

2. AMENDMENT/MODIFICATION NO. <b>M881</b>	3. EFFECTIVE DATE (M/D/Y) <b>10/01/2012</b>	4. REQUISITION/PURCHASE REQ. NO. <b>12SC007956</b>	5. PROJECT NO. (If applicable)
--	--	---	--------------------------------

6. ISSUED BY CODE <b>U.S. Department of Energy Pacific Northwest Site Office Post Office Box 350 Richland, WA 99352</b>	7. ADMINISTERED BY (If other than Item 6) CODE
--	--

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP code) <b>Battelle Memorial Institute Pacific Northwest Division Richland, Benton County, WA 99352 DUNS # 032987476</b>	<input type="checkbox"/>	9A. AMENDMENT OF SOLICITATION NO.
	<input type="checkbox"/>	9B. DATED (SEE ITEM 11)
	<input checked="" type="checkbox"/>	10A. MODIFICATION OF CONTRACT/ ORDER NO. <b>DE-AC05-76RL01830</b>
		10B. DATED (SEE ITEM 13) <b>December 30, 1964</b>

**11. THIS ITEM APPLIES TO AMENDMENTS OF SOLICITATIONS**

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers  is extended,  is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning \_\_\_\_\_ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE DATE AND HOUR SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and amendment and is received prior to the opening hour and date specified.

**12. ACCOUNTING AND APPROPRIATION DATA (If required)**



**13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS SET FORTH IN ITEM 14.**

CHECK	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE
<input type="checkbox"/>	
<input type="checkbox"/>	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO AUTHORITY OF FAR 43.103(b).
<input checked="" type="checkbox"/>	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO THE AUTHORITY OF: The mutual agreement of the parties
<input type="checkbox"/>	D. OTHER (Specify type of modification and authority)

**E. IMPORTANT: Contractor  is not,  is required to sign this document and return 2 copies to the issuing office.**

**14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including a solicitation/contract subject matter where feasible.)**  
This bilateral contract modification incorporates changes for the five-year contract extension to Contract DE-AC05-76RL01830, to Part I, Sections B, F, H, Part II, Section I and Part III, Section J, List of Documents, Exhibits and Other Attachments. (See Continuation Pages for the purpose and description of this modification)

15A. NAME AND TITLE OF SIGNER (Type or print) <b>Michael Kluse Laboratory Director</b>	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) <b>Ryan M. Kilbury Contracting Officer</b>
---	--

15B. CONTRACTOR/OFFEROR  (Signature of person authorized to sign)	15C. DATE SIGNED <b>17 Sept 2012</b>	16B. UNITED STATES OF AMERICA BY  (Signature of Contracting Officer)	16C. DATE SIGNED <b>9-17-12</b>
---	---	--	------------------------------------

**Purpose of Modification:**

The Department of Energy (DOE), Office of Science (SC), Pacific Northwest Site Office (PNSO) is modifying the Contract to update Sections B, F, H, I and J to their most current form. A description of the changes is listed below:

Revise Part I, Section B – Supplies or Service and Prices/Costs – Table of Contents to change the title of B-3 Estimated Budget Authority, Total Available Performance Fees to B-3 Estimated Fee Base and Total Available Performance Fees.

Revise Part I, Section B – Supplies or Service and Prices/Costs – Clause B-2 to update the amount of funds obligated under the contract to its most recent modification.

Revise Part I, Section B – Supplies or Service and Prices/Costs – Clause B-3 to change the title of the clause from Section B – Supplies or Service and Prices/Costs – Clause B-3 Estimated Budget Authority, Total Available Performances Fees to Section B – Supplies or Service and Prices/Costs – Clause B-3 Estimated Fee Base and Total Available Performance Fees and to revise the clause to reflect FY 12 performance fee only in the text and to add a table for the estimated fee base and available performance fees for the period of October 1, 2012 – September 30, 2017. Additionally added the provisions for adjusting the available performance fee.

Revise Part I, Section F – Deliveries or Performance – Clause F-1 Period of Performance to reflect the extension period of the contract to September 30, 2017.

Revise Part I, Section F – Deliveries or Performance – Clause F-3 to delete Deliverable A from the table and replace with Reserved.

Revise Part I, Section H – Special Contract Requirements – Table of Contents

Revise Part I, Section H – Clause H-1 Pacific Northwest National Laboratory Land/Facilities to clarify language in regards to the agreement of the parties for the exclusive use of Battelle owned facilities and to allow for the use of Government owned land, facilities and property under the provisions of Clause H-44 Agreements for the Commercialization of Technology and Clause H-45 Battelle Memorial Institute Legacy Work.

Revise Part I, Section H – Clause H-9 Other Intellectual Property Related Matters to reduce the amount of Battelle's contributions for privately funded technology transfer from \$1,250,000.00 to \$500,000 and to reduce the average number of patent applications from 20 to 7 and to set the minimum from 15 to 5 per year.

Revise Part I, Section H – Clause H-10 Continued Improvement Initiative to change language within the clause to reflect the current state of the contract and the accomplishments since 2008.

Revise Part I, Section H – Clause H-16 Administration of Subcontracts to reflect in paragraph (d) the change of language associated with the utilization of the Laboratory's Estimated Fee Base versus the Laboratory's budget as the means to determine an increase or decrease in the amount of performance fee available.

Revise Part I, Section H – Clause H-19 Cap on Liability to denote the change from the clause previously entitled “Definitions” which was previously deleted in another modification and to replace it to reflect the requirements in the DEAR “Property” clause of the contract.

Revise Part I, Section H – Clause H-24 Determining Total Available Performance Fee and Fee Earned to delete language contained in the clause that covered the period of performance from 2008-2012 and to add to the clause a table that reflects the estimated fee base and the amount of performance fee available by Fiscal year. Additionally language is revised to reflect the change in language from Laboratory’s budget and replacing it with Estimated Fee Base and to remove the language associated with past modifications to the contract in this area.

Delete Part I, Section H – Clause H-26 Advance Understandings on Allowable Cost in its entirety.

Add Part I, Section H – Clause H-26 Advance Understandings on Allowable Cost.

Revise Part I, Section H – Clause H-28 Greening the Government Through Federal Fleet and Transportation Efficiency to edit the language for grammatical reasons to replace manufacturers with manufacturer’s.

