

STANDARD FORM 26, JULY 1966 GENERAL SERVICES ADMINISTRATION REG. PROC. REG. (41CFR) 1-16.101		AWARD/CONTRACT		PAGE 1 OF 12	
1. CONTRACT (Proc. Inst. Ident.) NO. <b>NRC-10-80-695</b>		2. EFFECTIVE DATE <b>AUG 1, 1980</b>		3. REQUISITION/PURCHASE REQUEST/PROJECT NO. <b>RPPA No. ADM-80-695</b>	
4. CERTIFIED FOR NATIONAL DEFENSE UNDER ROSA REG. 2 AND/OR DMS REG. 1. RATING:		5. ISSUED BY <b>U.S. Nuclear Regulatory Commission Division of Contracts Washington, DC 20555</b>		6. ADMINISTERED BY (If other than block 5)  CODE	
7. DELIVERY FOR DESTINATION <input type="checkbox"/> OTHER (See below)		8. CONTRACTOR NAME AND ADDRESS <b>PRIME: Small Business Administration, Washington District Office 1030 15th Street, N.W., Suite 250 Washington, DC 20417</b>		9. DISCOUNT FOR PROMPT PAYMENT	
10. SUBMIT INVOICES (4 copies unless otherwise specified) TO ADDRESS SHOWN IN BLOCK 14		11. SUB CONTRACTOR <b>International Business Services, Inc. 1010 Vermont Avenue, N.W., Suite 1010 Washington, DC 20005</b>		12. PAYMENT WILL BE MADE BY <b>U.S. Nuclear Regulatory Commission Office of the Controller Division of Accounting Washington, DC 20555</b>	
13. THIS PROCUREMENT WAS <input type="checkbox"/> ADVERTISED <input checked="" type="checkbox"/> NEGOTIATED, PURSUANT TO: <input type="checkbox"/> 10 U.S.C. 2304 (a)(1) <input checked="" type="checkbox"/> 41 U.S.C. 252 (a)(5) and 15 U.S.C. 637(a)		14. ACCOUNTING AND APPROPRIATION DATA <b>Appropriation Symbol: 31X0200.400</b>		B&R No. <b>43-20-25-4-06</b> Total Amount Obligated - <b>\$40,000.00</b>	
15. ITEM NO.		16. SUPPLIES/SERVICES		17. QUANTITY	
		Key punch and verification services as may be required by the U.S. Nuclear Regulatory Commission, for a one (1) year period with an option for an additional year, as specified herein and in accordance with International Business Services, Inc.'s proposal No. 80-K-55 dated July 10, 1980.			
				18. UNIT	
				19. UNIT PRICE	
				20. AMOUNT	
21. (ESTIMATED) TOTAL AMOUNT OF CONTRACT \$ <b>81,867.97</b>		CONTRACTING OFFICER WILL COMPLETE BLOCK 22 OR 26 AS APPLICABLE			
22. <input checked="" type="checkbox"/> CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return 5 copies to issuing office.) Contractor agrees to furnish and deliver or items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract; (b) the solicitation, if any; and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)		26. <input type="checkbox"/> AWARD (Contractor is not required to sign this document.) Your offer on Solicitation Number _____, including the additions or changes made by you which additions or changes are set forth in full above, is hereby accepted as to the items listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) this award/contract. No further contractual document is necessary.			
23. NAME OF CONTRACTOR BY _____ (Signature of person authorized to sign)		27. UNITED STATES OF AMERICA BY _____ (Signature of Contracting Officer)			
24. NAME AND TITLE OF SIGNER (Type or print) <b>Joseph E. Tunstall</b>		25. DATE SIGNED <b>AUG 1 1980</b>		28. NAME OF CONTRACTING OFFICER (Type or print) <b>Mary Jo Mattia</b>	
				29. DATE SIGNED	

8008280363

NAME OF OFFICE OR CONTRACTOR: PRIME: Small Business Administration  
SUBCONTRACTOR: International Business Services, Inc.

ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
	ARTICLE I - STATEMENT OF WORK	(ESTIMATED)			
1.	The Contractor shall provide keypunching and verification of EAM cards for the U. S. Nuclear Regulatory Commission (NRC). When ordered, the Contractor shall keypunch a varying number of tabulating cards daily, Monday thru Friday, except legal Government holidays, on EAM Printing or Non-Printing Card Punch and shall be verified on Card Verifier, or similar equipment which will result in data being recorded and verified in the Hollerith Mode on Standard 80 Column cards (Standard 5801, 80-column cards to be supplied by the Contractor), alpha numerically.	First Year 400 Second Year 400	M M	\$ 120.46 \$ 128.89	\$ 48,184.00 \$ 51,556.00
2.	When ordered in accordance with (1) above, the Contractor shall pick up source documents and pertinent information at the NRC Division of ADP Support, 7920 Norfolk Avenue, Room P-634, Bethesda, Maryland, by 3:00 p.m. daily, Monday through Friday except legal Government holidays, promptly process the order and deliver the completed work together with the source documents and any pertinent instructions to the point of origin on a 24-hour turnaround basis. Deliveries falling on days other than regular Commission work-days shall be made by 3:00 p.m. the first regular Commission workday subsequent thereto, unless otherwise mutually agreed upon by the parties.	First Year 251 Second Year 251	RT RT	\$ 11.00 \$ 11.77	\$ 2,761.00 \$ 2,954.27
3.	The Contractor shall also provide key-to-tape data entry services as specified below. The requirement is for key to EBCDIC tape data entry. The data shall be supplied on standard 1/2", 800 BPI, 9 track, NRZI standard tapes. Format shall be fixed, unlabeled, and blocked. The Data shall be keyed as specified by the Contracting Officer's Authorized Representative (COAR). Verification will not be required.				

CONTINUATION SHEET

REP. NO. OF DOC. BEING CONTD.  
Contract No.  
NRC-10-80-695

PAGE 3 OF 12

NAME OF OFFEROR OR CONTRACTOR PRIME: Small Business Administration  
SUBCONTRACTOR: International Business Services, Inc.

ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
	(i) Keying from Handwritten Data Input Forms (DIF)				
	a. 20 character records	First Year 50	M	\$ 26.26	\$ 1313.00
		Second Year 50	M	\$ 28.10	\$ 1405.00
	b. 247.21 (average)	First Year 64.5	M	\$ 366.73	\$23,654.09
	character records	Second Year 64.5	M	\$ 392.40	\$25,309.80
	(ii) Keying of Computer Generated Authority Table Lists				
	a. Alpha Characters	First Year 80	M	\$ 1.31	\$ 104.80
		Second Year 80	M	\$ 1.40	\$ 112.00
4.	When ordered in accordance with (3) above, the Contractor shall pick up source documents and pertinent information at the NRC Public Document Room, 1717 H Street, N.W., Washington, DC, promptly process the order in a time period to be agreed upon with the COAR and deliver the completed work together with source documents and pertinent information to the NRC Public Document Room.	First Year 10	RT	\$ 6.00	\$ 60.00
		Second Year 10	RT	\$ 6.42	\$ 64.20
5.	The Contractor shall provide emergency keypunching and verifying services in support of NRC's Controller's Payroll System. These services shall include keypunching and 100% key verifying from NRC Payroll source documents to punch cards. When ordered, the Contractor shall provide qualified trained operators thoroughly familiar with NRC Payroll Key punch instructions within a three (3) hour notice. All work will be performed on site at the NRC's 7920 Norfolk Avenue, Bethesda, Maryland office. NRC equipment (UNIVAC 1710; IBM 029) will be made available. Services may be required Monday thru Friday on a regular and/or non-regular hour basis. The type of service required will be provided by the Contracting Officer's Authorized Representative when orders are placed.	First Year 400	HRS	\$ 9.26	\$ 3,704.00
		Second Year 400	HRS	\$ 9.91	\$ 3,964.00
6.	The Contractor may also be required to perform keypunching and verifying services of classified information on-site at NRC's Silver Spring offices under on-call circumstances similar to those described in (5) above.	First Year 80	HRS	\$ 9.26	\$ 740.80
		Second Year 80	HRS	\$ 9.91	\$ 792.80

