

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 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 subcontracts and purchase orders to implement its obligations to FMP or BPMI (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
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
BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS	FAR 52.204-21
BUY AMERICAN SUPPLIES	FAR 52.225-1
CHANGES – COST-REIMBURSEMENT <ul style="list-style-type: none"> Delete Paragraph (d); use Alt. V for R&D orders 	FAR 52.243-2
CLASSIFICATION / DECLASSIFICATION	DEAR 952.204-70
COMBATING TRAFFICKING IN PERSONS	FAR 52.222-50
ENERGY EFFICIENCY IN ENERGY CONSUMING PRODUCTS	FAR 52.223-15
EQUAL OPPORTUNITY <ul style="list-style-type: none"> Note: 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
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
PROPERTY	DEAR 970.5245-1
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
LAWS, REGULATIONS, AND DOE DIRECTIVES	DEAR 970.5204-2
LIMITATION OF COST	FAR 52.232-20
LIMITATION OF FUNDS	FAR 52.232-22
NOTICE OF INTENT TO DISALLOW COSTS	FAR 52.242-1
PATENT RIGHTS – ACQUISITION BY THE GOVERNMENT <ul style="list-style-type: none"> 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 OR NON-PROFIT) (RESEARCH AND DEVELOPMENT ORDERS ONLY)	DEAR 952.227-11
PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS	FAR 52.247-64
PREFERENCE FOR U.S.-FLAG AIR CARRIERS	FAR 52.247-63
PROHIBITION OF SEGREGATED FACILITIES	FAR 52.222-21

ARTICLE	REFERENCE
PROHIBITION ON REQUIRING CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENTS	FAR 52.203-19
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
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
PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS CONCERNS	FAR 52.232-40
REFUND OF ROYALTIES	DEAR 970.5227-8
RESEARCH MISCONDUCT	DEAR 952.235-71
RESTRICTIONS ON CERTAIN FOREIGN PURCHASES	FAR 52.225-13
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
STOP WORK ORDER (With Alt I)	FAR 52.242-15
SUBCONTRACTS (Ref. Paragraph (d). 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) <ul style="list-style-type: none"> Delete reference in paragraph j to the Disputes article 	FAR 52.249-6
UTILIZATION OF SMALL BUSINESS CONCERNS	FAR 52.219-8
WAIVER OF FACILITIES CAPITAL COST OF MONEY	FAR 52.215-17

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 \$35,000	PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT	FAR 52.209-6
Greater than \$100,000	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT	DEAR 970.5227-5
Greater than \$150,000	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
	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT-OVERTIME COMPENSATION	FAR 52.222-4
	CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS	FAR 52.203-17
	DEFINITIONS	FAR 52.202-1
	DUTY FREE ENTRY	FAR 52.225-8
	EMPLOYMENT REPORTS ON VETERANS	FAR 52.222-37
	EQUAL OPPORTUNITY FOR VETERANS	FAR 52.222-35
	GRATUITIES	FAR 52.203-3
	LIMITATION OF LIABILITY	FAR 52.246-23

THRESHOLD	ARTICLE	REFERENCE
Greater than \$150,000	LIMITATION OF LIABILITY – HIGH VALUE ITEMS (FMP orders only)	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
	ORGANIZATIONAL CONFLICTS OF INTEREST (With Alt I) (Orders involving Advisory and Assistance Services) <ul style="list-style-type: none"> Modified to include a three (3) year period after completion of this purchase order in the first sentence of 1(i). 	DEAR 952.209-72
	PATENT INDEMNITY	FAR 52.227-3
	PAYMENT FOR OVERTIME PREMIUMS <ul style="list-style-type: none"> Paragraph (a) is modified to state that the authorized Overtime premium is "zero". 	FAR 52.222-2
	PREVENTING PERSONAL CONFLICTS OF INTEREST	FAR 52.203-16
	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT	FAR 52.203-6
	SUSTAINABLE ACQUISITION PROGRAM	DEAR 952.223-78
	Greater than \$500,000	DISPLACED EMPLOYEE HIRING PREFERENCE
WORKFORCE RESTRUCTURING UNDER SECTION 3161 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1993		DEAR 970.5226-2
Greater than \$700,000	SMALL BUSINESS SUBCONTRACTING PLAN (with Alt II)	FAR 52.219-9
Greater than \$2,000,000	ACCESS TO AND OWNERSHIP OF RECORDS	
	ADMINISTRATION OF COST ACCOUNTING STANDARDS	FAR 52.230-6
	COST ACCOUNTING STANDARDS (Delete Paragraph (b)) <ul style="list-style-type: none"> Applicable to all negotiated subcontracts, unless Supplier claims an exemption per the Proposal Representation and Certification in accordance with 48 CFR 9903.201-1 	FAR 52.230-2
	NOTIFICATION OF OWNERSHIP CHANGES	FAR 52.215-19
	PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA	FAR 52.215-10
	SUBCONTRACTOR CERTIFIED COST OR PRICING DATA	FAR 52.215-12
	REVERSION OR ADJUSTMENT OF PLANS FOR POST-RETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS	FAR 52.215-18
	PENSION ADJUSTMENTS AND ASSET REVERSIONS	FAR 52.215-15
Greater than \$5,500,000	CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT	FAR 52.203-13
	DISPLAY HOTLINE POSTER(S)	FAR 52.203-14

PART III. 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 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.

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.

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 Buyer 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 Buyer 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 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 Buyer'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.

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.

TITLE AND ADMINISTRATION (FMP orders only)

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. 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.

ORDER OF PRECEDENCE (FMP orders only; for BPPI refer to the purchase order)

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 / Workslope
5. 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.