

GENERAL PROVISIONS FOR CPFF ORDERS (DOE)

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 submission of your proposal. Titles of articles in this subcontract are for reference purposes only and carry no substantive weight. To purchase a copy of the Department of Energy Acquisition Regulations (DEAR-CFR Title 48, Chapter 9), contact the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328.

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 when 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 purchase orders to implement its obligations to BMPC or BPMI (as stated in the order) and the Government, and must implement them in its lower-tier subcontracts and purchase orders

<u>ARTICLE</u>	<u>REFERENCE</u>
The following articles apply to this purchase order (except as noted):	
ACCOUNTS, RECORDS, AND INSPECTIONS	DEAR 970.5232-3
ADDITIONAL DATA REQUIREMENTS (RESEARCH AND DEVELOPMENT ORDERS)	FAR 52.227-16
ALLOWABLE COST AND PAYMENT	FAR 52.216-7
BUY AMERICAN ACT-SUPPLIES	FAR 52.225-1
COMBAT TRAFFICING IN PERSONS	FAR 52.222-50
CHANGES-COST-REIMBURSEMENT (Delete Paragraph (d); use Alt. V for R&D orders)	FAR 52.243-2
CLASSIFICATION/DECLASSIFICATION	DEAR 952.204-70
DEFINITIONS	FAR 52.202-1
EQUAL OPPORTUNITY	FAR 52.222-26
EXCUSABLE DELAYS	FAR 52.249-14
FACILITIES CAPITAL COST OF MONEY	FAR 52.215-16
FIXED FEE	FAR 52.216-8
FOREIGN TRAVEL	DEAR 952.247-70
INSPECTION OF RESEARCH AND DEVELOPMENT--COST REIMBURSEMENT	FAR 52.246-8
INSPECTION OF SERVICES--COST REIMBURSEMENT	FAR 52.246-5
INSPECTION OF SUPPLIES--COST REIMBURSEMENT	FAR 52.246-3
LIMITATION OF COST	FAR 52.232-20

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<u>ARTICLE</u>	<u>REFERENCE</u>
LIMITATION OF FUNDS	FAR 52.232-22
NOTICE OF INTENT TO DISALLOW COSTS	FAR 52.242-1
NUCLEAR HAZARDS INDEMNITY AGREEMENT	DEAR 952.250-70
PATENT RIGHTS – ACQUISITION BY THE GOVERNMENT (delete Paragraphs (b) (2) and (d) (4)) (R&D orders only)	DEAR 952.227-13
PATENT RIGHTS - RETENTION BY THE CONTRACTOR (SHORT FORM) (SMALL BUSINESS AND NON-PROFIT) (RESEARCH AND DEVELOPMENT ORDERS ONLY)	DEAR 952.227-11
PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS	FAR 52.247-64
PROHIBITION OF SEGREGATED FACILITIES	FAR 52.222-21
PRIVACY ACT NOTIFICATION - PRIVACY ACT (Privacy Act Notification and Privacy Act apply 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 FAR 52.224-2
REFUND OF ROYALTIES	DEAR 952.227-9
RIGHTS IN DATA – GENERAL (with Alt V.) (Substitute Paragraphs (a) and (d) (3) from DEAR reference)	FAR 52.227-14 DEAR 927.409(a) (1)
SECURITY	DEAR 952.204-2
SERVICE CONTRACT ACT (SCA) OF 1965, AS AMENDED	FAR 52.222-41
THE FOLLOWING ADDITIONAL ARTICLES APPLY:	
FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT - PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS) (>\$150K)	FAR 52.222.43
FAIR LABOR STANDARDS ACT AND SERVICE - CONTRACT ACT - PRICE ADJUSTMENT (>\$150K)	FAR 52.222.44
STOP-WORK ORDER (With Alt. I)	FAR 52.242-15
SUBCONTRACTS (Ref. Paragraph (e). The subcontracts requiring Buyer approval are discussed in the purchase order.)	FAR 52.244-2
SUBCONTRACTS FOR COMMERCIAL ITEMS	FAR 52.244-6
TERMINATION (COST-REIMBURSEMENT) (Delete reference in paragraph j to the Disputes Article)	FAR 52.249-6
WAIVER OF FACILITIES CAPITAL COST OF MONEY	FAR 52.215-17
WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DOE-On-Site Work Only)	DEAR 952.203-70

