

**GENERAL PROVISIONS FOR
EDUCATIONAL INSTITUTIONS (DOE)
(Unclassified Work Scope Only)**

This purchase order incorporates the following articles by reference, with the same force and effect as if they were printed in full text. The revision of each article will be the one in effect on the date of submission of your proposal. Titles of articles in this subcontract are for reference purposes only and carry no substantive weight. To purchase a copy of the Department of Energy Acquisition Regulations (DEAR-CFR Title 48, Chapter 9), contact the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328.

For purposes of this order, where the article says "Government", change it to read "Buyer"; where the article says "Contracting Officer", change it to read "Contract Administrator"; and when the article says "Contractor", 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 BMPC or BPMI (as identified in the order) and the Government, and must implement them in its lower-tier subcontracts and purchase orders.

<u>ARTICLE</u>	<u>REFERENCE</u>
The following articles apply to the purchase order which invokes this document:	
DEFINITIONS	FAR 52.202-1
EQUAL OPPORTUNITY	FAR 52.222-26
FEDERAL, STATE, AND LOCAL TAXES	FAR 52.229-3
INSPECTION OF RESEARCH AND DEVELOPMENT (Short Form)	FAR 52.246-9
PATENT RIGHTS - RETENTION BY THE CONTRACTOR (SHORT FORM), modified to delete paragraph (l) (1)	DEAR 952.227-11
PROHIBITION OF SEGREGATED FACILITIES	FAR 52.222.21
RIGHTS IN DATA – GENERAL, with ALTERNATE IV, modified to Delete paragraph (e) (4)	FAR 52.227-14
SUBCONTRACTS FOR COMMERCIAL ITEMS	FAR 52.244-6
TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (Educational and Other Nonprofit Institutions), modified to delete Paragraph (h)	FAR 52.249-5

The following articles apply if the purchase order is a Fixed Price-type contract, except as noted:

CHANGES-FIXED PRICE, with ALTERNATE V, modified to delete Paragraph (e)	FAR 52.243-1
AUDIT AND RECORDS-NEGOTIATION modified to delete Paragraph f(2) if Purchase order is >\$150,000	FAR 52.215-2

General Provisions For Educational Institutions (DOE)

07/2011

ARTICLE

REFERENCE

The following article applies if the purchase order exceeds \$10,000:

NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT FAR 52.222-40

RESTRICTIONS ON CERTAIN FOREIGN PURCHASES FAR 52.225-13

The following article applies if the purchase order exceeds \$15,000:

AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS FAR 52.222-36

The following articles apply if the purchase order exceeds \$100,000:

NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT DEAR 970.5227-5

The following articles apply if the purchase order exceeds \$150,000:

ANTI-KICKBACK PROCEDURES FAR 52.203-7

AUDITS AND RECORDS FAR52.215-2

AUTHORIZATION AND CONSENT DEAR 970.5227-4

DUTY-FREE ENTRY FAR 52.225-8

EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS FAR 52.222-37

EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS FAR 52.222-35

LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS FAR 52.203-12

RESPONSIBILITY FOR SUPPLIES FAR 52.246-16

RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT FAR 52.203-6

TOXIC CHEMICAL RELEASE REPORTING Modified to delete paragraph (e) FAR 52.223-14

UTILIZATION OF SMALL BUSINESS CONCERNS FAR 52.219-8

The following articles apply if the purchase order exceeds \$500,000:

ADDITIONAL DATA REQUIREMENTS FAR 52.227-16

DISPLACED EMPLOYEE HIRING PREFERENCE DEAR 952.226-74

General Provisions For Educational Institutions (DOE)**07/2011**ARTICLEREFERENCE**The following articles apply if the purchase order exceeds \$650,000:**

SMALL BUSINESS SUBCONTRACTING PLAN
(Alt. II) FAR 52.219-9

The following articles apply if the purchase order exceeds \$700,000:

ADMINISTRATION OF COST ACCOUNTING STANDARDS FAR 52.230-6

COST ACCOUNTING STANDARDS – FAR 52.230-5
EDUCATIONAL INSTITUTION, modified to delete paragraph (b)

PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA FAR 52.215-10

SUBCONTRACTOR COST OR PRICING DATA FAR 52.215-12

The following articles apply if the purchase order exceeds \$5,000,000:

DISPLAY HOTLINE POSTER(S) FAR 52.203-14

The following articles apply if the purchase order is a Cost-type purchase order (except as noted):

ACCESS TO AND OWNERSHIP OF RECORDS DEAR 970.5204-3
(If purchase order is > \$2 million)

ACCOUNTS, RECORDS, AND INSPECTIONS DEAR 970.5232-3

ALLOWABLE COST AND PAYMENT, modified to delete from FAR 52.216-7
Paragraph (a) the words "Subpart 31.2" and substitute "Subpart 31.3",
and delete paragraphs (d) (4) and (d) (6) (ii)

