of the required documented Quality Assurance / Quality Control program(s) / system(s) and their implementation applicable to work to be performed by the prospective Contractor or Subcontractor(s).
- (e) The Contractor shall comply with manufacturer's recommendations for product installation or application when instructions are not given in the Specifications. The Contractor shall notify Battelle if such compliance will result in violation of imposed codes and standards, or other specified requirements.

54. RED-LINED DRAWINGS

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

55. 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://www.hss.energy.gov/CSA/CSP/sci/SCI_TrainingManual.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.

56. TEST REPORTS

- (a) Contractor shall submit Test Reports as specified and required by this Contract. Each report shall be legible, reproducible, and contain, in addition to any other requirements as specified by this Contract, the following:
 - (1) The Contract number;
 - (2) A clear identification of the supplies covered, including, but not limited to, the use of serial, lot, batch, heat, or mill numbers;
 - (3) The date and title of the person signing
- (b) Test Reports contemplated by this clause include but are not limited to the following:
 - (1) Pressure and/or Leak Test Report(s) containing the testing requirements, acceptance criteria, and actual results of all pressure and/or leak tests required by this Contract.
 - (2) Functional Test Report(s) of the actual test results, specifying what was tested, the requirements/parameters tested, and the acceptance criteria, all as required by this Contract.
 - (3) Inspection Data Report(s) of actual inspection results, specifying what was inspected, the characteristics inspected, and the acceptance criteria, all as required by this Contract.
 - (4) ASTM Manufacturers' Certification and Test Report, certifying the actual results of all tests and inspections required by ASTM Standard Specification(s) stated in this Contract.
 - (5) Mechanical/Physical Properties Test Report(s) containing the actual results of all tests required by the Standard specification(s).
 - (6) Chemical Analytical Report(s) (or Certificate of Analysis) containing the actual results of a chemical analysis performed on the specific chemicals or supplies tendered for acceptance.
 - (7) Reference or Standard Materials Report(s) specifying (1) the measurements made; (2) the results of such measurements; (3) an estimate of the uncertainties of each measurement recorded (such as random and systematic errors); and (4) the basis for the validity of each measurement recorded, consisting of either a description of the methods and sources used to make the measurements or a certification that the measurements are traceable to a nationally recognized standard or derived from accepted values of natural physical constants.
- (c) Submission of a certification constitutes Contractor's express warranty that the identified supplies conform to all of the

requirements of this Contract.

Clauses Incorporated by Reference

57. CLAUSES/PROVISIONS 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)

(B) Applicable to Subcontracts Under This Contract For Commercial Items:

- (1) FAR 52.244-6, Subcontracts For Commercial Items (JUN 2010)

(C) Applicable if Contract exceeds \$2,000:

- (1) FAR 52.222-6, Davis-Bacon Act (JUL 2005)
- (2) FAR 52.222-7, Withholding of Funds (FEB 1988)
- (3) FAR 52.222-8, Payrolls and Basic Records (JUNE 2010)
- (4) FAR 52.222-9, Apprentices and Trainees (JUL 2005)
- (5) FAR 52.222-10, Compliance with Copeland Act Requirements (FEB 1988)
- (6) FAR 52.222-11, Subcontracts (Labor Standards) (JUL 2005)
- (7) FAR 52.222-12, Contract Termination-Debarment (FEB 1988)
- (8) FAR 52.222-13, Compliance with Davis-Bacon and Related Act Regulations (FEB 1988)
- (9) FAR 52.222-14, Disputes Concerning Labor Standards (FEB 1988)
- (10) FAR 52.222-15, Certification of Eligibility (FEB 1988)

(D) Applicable if Contract identifies specific items to be accorded duty-free entry into a customs territory of the United States. Also applicable where the purchase order/Contract does not identify specific items to be accorded duty-free entry, but more than \$10,000 of foreign supplies may be imported to a customs territory of the United States in performance of the purchase order/Contract.