CONTINUATION SHEET

REP. NO. OF DOC. BEING CONTD.  
Contract No.  
NRC-10-80-695

PAGE 4 OF 12

NAME OF OFFEROR OR CONTRACTOR

ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
7.	The contractor is authorized to perform over-time for the accomplishment of the services specified in Item 5. hereof to the extent that the overtime hours do not exceed six (6) hours per month.	<u>First Year</u> 72 <u>Second Year</u> 72	<u>HRS</u>  <u>HRS</u>	\$ 12.24  \$ 13.10	\$ 881.28  \$ 943.20
8.	Travel between Contractor's plant and 7920 Norfolk Avenue, Bethesda, MD, as required to perform the work specified in Item 5. hereof.	<u>First Year</u> 52 <u>Second Year</u> 52	<u>RT</u>  <u>RT</u>	\$ 7.50  \$ 8.03	\$ 390.00  \$ 417.56
9.	Travel between contractors plant and 7915 Eastern Avenue, Silver Spring, MD, as required to perform work specified in Item 6. hereof.	<u>First Year</u> 10 <u>Second Year</u> 10	<u>RT</u>  <u>RT</u>	\$ 7.50  \$ 8.03	\$ 75.00  \$ 80.30
ESTIMATED TOTAL FOR FIRST YEAR . . . . .					\$ 81,867.97
ESTIMATED TOTAL FOR SECOND YEAR . . . . .					\$ 87,599.13



## ARTICLE II - PERIOD OF PERFORMANCE

### 1. Period of Performance

The period of performance for the work to be delivered hereunder shall be for a one (1) year period beginning August 1, 1980 and ending July 31, 1981.

### 2. Option to Extend the Period of Performance

This contract may be extended for a period of one (1) year at the unit prices set forth under ARTICLE I, at the option of the Government, by the Contracting Officer giving written notice of the Government's exercise of such option to the Contractor not later than the last day of the term of the contract. The Contracting Officer may give preliminary written notice of an intent to exercise such option within thirty (30) days prior to the last day of the terms of the contract; such preliminary notice shall not be construed as an exercise of the option. If the Government exercises such option, the total duration of this contract, including the exercise of any option under this clause, shall not exceed two (2) years.

## ARTICLE III - TIME OF DELIVERY

Delivery of the services to be provided herein shall be made in accordance with the work orders issued hereunder.

## ARTICLE IV - INSPECTION AND ACCEPTANCE

1. All work under this contract is subject to inspection and final acceptance by an authorized representative of the Government. The contractor shall not receive payment for any job until all the requirements outlined in the schedule have been completed to the satisfaction of the authorized representative.
2. Completed work will be inspected by the ordering party at the destination. Errors in excess of one (1) percent of the total number of cards processed for each job (ARTICLE I, Item 1.,) to unsatisfactory work due to failure of the contractor to understand or follow instructions given by the ordering party, shall cause the job to be rejected and reported to the contractor who shall immediately pick up the rejected work, make the necessary corrections and return the corrected, completed job to the ordering party at no additional cost to the Government, within 24 working hours.
3. Source documents and any additional printed instructions will be numbered and recorded by the ordering office and signed for by the contractor when the order is picked up for processing. Return of these documents by the contractor will be compared with the records and verified before final acceptance of the completed job.

## ARTICLE V - SPECIAL PROVISIONS

### 1. ESTIMATED REQUIREMENTS

The quantities shown under ARTICLE I are estimates of the amount of work which may be required and ordered hereunder. No specific amount of work or minimum order is either guaranteed or implied. The quantities to be ordered will depend entirely upon NRC's needs, and NRC will be obligated to pay only for actual work ordered and satisfactorily performed. If such requirements of the NRC fail to materialize in the quantities estimated, such failure shall not constitute grounds for equitable adjustment hereunder.