Delete Part I, Section H – Clause H-35 Joint Global Climate Change Research Institute in its entirety.

Add Part I, Section H – H-35 Joint Global Climate Change Research Institute to identify that the DOE requirement for the personnel considered to be under the DOE directive entitled, “Use of Management and Operating or Other Facility Management Contractor Employees for Services to DOE in the Washington, D.C., Area”, or its successor does not apply to employees whose permanent duty station is at the Joint Global Climate Change Research Institute.

Revise Part I, Section H – Clause H-39 Definition of Unusually Hazardous or Nuclear Risk for FAR Clause 52.250-1 Indemnification under Public Law-804 to reflect the renewal of the indemnification by the Secretary of Energy via this modification.

Revise Part I, Section H – Clause H-42 Implementation of Section I Clauses to edit the language of paragraph (g) to delete reference to Agreement DE-GM05-00RL01381 and instead reference Clause H-45 Battelle Memorial Institute Legacy Work.

Revise Part I, Section H – Clause H-44 Non-Federal Agreements for Commercializing Technology (Pilot) to revise part 12. *Termination of ACT Authority* to change the length of the pilot from three years to five years.

Add to Part I, Section H – Clause H-45 Battelle Memorial Institute Legacy Work.

Revise Part II, Section I – Contract Clauses, revise Table of Contents to updated clauses I-16 and I-17 to their most current version and to remove DEVIATION from the title of Clause I-116.

Revise Part II, Section I – Contract Clauses, Clause I-16 FAR 52.219-8 Utilization of Small Business Concerns and I-17 FAR 52.219-9 Small Business Subcontracting Plan to update those clauses to their most current version.

Revise Part II, Section I – Contract Clauses, Clause I-116 DEAR 970.5245-1 Property to remove the DEVIATION from the title of the clause and to remove the deviated language located at paragraph (h) of the clause.

Revise Part III, Section J – List of Attachments, Table of Contents, to add Appendix I, List of Battelle Memorial Institute Legacy Work (Reserved), Appendix J, Advance Agreement on Costs and Associated Use of Battelle-Owned Facilities and Real Property, and Appendix K, Advance Agreement on Disposition of Battelle-Owned Personal Property/Nuclear Materials for the Pacific Northwest National Laboratory.

Revise Part III, Section J – List of Attachments, Appendix H – List of Approved Laboratory Facilities (Owned and Leased) to reflect proper designation in accordance with the Facility Information Management System and recent additions and deletions of facilities for PNNL.

Add Part III, Section J – List of Attachments, Appendix I – List of Battelle Memorial Institute Legacy Work (Reserved).

Add Part III, Section J – List of Attachments, Appendix J - Advance Agreement on Costs and Associated Use of Battelle-Owned Facilities and Real Property.

Add Part III, Section J – List of Attachments, Appendix K – Advance Agreement on Disposition of Battelle Owned Personal Property/Nuclear Materials for the Pacific Northwest National Laboratory.

#### **Description of Modification:**

The following changes are hereby incorporated into the Contract:

1. Revise Part I, Section B – Supplies or Service and Prices/Costs – Table of Contents to change the title of B-3 Estimated Budget Authority, Total Available Performance Fees to B-3 Estimated Fee Base and Total Available Performance Fees.
2. Part I, Section B – Supplies or Service and Prices/Costs – Clause B-2 is revised as follows to update the amount of funds obligated under the contract to its most recent modification:

#### **B-2 Obligated Funds**

The total amount of funds presently obligated by the Government with respect to this Contract is \$14,359,862,369.59 (through modification A880). Such amount may be increased or decreased in accordance with Contract clause 970.5232-4 “Obligation of Funds”.

(End of Clause)

**[M881]**

3. Part I, Section B – Supplies or Service and Prices/Costs – Clause B-3 is revised as follows to change the title of the clause and to revise the clause to reflect FY 12 performance fee only in the text and to add a table for the estimated fee base and available performance fees for the period of October 1, 2012 – September 30, 2017. Additionally added the provisions surrounding the conditions for adjusting the available performance fee:

**B-3 Estimated Fee Base and Total Available Performance Fees**

In FY12, the total available performance fee is \$9,000,000.

Fiscal Year	Estimated Fee Base	Performance Fee Available
FY 13	\$904.2M	\$11.9M
FY 14	\$910.5M	\$11.9M
FY 15	\$902.8M	\$12.5M
FY 16	\$892.9M	\$12.5M
FY 17	\$892.9M	\$12.5M

At the end of each fiscal year, there shall be no adjustment in the amount of the maximum available performance fee based on differences between any estimate of cost for performance of the work and the actual cost for performance of the work. Fee is subject to adjustment only –

1. under the provisions of the “Changes” clause;
2. for a +/- 10 percent change in the Estimated Fee Base; or
3. the mutual agreement of the Parties that a fee adjustment is required.

(End of Clause)  
**[M881]**

4. Part I, Section F – Deliveries or Performance – Clause F-1 Period of Performance is revised as follows to reflect the extension period of the contract to September 30, 2017:

**F – 1 Period of Performance**

This Contract shall be effective as specified in Block No. 3 – Effective Date, of the Standard Form 30, for this modification, except as otherwise provided, and shall continue up to and including September 30, 2017, unless sooner terminated according to its terms and conditions, or extended in accordance with the appropriate FAR and DEAR provisions. **[M881]**

(End of Clause)

5. Part I, Section F – Deliveries or Performance – Clause F-3 to is revised as follows to delete Deliverable A from the table and replace with Reserved:

**F – 3 Deliverables**

The Contractor will provide to the Contracting Officer the routine deliverables identified in the following table. These deliverables are in addition to those required elsewhere in this Contract.

