



Mission Support Alliance Provision

GENERAL PROVISIONS FOR COMMERCIAL ITEMS Rev 1 November 17, 2009

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1.0 DEFINITIONS

Whenever used in this document, the following definitions shall be applicable unless the content indicates otherwise:

The term “**Buyer**” shall mean the company (under DOE Prime Contract No. DE-AC06-09RL14728) entering into this Contract with the Contractor. The term “**buyer**” shall mean the Contract Specialist or authorized purchasing agent representing the company issuing this Contract.

Contractor shall mean the company, person, or organization performing work under this Contract. For MSA Contracting purposes, the term “Contractor” generally refers to vendors, sellers, and suppliers.

Contract, this agreement between Buyer and Contractor; also includes purchase order, task orders, releases and other agreements.

Government, the United States of America including the U.S. Department of Energy (DOE) and/or any duly authorized representative of it, including the Contracting Officer.

Item, commercial item including minor modifications thereto which is customarily used for non-governmental purposes and have been or will be sold, leased, or licensed to the general public.

Service, a service of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices and not sold on an hourly rate basis unless it is based on an established catalog or market price for a specific end product service.

2.0 ORDER OF PRECEDENCE

Inconsistencies shall be resolved according to the following descending order of precedence: (1) item description, (2) the Contract document, (3) special provisions set forth in the body of the Contract and (4) these Commercial Provisions.

3.0 ADMINISTRATION

Contractor, by signing this Contract or starting performance, agrees to comply with the terms and conditions, specifications and other documents that this Contract incorporates by reference or attachment. The specifications, drawings and documents referred to herein is the entire agreement between the parties. Prior negotiations, proposals, and correspondence pertaining to this Contract, or the subject matter hereof, are superseded. Contractor terms and conditions set forth on standard forms shall not be part of this Contract unless incorporated by modification into this Contract.

Buyer failure to enforce any performance or to exercise any right or privilege of the Contract or as provided by law shall not relieve the Contractor from any requirements of this Contract. Contract provisions intended to survive Contract termination, completion or expiration shall continue as valid and enforceable obligations.

In the event any provision, or any part or portion of any provision of this Contract should be found to be invalid, void or otherwise unenforceable, such finding shall not affect the remaining part or portions of that provision, or any other provision.



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3.1 INDEPENDENT CONTRACTOR

By accepting this Contract, Contractor certifies that it is acting as an independent contractor with responsibility for and control over the details and means for performing the work, provided that Contractor is in compliance with the terms of this Contract. Anything in this Contract which may appear to give Buyer the right to direct Contractor as to the details of the performance of the work or to exercise a measure of control over the Contractor shall mean that the Contractor shall follow the desires of the Buyer only as to the intended results of the work. Nothing in this Contract shall be deemed to represent that Contractor, or any of the Contractor's employees or agents, are the agents, representatives or employees of Buyer or the Government.

4.0 WARRANTY

Contractor warrants that all items and services conform with Contract specifications, drawings, and other descriptions and will be of merchantable quality, fit and sufficient for the purposes for which they are intended as evidenced in the Contract. Warranty shall begin upon Buyer's acceptance and extend for a period of (1) the manufacturer's warranty or six months, whichever is longer, if Contractor is not the manufacturer and has not modified the item or (2) one year or the manufacturer's warranty period, whichever is longer, if the Contractor is the manufacturer of the item or has modified it. If any nonconformity is discovered within that time, Contractor shall promptly repair or replace such items or re-perform services. Transportation of replacement items, return of nonconforming items and repeat performance of services shall be at Contractor's expense. If repair, replacement or re-performance of services is not timely, Buyer may elect to return the nonconforming items, repair, replace and/or re-procure the item or service at Contractor's expense. This warranty shall restart upon Buyer's acceptance of the repair, replacement or re-performance.