<u>ARTICLE</u>	<u>REFERENCE</u>
The following article applies if this purchase order exceeds \$10,000 (except as noted):	
NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT	FAR 52.222-40
RESTRICTIONS ON CERTAIN FOREIGN PURCHASES	FAR 52.225-13
The following article applies if this purchase order exceeds \$15,000 (except as noted):	
AFFIRMATIVE ACTION FOR HANDICAPPED WORKDERS	FAR 52.222-36
The following articles apply if this purchase order exceeds \$100,000 (except as noted):	
NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT	DEAR 970.5227-5
The following articles apply if this purchase order exceeds \$150,000 (except as noted):	
ANTI-KICKBACK PROCEDURES	FAR 52.203-7
AUDIT AND RECORDS-NEGOTIATION	FAR 52.215-2
AUTHORIZATION AND CONSENT	FAR 52.227-1
BANKRUPTCY	FAR 52.242-13
CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING	FAR 52.223-13
CONTRACT WORK HOURS AND SAFETY STANDARDS ACT-OVERTIME COMPENSATION	FAR 52.222-4
DUTY-FREE ENTRY	FAR 52.225-8
EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS	FAR 52.222-37
EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS	FAR 52.222-35
GRATUITIES	FAR 52.203-3
LIMITATION OF LIABILITY	FAR 52.246-23
LIMITATION OF LIABILITY - HIGH VALUE ITEMS	FAR 52.246-24
LIMITATION OF LIABILITY – SERVICES	FAR 52.246-25
LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS	FAR 52.203-12
LIMITATIONS ON PASS-THROUGH CHARGES	FAR 52.215-23

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<u>ARTICLE</u>	<u>REFERENCE</u>
ORGANIZATIONAL CONFLICTS OF INTEREST (With Alt. I) (Orders involving Advisory and Assistance Services)	DEAR 952.209-72
PATENT INDEMNITY	FAR 52.227-3
PAYMENT FOR OVERTIME PREMIUMS	FAR 52.222-2
RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT	FAR 52.203-6
TOXIC CHEMICAL RELEASE REPORTING (Delete Paragraph (e))	FAR 52.223-14
UTILIZATION OF SMALL BUSINESS CONCERNS	FAR 52.219-8

The following articles apply if this purchase order exceeds \$500,000 (except as noted):

DISPLACED EMPLOYEE HIRING PREFERENCE	DEAR 952.226-74
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The following articles apply if this purchase order exceeds \$650,000 (except as noted):

SMALL BUSINESS SUBCONTRACTING PLAN	FAR 52.219-9
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The following articles apply if this purchase order exceeds \$700,000 (except as noted):

ADMINISTRATION OF COST ACCOUNTING STANDARDS	FAR 52.230-6
COST ACCOUNTING STANDARDS (Delete Paragraph (b))	FAR 52.230-2
PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA - MODIFICATIONS	FAR 52.215-10 FAR 52.215-11
SUBCONTRACTOR COST OR PRICING DATA - MODIFICATIONS	FAR 52.215-12 FAR 52.215-13
PENSION ADJUSTMENTS AND ASSET REVERSIONS	FAR 52.215-15

The following article applies if this purchase order exceeds \$2,000,000 (except as noted):

ACCESS TO AND OWNERSHIP OF RECORDS	DEAR 970.5204-3
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The following articles apply if this purchase order exceeds \$5,000,000 (except as noted):

CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT	FAR 52.203-13
DISPLAY HOTLINE POSTERS(S)	FAR 52.203-14

In addition, the following articles are included in their entirety:

PUBLIC RELEASE OF INFORMATION

- (a) Information, data, photographs, sketches, advertising, displays, promotional brochures, or other materials related to work under this order, which Supplier desires to publish, display, or release internally, to other contractors, to government agencies, or to the public, shall be submitted to Buyer for approval at least eight weeks prior to the desired printing or release date. This includes descriptive or promotional material which links or relates, directly or indirectly, Supplier's product line, manufacturing facilities, or manufacturing capabilities to

performance of naval nuclear propulsion work. As part of the approval request, Supplier shall identify the specific media to be used as well as other pertinent details of the proposed release. All releases, regardless of tier of supplier, must have the prior approval of Buyer.

- (b) Should any information described in (a) above be requested, subpoenaed, or otherwise sought by a court or other judicial or administrative authority, this should be promptly brought to the attention of Buyer to permit appropriate measures to be taken to protect the information. Under no circumstances, should this information be released to such authority without prior notification and agreement of Buyer.
- (c) Supplier agrees that this requirement of prior Buyer approval of any release shall survive the purchase order and that Supplier shall not for a period of twenty years subsequent to the issuance of the purchase order either directly or indirectly issue any such release without the requisite approval of Buyer, its successor or assignee.
- (d) Supplier shall include all provisions of this article including this sentence in all purchase orders under this order.

ASSIGNMENT AND SET OFF

Performance of this order shall not be assigned or transferred by the 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.

CLASSIFIED INVENTIONS

(This article applies to orders which cover or are likely to cover classified subject matter.)

