

This purchase order incorporates the following articles by reference, with the same force and effect as if they were printed in full text. The revision of each article will be the one in effect on the date of the solicitation. Titles of articles in this subcontract are for reference purposes only and carry no substantive weight.

For purposes of this order, where the article says "Government", change it to read "Buyer"; where the article says "Contracting Officer", change it to read "Contract Administrator"; and where the article says "Contractor" or "Subcontractor", change it to read "Supplier".

Based on the stated provisions, Supplier is to determine what articles must be inserted in its subcontracts and purchase orders to implement its obligations to FMP (as identified in the order) and the Government, and must implement them in its lower-tier subcontracts and purchase orders.

PART I. ARTICLES INCORPORATED BY REFERENCE

The following articles, as applicable, are incorporated by reference (except as noted):

ARTICLE	REFERENCE
BUY AMERICAN - SUPPLIES	FAR 52.225-1
COMBATING TRAFFICKING IN PERSONS	FAR 52.222-50
CONTRACT TERMS AND CONDITIONS – COMMERCIAL ITEMS MODIFIED AS FOLLOWS: <ul style="list-style-type: none"> • Paragraphs (d) and (s) are deleted in their entirety. • Exclude reference to the Prompt Payment Act in paragraphs (g) and (i). • Paragraph (o) is modified to include Supplier's standard warranty period and non-conflicting warranty terms 	FAR 52.212-4
DISCLOSURE OF INFORMATION	DFARS 252.204-7000
ENERGY EFFICIENCY IN ENERGY CONSUMING PRODUCTS	FAR 52.223-15
EQUAL OPPORTUNITY <ul style="list-style-type: none"> • For this article, FAR 52-222-35 Equal Opportunity for Veterans and FAR 52.222-36 Equal Opportunity for Workers with Disabilities the following additional language applies: This contractor and subcontractor shall abide by the requirements of 41 CFR 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans, or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that the Supplier take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. 	FAR 52.222-26
GOVERNMENT PROPERTY (With Alt 1) <ul style="list-style-type: none"> • Note 1: Alternate I does not apply to the following purchase order types: cost-reimbursement, time-and-material, labor-hour, and fixed-price purchase orders awarded on the basis of submission of certified cost or pricing data. • Note 2: The preamble on page 1 of these General Provisions does not apply to the Government Property article (FAR 52.245-1). The Government Property article is modified as follows: Where the article says "Contractor" change it to read "Supplier"; Where the article says "subcontractor" change it to read "sub-tier supplier"; Where the article says "contract" change it to read "purchase order"; Where the article says "Contracting Officer" change it to read "Contract Administrator". 	FAR 52.245-1
LAWS, REGULATIONS, AND DOE DIRECTIVES	DEAR 970.5204-2
LIMITATIONS ON THE USE OR DISCLOSURE OF THIRD-PARTY CONTRACTOR REPORTED CYBER INCIDENT INFORMATION	DFARS 252.204-7009
NOTICE OF AUTHORIZED DISCLOSURE OF INFORMATION FOR LITIGATION SUPPORT	DFARS 252.204-7015
PREFERENCE FOR U.S.-FLAG AIR CARRIERS	FAR 52.247-63
PRIVACY ACT <ul style="list-style-type: none"> • Applies if the purchase order requires the design, development, or operation of a system of records on individuals to accomplish work effort. 	FAR 52.224-2
PRIVACY ACT NOTIFICATION <ul style="list-style-type: none"> • Applies if the purchase order requires the design, development, or operation of a system of records on individuals to accomplish work effort. 	FAR 52.224-1
PROHIBITION ON HEXAVALENT CHROMIUM	DFARS 252.223-7008
PROHIBITION ON REQUIRING CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENTS	FAR 52.203-19
PROHIBITION OF SEGREGATED FACILITIES	FAR 52.222-21

