



**General Sale Terms and Conditions
for the Sale of Government Property
at the Oak Ridge National Laboratory (ORNL)**

1. DEFINITIONS

A) "**Seller**" shall mean the United States Department of Energy (DOE), acting on its own behalf, and UT-Battelle LLC, its employees and agents acting pursuant to Contract No. DE-AC05-00OR22725 with DOE.

B) "**Days**" is defined as calendar days.

C) "**Government**" as used herein shall mean the United States of America, and includes the U.S. DOE and any duly authorized representative.

D) "**Installation**" as used herein shall mean any properties owned by the United States Department of Energy and operated or occupied by UT-Battelle LLC personnel.

E) "**Invitation**" the Invitation for Bids issued with respect to the Property.

F) "**Property**" is defined as material, equipment, assets or a possession of any kind, which is owned, leased, or rented by the government and in the custody of ORNL, and is the subject of the sales Subcontract or is described in the Invitation to Bid.

G) "**Purchaser**" shall mean the successful Bidder hereunder to whom award is made.

H) "**Subcontract**" shall include the Invitation completed by Seller awarding a sale to Purchaser, any Special Conditions, and the General Sale Terms and Conditions. Any inconsistencies shall be resolved in accordance with the following descending order of precedence: (1) Special Conditions; (2) General Sale Terms and Conditions; and (3) Invitation.

2. INSPECTION

Bidders are invited and urged to inspect the Property to be sold prior to submitting bids. Property will be available for inspection at the place and times specified in the Invitation. Seller will not be obligated to furnish any labor for such purpose. In no case will failure to inspect constitute grounds for a claim for the withdrawal of a bid after opening, or rescission of this Subcontract.

3. CONDITION OF PROPERTY

Unless otherwise provided in this Subcontract, all Property is offered for sale "as is" and "where is" without recourse against the Seller or Government. Unless otherwise provided in this Subcontract, neither the Seller nor the Government make any guaranty, warranty, or representation, express or implied, as to quantity, kind, character, quality, weight, size, or description of any of the Property, or its fitness for any use or purpose. Except as provided in the conditions or other special conditions of the Subcontract, no request by Purchaser for adjustment in price or for rescission of the sale will be considered. This is not a sale by sample.

4. CONSIDERATION OF BIDS

Unless otherwise provided in the Invitation, telephonic bids will not be considered. The acceptance of electronic or facsimile bids is valid only when the bidder has received a verification of receipt of the bid from the ORNL Property Management organization.

The Bidder agrees that his/her bid will not be withdrawn for 30 days following the opening of bids or such other time as specified in the Invitation to Bid and that during such period his/her bid would remain firm and irrevocable. The Seller or Government reserves the right to reject any or all bids, including bids under which a Bidder could take unfair advantage of the Seller, Government or other Bidders, to waive any technical defects in bids, and unless otherwise specified by the Seller, Government or by the Bidder, to accept any one item or group of items in the bid, as may be in the best interest of the Government. Unless otherwise provided in the Invitation, a bid covering any listed items must be submitted on the basis of the unit specified for that item and must cover the total number of units designated for that item.

5. FORMS OF BID DEPOSITS AND PAYMENTS

Unless otherwise provided in the Invitation, bid deposits (when required by the Invitation) and all payments shall be in U.S. currency or any form of credit instruments other than promissory notes, made payable to UT-Battelle LLC. Personal or business checks must be first party instruments. If during any prior sale, the Bidder tendered an instrument, which was not paid by the drawee for any reason, and the Bidder was notified in writing by the Seller; UT-Battelle and Government reserves the right to reject and/or debar the buyer from future sales transactions with UT-Battelle.

Deposits accompanying bids (when required by the Invitation), which are not accepted, will be refunded to the Bidder. Deposits of successful Bidders may be applied against the Subcontract price.

6. BID PRICE DETERMINATION

When bids are solicited on a unit price basis, Bidders will insert their unit prices and total prices in the space provided on the Bid sheet for each item.