- (a) The Supplier shall not file or cause to be filed on any invention discovery conceived or first actually reduced to practice in the course of or under this order in any country other than the United States, an application or registration for a patent without obtaining written approval of Buyer.
- (b) When filing a patent application in the United States on any invention or discovery conceived of or first actually reduced to practice in the course of or under this order, the subject matter of which is classified for reasons of security, the Supplier shall observe all applicable security regulations covering the transmission of classified subject matter. When transmitting the patent application to the United States Patent and Trademark Office, the Supplier shall by separate letter identify by agency and number, the order or orders which require security classification markings to be placed on the application.

COST ACCOUNTING STANDARDS (CAS)

CAS requirements do not apply if the order does not exceed \$650,000 and the offeror claims an exemption per the Proposal Representation and Certification, or if certified cost or pricing data was not provided.

INSURANCE

(Excluded items: materials, commercial products)

Unless otherwise specified in this Purchase Order, Supplier shall, at its sole expense, maintain in effect at all times during the performance of the work, insurance coverage, with limits not less than those set forth below with insurers rated by A.M. Best Company no less than A-VII or equivalent, and under forms of policies satisfactory to Buyer.

At all times during performance, the Supplier shall maintain a current Certificate of Insurance evidencing insurance coverage not less than required by this article and providing for thirty (30) days written notice to the Contract Administrator by the insurance company prior to cancellation or material change in policy coverage. The period of insurance coverage must coincide with the period of performance (term) of the Purchase Order, including the entire warranty period (whether on the original Certificate of Insurance or on subsequent such Certifications). Supplier Certificates of Insurance shall demonstrate Supplier's insurance policies contain the minimum coverage set forth in this clause. Thirty (30) calendar days advance written notice shall be given to Buyer prior to cancellation, termination or material alteration of said policies of insurance. Certificates shall identify on their face the Buyer name, and the applicable Purchase Order Number.

The Supplier shall also require all first-tier subcontractors who will perform work on Buyer or Government premises to procure and maintain the insurance specified below during the entire period of their performance, including warranty period, and to furnish proof at Buyer's request.

A. Required Coverage

1. **Worker' Compensation Insurance** as required by an applicable law or regulation, both State and/or Federal.

If there is an exposure of injury to Supplier's employees under the U.S. Longshoremen's and Harbor Workers' Compensation Act, the Jones Act, or under laws, regulations or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

2. **Employer Liability Insurance** of not less than:

\$1,000,000 each accident for bodily injury by accident;
 \$1,000,000 each employee for bodily injury by disease; and
 \$1,000,000 bodily injury by disease policy limit.

The above policies shall include an Insurer's waiver of subrogation in favor of Buyer and the Government.

3. **Commercial General Liability Insurance**

Supplier shall maintain Commercial Liability Insurance covering all operations by or on behalf of the Supplier providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for:

- Premises and Operations
- Independent contractors
- Products and Completed Operations;
- Contractual Liability insuring the indemnity agreement specified in this Purchase order
- Broad Form Property Damage (including Completed Operation);
- Personal Injury Liability

The Commercial General Liability insurance shall be written on an occurrence coverage basis, not claims-made. The policy of insurance which affords Commercial General Liability shall contain a provision or endorsement stating that:

1. Buyer and their subsidiaries and affiliates shall be named as Additional Insureds, including in any Excess or Umbrella Liability Insurance(s). and
2. Includes an insurer's waiver of subrogation in favor of each Additional Insured; and
3. Contains a cross liability and severability of interest clause and must be primary and non-contributory, with any similar insurance coverage (primary and excess) maintained by the Additional Insureds; and
4. *The following requirement applies only for Cases II and III below:* Does not contain any exclusions as to loss or damage to property caused by explosion or resulting from collapse of buildings or structures or damage to property underground, commonly referred to by insurers as the "XCU" hazards;

Policy Limits

For Supplier's Commercial General Liability Insurance, the limits of liability for bodily injury, property damage and personal injury shall be not less than;

CASE I*

\$1,000,000 Combined single limit for Bodily Injury and Property Damage-each occurrence.
 \$1,000,000 Personal Injury Limit-each occurrence
 \$2,000,000 General Annual Aggregate Limit

CASE II*

\$2,000,000 Combined single limit for Bodily Injury and Property Damage-each occurrence.
 \$2,000,000 Personal Injury Limit-each occurrence
 \$4,000,000 General Annual Aggregate Limit

CASE III*

\$5,000,000 Combined single limit for Bodily Injury and Property Damage-each occurrence.
 \$5,000,000 Personal Injury Limit-each occurrence
 \$5,000,000 General Annual Aggregate Limit

The required limits may be satisfied by a combination of a primary policy and an excess or umbrella policy.

* NOTE: The purchase order document specifically will identify the applicable Case within the Insurance Requirements section.

