

**WASHINGTON RIVER PROTECTION SOLUTIONS (WRPS)
TIME AND MATERIAL/LABOR HOUR CONTRACT TYPE
SUPPLEMENTAL PROVISIONS
March 4, 2020, Revision 9**

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DEFINITIONS

Whenever used in this document, the following definitions shall apply unless the content indicates otherwise.

Authorized Procurement Representative. The term “Authorized Procurement Representative” shall be a person with authority to enter into and administer Subcontracts and make related determinations and findings. These individuals are identified with the associated authority in the body of the Subcontract.

Buyer’s Technical Representative (BTR). The term “Buyer’s Technical Representative (BTR)” means the individual responsible for providing technical direction to the SUBCONTRACTOR. The BTR does not possess any explicit, apparent, or implied authority to modify Subcontract terms and conditions.

BUYER. The term “BUYER” means Washington River Protection Solutions, LLC (WRPS).

Government. The term “Government” shall mean the United States of America and includes the U.S. Department of Energy (DOE) Office of River Protection (ORP), or any duly authorized representative thereof, including the BUYER’s Administrative Contracting Officer (ACO).

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Head of the Procurement Activity. The term “Head of the Procurement Activity” means the individual who has the overall responsibility for the operations of the WRPS Procurement Office.

Lower-Tier Subcontractors. The term “lower-tier Subcontractors” refers to companies or individuals with whom the SUBCONTRACTOR has purchase orders, subcontracts, and rental agreements for materials or equipment, and other services not performed directly by the SUBCONTRACTOR under this Subcontract.

SUBCONTRACTOR. The term SUBCONTRACTOR refers to the company, person, or organization, including all lower-tier Subcontractors, performing Work under this Subcontract.

Subcontract. The term Subcontract shall mean this Subcontract or Purchase Order between the BUYER and the SUBCONTRACTOR including its terms, conditions, clauses, provisions, written direction and instructions, releases, and documents.

Work. The term “Work” includes all material, labor, tools, and all appliances, machinery, and transportation, necessary to perform and complete the Subcontract’s requirements, and such additional items not specifically indicated or described that can be reasonably inferred as required to complete the Subcontract.

ARTICLE 1.0 CONTRACT TYPE

1.1 Labor Hour

If identified and provided for in the body of this Subcontract, this Subcontract is a Labor-Hour contract type and direct labor hours are to be provided at specified fixed hourly rates that include wages, overhead, general and administrative expenses, other indirect costs consistent with the SUBCONTRACTOR’s established accounting practices and profit. “Hourly rate” means the rate(s) prescribed in the Subcontract for payment for labor that meets the labor category qualification of a labor category specified in the Subcontract. No other direct costs (ODCs) of Materials, as defined in 1.2 below, will be reimbursed under this Subcontract.

1.2 Time and Materials

If identified and provided for in the body of this Subcontract, this Subcontract is a Time and Materials (T&M) contract type. Labor and Materials will be reimbursed under this contract type.

a. Definitions for the purposes of T&M type contracts include:

“Hourly rate” means the rate(s) prescribed in the Subcontract for payment for labor that meets the labor category qualification of a labor category specified in the Subcontract that are—

- (1) Performed by the Subcontractor;
- (2) Performed by the lower-tier subcontractors; or
- (3) Transferred between divisions, subsidiaries, or affiliates of the contractor under a common control.

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“Materials” means—

- (1) Direct materials, including supplies transferred between divisions, subsidiaries, or affiliates of the Subcontractor under a common control;
- (2) Lower-tier subcontracts for supplies and incidental services for which there is not a labor category specified in the Subcontract;
- (3) Other direct costs (*e.g.*, incidental services for which there is not a labor category specified in the Subcontract, travel, computer usage charges, etc.); and
- (4) Applicable indirect costs.

b. Requirements

Direct labor hours will be provided at specified fixed hourly rates that include wages, overhead, general and administration, other indirect costs consistent with the SUBCONTRACTOR’s established accounting practices, and profit.

Reimbursable direct costs shall not include any costs arising for the letting, administration, or supervision of performance of the Subcontract, if the costs are included in the fully burdened hourly rates identified in the Subcontract’s Compensation Schedule (*e.g.*, already included as an Overhead/G&A expense in the fully burdened hourly rate).