- (1) FAR 52.225-8, Duty-Free Entry (FEB 2000)

(E) Applicable if Contract exceeds \$2,500:

- (1) FAR 52.225-9, Buy American Act—Construction Materials (FEB 2009)

(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)

(F) Applicable if Contract exceeds \$10,000:

- (1) FAR 52.222-21, Prohibition of Segregated Facilities (FEB 1999)

FIXED PRICE CONSTRUCTION GENERAL PROVISIONS

- (2) FAR 52.222-23, Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (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 (MAR 2007)
- (4) FAR 52.222-27, Affirmative Action Compliance Requirements for Construction (FEB 1999)
- (5) FAR 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)
- (6) FAR 52.222-36, Affirmative Action for Workers with Disabilities (JUN 1998)
- (7) FAR 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)
- (G) Applicable if Contract exceeds \$100,000:**
- (1) FAR 52.203-6, Restrictions on Subcontractor Sales to the Government (SEP 2006)
- (2) FAR 52.203-7, Anti-Kickback Procedures, (JUL 1995)
- (3) FAR 52.219-8, Utilization of Small Business Concerns (MAY 2004)
- (4) FAR 52.227-1, Authorization and Consent (DEC 2007)
- (5) FAR 52.227-4, Patent Indemnity—Construction Contracts (DEC 2007)
- (6) DEAR 970.5227-5, Notice and Assistance Regarding Patent and Copyright Infringement (AUG 2002)
- (7) FAR 52.247-64, Preference For Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)
- (H) Applicable if Contract exceeds \$100,000 and its performance involves international air transportation of personnel, including their personal effects or property.**
- (1) FAR 52.247-63, Preference for U.S.-Flag Air Carriers (JUN 2003)
- (I) Applicable if Contract exceeds \$100,000 unless exempt per the provisions of FAR 22.305:**
- (1) FAR 52.222-4, Contract Work Hours and Safety Standards Act--Overtime Compensation (JUL 2005)
- (J) 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, Toxic Chemical Release Reporting (AUG 2003)
- (K) Applicable If Work Is Performed On DOE Site:**
- (1) DEAR 970.5223-1, Integration of Environment, Safety, and Health into Work Planning and Execution (DEC 2000)
- (2) DEAR 970.5223-4, Workplace Substance Abuse Programs at DOE Sites, (DEC 2000)
- (3) DEAR 952.203-70, Whistleblower Protection For Contractor Employees (DEC 2000)
- (L) 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 (AUG 2009)
- (2) DEAR 952.204-70, Classification/Declassification (SEP 1997)
- (3) DEAR 952.204-73, Facility Clearance (MAY 2002)
- (M) Applicable if this Contract exceeds \$100,000 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)
- (N) Applicable if this Contract exceeds \$500,000:**
- (1) DEAR 952.226-74 Displaced Employee Hiring Preference (JUN 1997)
- (2) DEAR 970.5226-2, Workforce Restructuring Under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 (DEC 2000)
- (O) 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)
- (P) 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)
- (Q) 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 (OCT 1997)
- (2) FAR 52.215-11, Price Reduction for Defective Cost or Pricing Data—Modifications (Oct 1997)
- (3) FAR 52.215-12, Subcontractor Cost or Pricing Data (OCT 1997)
- (4) FAR 52.215-13, Subcontractor Cost or Pricing Data—Modifications (Oct 1997)
- (R) 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 2000) ALTERNATE II (AUG 2009)
- (S) Applicable if Contractor was required to submit a Subcontracting Plan under this Contract:**
- (1) FAR 52.219-9, Small Business Subcontracting Plan (APR 2008)
- (T) 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 52.245-2, Government Property (Fixed Price Contracts) (JUN 2007)

(U) Applicable if royalties exceeding \$250 were included in the price of this Contract:

- (1) DEAR 970.5227-8, Refund of Royalties (AUG 2002)

(V) Applicable if foreign travel is required in the performance of this Contract.

- (1) DEAR 952.247-70, Foreign Travel (AUG 2009)

(W) 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.]