### 2. PRIVATE USE AND PROTECTION OF UNCLASSIFIED GOVERNMENT INFORMATION

- (i) Except as specifically authorized by this contract, or as otherwise approved by the Contracting Officer, records or other information, documents and material furnished by the Commission to the Contractor in the performance of this contract, or information developed by the contractor in the course of the work hereunder, shall be used only in connection with the work performed under this contract. The Contractor shall, upon completion or termination of this contract, transmit to the Commission all records or other information, documents and material, and any copies thereof, furnished by the Commission to the contractor or developed by the contractor in the performance of this contract.
- (ii) The Contractor shall be responsible for safeguarding from unauthorized disclosure any information or other documents and material exempt from public disclosure by the Commission's regulations and made available to the Contractor in connection with the performance of work under this contract. The Contractor agrees to conform to all regulations, requirements, and directions of the Commission with respect to such material.
- (iii) The Contractor's duties under this clause shall not be construed to limit or affect in any way the Contractor's obligation to conform to all security regulations and requirements of the Commission pertaining to classified information and material.

### 3. JOB ORDERS

The Contractor shall be required to perform the services specified in each Job Order issued hereunder during the term of this contract. Job Orders shall be issued in writing (verbal orders shall be confirmed in writing), dated, and numbered. They shall set forth:

- (i) The services being ordered
- (ii) Delivery requirements
- (iii) Place of delivery or performance
- (iv) Packing and shipping instructions, if any

All Job Orders shall be issued by the Contracting Officer's authorized representative.

4. PRIVACY ACT

(FPR 1-1.327-5(c))

(a) The Contractor agrees:

(1) To comply with the Privacy Act of 1974 and the rules and regulations issued pursuant to the Act in the design, development, or operation of any system of records on individuals in order to accomplish an agency function when the contract specifically identifies (i) the system or systems of records and (ii) the work to be performed by the contractor in terms of any one or combination of the following: (A) design, (B) development, or (C) operation;

(2) to include the solicitation notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation when the statement of work in the proposed subcontract requires the design, development, or operation of a system of records on individuals to accomplish an agency function; and

(3) to include this clause, including this paragraph (3), in all subcontracts awarded pursuant to this contract which require the design, development, or operation of such a system of records.

(b) In the event of violations of the Act, a civil action may be brought against the agency involved where the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency where the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act when the contract is for the operation of a system of records on individuals to accomplish an agency function, the contractor is considered to be an employee of the agency.

(c) The terms used in this clause have the following meanings:

(1) "Operation of a system of records" means performance of any of the activities associated with maintaining the system of records including the collection, use, and dissemination of records.

(2) "Record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

(3) "System of records" on individuals means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

5. SECURITY/CLASSIFICATION (Subject to Security Clearance)

- (i) The Contractor and contractor's personnel will be governed by the provisions of the Security/Classification Requirements, NRC Form 187, incorporated herein by this reference and attached hereto as Attachment 4. Contractor personnel requiring continual access to NRC facilities will be required to have "L" clearances and must complete applicable clearance forms. Guidance and necessary forms will be provided by the COTR.
- (ii) Notwithstanding Clause 48 of the General Provisions entitled "Security," to the contrary, and in addition thereto, the parties hereto agree that the NRC contact shall be the Authorized Classifier for all classified information or material delivered under this contract and NRC shall provide classification guidance to the contractor as required in the performance of this contract.
- (iii) The Contractor and contractor's personnel will be governed by, and shall assign classification markings to information or material, originated or generated by the contractor as determined by the Project contact.
- (iv) If subsequent to the date of this contract, the security level under the contract is changed by the Commission and such change causes an increase or decrease in the estimated cost or the time required for performance under this contract the contract cost, delivery schedule, or both and any other provisions of the contract that may be affected shall be subject to an equitable adjustment by reason of such increased or decreased costs.

6. GOVERNMENT-FURNISHED PROPERTY (Short Form) FPR 1-7.303-7(c)

- (i) The Government shall deliver to the Contractor, for use only in connection with the contract, the property described in the schedule or specifications (hereinafter referred to as "Government-furnished property"), at the times and locations stated therein. If the Government-furnished property, suitable for its intended use, is not so delivered to the Contractor, the Contracting Officer shall, upon timely written request made by the Contractor, and if the facts warrant such action, equitably adjust any affected provision of this contract pursuant to the procedures of the "Changes" clause hereof.