Materials that will be reimbursed shall meet the following conditions under this contract type:

- Materials must be allocable, allowable, and reasonable.
- Materials include direct materials, subcontracts, purchases, travel and if applicable, Washington Business and Occupation (B&O) taxes.
- Materials, which enter directly into the service provided, or which are used or consumed directly in connection with the furnishing of the end product. The amount invoiced for these materials will be based on actual incurred costs.
- The SUBCONTRACTOR may apply a material handling and/or general and administrative expense to Materials consistent with the SUBCONTRACTOR’s established accounting practices and consistent with Federal Acquisition Regulations (FAR) Subpart 31.2.
- A pre-determined (*i.e.*, fixed percentage) material handling and/or general and administrative rate(s) shall not be applied as this will be considered a cost-plus-percentage-of-cost type subcontract, which is prohibited for use on Federal contracts.
- The SUBCONTRACTOR profit or fee shall not be applied to ODCs.
- ODCs must be exclusive of all other accounts and not be recovered in the fully burdened hourly direct labor rate(s).
- The BUYER will make payments to the SUBCONTRACTOR in amounts determined to be allowable by the Authorized Procurement Representative in accordance with Federal Acquisition Regulations (FAR) Subpart 31.2 in effect on the date of this Subcontract and the terms of this Subcontract.

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To the extent able, the SUBCONTRACTOR shall obtain materials and services at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and obtain all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. Credit shall be given to the BUYER for cash and trade discounts, rebates, allowances, credits, salvage, the value of any appreciable scrap, commissions, and other amounts that have accrued to the benefit of the SUBCONTRACTOR, or would have accrued except for the fault or neglect of the SUBCONTRACTOR. The benefits lost without fault or neglect on the part of the SUBCONTRACTOR, or lost through fault of the BUYER, shall not be deducted from gross costs.

ARTICLE 2.0 ORDER OF PRECEDENCE

In the event of a discrepancy among any of the Subcontract terms, conditions, clauses, provisions, including the Authorized Procurement Representative's written direction and instructions, and other documents (collectively, the 'Subcontract'), the following order of precedence shall govern resolution:

- (i) Amendments (e.g. Modification);
- (ii) Contract Agreement (i.e. Subcontract, Purchase Orders, and Release or Task Orders);
- (iii) Special Provisions;
- (iv) On-Site Work Provisions;
- (v) Construction Provisions;
- (vi) Supplemental Provisions;
- (vii) General Provisions;
- (viii) Statement of Work ('SOW');
- (ix) Technical Specifications; and
- (x) (viii) Drawings.

Nothing recited above shall be construed as superseding or deleting any applicable statute, rule, ordinance, or regulation (collectively, the 'Laws'). In the event of a conflict with Laws, the specific conflicting term of the Subcontract shall be considered null and without effect, Laws shall govern. All remaining terms unaffected by said Laws should continue in force.

All correspondence, questions, and items concerning interpretation or clarification of subcontracts shall be submitted in writing to the Authorized Procurement Representative.

Subject to the provisions of the "Changes" Article contained herein, all determinations, instructions, and clarifications provided by the Authorized Procurement Representative shall be final and conclusive unless the Subcontractor believes such determinations, instruction or clarifications result in a conflict within the Subcontract and/or attachments, in which case the Subcontractor shall identify such perceived conflict to the Authorized Procurement Representative prior to proceeding under the terms of the Disputes clause.

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ARTICLE 3.0 TERMS OF PAYMENT

3.1 General Invoice Requirements

- a. Invoice Submission Requirements. Original invoices and supporting documentation shall be submitted no more than once a calendar month to the BUYER's Accounts Payable organization at the address below:

WASHINGTON RIVER PROTECTION SOLUTIONS (WRPS)
Accounts Payable/Mail Stop: H1-40
P.O. Box 850
Richland, WA 99352
Email electronic invoices to: WRPSAPINVOICES@rl.gov