ARTICLE	REFERENCE
PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS CONCERNS	FAR 52.232-40
REQUIREMENTS TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS	DFARS 252.203-7002
RESTRICTIONS ON CERTAIN FOREIGN PURCHASES	FAR 52.225-13
SAFEGUARDING COVERED DEFENSE INFORMATION & CYBER INCIDENT REPORTING	DFARS 252.204-7012
SOURCES OF ELECTRONIC PARTS	DFARS 252.246-7008
SUBCONTRACTS FOR COMMERCIAL ITEMS (applies if NAVY funded)	DFARS 252.244-7000
SUPPLY CHAIN RISK <ul style="list-style-type: none"> Applies if the purchase order involves the development or delivery of any information technology. 	DFARS 252.239-7018
TECHNICAL DATA--COMMERCIAL ITEMS	DFARS 252.227-7015
UTILIZATION OF SMALL BUSINESS CONCERNS	FAR 52.219-8

PART II. ARTICLES INCORPORATED BY REFERENCE AT VARIOUS THRESHOLDS

The following articles, as applicable, are incorporated by reference (except as noted):

THRESHOLD	ARTICLE	REFERENCE
Greater than \$3,500	ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING	FAR 52.223-18
Greater than \$10,000	NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT	FAR 52.222-40
Greater than \$15,000	EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES	FAR 52.222-36
Greater than \$100,000	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (applies if DOE funded)	DEAR 970.5227-5
Greater than \$150,000	ANTI-KICKBACK PROCEDURES	FAR 52.203-7
	CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS	FAR 52.203-17
	EQUAL OPPORTUNITY FOR VETERANS	FAR 52.222-35
	DEFINITIONS	FAR 52.202-1
	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS	FAR 52.203-12
	PREVENTING PERSONAL CONFLICTS OF INTEREST	FAR 52.203-16
	RESTRICTION ON ACQUISITION OF CERTAIN ARTICLES CONTAINING SPECIALTY METALS	DFARS 252.225-7009
Greater than \$500,000	SUSTAINABLE ACQUISITION PROGRAM	DEAR 952.223-78
	UTILIZATION OF INDIAN ORGANIZATIONS, INDIAN-OWNED ECONOMIC ENTERPRISES, AND NATIVE HAWAIIAN SMALL BUSINESS CONCERNS	DFARS 252.226-7001
Greater than \$700,000	SMALL BUSINESS SUBCONTRACTING PLAN	FAR 52.219-9

PART III. ARTICLES APPLICABLE ONLY TO ON-SITE EFFORTS

The provisions contained in Part III of the Commercial General Provisions are only applicable to the Supplier if the purchase order requires Supplier to perform any work on the Buyer or Government premises. The following articles, as applicable, are incorporated by reference (except as noted):

THRESHOLD	ARTICLE	REFERENCE
ALL ORDERS	SECURITY <ul style="list-style-type: none"> Applies if performance of the purchase order involves or is likely to involve access to classified information 	DEAR 952.204-2
	WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES	DEAR 952.203-70
Greater than \$150,000	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT--OVERTIME COMPENSATION	FAR 52.222-4

THRESHOLD	ARTICLE	REFERENCE
Greater than \$150,000	FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT LABOR STANDARDS - PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS)	FAR 52.222-43
	FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT LABOR STANDARDS - PRICE ADJUSTMENT	FAR 52.222-44
	INSURANCE – WORK ON A GOVERNMENT INSTALLATION	FAR 52.228-5
Greater than \$5,500,000	CONTRACTOR CODE OF BUSINESS ETHICS	FAR 52.203-13

PART IV. ARTICLES INCORPORATED IN FULL TEXT

The following articles, as applicable, are incorporated by full text:

ASSIGNMENT AND SET OFF

Performance of this order shall not be assigned or transferred by Supplier, except as expressly authorized in writing by Buyer. This order may be assigned by Buyer to the Government or any designee of the Government, provided that written notice thereof is given to Supplier. Buyer shall be entitled at all times to set off against any amount payable at any time by Buyer under this order, any amount owing at any time from Supplier to Buyer whether arising under this order or other purchase orders with Supplier.