AUDIT AND RECORDS-NEGOTIATION with Alternate II, modified FAR 52.215-2
to delete paragraph (f) (2)

CHANGES – COST REIMBURSEMENT, with ALTERNATE V, FAR 52.243-2
Modified to delete paragraph (d)

EXCUSABLE DELAYS FAR 52.249-14

LIMITATION OF COST FAR 52.232-20

LIMITATION OF FUNDS FAR 52.232-22

LIMITATIONS ON PASS-THROUGH CHARGES FAR 52.215-23
(if purchase order is > \$150,000)

PAYMENT FOR OVERTIME PREMIUMS FAR 52.222-2

PREDETERMINED INDIRECT COST RATES, modified to delete FAR 52.216-15
Paragraph (f)

The following articles apply to all orders which invoke this document (except as noted):

PUBLIC RELEASE OF INFORMATION (Alt. used for Educational Institutions)

(a) The Supplier shall provide to the Buyer (or its successor or assignee) for Buyer review and comment any materials developed under this purchase order that the Supplier wishes to release to other suppliers, to government agencies, to the public, or to internal audiences (e.g., thesis, employee/student/alumni newsletters). The materials shall be provided at least 25 working days (Federal Government calendar) prior to the desired printing or release date. As part of the request for review and comment, the Supplier shall identify the specific media to be used as well as other pertinent details of the proposed release. Materials include:

- (1) Information, data, photographs, sketches, advertising, displays, promotional brochures, or other materials developed under this purchase order.
- (2) Items which link or relate the Supplier, Supplier's materials, or Supplier's capabilities to naval nuclear propulsion.

Supplier is responsible for ensuring Buyer's comments regarding Buyer's information are resolved to Buyer's satisfaction.

(b) The Supplier shall immediately inform the Buyer should any Buyer materials related to work under this order be requested via a legal proceeding, be subpoenaed, be otherwise sought by a judicial or administrative authority, or be requested by a citizen under applicable public records laws. Under no circumstances should this information be released to such authority without prior notification of the Buyer and opportunity to permit appropriate measures to be taken to protect the information. Supplier shall also inform the Buyer of any and all extensions of time that, in the Supplier's judgment, may be reasonably invoked prior to any deadline date and Supplier agrees to request such time extensions at Buyer's discretion. Should the Buyer choose to resist release of records, the Buyer assumes the burden of justifying nondisclosure.

(c) Supplier agrees that the provisions of this subsection shall survive the order until the Supplier destroys the materials related to this order. Before destroying deliverable materials, the Supplier shall ensure that the Buyer has received the required deliverables.

(d) The Supplier shall include all provisions of this article including this sentence in all purchase orders under this purchase order. All releases, regardless of tier of supplier, must have the prior review and comment of the Buyer.

COST ACCOUNTING STANDARDS (CAS)

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

WARRANTY (Applicable to all Fixed-Price Orders)

Supplier warrants to Buyer and the Government that the required work will be performed in accordance with any mutually agreed upon specifications/work scopes. If any failure to meet the foregoing warranty appears during the one year from the date of completion and acceptance of the work, on the condition that the Supplier is promptly notified in writing thereof, Supplier shall re-perform any defective portion of the work at no cost to Buyer or the Government. No warranty is made or implied for the results of the work.

For any Supplier purchased supplies, parts or equipment, to be delivered to Buyer, Supplier is required to obtain, on behalf of the Buyer, a warranty for no cost repair or replacement for any defective item. The warranty shall begin upon acceptance and extend for a period of one year or the sub-tier supplier's warranty period, whichever is longer.

ORDER OF PRECEDENCE

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

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

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

*all documents except the General Provisions, Specifications/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.

LIABILITY FOR UNCOMPLETED OR ERRONEOUS TRANSFERS

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

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

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

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

- If the funds are no longer under the control of the payment office, the Buyer is deemed to have made payment and the Supplier is responsible for recovery of any erroneously directed funds; or

If the funds remain under the control of the payment office, the Buyer shall not make payment and the provisions of the first paragraph shall apply.