4. **Automobile Liability Insurance**, including coverage for the operation of any vehicle to include, but not limited to, owned, hired and non-owned. The combined single limit for Bodily Injury and Property Damage Liability shall be no less than \$1,000,000 for any one accident or loss. The required limits may be satisfied by a combination of a primary policy and an excess or umbrella policy. Supplier's Automobile Liability Insurance shall include coverage for Automobile Contractual Liability.
5. **Excess or Umbrella Insurance** with limits not less than \$5,000,000 per occurrence/aggregate, coverage shall be provided on a follow form basis, applying as excess over Employer's Liability, Commercial General Liability and Automobile Liability, as stated above. Such insurance shall include an Insurer's waiver of subrogation in favor of each Additional Insured, be primary and non-contributory with any similar insurance coverage maintained by the Additional Insureds.

B. Special Operations Insurance Coverage

The following types of insurance coverage are only required if specifically identified in the purchase order Insurance Requirements section. The requirements are as identified below.

1. Supplier shall provide or have provided coverage for liabilities arising out of marine operations, including contractual liability under its **Commercial General Liability Insurance or Marine Hull and Machinery Insurance and Protection and Indemnity Insurance**. In the event such marine operations involve any Supplier owned, hired, chartered or operated vessels, barges, tugs or other marine equipment, Supplier agrees to provide or have provided Marine Hull and Machinery Insurance and Protection and Indemnity Insurance and/or Charterer's Liability Insurance. The combined limit of the Protection and Indemnity Insurance and/or Charterer's Liability Insurance shall be at least \$5,000,000 per occurrence or the market value of the vessel, whichever is greater. The Protection and Indemnity and/or Charterer's liability and the Hull and Machinery coverages shall include coverage for contractual liability, wreck removal, sudden and accidental pollution, tower's liability if applicable, special operations and full collision coverage and shall be endorsed:
 - a. To provide full coverage to Buyer and the Government as Additional Insureds without limiting coverage to liability "as owner of the vessel" and to delete any "as owner" clause or other language that would limit coverage to liability of an insured "as owner of the vessel"; and
 - b. To waive any limitation provided by any applicable liability statute.

All marine insurances provided by the Supplier shall include an Insurer's waiver of subrogation in favor of the Additional Insureds.

2. Supplier shall provide **Stevedore's Legal Liability and/or Wharfingers Legal Liability Insurance** with limits not less than \$5,000,000 per occurrence. Such insurance shall name Buyer as an Additional Insured, include an Insurer's waiver of subrogation in favor of each Additional Insured, state that it is primary and non-contributory, and contain a cross liability or severability or interest clause.
3. Supplier shall also carry "**All Risk**" **Motor Truck Cargo Insurance**, or such similar form of insurance that will insure against physical loss or damage to the property being transported, moved, or handled by Supplier pursuant to the terms of this contract. Such insurance shall provide a limit of not less than the replacement cost of the highest value being moved, shall insure the interest of the Supplier, and the Buyer, as their respective interests may appear, and shall include an insurer's waiver of subrogation in favor of each such party.
4. Involve **Aircraft** (fixed wing or helicopter) owned, operated or chartered by the Supplier, liability arising out or such aircraft shall be insured for a combined single limit not less than \$10,000,000 each occurrence and such limit shall apply to Bodily Injury (including passengers) and Property Damage Liability. Such insurance shall name the Buyer as Additional Insureds, include an Insurer's waiver of subrogation in favor of each Additional Insured, state that it is primary and non-contributory, and contain a cross-liability or severability of interest clause. If the aircraft hull is insured, such insurance shall provide for an Insurer's waiver of subrogation rights in favor of the Buyer. In the event the Supplier charters aircraft, the foregoing insurance and evidence of insurance may be furnished by the owner of the chartered aircraft, provided the above requirements are met.
5. Supplier shall also carry **Pollution Liability Insurance** in an amount not less than \$5,000,000 per occurrence or claim/annual aggregate. Such insurance shall provide bodily injury and property damage and clean up costs coverage for both the sudden and gradual occurrences arising from the work. If Supplier

activities involve professional services, coverage shall include pollution losses resulting from any deficient professional services. If Completed Operations is limited in the policy, such Completed Operations Coverage shall be for a period of not less than five (5) years. If such insurance is written on a claim-made form, such insurance shall include minimally a six (6) year extended discovery period and shall name the Buyer and the Government as Additional Insureds.