LIABILITY FOR UNCOMPLETED OR ERRONEOUS TRANSFERS

If the EFT information changes after submission of correct EFT information, the Buyer shall begin using the changed EFT information no later than 30 days after its receipt by the designated office to the extent payment is made by EFT. However, the Supplier may request that no further payments be made until the updated EFT information is implemented by the payment office. If such suspension would result in a late payment, the Supplier's request for suspension shall extend the due date for payment by the number of days of the suspension.

If an uncompleted or erroneous transfer occurs because the Buyer used the Supplier EFT information incorrectly, the Buyer remains responsible for-

- Making a correct payment;
- Recovering any erroneously directed funds.

If an uncompleted or erroneous transfer occurs because the Supplier EFT information was incorrect, or was revised within 30 days of Buyer release of the EFT payment transaction instruction to the Federal Reserve System, and-

- If the funds are no longer under the control of the payment office, the Buyer is deemed to have made payment and the Supplier is responsible for recovery of any erroneously directed funds; or
- If the funds remain under the control of the payment office, the Buyer shall not make payment and the provisions of the first paragraph shall apply.

DISPUTES

Supplier shall not be entitled to claim and Buyer shall not be liable to Supplier or its Suppliers or Suppliers of any tier in tort (including negligence), or purchase order except as specifically provided in this purchase order.

Any claim arising out of or attributable to the interpretation or performance of this subcontract which cannot be resolved by negotiation shall be considered a dispute within the meaning of this clause.

If for any reason Supplier and Buyer are unable to resolve a claim for an adjustment, Supplier or Buyer shall notify the other party in writing that a dispute exists and request or provide a final determination regarding the claim. Any such request by Supplier shall clearly reference this clause and shall summarize the facts in dispute and Supplier's proposed resolution of the dispute.

Buyer shall, within sixty (60) calendar days of any request by Supplier, provide a written final determination setting forth the contractual basis for its decision and defining what purchase order adjustments it considers equitable. Upon Supplier's written acceptance of FMP's determination the purchase order will be modified and the determination implemented accordingly.

If Buyer's final determination is not accepted by Supplier, the matter shall, within thirty (30) calendar days, be referred to senior executives of the parties who shall have designated authority to settle the dispute. The parties shall promptly prepare and exchange memoranda stating the issues in dispute and their respective positions, summarizing the negotiations that have taken place and attaching relevant documents.

The senior executives will meet for negotiations at a mutually agreed time and place. If the matter has not been resolved within thirty (30) days of the commencement of such negotiations, the parties agree to consider resolution of the dispute through some form of Alternative Dispute Resolution (ADR) process which is mutually acceptable to the parties.

Should the parties agree to pursue an ADR process each party will be responsible for its own expenses incurred to resolve the dispute during the ADR process.

If the parties do not agree to an ADR process or are unable to resolve the dispute through ADR, either party shall then have the right to pursue any legal remedy consistent with other terms of the purchase order.

Pending final resolution of any performance issue, request for equitable adjustment, claim or dispute regarding this purchase order, the Supplier shall proceed diligently with the performance of this purchase order.

TITLE AND ADMINISTRATION

All site work performed in furtherance of this purchase order will be on real property owned by the U.S. Government. Title and all property rights and interests resulting from this subcontract shall pass directly from Supplier to the U.S. Government, upon acceptance, regardless of when or where the Government takes physical possession. Payments under this subcontract will be made by Buyer from funds advanced by the Government, not from Buyer's own assets. Administration of this Purchase Order may be transferred to DOE or its designee, and in case of such transfer and notice thereof to supplier, Buyer shall have no further responsibilities hereunder.