- b. Invoice Payment Terms. The SUBCONTRACTOR shall prepare all invoices in a form satisfactory to and approved by the Authorized Procurement Representative. Except to the extent expressly stated elsewhere in this Subcontract, the invoice is payable thirty (30) calendar days after receipt by the BUYER of a properly marked and submitted invoice. Discounts are expected for earlier payments and shall be specifically incorporated in the Subcontract. All unit pricing and payments made shall be in United States dollars only, in the forms of cash, check, or electronic transfer as may be agreed upon. Remittance will be made only to the remittance address on file for the SUBCONTRACTOR. Invoices from third parties or with different remittance instructions or addresses will not be processed. Invoices may be submitted electronically, if in an acceptable format. All invoice requirements still apply to electronic invoices.
- c. Invoice Certification. Submittal of an invoice constitutes the SUBCONTRACTOR's certification that materials, work and/or services have been delivered as specified on the invoice in accordance with the Subcontract. This invoice certification additionally represents that all invoiced hours and materials are true, accurate and correctly represent the invoiced costs to accomplish this Work on the Subcontract. Falsely invoicing costs may result in civil or criminal penalties as a violation of the Federal False Claims Act (31 USC 37296).
- d. Separate Invoice Requirements. Each Subcontract or Subcontract Release shall be invoiced separately.
- e. Minimum Invoice Requirements. The invoice shall identify the following information:
- The SUBCONTRACTOR's name, invoice number, and Subcontract number, and Release number.
 - The SUBCONTRACTOR's name and telephone number of a representative available to respond to invoice questions.
 - The total amount due for the billing period (this amount shall be separate from cumulative amounts or subtotals included on the invoice).
 - A cost summary identifying all cost elements being invoiced. Cumulative values (i.e., invoiced to date values) for each item being invoiced are requested to be included as part of the invoice submission.

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- Each invoice must include a separate line item for sales tax unless an exemption from sales tax is specifically cited in the body of the Subcontract. Invoices that do not include a separate line item for sales tax will not be paid and will be returned to the Subcontractor.
 - The Subcontractor must provide itemized receipts, unless justification is provided explaining why itemized receipts cannot be provided. Credit card statements are not acceptable as invoice supporting documentation.
 - A synopsis with sufficient details to describe the work performed within the Period of Performance of the invoice. Note: Not applicable to Construction Subcontracts or Staff Augmentation Subcontracts which utilize the CLTR system for time recording.
 - Timekeeping Records shall be provided with each invoice submittal (except for Sole Proprietor - reference below). Timekeeping records submitted may be a system generated document, or equivalent, that identifies the project (job) number, employee name, dates worked and all associated daily hours and totals. These records shall be attached to the invoice and be included as part of the Invoice Certification requirement identified within this document.
 - A Sole Proprietor is when the business owner performs the Work. A Sole Proprietor shall submit invoices that identifies the project (job) number, dates worked, and all associated daily hours and totals. These records shall be attached to the invoice and be included as part of the Invoice Certification requirement identified within this document.
 - If overtime is being invoiced, the BUYER's authorization is required to be included with the invoice submittal.
 - A listing of ODCs invoiced that reconcile to the Subcontract's Compensation Schedule with supporting documentation as required by the Authorized Procurement Representative.
 - A corresponding description of each item billed and the associated amount.
 - Invoices that include a total freight charge that is equal to or greater than one hundred dollars (\$100) must include a copy of the freight bill. If requested, the SUBCONTRACTOR must provide the weight, quantity, and shipping point. Subcontractor shall be reimbursed for reasonable freight charges as determined by the BUYER.
- f. Fully Burdened Hourly Rate. Unless specified otherwise, the invoiced amount shall be computed by multiplying the appropriate hourly rate prescribed in the Subcontract's Compensation Schedule by the number of direct billable labor hours. The rates shall include wages, indirect costs, general and administrative expense, and profit. Fractional parts of an hour shall be payable on a prorated basis.
- g. Identification of Uncompensated Overtime. Uncompensated overtime means the hours worked without additional compensation in excess of an average of forty (40) hours per week by direct charging employees who are exempt from the Fair Labor Standards Act. Compensated personal absences such as holidays, vacations, and sick leave shall be included in the normal workweek for purposes of computing uncompensated overtime hours.

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The SUBCONTRACTOR's reporting of uncompensated overtime must be consistent with its established accounting practices and policies used to accumulate and report uncompensated overtime hours.