Deliverable	Source Requirement	Description
Reserved <b>[M881]</b>		
B	CO Letter 02-FMD-0060, dated October 23, 2002, subject	Provide by the 10th of every month a reconciliation of activities charged to suspense

	"Reconciliation of Activities Charged to Suspense Debits and Budget and Reporting YN01".	accounts.
C	CO Letter 09-PNSO-0219 dated March 20, 2009, subject "Review of Related Party Transactions at PNNL".	By April 15 of every year, provide a report disclosing all corporate allocations and the nature of the allocations.
D	CO Letter 10-PNSO-0186 dated February 17, 2010, subject "Oregon State University - Use of DOE Owned Equipment".	Provide report within 30 days of the end of each fiscal year of changes in DOE equipment usage at the Microproducts Breakthrough Institute (MBI) located at Oregon State University.
E	DOE HQ	As required by DOE HQ, provide input into the DOE Workforce Information System (WFIS): 1) Annual workforce restructuring report, and 2) quarterly EEO reports.
F	CO letter 06-PD-187 dated May 10, 2006, subject "Field Office Integrated Contactor Trial Balance Reconciliation Certification".	By the 15th calendar day of each month, provide a trial balance monthly recertification. Additionally, provide a biannual reconciliation and certification at the full Accounting Flex Field level for specific Standard General Ledger accounts.
G	DOE letter dated Feb. 10, 1987 from MJ Plahuta to PNNL Director, subject "Cost of Work Performed under the Related Services Article of Contract 1830".	Within six months after end of each fiscal year provide a notification report with supporting documentation of Other Federal Agencies funds used to replenish General Research Equipment (GRE).
H	CO letter 08-PNSO-0601 dated Sept. 29, 2008, subject "Letter of Credit".	Quarterly review of payments cleared financing arrangement with the financial institution, to be provided within 30 days of end of each quarter, plus semi-annual analysis that demonstrates the adequacy of funds on deposit for the previous six-month period consistent with DOE Accounting Handbook, section 6-11.
I	CO letter 09-PNSO-0158 dated Jan. 16, 2009, subject "Washington State University Use of DOE Owned Equipment.	Consistent with DOE Order 522.1 required analysis of pricing data, provide annual report detailing DOE equipment in BSEL, WSU usage of equipment in the service center and equipment that meets the criteria for a service center, and an analysis showing WSU non-collaborative usage no later than 30 days after the end of each fiscal year.
J	COR letter 99-STO-032 dated March 2, 1999, from Roger Christensen, subject "Use of Dispersible Radioactive Material at the Environmental Molecular Sciences Laboratory (EMSL)."	Provide PNSO a quarterly summary of all projects whose activities apply to Washington State Department of Health (WDOH) "Exemption for radioactive materials Notice of Construction for materials where there is no potential for airborne dispersion" pursuant to letter from Allen Conklin, WDOH Manager, to James Rasmussen, DOE-RL

	Director, dated November 23, 1998.
--	------------------------------------

6. Part I, Section H – Special Contract Requirements – Table of Contents is revised to reflect the addition of Clause H-45 Battelle Memorial Institute Legacy Work.
7. Part I, Section H – Clause H-1 Pacific Northwest National Laboratory Land/Facilities is revised as follows to clarify language in regards to the agreement of the parties for the exclusive use of Battelle owned facilities and to allow for the use of Government owned land, facilities and property under the provisions of Clause H-44 Agreements for the Commercialization of Technology and Clause H-45 Battelle Memorial Institute Legacy Work:

#### **H-1 Pacific Northwest National Laboratory Land/Facilities**

DOE agrees to furnish and make available to the Contractor, for the performance of work under this Contract, the Laboratory land/facilities designated as follows:

- (a) The Government-owned or leased land, buildings, utilities, equipment and other facilities situated at the Pacific Northwest National Laboratory Site at Richland, Benton County, Washington and Sequim, Clallam County, Washington; and
- (b) Government-owned or leased facilities at such other locations as may be approved by DOE for use under this Contract.

DOE reserves the right to make part of the above-mentioned land or facilities in paragraphs (a) and (b) available to other Government agencies or other users on the basis that the responsibilities and undertakings of the Contractor will not be unreasonably interfered with. Before exercising its right to make any part of the land or facilities available to another agency or user, DOE will confer with the Contractor.

Unless otherwise authorized by this Contract or as agreed to by the Parties, the Contractor agrees to provide to DOE the exclusive use of the Contractor-owned facilities and the beneficial use of the Contractor-owned land for the operations of the Pacific Northwest National Laboratory in accordance with the rights and obligations set forth in Section J, Appendix J, Advance Agreement on Costs and Associated Use of Battelle-Owned Facilities and Real Property. Before exercising its right to make any part of the Contractor-owned land or facilities available to another entity, the Contractor will confer with the Contracting Officer or his/her designee(s).  
**[M881]**

A list of current approved Government-owned and leased and Contractor-owned and Contractor-leased Laboratory land/facilities is contained in Section J, Appendix H – List of Approved Laboratory Land/Facilities (Owned and Leased).

Subject to mutual agreement land/facilities may be authorized or removed in the performance of the work under this Contract.

The Contractor may use the above-mentioned Government-owned or leased land, facilities and property in its custody under this Contract to conduct research and development activities for its own account, to the extent and in accordance with Clauses H-44 and H-45 of this Contract or as agreed to by DOE and the Contractor. **[M881]**

Part I, Section H – Clause H-9 Other Intellectual Property Related Matters paragraph (a) is revised as follows to reduce the amount of Battelle's contributions for privately funded technology transfer from \$1,250,000.00 to \$500,000 and to reduce the average number of patent applications from 20 to 7 and to set the minimum from 15 to 5 per year:

(a) Transfer of Patent Rights to a Successor Contractor

As consideration for the Contractor's commitment to expend private monies in its privately-funded technology transfer effort under this Contract at a level at least commensurate with such expenditures under its prior contracts, including an average of five hundred thousand dollars (\$500,000) per year for activities under the privately-funded technology transfer program which includes a combination of the filing of an average of 7 patent applications, and no fewer than 5, per year during the period of this Contract, including expenses related to the patenting, marketing, licensing and development of Subject Inventions, the Parties agree that at the termination or expiration of this Contract, the following terms and conditions shall apply to Subject Inventions which were elected to be pursued under the Contractor's privately-funded technology transfer program, and to the licenses and royalties generated therefrom:  
**[M881]**

8. Part I, Section H – Clause H-10 Continued Improvement Initiative is revised as follows to change language within the clause to reflect the current state of the contract and the accomplishments since 2008:

**H-10 Continued Improvement Initiative**

It is the intent of the Parties to continue to work together during the term of this Contract to develop and implement innovative approaches and techniques for improving Contractor performance and Contract administration. This initiative for continued improvement will focus on improving Contractor efficiency and effectiveness, enhancing Contractor accountability, gaining savings in Laboratory programs, improving cost-effective management of risks, and increasing efficiencies in Federal oversight of the Contract. Areas that the Parties will evaluate, include, but are not limited to, the following:

- (a) Management/reduction of mandatory Hanford Site Services and ensure cost allocation equity;



- (b) Policies and procedures related to the Technology Transfer mission of the Laboratory;  
and
- (c) Incentive Compensation and/or other enhancements to variable pay programs.