INDEPENDENT CONTRACTOR RELATIONSHIP AND SUPPLIER PERSONNEL

1. Supplier's relationship to Buyer shall be that of an Independent Contractor and this Purchase Order does not create an agency, partnership, or joint venture relationship between Buyer and Supplier or Buyer and Supplier personnel. Personnel supplied by Supplier hereunder shall be deemed employees of Supplier and shall not for any purposes be considered employees or agents of Buyer. Supplier assumes full responsibility for the actions and supervision of such personnel while performing services under this Purchase order. Buyer assumes no liability for Supplier personnel.
2. Supplier shall inform Buyer if a former employee of Buyer will be assigned Work under this Purchase order, and any such assignment shall be subject to Buyer approval.
3. Nothing contained in this Purchase Order shall be construed as granting to Supplier or any personnel of Supplier rights under any benefit plan of Buyer or its parent.
4. All persons, property, and vehicles entering or leaving Buyer's or Government's premises are subject to search.
5. Supplier will promptly notify Buyer and provide a report of any accidents or security incidents involving loss of or misuse or damage to Buyer's or Government's intellectual or physical assets, and all physical altercations, assaults, or harassment involving Seller's personnel performing work under this Purchase Order.
6. Supplier personnel: (i) will not remove Buyer or Government assets from Buyer's or Government's premises without Buyer authorization; (ii) will use Buyer or Government assets only for purposes of this Purchase Order; (iii) will only connect with, interact with or use computer resources, networks, programs, tools or routines that Buyer agrees are needed to provide services; and (iv) will not share or disclose user identifiers, passwords, cipher keys or computer dial port telephone numbers. Buyer may periodically audit Supplier's data residing on Buyer or Government's information assets.
7. Supplier shall indemnify and hold harmless Buyer from and against any actual or alleged liability, loss, costs, damages, fees of attorneys, and other expenses which Buyer may sustain or incur in consequence of (i) Supplier's failure to pay any employee for the Work rendered under this Purchase Order, or (ii) any claims made by Supplier's personnel against Buyer.
8. The Supplier will verify all Purchase Order workers that it provides to BMPC are authorized to work in the United States.
9. The Supplier will take appropriate action to remove its employees working on this Purchase Order who are later discovered not to be legally authorized to work in the United States and/or whose identity is in question.
10. The Supplier indemnifies BMPC from any and all liability, loss or damage it may suffer as a result of claims, demands, costs or judgments against it arising from the Supplier providing Purchase Order workers in violation of the requirements of the laws of the United States or the state in which the worker is working. Indemnity under this purchase order shall continue in full force throughout the term of this purchase order.

DISPUTES

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

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

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

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

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

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

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

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

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

INSURANCE

(Excluded items: materials, commercial products)

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

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

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

A. Required Coverage

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

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

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

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

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

3. Commercial General Liability Insurance

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

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

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

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

Policy Limits

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

CASE I*

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

CASE II*

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

CASE III*

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

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

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

4. **Automobile Liability Insurance**, including coverage for the operation of any vehicle to include, but not limited to, owned, hired and non-owned. The combined single limit for Bodily Injury and Property Damage Liability shall be not less than \$1,000,000 for any one accident or loss. The required limits may be satisfied by a combination of a primary policy and an excess or umbrella policy. Supplier's Automobile Liability Insurance shall include coverage for Automobile Contractual Liability.
5. **Excess or Umbrella Insurance** with limits not less than \$5,000,000 per occurrence/aggregate, coverage shall be provided on a follow form basis, applying as excess over Employer's Liability, Commercial General Liability and Automobile Liability, as stated above. Such insurance shall include an Insurer's waiver of subrogation in favor of each Additional Insured, be primary and non-contributory with any similar insurance coverage maintained by the Additional Insureds.

B. Special Operations Insurance Coverage

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

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

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

2. Supplier shall provide **Stevedore's Legal Liability and/or Wharfingers Legal Liability Insurance** with limits not less than \$5,000,000 per occurrence. Such insurance shall name Buyer as an Additional Insured, include an Insurer's waiver of subrogation in favor of each Additional Insured, state that it is primary and non-contributory, and contain a cross liability or severability or interest clause.
3. Supplier shall also carry "**All Risk**" **Motor Truck Cargo Insurance**, or such similar form of insurance that will insure against physical loss or damage to the property being transported, moved, or handled by Supplier pursuant to the terms of this contract. Such insurance shall provide a limit of not less than the replacement cost of the highest value being moved, shall insure the interest of the Supplier, and the Buyer, as their respective interests may appear, and shall include an insurer's waiver of subrogation in favor of each such party.
4. Involve **Aircraft** (fixed wing or helicopter) owned, operated or chartered by the Supplier, liability arising out of such aircraft shall be insured for a combined single limit not less than \$10,000,000 each occurrence and such limit shall apply to Bodily Injury (including passengers) and Property Damage Liability. Such insurance shall name the Buyer as Additional Insureds, include an Insurer's waiver of subrogation in favor of each Additional Insured, state that it is primary and non-contributory, and contain a cross-liability or severability of interest clause. If the aircraft hull is insured, such insurance shall provide for an Insurer's waiver of subrogation rights in favor of the Buyer. In the event the Supplier charters aircraft, the foregoing insurance and evidence of insurance may be furnished by the owner of the chartered aircraft, provided the above requirements are met.
5. Supplier shall also carry **Pollution Liability Insurance** in an amount not less than \$5,000,000 per occurrence or claim/annual aggregate. Such insurance shall provide bodily injury and property damage and clean up costs coverage for both the sudden and gradual occurrences arising from the work. If Supplier activities involve professional services, coverage shall include pollution losses resulting from any deficient professional services. If Completed Operations is limited in the policy, such Completed Operations Coverage shall be for a period of not less than five (5) years. If such insurance is written on a claim-made form, such insurance shall include minimally a six (6) year extended discovery period and shall name the Buyer and the Government as Additional Insureds.
6. Supplier shall also carry **Asbestos Liability Insurance** in an amount not less than \$5,000,000 per occurrence/annual aggregate. The policy shall be written on an "occurrence basis" with no sunset clause. Such insurance shall name the Buyer and the Government as Additional Insureds.
7. Supplier shall also carry **Business Automobile Insurance** covering liability arising out of the transportation of hazardous materials in an amount not less than \$2,000,000 per occurrence. Such policy shall include Motor Carrier Endorsement MCS-90 or equivalent. NEITHER BUYER NOR THE GOVERNMENT SHALL BE NAMED AS AN ADDITIONAL INSURED FOR THIS POLICY.
8. Supplier shall furnish an insurance certificate from the designated disposal facility establishing that the facility operator maintains current **Environmental Liability Insurance** in the amount of not less than \$5,000,000 per occurrence/annual aggregate. Supplier shall also carry Pollution Liability in an amount not less than \$5,000,000 per occurrence or claim/annual aggregate as required in sub-clause B.5 above. Coverage shall also include non-owned disposal site (NODS) coverage for losses at the jobsite.