5.0 INDEMNITY

Contractor agrees to assume the risk of and to release, defend, indemnify and hold harmless the Buyer, Government, affiliated companies and their directors, officers, employees, agents and representatives, from and against all loss, damage, liability, cost and expense (including attorney's fees) arising out of any (1) failure to comply with any law, ordinance, regulation, rule or order, (2) injury (including death) to any person or (3) damage to any property in any way connected with the performance of this Contract in accordance with the State of Washington Comparative Fault Statute (RCW 4.22). Contractor agrees to indemnify, hold harmless and defend Buyer and the Government from and against all laborers', material man's, mechanics', or other liens arising from the performance of Contractor's obligations under this Contract and shall keep the premises of Buyer and the Government free from all such claims, liens, and encumbrances.

To the extent that the Contractor, Contractor's workers or subcontractors are covered by the Washington Industrial Insurance Act (RCW Title 51 including any amending, substitute or replacement statutes) or any other industrial insurance, worker's compensation or similar act (Acts), Contractor specifically waives any and all immunity provided by these Acts.

6.0 SAFETY

The Contractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The Contractor shall comply with, and assist the Buyer in complying with Environmental, Safety, Health, and Quality (ESH&Q) requirements of all applicable laws, regulations and directives.

The Contractor shall exercise a degree of care commensurate with the work and the associated hazards. The Contractor shall ensure that management of ES&H functions and activities is an integral and visible part of the Contractor's work planning and execution processes. As a minimum, the Contractor shall:

- ❑ Thoroughly review the defined scope of work;



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- ❑ Identify hazards and ES&H requirements;
- ❑ Analyze hazards and implement controls;
- ❑ Perform work within controls; and
- ❑ Provide feedback on adequacy of controls and continue to improve safety management.

The Contractor shall flow down ESH&Q requirements to the lowest tier subcontractor performing work on the Hanford site commensurate with the risk and complexity of the work.

Contractor shall ensure that all shipments made to the Hanford site in performance of this contract are packaged and loaded for safe handling and unloading. Any person delivering to the Hanford site or to a Buyer-controlled facility should wear appropriate protective equipment and may be required by the Buyer to wear specific personal protective equipment (hand, eye, head or foot protection). Deliveries to the Hanford site or Buyer-controlled facility may be refused and/or unloading work stopped by any Buyer employee for unsafe conditions or practices.

7.0 NUCLEAR SAFETY AND INDEMNITY

The provisions of 48 CFR 952.250-70, Nuclear Hazards Indemnity Agreement, are incorporated by reference into these terms and conditions for the delivery of any product or service that has nuclear safety implications. Contractor shall flow down these provisions to all subcontractors and suppliers unless expressly waived in writing by Buyer.

Contractor will be indemnified by the U.S. Department of Energy (DOE) against (1) claims for public liability, and (2) legal costs arising from any nuclear incident under the provisions of 48 CFR 952.250-70. However, Contractor and its subcontractors and suppliers that are indemnified are subject to civil penalties under provisions of the Atomic Energy Act of 1954, as amended, for violations of DOE nuclear safety related rules, regulations, and orders. In addition, directors, officers, and employees of Contractor and its subcontractors and suppliers that are indemnified are subject to criminal penalties for knowing and willful violations.

8.0 ASSIGNMENT

Neither this Contract nor any portion hereof shall be assigned or delegated without Buyer's prior written consent. This shall include assignments of Contractor's accounts receivable. Buyer reserves the right to assign this Contract to DOE or its designee, and in case of such assignment and by notice to the Contractor, Buyer shall have no further Contract responsibility.

9.0 CHANGES

No substitutions shall be made in this Contract without the prior written consent of the Buyer. The Buyer reserves the right to make changes within the general scope of this Contract by unilateral modification. Such changes may include changes in (1) the description of the items or services required; (2) the quantities ordered; (3) the method of shipment or packaging, and (4) the time or place of delivery, inspection or acceptance. The Contractor shall promptly comply with any such change made by the Buyer. If any change affects the price of or the time required for performance, Contractor shall identify the impact as soon as practical and request an equitable adjustment within 10 days of the change notice. The equitable adjustment to the price and/or delivery requirements and other affected provisions of the Contract shall be made by a mutual agreement and modification to this Contract in a timely manner.