**[M881]**

(End of Clause)

9. Part I, Section H – Clause H-16 Administration of Subcontracts is revised to reflect the change of language associated with the utilization of the Laboratory's Estimated Fee Base versus the Laboratory's budget as the means to determine an increase or decrease in the amount of performance fee available.in paragraph (d):

- (d) To the extent that DOE removes (de-scopes) work from this Contract, any such removed or withdrawn work shall be treated as a change in accordance with the clause of this Contract, titled Changes (Dec 2000). A "material change" for the purpose of this clause is defined as cumulative changes during a fiscal year that result in a plus or minus 10% change to the Laboratory's Estimated Fee Base. To the extent that DOE assigns the administration of a contract to the Contractor, or removes (de-scopes) work, the Parties reserve the right to negotiate an equitable adjustment in the Contractor's annual available performance fee. The negotiation of fee will be in accordance with the Contract clause entitled "Determining Total Available Performance Fee and Fee Earned". The Parties will also negotiate appropriate adjustments to the Contractor's Subcontracting Plan or any other applicable Contract terms and conditions impacted by such withdrawal or addition of work scope to recognize the changes to the Contractor's subcontracting base and goals. **[M881]**

10. Part I, Section H – Clause H-19 Cap on Liability is revised as follows to denote the change in paragraph (a) (4) from the clause previously entitled "Definitions" which was previously deleted in another modification and to replace it to reflect the requirements in the DEAR "Property" clause of the contract:

- (4) The clause titled "Insurance – Litigation and Claims", (j)(2), except for punitive damages resulting from the willful misconduct or lack of good faith on the part of the Contractor's managerial personnel as defined in the clause titled "Property".**[M881]**

11. Part I, Section H – Clause H-24 Determining Total Available Performance Fee and Fee Earned is revised as follows to delete language contained in the clause at paragraph (a) (1) that covered the period of performance from 2008-2012 and to add to the clause a table at paragraph (a) (2) that reflects the estimated fee base and the amount of performance fee available by Fiscal year. Additionally language at paragraph (a)(3) is revised to reflect the change in language from Laboratory's budget and replacing it with Estimated Fee Base and to remove the language associated with past modifications to the contract in this area:

- (1) In FY12, the total available performance fee is \$9,000,000. **[M881]**

(2)

Fiscal Year	Estimated Fee Base	Performance Fee Available
FY 13	\$904.2M	\$11.9M
FY 14	\$910.5M	\$11.9M
FY 15	\$902.8M	\$12.5M
FY 16	\$892.9M	\$12.5M
FY 17	\$892.9M	\$12.5M

[M881]

(3) The Parties have agreed that the available performance fee shall be subject to adjustment in the event of a significant change (greater than plus or minus 10%) to the Laboratory's Estimated Fee Base for any fiscal year, or work scope. The Parties may re-negotiate, in good faith, the total available performance fee pool. [M881]

12. Part I, Section H – Clause H-26 Advance Understandings on Allowable Costs is deleted in its entirety and replaced with Part I, Section H – Clause H-26 Advance Understandings on Allowable Costs, the text of the new clause as follows:

#### **H-26 Advance Understandings on Allowable Costs**

Allowable costs under this Contract shall be determined according to the requirements of DEAR 970.5232-2, Payments and Advances. For purposes of effective contract implementation, certain items of cost are being specifically identified below as allowable under this Contract to the extent indicated:

- 1) Foreign Rental Car Insurance - Foreign rental car insurance is allowable to the extent it is not covered by an existing insurance plan being billed to the government or is required by law and is not personal in nature.
- 2) Home Office Expenses - Home Office expenses are allowable to the extent that such expenses are allowable per FAR 31.2 and DEAR 970.3102 and are allocable consistent with FAR 31.2 and the Cost Accounting Standards. These costs are initially capped at \$5.4M per year to be reviewed annually.
- 3) Operational Support and Strategic Sourcing – In circumstances when there is a clear advantage to the Government for operational support to be sourced from Battelle, such costs will be deemed allowable under this Contract if expressly approved by the Contracting Officer.
- 4) **Stipends and payment, if not otherwise unallowable under any other terms of the contract, made to reimburse travel or other expenses - Researchers and students who are not employed under this Contract but are participating in research, educational or training activities under this Contract are allowable to the extent such costs are incurred in connection with fellowship, international agreements, or other research, educational or training programs approved in writing by the Contracting Officer. (Deviation authorized from FAR 31.205-44 (e))**

- 5) Tuition Reimbursement – Tuition and fees for staff who are employed under this Contract are allowable to the extent the staff continue their employment during the period of reimbursement and this cost is not otherwise unallowable.
- 6) **Payments, if not otherwise unallowable under any other terms of the contract, to educational institutions - Tuition and fees for researchers and students who are not employed under this Contract but are participating in research, educational or training activities under this Contract, or institutional allowances in connection with fellowship or other research, educational or training programs are allowable. (Deviation authorized from FAR 31.205-44 (e))**
- 7) Rewards & Recognition - The cost incurred by the Contractor will be allowable, to the extent specified under FAR 31.205-6 (f), and as applicable to work under this Contract for administering the Contractor’s Recognition and Reward Program for the Commercialization of Intellectual Property as described in the program description. Such costs shall include cash awards and rewards and recognition events to the extent that they are not otherwise unallowable.
- 8) Imputed interest costs - Leases classified and accounted for as capital leases under generally accepted accounting principles (GAAP) are allowable, provided that the decision to enter into a capital leasing arrangement has been specifically authorized and approved in writing by the DOE Contracting Officer in accordance with applicable procedures and such interest costs are recorded in an appropriately specified DOE account established for such purpose.
- 9) ISM Awareness Program - PNNL has an Integrated Safety Management (ISM) Awareness Program (ISMAP) which is separate and distinct from the Laboratory’s variable pay programs. ISMAP includes tangible awards valued at less than \$25 each. The ISMAP awards are for PNNL staff for having participated in educational and survey safety activities that are linked to ISM program performance improvement and achievement or for supporting staff recognition and awareness in the areas of safety and wellness. Costs associated with the “ISM Awareness Program” are allowable subject to an annual ceiling amount. ISM Awareness Program tangible awards will not promote the Battelle name or logo. However, the PNNL branding logo is acceptable (i.e. Pacific Northwest National Laboratory branding logo, along with Operated by Battelle for the U.S. Department of Energy). Allowable cost is limited to tangible awards for PNNL staff, and any awards to non-PNNL employees will be an unallowable cost.
- 10) Management and Operations Sustainability Program – The PNNL Site Sustainability Plan is to reduce Greenhouse Gas emissions in accordance with H-43 and Departmental goals. To this end, Battelle is authorized up to \$10,000 for use in creating and implementing sustainability initiatives to include tangible awards valued at less than \$25 each. Tangible awards will not promote the Battelle name or logo. However, the PNNL branding logo is acceptable (i.e. Pacific Northwest National Laboratory branding logo, along with Operated by Battelle for the U.S. Department of Energy). Allowable cost is

