

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 (as identified in the order) and the Government, and must implement them in its lower-tier purchase orders and purchase orders.

## **PART I. ARTICLES INCORPORATED BY REFERENCE**

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

ARTICLE	REFERENCE
COMBATING TRAFFICKING IN PERSONS	FAR 52.222-50
CHANGES – FIXED PRICE (Delete Paragraph (e))	FAR 52.243-1
DEFAULT (FIXED-PRICE SUPPLY AND SERVICE) (Delete reference in Paragraph (f) to the Disputes Article)	FAR 52.249-8
ENERGY EFFICIENCY IN ENERGY CONSUMING PRODUCTS	FAR 52.223-15
EQUAL OPPORTUNITY <ul style="list-style-type: none"> <li>• <b>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.</b></li> </ul>	FAR 52.222-26
GOVERNMENT PROPERTY (With Alt 1) <ul style="list-style-type: none"> <li>• <i>Note 1: Alternate I does not apply to the following purchase order types: cost-reimbursement, time-and-material, labor-hour, and fixed-price purchase orders awarded on the basis of submission of certified cost or pricing data</i></li> <li>• <i>Note 2: The preamble on page 1 of these General Provisions does not apply to the Government Property article (FAR 52.245-1). The Government Property article is modified as follows: Where the article says "Contractor" change it to read "Supplier"; Where the article says "subcontractor" change it to read "sub-tier supplier"; Where the article says "contract" change it to read "purchase order"; Where the article says "Contracting Officer" change it to read "Contract Administrator"</i></li> </ul>	FAR 52.245-1
LAWS, REGULATIONS, AND DOE DIRECTIVES	DEAR 970.5204-2
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
PROHIBITION ON REQUIRING CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENTS	FAR 52.203-19
PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS CONCERNS	FAR 52.232-40
RESTRICTIONS ON CERTAIN FOREIGN PURCHASES	FAR 52.225-13
SUBCONTRACTS FOR COMMERCIAL ITEMS	FAR 52.244-6

## **PART II. ARTICLES INCORPORATED BY REFERENCE AT VARIOUS THRESHOLDS**

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

THRESHOLD	ARTICLE	REFERENCE
<b>Less than \$150,000</b>	TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED PRICE) (SHORT FORM)	FAR 52.249-1
<b>Greater than \$3,500</b>	ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING	FAR 52.223-18

THRESHOLD	ARTICLE	REFERENCE
<b>Greater than \$15,000</b>	EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES	FAR 52.222-36
<b>Greater than \$100,000</b>	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT	DEAR 970.5227-5
<b>Greater than \$150,000</b>	ANTI-KICKBACK PROCEDURES	FAR 52.203-7
	AUDIT AND RECORDS-NEGOTIATION	FAR 52.215-2
	CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS	FAR 52.203-17
	DEFINITIONS	FAR 52.202-1
	EMPLOYMENT REPORTS ON VETERANS	FAR 52.222-37
	EQUAL OPPORTUNITY FOR VETERANS	FAR 52.222-35
	FEDERAL, STATE AND LOCAL TAXES	FAR 52.229-3
	GRATUITIES	FAR 52.203-3
	PREVENTING PERSONAL CONFLICTS OF INTEREST	FAR 52.203-16
	SUSTAINABLE ACQUISITION PROGRAM	DEAR 952.223-78
	TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED PRICE) (Delete Paragraph (j))	FAR 52.249-2
<b>Greater than \$500,000</b>	DISPLACED EMPLOYEE HIRING PREFERENCE	DEAR 952.226-74
	WORKFORCE RESTRUCTURING UNDER SECTION 3161 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1993	DEAR 970.5226-2
<b>Greater than \$2,000,000</b>	ADMINISTRATION OF COST ACCOUNTING STANDARDS	FAR 52.230-6
	COST ACCOUNTING STANDARDS (Delete Paragraph (b)) <ul style="list-style-type: none"> <li>• <i>Applicable to all negotiated subcontracts, unless Supplier claims an exemption per the Proposal Representation and Certification in accordance with 48 CFR 9903.201-1</i></li> </ul>	FAR 52.230-2

### **PART III. ARTICLES INCORPORATED IN FULL TEXT**

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

#### **ASSIGNMENT**

Neither this order nor any interest therein nor claim thereunder shall be assigned or transferred by the Supplier except as expressly authorized in writing by Buyer.