(a) In the event the Bidder inserts a total price on the item but fails to insert a unit price; the Seller will determine the unit price by dividing the total price by the quantity of the item set out in the Invitation. The unit price so determined shall be used for the purpose of bid evaluation, award and all phases of Subcontract administration.

(b) When bids are solicited on a "lot" basis, Bidders should submit a single total price on the bid sheet.

7. PAYMENT

The Purchaser agrees to pay for Property awarded to him/her in accordance with the prices quoted in his/her bid. If any adjustment or bid deposit is required through the provisions of the Subcontract, these must be made within the time specified in the Invitation and prior to removal of any of the Property.

Unless otherwise specified by the Seller, payment of the full purchase price must be made prior to the date specified for removal of any Property. The Purchaser will in no way be released from full compliance with the terms and conditions of this Subcontract by his resale of the Property.

8. TITLE

Unless otherwise provided in the Invitation, title to the Property sold hereunder shall vest in the Purchaser as and when full payment is received and removal of Property has been achieved. On all motor vehicles and motor-propelled or motor-drawn equipment requiring licensing by the State motor vehicle regulator agency, a certificate of release, Standard form 97, will be furnished for each vehicle and piece of equipment unless otherwise provided in the Invitation.

9. DELIVERY, LOADING AND REMOVAL OF PROPERTY

(a) Unless otherwise provided in the Invitation, the Purchaser shall be entitled to obtain the Property upon full payment therefore with removal of the Property being made only from the exact place where the Property is located within the installation and by the time specified in the Invitation. The Purchaser must make and pay for all arrangements necessary for packing, removal, and transportation of Property. Neither UT-Battelle, LLC, nor the Government will act as liaison in any fashion between the Purchaser and carrier, nor will the Seller or Government recommend a specific common carrier. Loading will only be performed as set forth in the Invitation, and unless otherwise provided in the Invitation, loading will not be performed on Saturdays, Sundays, Company holidays, or any day that the installation where the Property is located is closed. Where it is provided that the Seller will load, the Seller will make the initial placement of the Property on conveyance(s) furnished by the Purchaser and the initial placement on the Purchaser's conveyance shall be as determined by the Seller. Unless otherwise provided in the Invitation, the Seller will not block, chock, brace, lash, band, or in any other manner secure the Property on such conveyance(s) furnished by the Purchaser. Any details regarding removal of the Property as may not be provided for herein or in the Invitation, shall be arranged with the authorized representative of the Seller, which arrangements shall be reduced to writing.

(b) Where it is provided in the Invitation that the Seller will not load or that the Purchaser will load, the Purchaser will make all arrangements and perform all work necessary to effect removal of the Property. The Purchaser shall remove the Property at his/her expense within the period of time allowed in the Invitation.

(c) If the Seller determines that the failure to remove the Property within the period of time specified in the Invitation arose out of causes beyond the control and without the fault or negligence of the Purchaser, such determination shall be reduced to writing, and a reasonable extension of time for removal shall be allowed. Such causes may include, but are not restricted to acts of God or of the public enemy, acts of the Government in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather. If the Purchaser is permitted to remove the Property after the expiration of the time originally allowed for removal, the Seller, without limiting any other rights which it may have, may require the Purchaser to pay a reasonable storage charge for storage on Government or non-Government property, and Purchaser shall pay all costs incident to such storing including handling and moving charges. The Purchaser shall reimburse the Seller for any damage to Government property caused during the removal operations by the Purchaser or his authorized representative including any common carrier. These rights are in addition to the rights specified in Condition 10. Default.

(d) The Property will be released only to the Purchaser or his authorized representative. The authorized representative must furnish authorization from the Purchaser before any delivery or release of the Property will be made. When Property is described as being boxed, packed, crated, skidded, or in containers, the Seller does not warrant that the Property, as packaged, is suitable for shipment.