limited to tangible awards for PNNL staff, and any award to non-PNNL employees will be an unallowable cost.

(End of Clause)  
[M881]

13. Part I, Section H – Clause H-28 Greening the Government Through Federal Fleet and Transportation Efficiency is edited for grammatical reasons to replace manufacturers to manufacturer's as follows:

**H-28 Greening the Government Through Federal Fleet and Transportation Efficiency**

When performing motor vehicle fleet operations for the Department of Energy, the Contractor will conduct such operations in accordance with the requirements of Executive Order 13149 of April 21, 2000, Greening the Government Through Federal Fleet and Transportation Efficiency, including implementing guidance for the Department of Energy fleet. Such operations should include the use of environmentally preferable motor vehicle products in the maintenance of these vehicles when such products are reasonably available, and meet manufacturer's warranty requirement and applicable performance standards. Environmentally preferable motor vehicle products include re-refined motor vehicle lubricating oils, retread tires, and bio-based motor vehicle products.

[M881]  
(End of Clause)

14. Part I, Section H – Clause H-35 Joint Global Climate Change Research Institute is deleted in its entirety and replaced with Part I, Section H – H-35 Joint Global Climate Change Research Institute to identify that the DOE requirement for the personnel considered to be under the DOE directive entitled, "Use of Management and Operating or Other Facility Management Contractor Employees for Services to DOE in the Washington, D.C., Area", or its successor does not apply to employees whose permanent duty station is at the Joint Global Climate Change Research Institute as follows:

**H-35 Joint Global Climate Change Research Institute**

The Department of Energy directive titled, "Use of Management and Operating or Other Facility Management Contractor Employees for Services to DOE in the Washington, D.C., Area", or its successor, is not applicable to PNNL employees whose permanent duty station is at the Joint Global Climate Change Research Institute in College Park, Maryland, provided that those employees are performing or supporting research and development work. However, if at any time any of those employees are assigned to a position to provide technical expertise and/or experience in support of program missions, the Contractor must meet all of the applicable requirements of the above-mentioned directive or its successor for those employees. [M881]

(End of Clause)

15. Part I, Section H – Clause H-39 Definition of Unusually Hazardous or Nuclear Risk for FAR Clause 52.250-1 Indemnification under Public Law-804 has been updated to reflect the renewal of the indemnification by the Secretary of Energy via this modification. **[M881]**

16. Part I, Section H – Clause H-42 Implementation of Section I Clauses is revised as follows to edit the language of paragraph (g) to delete reference to Agreement DE-GM05-00RL01381 and instead reference Clause H-45 Battelle Memorial Institute Legacy Work:

- (g) For purposes of implementation of Contract Clause I-111, entitled “Federally Funded Research and Development Center Sponsoring Agreement”, the Parties agree that the referenced clause only applies to work performed under this Contract and does not apply to work authorized in accordance with Contract Clause H-45, entitled “Battelle Memorial Institute Legacy Work”. **[M881]**

(End of Clause)

17. Part I, Section H – Clause H-44 Non-Federal Agreements for Commercializing Technology (Pilot) is revised as follows to modify paragraph 12. Termination of ACT Authority to change the length of the pilot from three years to five years:

12. *Termination of ACT Authority.* The PILOT Program implemented by this Clause will terminate five years from the date of the Contract modification adding this Clause to the Contract, unless renewed by the Contracting Officer. The Government may provide the Contractor with written notice to terminate Contractor’s authority to conduct work under this Clause at any time. If the Contractor’s authority to conduct work under this Clause has expired or been terminated, the Contractor may be permitted, subject to any other provisions of this Clause, to complete any work that was DOE approved work at the time Contractor’s authority to conduct work under this Clause was terminated by the Government. **[M881]**

18. Part I, Section H – Clause H-45 Battelle Memorial Institute Legacy Work is incorporated into the contract as follows:

**H-45 Battelle Memorial Institute Legacy Work**

- (a) Authority to Use DOE Facilities.

Contractor may utilize the Government-owned or leased facilities and property to complete previously awarded Projects as identified in Appendix I – List of Battelle Memorial Institute

Legacy Work (Legacy Work), under the same terms and conditions as previously agreed to with Battelle clients, provided that such utilization is not incompatible with existing or planned DOE programs and that it does not substantially interfere with Contractor's performance of work under the Contract, or with the work of another DOE on-site operating contractor.

(b) Non-FFRDC Work

DOE and Battelle agree that work performed by Battelle under this Clause is performed neither on behalf of DOE nor as a part of PNNL in its status as a Federally Funded Research and Development Center or as a DOE national laboratory, but as a separate division of Battelle for its own account. DOE and Battelle also agree that the projects that are performed under this Clause are prohibited under the requirements for a Non-Federal Work for Others (NFWFO) Agreement or under "Clause H-44, Non-Federal Agreements for the Commercialization of Technology (PILOT)" unless otherwise permitted as described in the paragraph of this Clause that is entitled "Conversion to ACT or NFWFO."