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10.0 SUBCONTRACTING

Contractor shall not subcontract performance of any on-site work or a significant portion of off-site work under this Contract without first obtaining buyer acceptance in writing of the subcontracting and the subcontractor.

Contractor warrants that its subcontractors have been fully informed of the terms of this Contract and that all applicable provisions and requirements of this Contract are flowed down and invoked in such subcontracts.

11.0 SUSPENSION

If the Contractor fails to comply with any Contract terms or to make sufficient progress as to endanger performance, the Buyer may suspend or terminate this Contract for cause. In the event of termination for cause, the Buyer shall be liable only for any item and/or service accepted. The Buyer may complete Contract performance by any reasonable means and the Contractor shall be responsible for additional costs incurred by the Buyer.

The Buyer may suspend the Contractor's right to perform any part of or all of this Contract for an indefinite period. If any such suspension significantly delays the progress or causes the Contractor additional direct expenses in the performance of the Contract, not due to the fault or negligence of the Contractor, a Contract modification shall adjust compensation to the Contractor based on the additional direct Contractor expenses to perform and the time of performance shall be extended by the actual suspension duration. Contractor's claim for compensation must be supported by appropriate documentation within ten (10) calendar days from the date performance resumes.

The Contractor shall not be liable for delays in performance due to causes beyond the Contractor's reasonable control or for delays of the Contractor's suppliers at any tier if the delay is beyond the control of both the Contractor and its suppliers and without fault or negligence of either.

12.0 BACKCHARGES

Costs sustained by Buyer as a result of (1) Contractor's non-compliance with any law, ordinance, regulation, rule or order, or this Contract, including its Safety provisions; (2) delays to contract performance attributable to unsatisfactory Contractor performance; or (3) damage to or loss of property (including the property of Buyer or the Government) resulting from any acts or omissions of Contractor or its subcontractors, shall be backcharged to the Contractor. Backcharges may include, but are not limited to, costs of labor, material, or equipment; taxes, levies, duties and assessments; and markups for indirect costs, overhead, supervision, and administration. Such backcharges shall offset payments due Contractor from pending invoices and if such backcharges exceed invoiced amounts, such backcharges will be invoiced by Buyer to Contractor, such backcharges payable within 30 days.

The Contractor shall protect from damage at no additional cost to Buyer all existing equipment, materials (whether stored or installed), paving, structures, improvements and utilities (1) at or near the work site and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this Contract or failure to exercise reasonable care in performing the work.

13.0 TERMINATION FOR CONVENIENCE

The Buyer may, at its sole discretion, terminate the Contract in total or any portion not completed by giving the Contractor written notice. Upon notice of termination, the Contractor shall, unless otherwise directed in writing, discontinue all performance on the date specified in the notice and take action to minimize costs to the Buyer. Payment for items and/or services already completed or in the process of completion shall be adjusted between the Buyer and the Contractor in a fair and reasonable manner, but such payment shall exclude any allowance for the uncompleted portion of the item and/or service, or any anticipated profits thereon. Contractor shall deliver all



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completed and partial items with all applicable warranties or dispose of items as directed by Buyer before final payment. Such payments shall not exceed the total value of the Contract prior to termination for convenience.

14.0 LAWS AND REGULATIONS

Contractor shall comply with all applicable federal, state and local laws and ordinances and all pertinent lawful orders, rules and regulations. Contractor shall act as an independent entity and not as an agent or employee of Buyer or the Government.