- h. Rejection of Invoices. Any invoice submitted, which fails to comply with the terms of this Subcontract, including the requirements of form and documentation, may be returned to the SUBCONTRACTOR. Any costs associated with the resubmission of an invoice to meet these requirements shall not be reimbursed by the BUYER.
- i. Withholding Invoice Payments. The BUYER may, at its sole discretion, withhold payment due for, but not limited to, the following reasons:
- Substandard Work or delays in the Work not corrected promptly.
 - Evidence that a claim has been or will be filed against the SUBCONTRACTOR.
 - Evidence that lower tier Subcontractors or suppliers have not been properly paid.
 - Failure to provide accrual reports by the 16th of each month as specified in the Subcontract provisions.
- j. Accruals. This provision applies to all Subcontracts unless the Subcontract is for one-time Work which will be billed during the month the Work was performed. The SUBCONTRACTOR shall provide monthly to the BUYER's Accounts Payable an estimate of the total billable cost from inception of the Subcontract through the current fiscal month end. The Fiscal Year Calendar can be accessed on the [Hanford external web site](#). This information must be provided electronically between the 12th and the 16th of each month using the login information contained in the SUBCONTRACTOR's confirmation email when the SUBCONTRACTOR completed its initial vendor registration with the BUYER.

Accruals are submitted through the Vendor Registration System at [Vendor Registration](#). Click on the accruals tab at the top of the screen and enter the current cost to date amount for the subcontract or release in the appropriate space. If you experience any technical difficulties, please contact us at wrps_procurement@rl.gov. Alternative methods are email or mail and must be submitted by the 16th of each month to the following address.

WASHINGTON RIVER PROTECTION SOLUTIONS (WRPS)
ATTN: Accounts Payable / MSIN H1-40
P.O. Box 850
Richland, WA 99352
Email: awrps@rl.gov

Monthly SUBCONTRACTOR cost to date forms can be obtained at the following link --
[Subcontractor Cost to Date Form @ https://www.hanford.gov/tocpmm/page.cfm/Forms](https://www.hanford.gov/tocpmm/page.cfm/Forms).

Accrual data must be provided for each Subcontract or Subcontract release until all SUBCONTRACTOR invoices are received and Work is complete.

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3.2 Reimbursement of Travel Expenses

Only when authorized by the Buyer's authorized procurement representative prior to arranging, conducting, and/or incurring travel expenses by the Subcontractor or the Subcontractor's employees, the Subcontractor will be reimbursed for travel expenses incurred in performance of this subcontract. Expenses reimbursed are limited to costs incurred for transportation, lodging, meals, and incidentals expenses (M&IE) considered reasonable, allowable, and allocable (per the Federal Acquisition Regulation (FAR)) and do not exceed the maximum per diem rates in effect at the time of travel within the forty-eight (48) states as set forth in the Federal Travel Regulations (FTR). Subcontractor will take reasonable steps to minimize the amount of travel expenses.

- Allowable under the FAR, and the provisions of this Subcontract
- Reasonable
- Allocable and necessary to the performance of this Subcontract
- Travel time for a subcontracted professional employee is NOT billable unless specified in the Subcontract.
- Travel time for a subcontracted employee who is covered under the Fair Labor Standards Act IS billable per the Department of Labor.

Travel expense reimbursement requests must be invoiced in accordance with the subcontract invoicing requirements. Receipts must show the full original itinerary, including the name of the person(s) traveling, travel dates, travel times, and destination. Airfare costs must be separated from any lodging, car rental and/or any other travel charges, and must list the airfare class, agency fees, and that the lowest reasonably available airfare was booked. Subcontractor must provide itemized receipts for all airfare, agency fees, lodging, and car rental company charges regardless of dollar amount AND any other travel expenditures of \$75.00 or more.

The Subcontractor is expected to take reasonable steps to mitigate the amount of travel expense. When work assignments are such that travel for any one employee would exceed a short term (typically more than 30 days), the Subcontractor is expected to propose and implement lower cost alternatives (such as long term lodging, temporary relocation, long term car rental, etc.).

Submittal of an invoice to the Buyer that includes travel expenses signifies Subcontractor's certification to all travel requirements outlined in this Subcontract. Failure to comply with the requirements may cause any request for travel reimbursement to be reduced or denied.