(c) Term

The term of Legacy Work will continue in accordance with the list of Projects identified in Appendix I of the Contract. Each Project will have a defined end date and estimated cost of completion as specified in Appendix I and no additional funds or extensions to these Projects will be authorized without a modification to the Contract. Authority to use facilities for Legacy Work under this Clause will expire on or before September 30, 2015.

(d) Full Cost Recovery

For Contractor's activities conducted under authority of this Clause, the Contractor shall provide full-cost recovery, and shall indemnify the Government in accordance with Paragraph (h), Indemnification, of this Clause. All direct costs associated with Contractor's work conducted under this Clause shall be directly charged to separate and identifiable accounts in accordance with the requirements of the Department's Financial Management Handbook. An allocable portion of indirect costs normally applied to equivalent work under this Contract shall also be applied to work conducted under this Clause in accordance with the requirements of the Department's Financial Management Handbook. Work conducted under this Clause shall be excluded from Contract award fee calculations and such fee shall not be allocable to work conducted under this Clause.

(e) Effect of Termination

If, prior to its specified expiration date, the Contract is terminated in whole or in part, DOE will terminate this Clause in whole or in part at any time after the effective date of the termination of the Contract by giving Battelle 30 days written notice and, upon the date specified in such notice, this Clause shall terminate; provided, however, that for a period of one year following the effective date of the termination of the Contract or until the date on which the Contract would have expired had it not been terminated, whichever period of time is less, this Clause shall continue in effect as to those facilities and that property necessary for the performance of research and development Legacy Work in progress when the Contractor receives notice of the

termination of the Contract; provided, further, that such continued use will not substantially interfere with the conduct of DOE programs.

In the event DOE selects a successor contractor to replace Battelle to manage and operate PNNL, Battelle will coordinate its access to DOE facilities and equipment on a non-interference basis with said successor contractor in order to complete work in progress or work for which Battelle has been committed prior to receiving notice of the termination of the Contract. An agreement between the successor contractor and Battelle will be required to perform any new work using DOE facilities and equipment.

(f) Nuclear Work

In cases involving nuclear-related work DOE may, but shall not be obligated to, extend Battelle's permission to use all or part of the facilities and property.

(g) Effect of Emergencies

In the event an emergency situation arises involving an on-site or off-site incident as hereinafter defined, which as determined by the Contracting Officer requires the utilization of the Government-owned facilities or property or of personnel then engaged in the conduct of activities for Battelle's own account, Battelle shall, upon request of the Contracting Officer, cease all or any part of such activities during the duration of the emergency situation and shall make the facilities, property and personnel immediately available for such work as the Contracting Officer shall direct. The Government, DOE, their officers, employees or authorized representatives shall not be liable for any loss sustained by Battelle, its clients, or others directly or indirectly attributable to the cessation of activities requested under the authority of this Paragraph.

(h) Indemnification

The Contractor shall be liable for, and indemnify and hold harmless the DOE, its officers, agents, employees and persons acting on its behalf against liability and claims of any kind (including costs and expenses incurred) arising out of or relating to activities conducted under this Clause, or arising from any exercise of Contracting Officer's authority with regard to this Clause.

Contractor's liability and indemnification obligations under this Clause shall not apply to any injury, destruction, or death which results directly from the negligence of DOE, other DOE contractors, or the officers, employees or representatives of the DOE or other DOE contractors.

(i) Intellectual Property Considerations.

- (1) Intellectual property conceived, first reduced to practice, authored or otherwise created under the projects listed in Appendix I (Legacy IP) will be owned and allocated in accordance with the terms and conditions of the agreements for such projects.
- (2) The Contractor may in the exercise of its sole and independent discretion donate Legacy IP to the Government for commercialization under this Contract with the approval of the Contracting Officer. Once donated, the Legacy IP will be Subject Inventions and

copyrightable data under this Contract and the Contractor's commercialization activities for the Legacy IP will be conducted in compliance with the following clauses that are included in this Contract: Technology Transfer Mission; Patent Rights-Management and Operating Contracts, Nonprofit Organization or Small Business Firm Contractor; and Rights in Data – Technology Transfer.

(j) Intellectual Property Indemnity.

The Contractor shall indemnify DOE, its agents, and employees against liability, including costs, for infringement of any United States patent, copyright, or other intellectual property arising out of and relating to activities conducted under this Clause. Such indemnity shall not apply to a claimed infringement that is settled without the consent of the Contractor unless required by a court of competent jurisdiction.

(k) Damage to Government-owned and Leased Facilities and Equipment.

(1) Except for loss or destruction of, or damage to, Government-owned or leased facilities, equipment, or other property that are subject to this Clause and are caused by the willful misconduct or lack of good faith on the part of Contractor's managerial personnel, Contractor during the conduct of activities under this Clause shall not be liable for: (1) loss or destruction of, or damage to, such facilities, equipment, or property; and (2) expenses related to or incidental to such loss, destruction of, or damage to, such facilities and property, due to excepted perils as described in this Paragraph J. when such loss, destruction, or damage is caused by or arises out of any activity undertaken pursuant to this Clause; provided, that this waiver of liability shall be applicable only when the amount of such loss, destruction or damage caused by any of such excepted perils is in excess of \$5,000,000 or such other amount as the Government and Contractor may agree upon from time-to-time.

(2) Excepted perils comprise fire; lightning; windstorm; cyclone; tornado; hail; explosion; riot attending a strike; civil commotion; vandalism and malicious mischief; nuclear incident; aircraft or objects falling therefrom; vehicles running on land or tracks (excluding vehicles owned or operated by Contractor or any agent or employee thereof operating in the course of the agency or employment); smoke; sprinkler leakage; earthquake or volcanic eruption; flood, meaning thereby rising of rivers or streams; enemy attack or any action by the military forces of the United States in resisting enemy attack.

(l) The clause in this contract entitled "DEAR 970.5228-1 Insurance—Litigation and Claims" is not applicable to the Legacy Work performed under this clause. DOE is not responsible for any costs of litigation arising out of or relating to the Legacy Work performed under this clause.

(m) Legacy Work Only



In no event will work other than that listed in Appendix I – List of Battelle Memorial Institute Legacy Work, dated October 15, 2012, be permitted under this Clause.