15.0 RESOLUTION OF DISPUTES

The Contractor and Buyer agree to make good-faith efforts to settle any dispute or claim that arises under this Contract through discussion and negotiation. If such efforts fail to achieve a mutually agreeable resolution, the parties agree to alternative disputes resolution (ADR) and to join in such arbitration proceeding as Buyer may determine appropriate. Parties shall submit to such jurisdiction and be bound by the judgment rendered according to the ADR rules. Contractor shall proceed diligently without interruption in the performance of this Contract pending final resolution of any dispute arising under this Contract between the parties hereto or between the Contractor and its subcontractors.

If ADR fails or is not used, the parties agree that the appropriate forum for resolution shall be a court of competent jurisdiction in the State of Washington.

No interest is payable to Contractor for any claim it may have, except that specifically imposed by a court of competent jurisdiction on any judgment (and then only from the date of the entry of judgment).

16.0 COUNTERFEIT FASTENERS AND COMPONENTS

Buyer reserves the right to question and/or require Contractor to certify and/or furnish proof regarding the quality, authenticity, application or fitness for use of the items supplied by the Contractor under this Contract. Any items furnished as part of this Contract and which have been previously found by Buyer, the Department of Energy, or the Department of Commerce to be counterfeit or which are listed by the Department of Commerce to be suspect will be deemed, without more proof, to be subject to the above requirement of further proof or certification. Buyer also reserves the right to question the circumstances and make available a report of any such review to the Government. All costs associated with conducting inquiries into and reporting on fasteners and components determined to be counterfeit shall be recovered by Buyer from Contractor.

17.0 TAXES

The Contractor shall not assess and collect Washington State sales or use tax from the Buyer for materials with respect to this Contract. The Buyer, Mission Support Alliance (Washington State UBI Number 602-931-756), is in possession of a DIRECT PAY PERMIT (number 80) issued by Washington State Department of Revenue, effective August 1, 2009 through July 31, 2013, and shall pay a use tax attributable to materials used in performing work under this Contract. A copy is available from the Buyer upon request. All other Federal, state, county, municipal or other sales, use, excise or similar taxes must be included in the Contract amount. If the Contractor, as a result of this Contract becomes eligible for Washington State Business and Occupation Tax Credit for Research and Development spending, the Contractor shall take such tax credit and assign such tax credit to the Buyer. Note that labor charges for construction and demolition services, which are applied to real property owned by the U.S. Department of Energy, are exempt from sales and use tax.



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18.0 INVOICING AND PAYMENT

Contractor shall prepare all invoices in a form satisfactory to and approved by Buyer. Except to the extent expressly stated elsewhere in this Contract, the Contract price shall be payable thirty (30) calendar days after receipt by Buyer of a proper invoice. All unit pricing, and payments made, shall be in U.S. dollars only, in the forms of cash, check or electronic transfer as may be agreed upon.

As a minimum, the invoice shall clearly identify the invoice number, contract, release and/or item number(s) for which payment is being requested, and contain a corresponding description of each item billed, and amount being billed. Submittal of an invoice constitutes Contractor's certification that the materials, work and/or services have been delivered and are in accordance with all terms of the Contract.

At Buyer's request Contractor shall furnish evidence, satisfactory to Buyer, that all labor and materials furnished and equipment used during the period covered by any invoice has been paid for in full and that the work is not subject to liens or claims on account thereof. Buyer may withhold payment of invoices until Contractor furnishes such evidence.

In the event an invoice is submitted, in accordance with Contract terms, for work accomplished on a reimbursable or unit price/unit rate basis, it shall be accompanied by documentation supporting each element of measurement and/or cost. The final invoice shall be submitted for payment after completion and acceptance of work by Buyer and compliance by Contractor with all terms of this Contract. It shall be supported by a written acceptance of the work signed by buyer, and a certification and release.

Any invoice submitted, which fails to comply with the terms of this Contract, including the requirements of form and documentation, may be returned to Contractor. Any costs associated with the resubmission of a proper invoice shall be to Contractor's account. Final payment shall not relieve Contractor of any obligation under Contract guarantees.