- 9. **Contractor’s Tools and Equipment Insurance** covering loss or damage to equipment, tools or any other property of Supplier. Such insurance shall include an Insurer’s waiver of subrogation in favor of Buyer and the Government, and indemnifies Buyer and the Government from and against any liability arising out of or for any loss or damage to such equipment, tools, or property of Supplier and each of its lower tier suppliers.
- 10. **Builders Risk Insurance**, including Buyer and the Government as Additional Insureds and written on an “All Risk” basis with a limit equal to the total installed cost of the Supplier’s work. “Total installed cost” shall include the value of material and equipment provided by Buyer and the Government while such property is in the care custody, and control of Supplier. This insurance will cover all material and equipment installed or to be installed in permanent buildings and facilities and will include coverage for material in transit and in offsite storage. In addition, Supplier’s insurer shall waive its right of subrogation against Buyer and the Government. Should any loss or damage to the Work occur, deductibles under this policy shall be for Supplier’s account.

C. Related Obligations

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

D. Buyer or Government Furnished Insurance

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

E. Non-Waiver

Buyer’s acceptance of any evidence of insurance, including any certificate of insurance, shall not: (i) constitute acceptance of the adequacy of Supplier’s insurance coverage, (ii) imply that any insurance coverage provided by Supplier complies with the requirements of this subcontract, or (iii) waive Buyer’s or Government’s rights to enforce any of Supplier’s requirements in this subcontract, including the requirements concerning insurance coverage amounts, insurance terms and conditions and qualifications of insurance companies.

TITLE AND ADMINISTRATION

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

LOWER-TIER SUBCONTRACTS

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

ANTI-VIRUS WARRANTY

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

CHOICE OF LAW

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

DEAR 970.5245-1 PROPERTY

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

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

PROPERTY (Dec 2000)

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

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

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

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

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

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

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

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

(f) Risk of loss of Government property.

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

- (A) Willful misconduct or lack of good faith on the part of the Supplier's managerial personnel;
- (B) Failure of the Supplier's managerial personnel to take all reasonable steps to comply with any appropriate written direction of the Contract Administrator to safeguard such property under paragraph (e) of this clause; or
- (C) Failure of supplier's managerial personnel to establish, administer, or properly maintain an approved property management system in accordance with paragraph (i)(1) of this clause.

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

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

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

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

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

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

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

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

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

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

(i) Property Management.

(1) Property Management System.

(i) The Supplier shall establish, administer, and properly maintain an approved property management system of accounting for and control, utilization, maintenance, repair, protection, preservation, and disposition of Government property in its possession under the purchase order. The

Supplier's property management system shall be submitted to the Contract Administrator for approval and shall be maintained and administered in accordance with sound business practice, applicable Federal Property Management Regulations and Department of Energy Property Management Regulations, and such directives or instructions which the Contract Administrator may from time to time prescribe.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Alternate I (Dec 2000). As prescribed in 970.4501-1(b), when the award is to a nonprofit contractor, replace paragraph (j) of the basic clause with the following paragraph (j):

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

- (1) The Supplier's business; or
- (2) The Supplier's operations at any one facility or separate location at which this purchase order is being performed; or
- (3) The Supplier's Government property system and/or a Major System Acquisition or Major Project as defined in DOE Order 4700.1 (Version in effect on Dec 2000).