3.3 Cash Discounts

Cash discounts will apply from the date a correct, properly supported invoice is received by the BUYER.

3.4 Refunds

The SUBCONTRACTOR agrees that any refunds, rebates, or credits (including any related interest) accruing to or received by the SUBCONTRACTOR or any assignee, that arise under the materials portion of this Subcontract and for which the SUBCONTRACTOR has received reimbursement, shall be paid by the SUBCONTRACTOR to the BUYER.

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3.5 Taxes

The SUBCONTRACTOR shall collect the applicable Washington State sales or use tax and include this on each applicable invoice. Sales tax must be listed as a separate line item on the invoice as stated in 3.1e above. If the SUBCONTRACTOR is an out of state vendor with no nexus in the State of Washington, taxes will be paid by BUYER. SUBCONTRACTOR shall notify the Authorized Procurement Representative if they don't have a nexus in the State of Washington. All other Federal, State, county, municipal or other taxes must be included in the Subcontract amount and invoiced accordingly.

If as a result of this Subcontract, the SUBCONTRACTOR becomes eligible for Washington State Business and Occupation Tax Credit for Research and Development spending, the SUBCONTRACTOR shall take such tax credit and assign such tax credit to the BUYER. If the SUBCONTRACTOR applies for the Washington State Business and Occupation Tax Credit for Research and Development spending, the SUBCONTRACTOR shall notify the Authorized Procurement Representative. The SUBCONTRACTOR shall fully cooperate with the BUYER in any tax audits, tax assessment reviews, or tax challenges.

3.6 Right to Offset

The BUYER, without waiver or limitation of any rights or remedies of the BUYER, shall be entitled from time to time to deduct from any amounts due or owing by the BUYER to the SUBCONTRACTOR in connection with this Subcontract (or any other Subcontract with the BUYER), any and all amounts owed by the SUBCONTRACTOR to the BUYER or the Government in connection with this Subcontract.

3.7 Interest Payment

No interest is payable to the SUBCONTRACTOR for any claim it may have, except that specifically imposed by a court of competent jurisdiction on any judgment, and then only in accordance with the terms of the judgment.

3.8 Audit

Audit clauses contained in General Provisions at DEAR 970.5232-3, (Jun 2007, Alt 1 (Jun 2000) entitled Accounts, Records, and Inspection and FAR clause 52.215-2, (Jun 2009), Alt 1 (Mar 2009) entitled Audit and Record-Negotiation are available for use by the BUYER and Department of Energy, if necessary, for auditing Subcontractor records.

3.9 Final Payment

Upon completion of the Work, the SUBCONTRACTOR will notify the Authorized Procurement Representative, in writing that the Work is complete and that final payment is due. The final invoice shall be clearly marked "FINAL PAYMENT" and submitted for reimbursement after completion and acceptance of Work by the BUYER and compliance by the SUBCONTRACTOR with all terms of this Subcontract. The final invoice shall be supported by all requested certifications and releases needed to close out the Subcontract including, but not limited to, the "Subcontractor Release of Claims." If the Work has been completed in accordance with this Subcontract, final payment will be made in accordance with the terms of this Subcontract. Final Payment shall not relieve the SUBCONTRACTOR of any obligation under this Subcontract.

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3.10 Limitation of Funds (Ceiling Price)