- (ii) Title to Government-furnished property shall remain in the Government. The Contractor shall maintain adequate property control records of Government-furnished property in accordance with sound industrial practice.
- (iii) Unless otherwise provided in this contract, the Contractor, upon delivery to him of any Government-furnished property, assumes the risk of, and shall be responsible for, any loss thereof or damage thereto except for reasonable wear and tear, and except to the extent that such property is consumed in the performance of this contract.
- (iv) The Contractor shall, upon completion of this contract, prepare for shipment, deliver f.o.b. origin, or dispose of all Government-furnished property not consumed in the performance of this contract or not theretofore delivered to the Government, as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or paid in such other manner as the Contracting Officer may direct.

7. Service Contract Act Wage Determination

The following U. S. Department of Labor Wage Determination Registers are hereby incorporated by reference and attached hereto as Attachment 3:

<u>Wage Determination No.</u>	<u>Date</u>
78-279 (Rev. 2)	April 29, 1980



ARTICLE VI - CONTRACT ADMINISTRATION DATA

1. AUTHORIZED REPRESENTATIVE

The Contracting Officer may designate one or more authorized representatives under this contract for the purpose of assuring that the supplies required under the contract are delivered in accordance therewith. Such representatives as may be appointed will be specifically designated in writing by the Contracting Officer.

2. Billing Instructions

General. The contractor shall submit vouchers or invoices as prescribed herein.

Form. Claims shall be submitted on the payee's letterhead, invoice or on the Government's Standard Form 1004 "Public Voucher for Purchases and Services Other Than Personal," and Standard Form 1005 "Public Voucher for Purchases Other Than Personal -- Continuation Sheet." These forms are available from the Government Printing Office, 710 North Capitol Street, Washington, DC 20501.

Number of Copies and Mailing Address. An original and six copies shall be submitted to NRC offices identified below.

Frequency. The contractor shall submit an invoice or voucher only after NRC's final acceptance for services rendered or products delivered in performance of the contract unless otherwise specified in the contract.

Preparation and Itemization of the Voucher. The voucher shall be prepared in ink or typewriter (without strikeouts) and corrections or erasures must be initialed. It must include the following:

- (a) Payor's name and address. (i) Address the original voucher (with 4 copies) to: U.S. Nuclear Regulatory Commission, Division of Accounting, Office of the Controller, ATTN: GOV/COM Accounts Sections, Washington, DC 20555.

- (b) Voucher number.

- (c) Date of voucher.
- (d) Contract number and date.
- (e) Payee's name and address. Show the name of the contractor and its correct address, except when an assignment has been made by the contractor or a different payee has been designated, then insert the name and address of the payee.)
- (f) Description of articles or services, quantity, unit price, and total amount.
- (g) Weight and zone of shipment, if shipped by parcel post.
- (h) Charges for freight or express shipments, and attached prepaid bill, if shipped by freight or express.
- (i) Instructions to consignee to notify Contracting Officer of receipt of shipment.
- (j) Final invoice marked: "FINAL INVOICE"

Currency. Billings may be expressed in the currency normally used by the Contractor in maintaining his accounting records and payments will be made in that currency. However, the U.S. dollar equivalent for all invoices paid under the contract may not exceed the total U.S. dollars authorized in the contract.

### 3. CEILING PRICE

The estimate for performing the work under this contract is \$81,867.97. The amount presently obligated by the Commission for such performance is \$40,000.00. The obligated ceiling specified above may be increased by the Contracting Officer by written notice to the Contractor. The Contractor shall not be obliged to continue performance of services by virtue of which the Government's obligation hereunder would exceed such ceiling amount set forth, unless and until the Contracting Officer shall have notified the Contractor in writing that such maximum amount has been increased and shall have specified in such notice a revised maximum amount. When and to the extent that the maximum set forth has been increased, any expenses incurred by the Contractor in excess of such ceiling prior to the increase shall be allowable to the same extent if such expenses had been incurred after such increase in the ceiling.