(e) Segregation, culling or selection of Property for the purpose of affecting partial or increment removals will not be permitted except as specifically authorized and prescribed by the Seller.

10. DEFAULT

If the Purchaser breaches the Subcontract by failure to make payment within the time allowed by the Subcontract, by failure to remove the Property as required by the Subcontract, or by breach of one or more of the other conditions of this Subcontract, including any Special Conditions, then the Seller may send the Purchaser a written notice of default giving Purchaser 10 days from the date the notice was mailed to cure the default.

Upon Purchaser's failure to cure such default within that period, the Purchaser shall lose all right, title and interest, which he might otherwise have acquired in and to such Property. Upon default the Seller shall have the right to resale the Property by any method or dispose of the Property. The Purchaser shall be responsible for all cost of storage of the Property until resale or disposal, including handling and moving charges and all cost of resale or disposal that are not recovered by Seller from the proceeds of any resale. Seller reserves the right to reject and/or debar the defaulting Purchaser from any future sales transactions.

To the extent Seller has received payment from the Purchaser for the Property, in the event of default, Seller shall be entitled to retain any amounts received until resale or disposal, and Seller shall be entitled to apply said amounts received against the costs of storage, including handling and moving charges, and cost of resale or disposal.

If Purchaser fails to pay amounts due for cost incurred by Seller for storage, resale, or disposal, as described herein, Purchaser shall be liable for interest, late payment handling charges, and penalty charges as described in Condition 11 and all Sellers' attorneys fees and costs to recover said amounts.

Seller may exercise any remedies available at law or in equity for a default by Purchaser occurring at any time under this Subcontract and shall be entitled to recover attorneys' fees and costs incurred to enforce this Subcontract.

11. INTEREST

Notwithstanding any other provision of this Subcontract, all payments not received within 30 days of the invoice date including payments due in case of default will be assessed interest at an annual rate of 6% on the amount due from the invoice date until the date of payment. A late payment handling charge of \$18.15 per month shall be imposed on delinquent invoices for each 30-day period of delinquency or portion thereof. A penalty charge assessed at an annual rate of 6% on any principal amount not paid within 90 days of the due date will be assessed from the date the debt becomes delinquent until the date of payment.

12. ADJUSTMENT FOR VARIATION IN QUANTITY OR WEIGHT

Weights listed in the Invitation to Bid are estimated amounts. The actual amounts may be higher or lower. Seller shall not be responsible to Purchaser for any variation between the estimated amounts and the actual amounts.

13. WEIGHING, SWITCHING, AND SPOTTING

Where weighing is necessary to determine the exact purchase price, the Seller or Government shall arrange for weighing the Property on available Government scales. If circumstances warrant the use of non UT-Battelle scales, the scales used shall be certified scales acceptable to both parties and shall be subject to inspection and validation by Seller. The Purchaser shall pay all switching and spotting charges unless such services are performed with Government-owned or Government-operated locomotives on Government Property.

14. RISK OF LOSS

The risk of loss or damage shall pass to the Purchaser when possession of the Property is transferred from the Seller to the Purchaser or its authorized representative including a common carrier. The Seller and/or Government will be responsible for the care and protection of the Property prior to the risk of loss passing to the Purchaser. If any loss, damage, or destruction to the Property occurs during such period the Seller will make necessary adjustments to the purchase price, to the extent the loss was not caused directly or indirectly by the Purchaser or its authorized representatives. At the discretion of the Seller, the adjustment may consist of rescission of the Subcontract and Purchaser agrees that it shall have no cause of action or claim against Seller for any damage whatsoever arising from such rescission. In the event of a rescission under this condition, the Seller shall be liable only for the refund of any amount of the Subcontract price paid by Purchaser. No adjustment will be authorized under this provision unless the Seller or Government is notified of the loss, damage or destruction prior to removal from the Installation of the Property or any portion of the lot to which a loss is claimed.