6. Supplier shall also carry **Asbestos Liability Insurance** in an amount not less than \$5,000,000 per occurrence/annual aggregate. The policy shall be written on an "occurrence basis" with no sunset clause. Such insurance shall name the Buyer and the Government as Additional Insureds.
7. Supplier shall also carry **Business Automobile Insurance** covering liability arising out of the transportation of hazardous materials in an amount not less than \$2,000,000 per occurrence. Such policy shall include Motor Carrier Endorsement MCS-90 or equivalent. NEITHER BUYER NOR THE GOVERNMENT SHALL BE NAMED AS AN ADDITIONAL INSURED FOR THIS POLICY.
8. Supplier shall furnish an insurance certificate from the designated disposal facility establishing that the facility operator maintains current **Environmental Liability Insurance** in the amount of not less than \$5,000,000 per occurrence/annual aggregate. Supplier shall also carry Pollution Liability in an amount not less than \$5,000,000 per occurrence or claim/annual aggregate as required in sub-clause B.5 above. Coverage shall also include non-owned disposal site (NODS) coverage for losses at the jobsite.
9. **Contractor's Tools and Equipment Insurance** covering loss or damage to equipment, tools or any other property of Supplier. Such insurance shall include an Insurer's waiver of subrogation in favor of Buyer and the Government, and indemnifies Buyer and the Government from and against any liability arising out of or for any loss or damage to such equipment, tools, or property of Supplier and each of its lower tier suppliers.
10. **Builders Risk Insurance**, including Buyer and the Government as Additional Insureds and written on an "All Risk" basis with a limit equal to the total installed cost of the Supplier's work. "Total installed cost" shall include the value of material and equipment provided by Buyer and the Government while such property is in the care custody, and control of Supplier. This insurance will cover all material and equipment installed or to be installed in permanent buildings and facilities and will include coverage for material in transit and in offsite storage. In addition, Supplier's insurer shall waive its right of subrogation against Buyer and the Government. Should any loss or damage to the Work occur, deductibles under this policy shall be for Supplier's account.

C. Related Obligations

1. The requirements contained herein as to types and limits, as well as Buyer's approval of insurance coverage to be maintained by Supplier, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Supplier under this contract. The Supplier shall require each lower-tier supplier to comply with all insurance requirements appropriate for its scope of work, and any deficiency shall not relieve the Supplier of its responsibility herein. Upon written request, the Supplier shall provide the Buyer with complete, certified copies of all required insurance policies, and/or copies of lower-tier Supplier certificates of insurance.
2. Buyer shall have no duty to advise Supplier in the event Supplier' insurance does not comply with the requirements of this purchase order. If Supplier fails to procure and maintain all the insurance coverage required by this clause, Supplier shall indemnify and hold harmless Buyer, Government, each of their parents, subsidiaries and affiliate, and the officers, directors and employees of each from and against all claims, demands, costs, charges, and expenses that would have been covered by such insurance had Supplier complied with its obligations herein.

D. Buyer or Government Furnished Insurance

Neither the Buyer nor the Government is maintain any insurance on behalf of the Supplier covering against loss or damage to the work or to any other property of the Supplier unless otherwise specifically stated herein and as may be described by an appendix hereto. Any insurance maintained by the Buyer is excess of and shall not in any manner contribute to any loss covered by the Supplier's primary insurance or with any other insurance available to the Supplier in excess of such primary insurance and applicable to such loss.

E. Non-Waiver

Buyer's acceptance of any evidence of insurance, including any certificate of insurance, shall not: (i) constitute acceptance of the adequacy of Supplier's insurance coverage, (ii) imply that any insurance coverage provided by Supplier complies with the requirements of this subcontract, or (iii) waive Buyer's or Government's rights to

enforce any of Supplier's requirements in this subcontract, including the requirements concerning insurance coverage amounts, insurance terms and conditions and qualifications of insurance companies.

EXPORT CONTROL

- A. Supplier agrees to comply with all applicable U.S. export control laws and regulations, specifically the requirements of the Arms Export Control Act, 22 U.S.C. 2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C.F. R. 120 et seq.; and the Export Administration Act, 50 U.S.C. app. 2401-2420, including the Export Administration Regulations 15 C.F.R., including the requirement for obtaining any export license, if applicable. Without limiting the foregoing, Supplier agrees that it will not transfer any export controlled item, data, or services, to include transfer to foreign persons employed by, or associated with, or under contract to Supplier or Supplier's lower-tier suppliers, without the authority of an export license or applicable license exemption.
- B. Supplier agrees to notify the Buyer if any deliverable under this Purchase Order is restricted by export control laws or regulations.
- C. Supplier shall immediately notify the Buyer if Supplier is or becomes listed in any Denied Parties List, or if Supplier's export privileges are otherwise denied, suspended, or revoked in whole or in part by any U.S. Government entity or agency.
- D. Supplier shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expenses, including attorney's fees, all expense of litigation and/or settlement, and court costs arising from any act or omission of the Supplier, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this provision.

ORDER OF PRECEDENCE

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

(Note: if GSA applies to the order, only this article in the General Provisions applies)

1. Purchase Order/Subcontract
2. GSA Agreement (only if applicable)
3. General Provisions
4. Applicable Referenced Documents (including final proposal for Design Build)*
5. Detailed Specification / Workslope
6. Drawings

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

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

INDEPENDENT CONTRACTOR RELATIONSHIP AND SUPPLIER PERSONNEL

1. Supplier's relationship to Buyer shall be that of an Independent Contractor and this Purchase Order does not create an agency, partnership, or joint venture relationship between Buyer and Supplier or Buyer and Supplier personnel. Personnel supplied by Supplier hereunder shall be deemed employees of Supplier and shall not for any purposes be considered employees or agents of Buyer. Supplier assumes full responsibility for the actions

and supervision of such personnel while performing services under this Purchase order. Buyer assumes no liability for Supplier personnel.