#### **CONDITION OF RENTED/LEASED PROPERTY**

Rented property furnished under this order shall be of good quality and in safe operating condition, and shall comply with the Federal and State safety regulations applicable thereto. Buyer shall accept or reject the rented property promptly after receipt. If Buyer determines that any rented property furnished is not in compliance with this order, Buyer shall promptly inform the Supplier in writing. If the Supplier fails to replace the rented property or correct the defects as required by Buyer, Buyer may (a) by purchase order or otherwise, correct the defect or arrange for the rental of a similar property and shall charge or set off against the Supplier any excess costs occasioned thereby, or (b) terminate the order under the Default article of this order.

#### **RESPONSIBILITY FOR RENTED/LEASED PROPERTY**

Except for reasonable wear and tear, Buyer agrees to return the rented property in as good condition as when received.

#### **RESPONSIBILITY FOR DAMAGES**

(a) 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 (1) Supplier's providing of defective rented property or (2) Supplier's defective maintenance of rented property (when such maintenance is required by this order). Supplier will indemnify and save harmless the Government and Buyer from and against any and all claims, demands, actions, causes of action, suits, damages, expenses (including attorney's fees) and liabilities whatsoever resulting from or arising in any manner on account of or by reason of any damages which may occur or be alleged to have occurred as a result of or in connection with (1) Supplier's providing of defective rented property or (2) Supplier's defective maintenance of rented property (when such maintenance is required by this order).

(b) Supplier shall procure at its own expense, and shall likewise maintain or cause to be maintained, during the term of this order,

\$1,000,000 of General Liability insurance to protect Supplier, Buyer and the Government against liability with respect to bodily injury or death, or property loss or damage, which may be imposed by law upon Supplier or which is assumed by Supplier under this order.

Such insurance shall be with such companies, and on such forms as are satisfactory to Buyer, and shall provide for at least thirty days prior written notice to Buyer of cancellation thereof. All such policies of insurance shall contain a clause reading substantially as follows: "The insurer waives any right to subrogation against FMP or the United States of America which might arise by reason of any payment under this policy." Certificates of such insurance shall be furnished to Buyer, upon request. Supplier shall not be relieved of liability assumed pursuant to this article by reason of the procurement, maintenance, limits, or coverages of any insurance policies.

#### **RENTAL/LEASE PAYMENTS**

- (a) Upon the submission of proper invoices or vouchers, Buyer shall pay rent for the rented property at the rate(s) specified in this order.
- (b) Rent shall accrue from the beginning of this order, or from the date rented property is delivered to Buyer, whichever is later, and shall continue until the expiration of the order term or the termination of this order. However, rent shall accrue only for the period that any rented property is in the possession of Buyer.
- (c) Rent shall not accrue for any rented property that Buyer determines does not comply with the Condition of Rented Property article of this order or otherwise does not comply with the requirements of this order, until the rented property is replaced or the defects are corrected.
- (d) Rent shall not accrue for any rented property during any period when the rented property is unavailable or unusable as a result of the Supplier's failure to render services for the operation and maintenance of the rented property as prescribed by this order.
- (e) Rent stated in monthly terms shall be prorated on the basis of 1/30th of the monthly rate for each day the rented property is in Buyer' possession.

#### **LIABILITY FOR UNCOMPLETED OR ERRONEOUS TRANSFERS**

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

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

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

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

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

#### **DISPUTES**

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

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

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

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

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.

### **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.

### **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.

### **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.

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**ORDER OF PRECEDENCE**

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

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

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

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