(n) Conversion to ACT or NFWFO

If any Project identified in Appendix I can be performed in compliance with Clause H-44 or under an NFWFO Agreement, the Contractor may submit a written request to the Contracting Officer that identifies the Project and a statement establishing the reasons why the Project may be performed in compliance with Clause H-44 or under an NFWFO Agreement. Contractor may perform the converted Project under Clause H-44 or under an NFWFO Agreement upon approval by the Contracting Officer. However, the Contractor will continue to indemnify DOE in accordance with this Clause for Legacy Work approved for conversion to ACT or NFWFO. The IP terms of any such converted project will be subject to the terms and conditions of the applicable agreement arising under the H-44 Clause.

**[M881]**

(End of Clause)

19. Part II, Section I – Contract Clauses, revise Table of Contents to update clauses I-16 and I-17 to their most current version and to remove DEVIATION from the title of Clause I-116.

20. Revise Part II, Section I – Contract Clauses, Clause I-16 FAR 52.219-8 Utilization of Small Business Concerns and I-17 FAR 52.219-9 Small Business Subcontracting Plan to update those clauses to their most current version as follows:

**I-16 FAR 52.219-8 Utilization of Small Business Concerns (Jan 2011)**

- (a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.
- (b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business

Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(c) *Definitions.* As used in this contract—

“HUBZone small business concern” means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

“Service-disabled veteran-owned small business concern”—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

“Small business concern” means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

“Small disadvantaged business concern” means a small business concern that represents, as part of its offer that—

(1)(i) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, Subpart B;

(ii) No material change in disadvantaged ownership and control has occurred since its certification;

(iii) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(iv) It is identified, on the date of its representation, as a certified small disadvantaged business in the CCR Dynamic Small Business Search database maintained by the Small Business Administration, or

(2) It represents in writing that it qualifies as a small disadvantaged business (SDB) for any Federal subcontracting program, and believes in good faith that it is owned and controlled by one or more socially and economically disadvantaged individuals and meets the SDB eligibility criteria of 13 CFR 124.1002.

“Veteran-owned small business concern” means a small business concern—

- (1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and
- (2) The management and daily business operations of which are controlled by one or more veterans.

“Women-owned small business concern” means a small business concern—

- (1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
- (2) Whose management and daily business operations are controlled by one or more women.

(d)(1) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a small disadvantaged business concern, or a women-owned small business concern.

(2) The Contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the Central Contractor Registration (CCR) database or by contacting the SBA. Options for contacting the SBA include—

- (i) HUBZone small business database search application web page at [http://dsbs.sba.gov/dsbs/search/dsp\\_searchhubzone.cfm](http://dsbs.sba.gov/dsbs/search/dsp_searchhubzone.cfm); or <http://www.sba.gov/hubzone>;
- (ii) In writing to the Director/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416; or
- (iii) The SBA HUBZone Help Desk at [hubzone@sba.gov](mailto:hubzone@sba.gov).

(End of clause)

**[M881]**

**I-17 FAR 52.219-9 Small Business Subcontracting Plan (Jan 2011)**

(a) This clause does not apply to small business concerns.

(b) *Definitions.* As used in this clause—

“Alaska Native Corporation (ANC)” means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*) and which is considered a minority and economically disadvantaged concern under the criteria at 43 U.S.C. 1626(e)(1). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of 43 U.S.C. 1626(e)(2).

“Commercial item” means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

“Commercial plan” means a subcontracting plan (including goals) that covers the offeror’s fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (*e.g.*, division, plant, or product line).

“Electronic Subcontracting Reporting System (eSRS)” means the Governmentwide, electronic, web-based system for small business subcontracting program reporting. The eSRS is located at <http://www.esrs.gov>.

“Indian tribe” means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act (43 U.S.C.A. 1601 et seq.), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with 25 U.S.C. 1452(c). This definition also includes Indian-owned economic enterprises that meet the requirements of 25 U.S.C. 1452(e).

“Individual contract plan” means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror’s planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

“Master plan” means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

“Subcontract” means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in

and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.

(d) The offeror's subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all sub-contracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with 43 U.S.C. 1626:

(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business (SDB) concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe.

(ii) Where one or more subcontractors are in the subcontract tier between the prime contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.

(2) A statement of—

(i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;

(iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

- (v) Total dollars planned to be subcontracted to HUBZone small business concerns;
  - (vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and
  - (vii) Total dollars planned to be subcontracted to women-owned small business concerns.
- (3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to—
- (i) Small business concerns;
  - (ii) Veteran-owned small business concerns;
  - (iii) Service-disabled veteran-owned small business concerns;
  - (iv) HUBZone small business concerns;
  - (v) Small disadvantaged business concerns; and
  - (vi) Women-owned small business concerns.
- (4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.
- (5) A description of the method used to identify potential sources for solicitation purposes (*e.g.*, existing company source lists, the Central Contractor Registration database (CCR), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in CCR as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of CCR as its source list does not relieve a firm of its responsibilities (*e.g.*, outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.
- (6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—
- (i) Small business concerns (including ANC and Indian tribes);
  - (ii) Veteran-owned small business concerns;
  - (iii) Service-disabled veteran-owned small business concerns;
  - (iv) HUBZone small business concerns;
  - (v) Small disadvantaged business concerns (including ANC and Indian tribes); and
  - (vi) Women-owned small business concerns.
- (7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.
- (8) A description of the efforts the offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause of this contract entitled “Utilization of Small Business Concerns” in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$650,000 (\$1.5 million for construction of any public facility) with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the offeror will—

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;

(iii) Submit the Individual Subcontract Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with paragraph (l) of this clause using the Electronic Subcontracting Reporting System (eSRS) at <http://www.esrs.gov>. The reports shall provide information on subcontract awards to small business concerns (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes that have not been certified by the Small Business Administration as small disadvantaged businesses), women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations;

(iv) Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using eSRS;

(v) Provide its prime contract number, its DUNS number, and the e-mail address of the offeror’s official responsible for acknowledging receipt of or rejecting the ISRs, to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their ISRs; and

(vi) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own DUNS number, and the e-mail address of the subcontractor’s official responsible for acknowledging receipt of or rejecting the ISRs, to its subcontractors with subcontracting plans.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror’s efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (*e.g.*, CCR), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than \$150,000, indicating—

- (A) Whether small business concerns were solicited and, if not, why not;
  - (B) Whether veteran-owned small business concerns were solicited and, if not, why not;
  - (C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;
  - (D) Whether HUBZone small business concerns were solicited and, if not, why not;
  - (E) Whether small disadvantaged business concerns were solicited and, if not, why not;
  - (F) Whether women-owned small business concerns were solicited and, if not, why not; and
  - (G) If applicable, the reason award was not made to a small business concern.
- (iv) Records of any outreach efforts to contact—
- (A) Trade associations;
  - (B) Business development organizations;
  - (C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and
  - (D) Veterans service organizations.
- (v) Records of internal guidance and encouragement provided to buyers through—
- (A) Workshops, seminars, training, etc.; and
  - (B) Monitoring performance to evaluate compliance with the program’s requirements.
- (vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.
- (e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:
- (1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor’s lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.
  - (2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all “make-or-buy” decisions.
  - (3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.
  - (4) Confirm that a subcontractor representing itself as a HUBZone small business concern is identified as a certified HUBZone small business concern by accessing the Central Contractor Registration (CCR) database or by contacting SBA.