2. Supplier shall inform Buyer if a former employee of Buyer will be assigned Work under this Purchase order, and any such assignment shall be subject to Buyer approval.
3. Nothing contained in this Purchase Order shall be construed as granting to Supplier or any personnel of Supplier rights under any benefit plan of Buyer or its parent.
4. All persons, property, and vehicles entering or leaving Buyer's or Government's premises are subject to search.
5. Supplier will promptly notify Buyer and provide a report of any accidents or security incidents involving loss of or misuse or damage to Buyer's or Government's intellectual or physical assets, and all physical altercations, assaults, or harassment involving Seller's personnel performing work under this Purchase Order.
6. Supplier personnel: (i) will not remove Buyer or Government assets from Buyer's or Government's premises without Buyer authorization; (ii) will use Buyer or Government assets only for purposes of this Purchase Order; (iii) will only connect with, interact with or use computer resources, networks, programs, tools or routines that Buyer agrees are needed to provide services; and (iv) will not share or disclose user identifiers, passwords, cipher keys or computer dial port telephone numbers. Buyer may periodically audit Supplier's data residing on Buyer or Government's information assets.
7. Supplier shall indemnify and hold harmless Buyer from and against any actual or alleged liability, loss, costs, damages, fees of attorneys, and other expenses which Buyer may sustain or incur in consequence of (i) Supplier's failure to pay any employee for the Work rendered under this Purchase Order, or (ii) any claims made by Supplier's personnel against Buyer.
8. The Supplier will verify all Purchase Order workers that it provides to BMPC are authorized to work in the United States.
9. The Supplier will take appropriate action to remove its employees working on this Purchase Order who are later discovered not to be legally authorized to work in the United States and/or whose identity is in question.
10. The Supplier indemnifies BMPC from any and all liability, loss or damage it may suffer as a result of claims, demands, costs or judgments against it arising from the Supplier providing Purchase Order workers in violation of the requirements of the laws of the United States or the state in which the worker is working. Indemnity under this purchase order shall continue in full force throughout the term of this purchase order.

DISPUTES

Supplier shall not be entitled to claim and BMPC 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 BMPC are unable to resolve a claim for an adjustment, Supplier or BMPC 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.

BMPC 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 BMPC's determination the purchase order will be modified and the determination implemented accordingly.

If BMPC'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.

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.

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 purchase order 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 purchase order 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.

LOWER-TIER SUBCONTRACTS

- (a) If, at any time during the progress of the work under this purchase order, Buyer determines that any lower-tier supplier's performance is unacceptable for any reason, Buyer will notify the Supplier accordingly. The Supplier shall then take immediate steps to address the unsatisfactory performance up to and including termination of the lower-tier purchase order.
- (b) The Supplier agrees that it is responsible for the acts and omissions of its lower-tier suppliers and of all persons either directly or indirectly employed by its subcontractors or by the Supplier.
- (c) Nothing contained in this subcontract shall be construed to create any contractual relationship between any lower-tier supplier and the Buyer.

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.

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 (in accordance with the DOE Order 471.205.1A). 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.

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.

DEAR 970.5245-1 PROPERTY

Note: The preamble on page 1 of these General Provisions does not apply to this article. It is to be read literally as it is shown below:

As prescribed in 970.4501-1(a), insert the following clause:

PROPERTY (Dec 2000)

(a) Furnishing of Government property. The Buyer reserves the right to furnish any property or services required for the performance of the work under this contract.

(b) Title to property. Except as otherwise provided by the Contract Administrator, title to all materials, equipment, supplies, and tangible personal property of every kind and description purchased by the Supplier, for the cost of which the Supplier is entitled to be reimbursed as a direct item of cost under this contract, shall pass directly from the vendor to the Government.

The Buyer reserves the right to inspect, and to accept or reject, any item of such property.

The Supplier shall make such disposition of rejected items as the Contract Administrator shall direct. Title to other property, the cost of which is reimbursable to the Supplier under this contract, shall pass to and vest in the Government upon (1) issuance for use of such property in the performance of this contract, or (2) commencement of processing or use of such property in the performance of this contract, or (3) reimbursement of the cost thereof by the Government, whichever first occurs. Property furnished by the Government and property purchased or furnished by the Supplier, title to which vests in the Government, under this paragraph are hereinafter referred to as Government property. Title to Government property shall not be affected by the incorporation of the property into or the attachment of it to any property not owned by the Government, nor shall such Government property or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any realty.