15. ORAL STATEMENTS AND MODIFICATIONS

Any oral statement or representation by any representative of the Seller or Government, changing, or supplementing the Invitation or Subcontract or any Condition thereof, is unauthorized and shall confer no right upon the Bidder or Purchaser. Further, no interpretation of any provision of the Subcontract, including applicable performance requirements, shall be binding on the Seller or Government unless furnished or agreed to, in writing, by the Seller or his/her designated representative.

16. COVENANT AGAINST CONTINGENT FEES

(a) The Purchaser warrants that no person or agency has been employed or retained to solicit or obtain this Subcontract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or established commercial or selling agencies maintained by the Purchaser for the purpose of doing business. For breach of this warranty, the Seller or the Government shall have the right to annul this Subcontract without liability or in its discretion, to deduct from the Subcontract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) "Bona fide agency" as used in this clause, means an established commercial or selling agency, maintained by a Purchaser for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government Subcontracts nor holds itself out as being able to obtain any Government Subcontract or Subcontracts through improper influence.

(c) "Bona fide employee" as used in this clause, means a person, employed by Purchaser and subject to the Purchaser's supervision and control as to time, place and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government Subcontracts nor holds out as being able to obtain any Government contract or Subcontracts through improper influence.

(d) "Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government Subcontract.

(e) "Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government Subcontract on any basis other than the merits of the matter.

17. OFFICIALS NOT TO BENEFIT

No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Subcontract or to any benefit that may arise there from, unless it is made with a corporation for its general benefit.

18. CERTIFICATE OF INDEPENDENT PRICE DETERMINATION

(a) By submission of this bid or proposal, the Bidder certifies, and in the case of a joint bid or proposal each party thereto certifies as to its own organization, that in connection with this sale:

(1) The prices in this bid or proposal have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices, with any other Bidder or with any competitor;

(2) Unless otherwise required by law, the prices which have been quoted in this bid or proposal have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, in the case of a bid, or prior to award, in the case of a proposal, directly or indirectly to any other Bidder or to any competitor, and

(3) No attempt has been made or will be made by the Bidder to induce any other person or firm to submit or not to submit a bid or proposal for the purpose of restricting competition.

(b) Each person signing this bid or proposal certifies that:

(1) He is the person in the Bidder's organization responsible within that organization for the decision as to the prices being bid or offered therein and that he has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3), above; or

(2) (i) He is not the person in the Bidder's organization responsible within that organization for the decision as to the prices being bid or offered herein but that he has been authorized in writing to act as Agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to (a)(1) through (a)(3), above, as their Agent does hereby so certify; and

(ii) He has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3), above and

(iii) As an Agent, has not personally participated and will not participate, in any action contrary to subparagraphs (a) (1) through (a) (3) above.

(3) This certification is not applicable to a foreign Bidder submitting a bid or proposal for a Subcontract, which requires performance or delivery outside the United States, its possessions, and Puerto Rico.

19. ASSIGNMENT OF SUBCONTRACTS

Purchaser shall not assign rights or obligations to third parties without prior written consent of Seller. Administration of this Subcontract may be transferred, in whole or in part, to DOE or its designee(s) and to the extent of such transfer and notice thereof to Purchaser, UT-Battelle, LLC, shall have no further responsibility.

20. CLAIMS LIABILITY

Neither the Government, the Seller, nor their officers, agents, and employees will be responsible for any injury to or death of persons or other living things, or damage to or destruction or loss of property, or for any other loss, damage or injury of any kind whatsoever resulting from the performance of this Subcontract by the Government, or the Seller to the extent such injury, death,

damage, destruction, or loss is not caused by the negligence or willful misconduct of the Government or the Seller. The Bidder or Purchaser agrees to indemnify and hold harmless the Government, the Seller and their officers, agents, and employees, from and against any and all liabilities, penalties, fines, forfeitures, claims, causes of action, and costs and expenses (including the costs of defense and/or settlement, including, but not limited to, attorney's fees), caused by, resulting from or arising out of, in whole or in part, the performance of this Subcontract, to the extent the liability is not caused by the negligence or willful misconduct of the Government or the Seller.