MEMORY BEARING COMPONENTS

A memory bearing component is computer memory that can retain the stored information even when not powered. Examples include, but are not limited to, read-only memory, flash memory, most types of magnetic computer storage devices (e.g. hard disks, floppy disks, and magnetic tape), optical discs, and early computer storage methods such as paper tape and punched cards. Once a memory bearing component has been delivered, it will not be removed from the laboratory unless Buyer can conclude that the component is free from any classified or sensitive data and removal of the component is approved by the Buyer. Magnetic media is subject to Buyer Security Regulations and will not be allowed to be removed from Buyer's sites. Memory bearing components retained by Buyer, in accordance with Buyer Security Requirements, shall be replaced at Supplier's cost. Seller shall invoice for reimbursement for each part replaced or repaired.

ANTI-VIRUS WARRANTY

Software and Hardware provided by the Supplier under this Purchase Order shall not contain computer viruses or other malicious software. In fulfilling the terms of this Purchase Order, the Supplier agrees to take precautions to avoid conveying computer viruses or other malicious software to the Buyer. Specifically, all computer files, disks, memories or other media provided by the Supplier to the Buyer (other than third party Supplier software in its original, unopened packaging materials) will be checked by the Supplier prior to delivery to the Buyer to detect and remove any computer virus or other malicious software. The virus check that is performed by the Supplier will include checks with current, up-to-date anti-virus software and any virus problems that are found during the check (or later found by the Buyer) will be fixed by the Supplier.

WARRANT OF MANUFACTURER'S PRODUCT

The supplier shall source all products submitted in this offer as new products from the manufacturer or through the manufacturer's authorized distributors only, in accordance with all applicable laws and policies at the time of purchase.

CHOICE OF LAW

This subcontract and any and all matters of disputes between the parties to this subcontract whether arising from the subcontract itself or arising from alleged extra contractual facts, during or subsequent to the contract shall be governed by construed, and enforced in accordance with the law of U.S. Government contracts as set forth by statute and applicable regulations, and decisions by the appropriate courts and Board of Contract Appeals. To the extent that the law referred to in the foregoing sentence is not determinative on an issue, the issue shall be resolved in accordance with the laws of the Idaho or New York or Pennsylvania depending on the state in which the work is performed.

ORDER OF PRECEDENCE

In the event of any inconsistencies from this purchase order, the following order of precedence shall apply:

1. Purchase Order/Subcontract
2. General Provisions
3. Applicable Referenced Documents (including final proposal for Design Build)*
4. Detailed Specification / Workscope
5. Drawings

*all documents except the General Provisions, Specifications/Workscopes and Drawings

Any inconsistencies whatsoever shall be brought to the attention of the Contract Administrator prior to any action related hereto by the Supplier.

SUPPLIER LIABILITIES AND INDEMNIFICATIONS

This purchase order does not bind nor purport to bind the United States Government, its officers, employees, or agents. As to the Work to be done, or services to be performed by Supplier on Buyer premises, Government premises, or the premises of other Buyer Suppliers, Supplier assumes entire responsibility and liability for losses, expenses, damages, demands, and claims in connection with or arising out of any injury or alleged injury (including death), or damage or alleged damage to property, sustained or alleged to have been sustained in connection with or to have arisen out of performance of the Work. Supplier will indemnify and save harmless the Government and Buyer, or other Buyer Suppliers, from and against any and all claims, demands, actions, causes of actions, suits, damages, expenses (including attorneys' fees) and liabilities whatsoever resulting from or arising in any manner on account of or by reason of any injury to or death of any person or any damage to or loss of property which may occur or be alleged to have occurred as a result of or in connection with the performance of this purchase order. Supplier further agrees to indemnify Buyer and the Government against, and to save and hold harmless Buyer and the Government from any and all liability, and expense with respect to claims against Buyer or the Government which may result from the failure or alleged failure of Supplier or any of its lower-tier suppliers to comply with the requirements of this purchase order.