(c) Identification. To the extent directed by the Contract Administrator, the Supplier shall identify Government property coming into the Supplier's possession or custody, by marking and segregating in such a way, satisfactory to the Contract Administrator, as shall indicate its ownership by the Government.

(d) Disposition. The Supplier shall make such disposition of Government property which has come into the possession or custody of the Supplier under this contract as the Contract Administrator may direct during the progress of the work or upon completion or termination of this contract. The Supplier may, upon such terms and conditions as the Contract Administrator may approve, sell, or exchange such property, or acquire such property at a price agreed upon by the Contract Administrator and the Supplier as the fair value thereof. The amount received by the Supplier as the result of any disposition, or the agreed fair value of any such property acquired by the Supplier, shall be applied in reduction of costs allowable under this contract or shall be otherwise credited to account to the Supplier, as the Contract Administrator may direct. Upon completion of the work or the termination of this contract, the Supplier shall render an accounting, as prescribed by the Contract Administrator, of all government property which had come into the possession or custody of the Supplier under this contract.

(e) Protection of government property-management of high-risk property and classified materials. (1) The Supplier shall take all reasonable precautions, and such other actions as may be directed by the Contract Administrator, or in the absence of such direction, in accordance with sound business practice, to safeguard and protect government property in the Supplier's possession or custody.

(2) In addition, the Supplier shall ensure that adequate safeguards are in place, and adhered to, for the handling, control and disposition of high-risk property and classified materials throughout the life cycle of the property and materials consistent with the policies, practices and procedures for property management contained in the Federal Property Management Regulations (41 CFR chapter 101), the Department of Energy (DOE) Property Management Regulations (41 CFR chapter 109), and other applicable Regulations.

(3) High-risk property is property, the loss, destruction, damage to, or the unintended or premature transfer of which could pose risks to the public, the environment, or the national security interests of the United States. High-risk property includes proliferation sensitive, nuclear related dual use, export controlled, chemically or radioactively contaminated, hazardous, and specially designed and prepared property, including property on the militarily critical technologies list.

(f) Risk of loss of Government property.

(1)(i) The Supplier shall not be liable for the loss or destruction of, or damage to, Government property unless such loss, destruction, or damage was caused by any of the following—

(A) Willful misconduct or lack of good faith on the part of the Supplier's managerial personnel;

(B) Failure of the Supplier's managerial personnel to take all reasonable steps to comply with any appropriate written direction of the Contract Administrator to safeguard such property under paragraph (e) of this clause; or

(C) Failure of supplier's managerial personnel to establish, administer, or properly maintain an approved property management system in accordance with paragraph (i)(1) of this clause.

(ii) If, after an initial review of the facts, the Contract Administrator informs the Supplier that there is reason to believe that the loss, destruction of, or damage to the government property results from conduct falling within one of the categories set forth above, the burden of proof shall be upon the Supplier to show that the Supplier should not be required to compensate the government for the loss, destruction, or damage.

(2) In the event that the Supplier is determined liable for the loss, destruction or damage to Government property in accordance with (f)(1) of this clause, the Supplier's compensation to the Government shall be determined as follows:

(i) For damaged property, the compensation shall be the cost of repairing such damaged property, plus any costs incurred for temporary replacement of the damaged property. However, the value of repair costs shall not exceed the fair market value of the damaged property. If a fair market value of the property does not exist, the Contract Administrator shall determine the value of such property, consistent with all relevant facts and circumstances.

(ii) For destroyed or lost property, the compensation shall be the fair market value of such property at the time of such loss or destruction, plus any costs incurred for temporary replacement and costs associated with the disposition of destroyed property. If a fair market value of the property does not exist, the Contract Administrator shall determine the value of such property, consistent with all relevant facts and circumstances.

(3) The portion of the cost of insurance obtained by the Supplier that is allocable to coverage of risks of loss referred to in paragraph (f)(1) of this clause is not allowable.

(g) Steps to be taken in event of loss. In the event of any damage, destruction, or loss to Government property in the possession or custody of the Supplier with a value above the threshold set out in the Supplier's approved property management system, the Supplier—

(1) Shall immediately inform the Contract Administrator of the occasion and extent thereof,

(2) Shall take all reasonable steps to protect the property remaining, and

(3) Shall repair or replace the damaged, destroyed, or lost property in accordance with the written direction of the Contract Administrator. The Supplier shall take no action prejudicial to the right of the Government to recover therefore, and shall furnish to the Government, on request, all reasonable assistance in obtaining recovery.

(h) Government property for Government use only. Government property shall be used only for the performance of this purchase order.

(i) Property Management.

(1) Property Management System.

(i) The Supplier shall establish, administer, and properly maintain an approved property management system of accounting for and control, utilization, maintenance, repair, protection, preservation, and disposition of Government property in its possession under the purchase order. The Supplier's property management system shall be submitted to the Contract Administrator for approval and shall be maintained and administered in accordance with sound business practice, applicable Federal Property Management Regulations and Department of Energy Property Management Regulations, and such directives or instructions which the Contract Administrator may from time to time prescribe.

