

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", 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 subcontracts and purchase orders.

PART I. ARTICLES INCORPORATED BY REFERENCE BY CONTRACT TYPE

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

ARTICLE	REFERENCE	CONTRACT TYPE
COMBATING TRAFFICKING IN PERSONS	FAR 52.222-50	ALL
ENERGY EFFICIENCY IN ENERGY CONSUMING PRODUCTS	FAR 52.223-15	ALL
EQUAL OPPORTUNITY <ul style="list-style-type: none"> Note: For this article, FAR 52-222-35 Equal Opportunity for Veterans, and FAR 52.222-36 Equal Opportunity for Workers with Disabilities the following additional language applies: This contractor and subcontractor shall abide by the requirements of 41 CFR 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans, or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that the Supplier take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. 	FAR 52.222-26	ALL
INSPECTION OF RESEARCH AND DEVELOPMENT (SHORT FORM)	FAR 52.246-9	ALL
LAWS, REGULATIONS, AND DOE DIRECTIVES	DEAR 970.5204-2	ALL
PATENT RIGHTS – RETENTION BY THE CONTRACTOR (SHORT FORM), modified to delete paragraph (l) (1)	DEAR 952.227-11	ALL
PROHIBITION OF SEGREGATED FACILITIES	FAR 52.222-21	ALL
PREFERENCE FOR U.S.-FLAG AIR CARRIERS	FAR 52.247-63	ALL
PROHIBITION ON REQUIRING CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENTS	FAR 52.203-19	ALL
PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS CONCERNS	FAR 52.232-40	ALL
RESTRICTIONS ON CERTAIN FOREIGN PURCHASES	FAR 52.225-13	ALL
RIGHTS IN DATA – GENERAL, with Alternate IV	FAR 52.227-14	ALL
SUBCONTRACTS FOR COMMERCIAL ITEMS	FAR 52.244-6	ALL
TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (Educational and Other Nonprofit Institutions), modified to delete Paragraph (h)	FAR 52.249-5	ALL
GOVERNMENT PROPERTY, with Alternate II	FAR 52.245-1	ALL
RESEARCH MISCONDUCT	DEAR 952.235-71	ALL
CHANGES – FIXED PRICE, with Alternate V, modified to delete Paragraph (e)	FAR 52.243-1	FP
ACCOUNTS, RECORDS, AND INSPECTIONS	DEAR 970.5232-3	COST
ALLOWABLE COST AND PAYMENT <ul style="list-style-type: none"> Modified to delete from Paragraph (a) the words "Subpart 31.2" and substitute "Subpart 31.3", and delete paragraphs (d) (4) and (d) (6) (ii) 	FAR 52.216-7	COST
CHANGES – COST REIMBURSEMENT, with Alternate V, modified to delete paragraph (d)	FAR 52.243-2	COST
EXCUSABLE DELAYS	FAR 52.249-14	COST
LIMITATION OF COST	FAR 52.232-20	COST
LIMITATION OF FUNDS	FAR 52.232-22	COST
PREDETERMINED INDIRECT COST RATES, modified to delete Paragraph (f)	FAR 52.216-15	COST
UTILIZATION OF SMALL BUSINESS CONCERNS	FAR 52.219-8	ALL

PART II. ARTICLES INCORPORATED BY REFERENCE AT VARIOUS THRESHOLDS BY CONTRACT TYPE

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

THRESHOLD	ARTICLE	REFERENCE	CONTRACT TYPE
Greater than \$3,500	ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING	FAR 52.223-18	ALL
Greater than \$10,000	NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT	FAR 52.222-40	ALL
	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES	FAR 52.225-13	ALL
Greater than \$15,000	EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES	FAR 52.222-36	ALL
Greater than \$35,000	PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT	FAR 52.209-6	ALL
Greater than \$100,000	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT	DEAR 970.5227-5	ALL
Greater than \$150,000	ANTI-KICKBACK PROCEDURES	FAR 52.203-7	ALL
	AUTHORIZATION AND CONSENT	FAR 52.227-1	ALL
	CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS	FAR 52.203-17	ALL
	DEFINITIONS	FAR 52.202-1	ALL
	DUTY FREE ENTRY	FAR 52.225-8	ALL
	EMPLOYMENT REPORTS ON VETERANS	FAR 52.222-37	ALL
	EQUAL OPPORTUNITY FOR VETERANS	FAR 52.222-35	ALL
	FEDERAL, STATE AND LOCAL TAXES	FAR 52.229-3	ALL
	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS	FAR 52.203-12	ALL
	RESPONSIBILITY FOR SUPPLIES	FAR 52.246-16	ALL
	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT	FAR 52.203-6	ALL
	PREVENTING PERSONAL CONFLICTS OF INTEREST	FAR 52.203-16	ALL
	SUSTAINABLE ACQUISITION PROGRAM	DEAR 952.223-78	ALL
	AUDIT AND RECORDS-NEGOTIATION, modified to delete Paragraph (f)(2)	FAR 52.215-2	FP
	AUDIT AND RECORDS – NEGOTIATION with Alternate II, modified to delete Paragraph (f)(2)	FAR 52.215-2	COST
	LIMITATIONS ON PASS-THROUGH CHARGES	FAR 52.215-23	COST
PAYMENT FOR OVERTIME PREMIUMS <ul style="list-style-type: none"> • Paragraph (a) is modified to state that the authorized Overtime premium is "zero". 	FAR 52.222-2	COST	
Greater than \$500,000	ADDITIONAL DATA REQUIREMENTS	FAR 52.227-16	ALL
	DISPLACED EMPLOYEE HIRING PREFERENCE	DEAR 952.226-74	ALL
	WORKFORCE RESTRUCTURING UNDER SECTION 3161 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1993	DEAR 970.5226-2	ALL
Greater than \$700,000	SMALL BUSINESS SUBCONTRACTING PLAN (Alt. II)	FAR 52.219-9	ALL
Greater than \$2,000,000	ACCESS TO AND OWNERSHIP OF RECORDS	DEAR 970.5204-3	COST