21. WITHDRAWAL OF PROPERTY AFTER AWARD

The Seller or Government reserves the right to withdraw for its use any or all of the Property covered by this Subcontract, if a bona fide requirement for the Property develops or exists prior to actual removal of the Property from Government or Seller possession. In the event of a withdrawal under this condition, the Seller shall be liable only for the refund of the Subcontract price of the withdrawn Property or such portion of the Subcontract price, as it may have received. Purchaser agrees it shall have no cause of action or claim against Seller for any damage whatsoever arising from said withdrawal of Property.

22. ELIGIBILITY OF BIDDERS

The Bidder warrants that he/she is not: (a) under 18 years of age; (b) an employee of an agency of the Federal Government (either as a civilian or as a member of the Armed Forces of the United States, including the United States Coast Guard, on active duty) prohibited by the regulations of that agency from purchasing Property sold hereunder; (c) an agent or immediate member of the household of the employee in (b) above. For breach of this warranty, this Subcontract shall be deemed in default under Condition 10.

23. PERSONS PROHIBITED FROM OR LIMITED IN BIDDING

If the Bidder is an employee of Oak Ridge National Laboratory, the U.S. Department of Energy, or a Subcontractor of the U.S. Department of Energy, he hereby represents that he (1) has not participated in the Seller's determination to dispose of the Property; (2) has not participated in the preparation of the Property for sale; (3) has not participated in determining the method of this sale; and (4) has not acquired information not otherwise available to the general public regarding usage, condition, quality, or value of the Property.

24. LATE BIDS, MODIFICATIONS OF BIDS, OR WITHDRAWAL OF BIDS

- (a) Any bid received at the address designated in Condition 4, or a different address if specified in the invitation, after the exact time specified for receipt may not be considered.
- (b) Any modification or withdrawal of a bid received at the address designated in Condition 4, or a different address if specified in the invitation, after the exact time specified for receipt will not be considered. A Bidder or his authorized representative may also withdraw a bid in person prior to the exact time set for receipt of bids. The acceptance of electronic or facsimile modifications or withdrawal of bids are valid only when the bidder has received a verification of receipt of the modification or withdrawal from the ORNL Property Management organization prior to the exact time set for receipt of bids.
- (c) Notwithstanding (a) and (b) of this provision, a late modification of an otherwise successful bid, which makes it terms more favorable to the Government, will be considered at any time it is received and may be accepted.

25. REQUIREMENTS TO COMPLY WITH APPLICABLE LAWS AND REGULATIONS

It is a material requirement of this invitation that it is the Bidder's responsibility to ascertain and comply with all applicable Federal, State, Local and multi-jurisdictional laws, ordinances, orders and regulations (including DOE Orders) pertaining to the registration, licensing, handling, possession, transportation, transfer, export, processing, manufacture, sale use or disposal of the Property, and provide written proof of registration, licensing, or other requirements. Purchasers or users of this Property are not excused from any violation of such laws or regulations either because the United States is a party to this sale or has had any interest in the Property at any time.

FINES AND PENALTIES

In the event that any actions that result in fines and/or penalties are taken by a local, state, or federal agency against the Seller or the Government for a regulatory and/or permit noncompliance that resulted from a failure of Purchaser to perform in accordance with this Invitation or local, state, or federal law, Purchaser shall reimburse Seller or the Government for the amount of the resultant fine and/or penalty including the cost of any additional work required as a result of the enforcement action to the extent caused by the Purchaser's or its authorized representative's negligence and/or failure.