(ii) In order for a property management system to be approved, it must provide for—

(A) Comprehensive coverage of property from the requirement identification, through its life cycle, to final disposition;

(B) Employee personal responsibility and accountability for Government-owned property;

(C) Full integration with the Supplier's other administrative and financial systems; and

(D) A method for continuously improving property management practices through the identification of best practices established by "best in class" performers.

(iii) Approval of the Supplier's property management system shall be contingent upon the completion of the baseline inventory as provided in subparagraph (i)(2) of this clause.

(2) Property Inventory. (i) Unless otherwise directed by the Contract Administrator, the Supplier shall within six months after execution of the contract provide a baseline inventory covering all items of Government property.

(ii) If the Supplier is succeeding another entity in the performance of this purchase order, the Supplier shall conduct a joint reconciliation of the property inventory with the predecessor entity. The Supplier agrees to participate in a joint reconciliation of the property inventory at the completion of this purchase order. This information will be used to provide a baseline for the succeeding purchase order as well as information for closeout of the predecessor purchase order.

(j) The term "supplier's managerial personnel" as used in this clause means the Supplier's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Supplier's business; or

(2) All or substantially all of the Supplier's operations at any one facility or separate location to which this contract is being performed; or

(3) A separate and complete major industrial operation in connection with the performance of this contract; or

(4) A separate and complete major construction, alteration, or repair operation in connection with performance of this contract; or

(5) A separate and discrete major task or operation in connection with the performance of this contract.

(k) The Supplier shall include this clause in all cost reimbursable subcontracts.

The following articles apply only if specifically called out in the Purchase Order document:

FRAUD OR FALSIFICATION

- a. This purchase order and activities hereunder are within the jurisdiction of the Department of Energy and/or the Navy. Any knowing and willful act to falsify, conceal or alter a material fact, or any false, fraudulent or fictitious statement or representation in connection with the performance of work under this purchase order may be punishable in accordance with applicable Federal Statutes.
- b. Supplier agrees that all employees engaged in the performance of this purchase order will be, if they have not been previously, informed in writing prior to commencing performance of work under this purchase order that there is a risk of Federal criminal penalties associated with any falsification, concealment or misrepresentation in connection with work performed under this purchase order. Supplier agrees that a signed statement shall be, if it has not been previously, obtained from said employees prior to their commencing performance of work under this purchase order that they have been so informed. Such statements shall be retained by the Supplier for at least three years after final payment on this purchase order. An acceptable form for such a statement is substantially as follows:

"This company/division/department/branch performs work under purchase orders which are within the jurisdiction of departments of the United States Government. Some of the work performed under these purchase orders affects the national security of the United States and the requirements of these purchase orders are designed to ensure that essential attributes of the work are carefully checked or inspected and that records accurately reflect the results of all work. Any falsification, concealment or alteration of any material fact, or any false, fraudulent or fictitious statement or representation in connection with the work under any purchase order within the jurisdiction of the Government is not only prohibited by company policy, but may also be punishable under Federal Law. Please acknowledge by your signature that you have read and understand the above."

- c. Supplier must also agree to include the following statement preprinted on each manufacturing, inspection or test record used in conjunction with the subject purchase order:

Note: The recording of false, fictitious or fraudulent statements or entries on this document may be punishable as a felony under Federal Statute.

- d. Supplier shall include all provisions of this Article including this sentence in all lower-tier purchase orders under this order. Any inability or unwillingness of a lower-tier supplier to comply with this provision should be documented in writing and submitted to the Prime Contractor.
- e. The Seller shall advise the Buyer promptly upon identification of any potential or actual fraud and falsification incidents pertaining to this order and occurring either within its own organization or within its subtier organization(s).

CONTROL OF VISITORS

Except with the written consent of the Buyer, Supplier shall not permit any Visitors to its plants, offices, or facilities to view or examine documents, components, assemblies, or major subassemblies provided for or delivered under this order, or to obtain information or data concerning such documents, components, assemblies, or major subassemblies.

"Visitor" as used herein means any person who visits Supplier's plant, office or facility and does not represent either the Supplier, the Buyer, or the Government in the performance of this Purchase Order. This includes Foreign Nationals, whose visits may require additional controls above and beyond those necessary for visits by U.S. Citizens.

Supplier must establish and implement procedures that prevent the release of Classified and Unclassified Naval Nuclear Propulsion Information (NNPI) to Visitors. Supplier must also notify the Buyer in advance of any visit to Supplier's plant, office, or facility, to view or examine documents, components, assemblies, or major subassemblies provided for or delivered under this order and must ensure similar controls are in effect at all lower tier suppliers.