THRESHOLD	ARTICLE	REFERENCE	CONTRACT TYPE
Greater than \$2,000,000	ADMINISTRATION OF COST ACCOUNTING STANDARDS	FAR 52.230-6	ALL
	COST ACCOUNTING STANDARDS – EDUCATIONAL INSTITUTION (delete Paragraph (b)) <ul style="list-style-type: none"> Applicable to all negotiated subcontracts, unless Supplier claims an exemption per the Proposal Representation and Certification in accordance with 48 CFR 9903.201-1 	FAR 52.230-5	ALL
	PENSION ADJUSTMENTS AND ASSET REVERSIONS	FAR 52.215-15	ALL
	PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA	FAR 52.215-10	ALL
	REVERSION OR ADJUSTMENT OF PLANS FOR POST-RETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS	FAR 52.215-18	ALL
	SUBCONTRACTOR CERTIFIED COST OR PRICING DATA	FAR 52.215-12	ALL
Greater than \$5,500,000	CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT	FAR 52.203-13	ALL
	DISPLAY OF HOTLINE POSTER(S)	FAR 52.203-14	ALL

PART III. ARTICLES INCORPORATED IN FULL TEXT

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

LIABILITY FOR UNCOMPLETED OR ERRONEOUS TRANSFERS

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

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

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

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

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

INDEPENDENT CONTRACTOR RELATIONSHIP AND SUPPLIER PERSONNEL

1. Supplier's relationship to Buyer shall be that of an Independent Contractor and this Purchase Order does not create an agency, partnership, or joint venture relationship between Buyer and Supplier or Buyer and Supplier personnel. Personnel supplied by Supplier hereunder shall be deemed employees of Supplier and shall not for any purposes be considered employees or agents of Buyer. Supplier assumes full responsibility for the actions and supervision of such personnel while performing services under this Purchase order. Buyer assumes no liability for Supplier personnel.
2. Supplier shall inform Buyer if a former employee of Buyer will be assigned Work under this Purchase order, and any such assignment shall be subject to Buyer approval.
3. Nothing contained in this Purchase Order shall be construed as granting to Supplier or any personnel of Supplier rights under any benefit plan of Buyer or its parent.
4. All persons, property, and vehicles entering or leaving Buyer's or Government's premises are subject to search.

5. Supplier will promptly notify Buyer and provide a report of any accidents or security incidents involving loss of or misuse or damage to Buyer's or Government's intellectual or physical assets, and all physical altercations, assaults, or harassment involving Seller's personnel performing work under this Purchase Order.
6. Supplier personnel: (i) will not remove Buyer or Government assets from Buyer's or Government's premises without Buyer authorization; (ii) will use Buyer or Government assets only for purposes of this Purchase Order; (iii) will only connect with, interact with or use computer resources, networks, programs, tools or routines that Buyer agrees are needed to provide services; and (iv) will not share or disclose user identifiers, passwords, cipher keys or computer dial port telephone numbers. Buyer may periodically audit Supplier's data residing on Buyer or Government's information assets.
7. Supplier shall indemnify and hold harmless Buyer from and against any actual or alleged liability, loss, costs, damages, fees of attorneys, and other expenses which Buyer may sustain or incur in consequence of (i) Supplier's failure to pay any employee for the Work rendered under this Purchase Order, or (ii) any claims made by Supplier's personnel against Buyer.
8. The Supplier will verify all Purchase Order workers that it provides to Buyer are authorized to work in the United States.
9. The Supplier will take appropriate action to remove its employees working on this Purchase Order who are later discovered not to be legally authorized to work in the United States and/or whose identity is in question.
10. The Supplier indemnifies Buyer from any and all liability, loss or damage it may suffer as a result of claims, demands, costs or judgments against it arising from the Supplier providing Purchase Order workers in violation of the requirements of the laws of the United States or the state in which the worker is working. Indemnity under this purchase order shall continue in full force throughout the term of this purchase order.

DISPUTES

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

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

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

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

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

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

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

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

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

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.

WARRANTY (APPLICABLE TO 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.

CHOICE OF LAW

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

ORDER OF PRECEDENCE

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

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

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

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