26. EXPORT CONTROLLED PROPERTY

Personal Property purchased from the Seller is not being authorized for export/ import from/to the country where the personal Property is located. If export/import is allowed, the Purchaser is solely responsible for obtaining required clearances, licenses, or approvals. The Purchaser also is required to pass on DOE's export control guidance if the Property is resold or otherwise disposed.

The use, disposition, export and re-export of this Property is subject to all applicable U.S. laws and regulations, including the Atomic Energy Act of 1954, as amended; the Arms Export Control Act (22 USC 2751 et seq.); the Export Administration Act of 1979 (560 USC Append 2401 et seq.); DOE Regulations (10 CFR Part 810); International Traffic in Arms Regulations (22 CFR 120 et seq.); Export Administration Regulations (15 CFR 730 et seq.); Foreign Assets Control Regulations (31 CFR 500 et seq.); and the Espionage Act (37 USC 791 et seq.) which, among other things, prohibit:

- a) The making of false statements and concealment of any material information regarding the use or disposition of export or re-export of the Property; and
- b) Any use or disposition, export or re-export of the Property, which is not authorized in accordance with the provisions of this agreement.

PROLIFERATION SENSITIVE PROPERTY ACKNOWLEDGEMENT

In the event that proliferation sensitive Property, as identified on the U.S. Munitions List (22 CFR 121) or the International Atomic Energy Agency Information Circular (INFCIRC) 254 Part I (the Trigger List), is inadvertently included in this sale, the Purchaser agrees that that portion of the sale covering proliferation sensitive property is void, and, if such Property has been received by Purchaser, the Purchaser will return the Property to UT-Battelle LLC/DOE-ORO. If payment has been made, the purchase price only shall be refunded to the Purchaser.

27. RESOLUTION OF DISPUTES

The Parties agree to make good faith efforts to resolve any disputes through discussion and negotiation. If such efforts fail, the parties may consider the use of alternative dispute resolution (ADR). In the event that mediation or arbitration is agreed upon, costs shall be mutually shared by the Seller and Purchaser and it is agreed that there shall be no pre-decisional interest costs, and each party shall bear its discretionary costs. Substantive issues presented for mediation,

arbitration, dispute, claim, litigation, or other effort at resolution shall be determined in accordance with Federal Statutory and common law regarding Government contracts; in the absence of applicable federal law the laws of the State of Tennessee shall apply. In the event that ADR fails or is not used, the parties agree that any litigation shall be brought and prosecuted in the United States Federal District Court for the Eastern District of Tennessee, Northern Division. In the event the requirements for jurisdiction in Federal District Court are not present such litigation shall be brought in the Chancery Court of Knox or Roane County, Tennessee. It is agreed that in the event of a dispute, there shall be no interruption in the performance of the work, and Purchaser shall proceed diligently with performance of this agreement pending final resolution of any dispute between the parties or between Purchaser and its authorized representative including a common carrier.

28. INDEMNIFICATION

The Purchaser agrees to indemnify and hold harmless UT-Battelle, LLC, DOE, the Government, and their officers, agents, and employees, from any and all claims, liabilities, costs, and other detriments (including but not limited to reasonable attorney fees, settlements, fines and penalties, and damages for personal injury, property damage or destruction, environmental remediation, and natural resources damages) that arise out of any loading, unloading, transportation, use, management, processing, disposal and/or sale or other disposition by the Purchaser, its contractors, and customers of material obtained under this contract.

29. ACCEPTANCE OF TERMS AND CONDITIONS

Purchaser, by submitting this bid or proposal or performing the services identified in this bid identified herein, agrees to comply with all the terms and conditions and all specifications and other documents that this Invitation incorporates by reference or attachment. Seller hereby objects to any terms and conditions contained in any acknowledgment of his Invitation that are different from or in addition to those mentioned in this document. Failure of Seller to enforce any of the provisions of this Invitation shall not be construed as evidence to interpret the requirements of this Invitation, nor a waiver of any requirement, nor of the right of Seller to enforce each and every provision. All rights and obligations shall survive final performance of this Invitation