(5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(6) For all competitive subcontracts over the simplified acquisition threshold in which a small business concern received a small business preference, upon determination of the successful subcontract offeror, the Contractor must inform each unsuccessful small business subcontract offeror in writing of the name and location of the apparent successful offeror prior to award of the contract.

(f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided—

(1) The master plan has been approved;

(2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and

(3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Once the Contractor's commercial plan has been approved, the Government will not require another subcontracting plan from the same Contractor while the plan remains in effect, as long as the product or service being provided by the Contractor continues to meet the definition of a commercial item. A Contractor with a commercial plan shall comply with the reporting requirements stated in paragraph (d)(10) of this clause by submitting one SSR in eSRS for all contracts covered by its commercial plan. This report shall be acknowledged or rejected in eSRS by the Contracting Officer who approved the plan. This report shall be submitted within 30 days after the end of the Government's fiscal year.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) A contract may have no more than one plan. When a modification meets the criteria in 19.702 for a plan, or an option is exercised, the goals associated with the modification or option shall be added to those in the existing subcontract plan.

(j) Subcontracting plans are not required from subcontractors when the prime contract contains the clause at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, or when the subcontractor provides a commercial item subject to the clause at 52.244-6, Subcontracts for Commercial Items, under a prime contract.

(k) The failure of the Contractor or subcontractor to comply in good faith with—

(1) The clause of this contract entitled "Utilization Of Small Business Concerns;" or

(2) An approved plan required by this clause, shall be a material breach of the contract.

(l) The Contractor shall submit ISRs and SSRs using the web-based eSRS at <http://www.esrs.gov>. Purchases from a corporation, company, or subdivision that is an affiliate of the prime Contractor or subcontractor are not included in these reports. Subcontract award data reported by prime Contractors and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian Tribe. Only subcontracts involving performance in the United States or its outlying areas should be included in these reports with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas.

(1) *ISR*. This report is not required for commercial plans. The report is required for each contract containing an individual subcontract plan.

(i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period.

(ii) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR 19.704(c), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.

(iii) The authority to acknowledge receipt or reject the ISR resides—

(A) In the case of the prime Contractor, with the Contracting Officer; and

(B) In the case of a subcontract with a subcontracting plan, with the entity that awarded the subcontract.

(2) *SSR*.

(i) Reports submitted under individual contract plans—

(A) This report encompasses all subcontracting under prime contracts and subcontracts with the awarding agency, regardless of the dollar value of the subcontracts.

(B) The report may be submitted on a corporate, company or subdivision (*e.g.* plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.

(C) If a prime Contractor and/or subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over \$650,000 (over \$1.5 million for construction of a public facility) and contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime Contractors. However, for construction and related maintenance and repair, a separate report shall be submitted for each DoD component.

(D) For DoD and NASA, the report shall be submitted semi-annually for the six months ending March 31 and the twelve months ending September 30. For civilian agencies, except NASA, it shall be submitted annually for the twelve month period ending September 30. Reports are due 30 days after the close of each reporting period.

(E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.

(F) The authority to acknowledge or reject SSRs in eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts unless stated otherwise in the contract.

(ii) Reports submitted under a commercial plan—

(A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year.

(B) The report shall be submitted annually, within thirty days after the end of the Government's fiscal year.

(C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency from which contracts for commercial items were received.

(D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

(iii) All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a Year-End Supplementary Report for Small Disadvantaged Businesses. The report shall include subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. If the data are not available when the year-end SSR is submitted, the prime Contractor and/or subcontractor shall submit the Year-End Supplementary Report for Small Disadvantaged Businesses within 90 days of submitting the year-end SSR. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.

(End of clause)

**[M881]**

21. Part II, Section I – Contract Clauses, Clause I-116 DEAR 970.5245-1 Property is revised as follows to remove the DEVIATION from the title of the clause and to remove the deviated language located at paragraph (h) of the clause:

**I-116 DEAR 970.5245-1 Property (Dec 2000) Alternate I (Dec 2000)**

(h) Government property for Government use only. Government property shall be used only for the performance of this Contract. **[M881]**

22. Part III, Section J – List of Attachments, Table of Contents, is revised to add Appendix I, List of Battelle Memorial Institute Legacy Work (Reserved), Appendix J, Advance Agreement on Costs and Associated Use of Battelle-Owned Facilities and Real Property, and Appendix K, Advance

Agreement on Disposition of Battelle-Owned Personal Property/Nuclear Materials for the Pacific Northwest National Laboratory.

23. Part III, Section J – List of Attachments, Appendix H – List of Approved Laboratory Facilities (Owned and Leased) is revised to reflect proper designation in accordance with the Facility Information Management System and recent additions and deletions of facilities for PNNL. (See Attached)
24. Part III, Section J – List of Attachments, Appendix I – List of Battelle Memorial Institute Legacy Work (Reserved) is added to the contract. (See Attached)
25. Part III, Section J – List of Attachments, Appendix J - Advance Agreement on Costs and Associated Use of Battelle-Owned Facilities and Real Property is added to the contract. (See Attached)
26. Part III, Section J – List of Attachments, Appendix K – Advance Agreement on Costs and Disposition of Battelle Owned Personal Property/Nuclear Materialsfor the Pacific Northwest National Laboratory is added to the contract. (See Attached)
27. This modification results in no further changes to the Contract.

**(End of Contract Modification)**