- a. The Subcontract (or Subcontract release) specifies the dollar amount authorized, the items covered, and the period of performance, the amount will cover. The SUBCONTRACTOR agrees to perform, or have performed, Work on the Subcontract up to the point at which the total amount paid and payable under the Subcontract, approximates, but does not exceed the total amount authorized on the Subcontract.
- b. When the parties have negotiated a total award value which exceeds current funding, the authorized funds on the resulting Subcontract will be limited using a limitation of funding provision.
- c. The authorized funding shall be considered a ceiling price which may not be exceeded until the Authorized Procurement Representative notifies the SUBCONTRACTOR in writing that the ceiling price has been increased and shall have specified in the notice a revised ceiling that shall constitute the ceiling price for performance under this Subcontract.
- d. The SUBCONTRACTOR shall notify the Authorized Procurement Representative identified in the Subcontract, in writing whenever it has reason to believe that the costs it expects to incur under this Subcontract in the next sixty (60) days, when added to all costs previously incurred, will exceed seventy-five (75) percent of the total amount so far allotted to this Subcontract. The notice shall state the estimated date when such allotted amount will be reached and estimated amount of additional funds required to continue performance for the period specified in the Subcontract. If after such notification, additional funds are not obligated by the end of estimated reach date or by an another agreed date, the BUYER's authorized procurement representative shall upon SUBCONTRACTOR's written request, terminate this Subcontract on the performance end date or the date set forth in the request, whichever is later, pursuant to the provisions of the Termination provision of this Subcontract.
- e. Except as provided by other provisions of this Subcontract, specifically citing and stated to be an exception to this provision, the BUYER's authorized procurement representative is not obligated to reimburse the SUBCONTRACTOR for costs incurred in excess of the total authorized funding; and the SUBCONTRACTOR is not obligated to continue performance under this Subcontract (including actions under the termination provision) or otherwise incur costs in excess of the allotted amount of this Subcontract, until the BUYER's authorized procurement representative notifies the SUBCONTRACTOR in writing that the allotted amount has been increased and specifies the revised total allotted amount.
- f. No notice, communication, or representation in any form or by anyone other than the BUYER's authorized procurement representative shall affect the authorized amount of this Subcontract. In the absence of the SUBCONTRACTOR's notification as described above, the BUYER's authorized procurement representative is not obligated to reimburse the SUBCONTRACTOR for any costs in excess of the total authorized funding, whether incurred during the course of performance period, a termination, or result of an audit.
- g. When, and to the extent that the amount authorized by the BUYER's authorized procurement representative is increased, any excess costs the SUBCONTRACTOR incurred before this

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amendment shall be allowable to the same extent as if incurred afterward, unless this Subcontract was terminated.

- h. Change orders (amendments) shall not be considered an authorization to exceed the estimated cost to the BUYER specified in the Subcontract, unless the change order (amendment) contains a statement increasing the Subcontract's estimated funding.

ARTICLE 4.0 CHANGES – TIME-AND-MATERIALS OR LABOR-HOUR (FAR 52.243-3) (SEP 2000) (MODIFIED)*

Note: This clause is intended for Non-Davis Bacon Act Subcontracts. Refer to the Construction Supplemental Provisions, Article 3.0, “Changes – Time and Material – Construction Subcontracts,” for Subcontracts governed by the Davis Bacon Act.

(a) The Buyer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in any one or more of the following:

- (1) Description of services to be performed.
- (2) Time of performance (*i.e.*, hours of the day, days of the week, etc.)
- (3) Place of performance of the services.
- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Buyer in accordance with the drawings, designs, or specifications.
- (5) Method of shipment or packing of supplies.
- (6) Place of delivery.
- (7) Amount of Buyer-furnished property.

(b) If any change causes an increase or decrease in any hourly rate, the ceiling price, or the time required for performance of any part of the work under this subcontract, whether or not changed by the order, or otherwise affects any other terms and conditions of this subcontract, the Buyer will make an equitable adjustment in any one or more of the following and will modify the subcontract accordingly:

- (1) Ceiling price.
- (2) Hourly rates.
- (3) Delivery schedule.
- (4) Other affected terms.

(c) The Subcontractor shall assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Buyer decides that the facts justify it, the Buyer may receive and act upon a proposal submitted before final payment of the subcontract.

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(d) Failure to agree to any adjustment will be a dispute under the Disputes clause. However, nothing in this clause excuses the Subcontractor from proceeding with the subcontract as changed.

ARTICLE 5.0 WARRANTY*

The SUBCONTRACTOR warrants that all supplies and services provided under this Subcontract shall conform to the Statement of Work and/or specification included in this Subcontract. The SUBCONTRACTOR further warrants that all supplies provided as part of the Work shall be new, not refurbished or reconditioned; preserved, packaged, marked and prepared for shipment in a manner conforming to the requirements of applicable law and regulation and this Subcontract; and of an even kind, quality, and quantity within each unit and among all units.

These warranty obligations shall survive for one (1) year after acceptance of the supplies or the completion of the Work performance hereunder unless a longer warranty period is called for in any writing including, without limitation, specifications, drawings, or proposals furnished by or to the BUYER. The BUYER shall notify the SUBCONTRACTOR of any warranty claim within thirty (30) days after discovering the basis to raise such claim.