19.0 TITLE AND OFFSETS

Contractor warrants full and unrestricted title to the Government for all items purchased under this Contract and is free and clear of any and all liens, restrictions, reservations, security interests, and encumbrances. Excess items received that are of a nominal value shall be kept by Buyer at no cost to the Buyer. All items received in excess of Contract requirements that are returned shall be returned at Contractor's expense.

Buyer is entitled to offset and/or deduct any amount owed to the Contractor under this Contract for any amounts owed the Buyer under this Contract or any other contract with the Buyer.

20.0 CONFIDENTIAL AND CONTROLLED-USE INFORMATION

Confidential and Controlled-Use Information obtained by Contractor from Buyer or the Government in connection with this contract shall be held in confidence by Contractor and shall not be disclosed to third parties or used by Contractor for any purpose other than for the performance of work or as authorized in writing by Buyer. All such documents furnished by Buyer or the Government to Contractor shall remain their property, and upon completion of the work Contractor shall, as requested by Buyer, either destroy or return such documentation including any copies thereof.

Contractor shall not make news releases, publicize or issue advertising pertaining to the work or this Contract without first obtaining the written approval of Buyer.



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21.0 FAR AND DEAR CLAUSE FLOWDOWN

FAR 52.242-15 Stop-Work (August 1989) Alternate I (Apr 1984)

- A. The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either--
- (1) Cancel the stop-work order; or
 - (2) Terminate the work covered by the order as provided in the termination clause of this contract.
- B. If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected, and the contract shall be modified, in writing, accordingly, if--
- (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
 - (2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.
- C. If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- D. If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

FAR 52.244-6 Subcontracts For Commercial Items (Mar 2007)

- A. Definitions. As used in this clause--
- “Commercial item” has the meaning contained Federal Acquisition Regulation 2.101, Definitions.
- “Subcontract” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.
- B. To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or no developmental items as components of items to be supplied under this contract.
- C. The Contractor shall insert the following clauses in subcontracts for commercial items:
1. 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2)(3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to



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small business concerns) exceed \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

2. 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).
3. 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212(a));
4. 52.222-36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793).
5. 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201). (Flow down a required in accordance with paragraph (g) of FAR clause 52.222-39.)
6. 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631) (flow down required in accordance with paragraph (d) of FAR clause 52.247-64).

While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

- D. The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

22.0 CLAUSES INCORPORATED BY REFERENCE

In as much as Government funds are being used to make payment against this Contract, the following Federal Acquisition Regulation (FAR) and Department of Energy Acquisition Regulations (DEAR) clause(s) are hereby incorporated by reference into this Contract and shall apply as applicable. For these specific provisions, Contractor means Contractor and Contracting Officer means the assigned Buyer. The text of the FAR/DEAR clauses may be obtained from the Buyer upon request or by linking to the regulations via the Buyer's INTERNET homepage at www.hanford.gov/pmm

FAR/DEAR REFERENCE	CLAUSE TITLE	NOTE
FAR 52.219-8	Utilization of Small Business Concerns (May 2004)	
FAR 52.222-26	Equal Opportunity (E.O. 11246) (Mar 2007)	
FAR 52.222-35	Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001)	
FAR 52.222-36	Affirmative Action for Workers with Disabilities (29 U.S.C. 793) (Jun 1998)	
FAR 52.222-39	Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004)	Applies over \$100,000
FAR 52.222-54	Employment Eligibility Verification (Jan 2009)	
FAR 52.222-41	Service Contract Act of 1965 (Nov 2007)	
FAR 52.223-15	Energy Efficiency in Energy Consuming Products (Dec 2007)	
FAR 52.223-16	IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products (Dec 2007)	
FAR 52.225-13	Restrictions on Certain Foreign Purchases (Feb 2006)	
FAR 52.247-64	Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006)	
DEAR 952.203-70	Whistleblower Protection for Contractor Employees (Dec 2000)	
DEAR 952.204-2	Security (May 2002)	
DEAR 952.208-70	Printing (Apr 1984)	