The SUBCONTRACTOR shall bear all costs and risk for correction or replacement of defective supplies or services, and in the case of supplies, for the cost of return of conforming supplies to the BUYER. Any of the supplies or parts thereof, corrected or furnished in replacement under this warranty provision, shall also be subject to the terms of this paragraph to the same extent as the supplies initially delivered. If replacement or correction is not completed promptly after notice of the defect or if a cure does not appear feasible, the BUYER shall have the right to either (i) obtain equivalent supplies or services from other sources (or to provide such supplies or services from internal sources) and to charge the cost thereof to the SUBCONTRACTOR or (ii) demand a refund of the funds paid by the BUYER for the defective supplies or services. At the BUYER's Authorized Procurement Representative's request, the SUBCONTRACTOR shall provide a schedule for completing any proposed cure for defective supplies or services. Failure to provide a schedule within ten (10) working days shall be deemed grounds for the BUYER to exercise its rights under this provision.

If the SUBCONTRACTOR disputes the BUYER's warranty claim, the SUBCONTRACTOR shall nevertheless proceed to correct or replace the defective supplies or services. In the event it is later determined that the supplies or services were not defective, the BUYER shall equitably adjust the amount paid, or to be paid under the Subcontract to compensate the SUBCONTRACTOR for the additional supplies or services provided, subject to offset for any conforming supplies returned by the BUYER.

The SUBCONTRACTOR shall provide instructions for pick up or disposal of defective supplies. Notwithstanding the provision entitled "Final Acceptance" hereof, title to, and risk of loss of, defective supplies that are returned for replacement or refund shall revert to the SUBCONTRACTOR upon notice of the defect. If the SUBCONTRACTOR fails to furnish timely disposition instructions, the BUYER may dispose of the defective supplies for the SUBCONTRACTOR's account in a reasonable manner. The BUYER is entitled to reimbursement from the SUBCONTRACTOR, or from the proceeds of such disposal, for the reasonable expenses of the care and disposition of the defective supplies, as well as for excess costs incurred or to be incurred as a result of the breach of warranty. The rights and remedies of the BUYER provided in this paragraph are in addition to and do not limit any rights afforded to the BUYER by applicable law or any other term of this Subcontract.

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March 4, 2020, Revision 9**

Without limiting the SUBCONTRACTOR's liability under the warranties set out above, the SUBCONTRACTOR shall assign to the BUYER all manufacturer's warranties for supplies provided to the BUYER or other property acquired by the SUBCONTRACTOR at the BUYER's expense to which the BUYER takes title under the provision entitled "Final Acceptance" in the BUYER's general provisions.

ARTICLE 6.0 SUPPLEMENTAL TERMS AND CONDITIONS

General Intent. This agreement is subject to the terms and conditions of BUYER's Prime Contract Number DE-AC27-08RV14800. The general intent of these provisions is to incorporate into the purchase order or Subcontract all required Federal Acquisition Regulation (FAR) flow down clauses, and any other State or Federally-mandated Subcontract clauses, which are required to be so incorporated either by the FAR, BUYER's Prime Contract or the applicable State or Federal law.

To reference the cited FAR flow down clauses, the following links are provided:

<http://farsite.hill.af.mil/>

<https://www.acquisition.gov/>

Substitution of the Parties. Wherever required to make any FAR clause incorporated herein meaningful, the term "Contractor" shall be read "Subcontractor," the term "Administrative Contracting Officer" or "ACO" shall be read "AUTHORIZED PROCUREMENT REPRESENTATIVE," the term "Head of the Contracting Activity" shall be read "HEAD OF THE PROCUREMENT ACTIVITY" - and the term "Government" or "Contracting Officer" shall be read "BUYER."

Specific Incorporated Clauses. Without in any way limiting, the following FAR clauses are hereby specifically incorporated herein by reference with the same force and effect as if they were given in full text.

6.1 Federal Acquisition Regulation (48 CFR Chapter 1) Clauses

Applicable to all orders:

1. DEAR 970.3102-05-46, Travel Costs
2. FAR 52.246-6, Inspection – Time and Material and Labor Hour (May 2001).
3. FAR 52.249-14, Excusable Delays (Apr 1984).