#### ARTICLE VII - GENERAL PROVISIONS

1. This contract is subject to the Fixed Price Supply Contract General Provisions which incorporates the Standard Form 32 (Rev. 4/75) General Provisions and FPR Changes and Additions to Standard Form 32 General Provisions (6/76), attached hereto and made a part hereof by this reference.

FPR Changes and NRC Additions to Standard Form 32 General Provisions attached hereto and forming a part of this contract, is further modified as follows:

1. Clause 23 entitled "Utilization of Minority Business Enterprises" is deleted in its entirety.
2. Clause 33 entitled "Preference for U. S. Flag Air Carriers" is deleted in its entirety.
3. The Clause entitled, "Special Clauses for Prime Contracts" attached hereto and forming a part hereof, is added as Clause No. 47.
4. The Clause entitled, "Security," attached hereto and forming a part hereof, is added as Clause No. 48.
5. The Clause entitled, "Service Contract Act of 1965, as Amended, attached hereto and forming a part hereof, is added as Clause No. 49.

#### ARTICLE VIII - LIST OF DOCUMENTS AND ATTACHMENTS

This contract contains the following attachments:

1. Fixed Price Supply Contract General Provisions, which incorporates the Standard Form 32 (Rev. 4/75) General Provisions and FPR Changes and Additions to Standard Form 32 General Provisions (6/76).
2. Nuclear Regulatory Commission, 41 CFR Part 20, Contractor Organizational Conflicts of Interest.
3. Wage Determination No. 78-279 (Rev.- 2) dated April 29, 1980.
4. NRC Form 187, Security/Classification Requirements

GENERAL PROVISION  
FIXED PRICE SUPPLY CONTRACTTABLE OF CONTENTS

Standard Form 32, General Provisions (Supply Contract) Containing the following listed Articles on pages 1 through 5 of the form plus additional Articles on pages 6 through 20 attached thereto.

<u>ARTICLE</u>	<u>TITLE</u>	<u>PAGE</u>
1	Definitions.....	1
2	Changes.....	1
3	Extras.....	1
4	Variation In Quantity.....	1
5	Inspection.....	1
6	Responsibility For Supplies.....	2
7	Payments.....	2
8	Assignment of Claims.....	2
9	Additional Bond Security.....	2
10	Examination of Records By Comptroller General.....	2
11	Default.....	2
12	Disputes.....	3
13	Notice and Assistance Regarding Patent and Copyright Infringement.....	3
14	Buy American Act.....	3
15	Convict Labor.....	4
16	Contract Work Hours and Safety Standards Act - Overtime Compensation.....	4
17	Walsh-Healey Public Contracts Act.....	4
18	Equal Opportunity.....	4
19	Officials Not To Benefit.....	5
20	Covenant Against Contingent Fees.....	5
21	Utilization of Small Business Concerns.....	5
22	Utilization of Labor Surplus Area Concerns.....	5
23	Utilization of Minority Business Concerns.....	5
24	Pricing of Adjustments.....	5
25	Payment of Interest On Contractors' Claims.....	5
26	Alterations.....	6
27	Listing of Employment Openings.....	6
28	Employment of the Handicapped.....	9
29	Clear Air and Water.....	10
30	Federal, State and Local Taxes.....	11
31	Termination For Convenience of the Government.....	12
32	Minority Business Enterprises Subcontracting Program.....	17
33	Preference For U.S. Flag Air Carriers.....	18
34	Notice To the Government of Labor Disputes.....	18
35	Permits.....	19
36	Renegotiation.....	19
37	Patent Indemnity.....	19
38	Reporting Royalties.....	20
39	Notice Regarding Late Delivery.....	20

GENERAL PROVISION  
FIXED PRICE SUPPLY CONTRACT

(Cont.)

<u>ARTICLE</u>	<u>TITLE</u>	<u>PAGE</u>
40	Stop Work Order .....	21
41	Publication and Publicity .....	22
42	Dissemination of Contract Information .....	22
43	Work for Others .....	23



# GENERAL PROVISIONS

## (Supply Contract)

### 1. DEFINITIONS

As used throughout this contract, the following terms shall have the meaning set forth below:

- (a) The term "head of the agency" or "Secretary" as used herein means the Secretary, the Under Secretary, any Assistant Secretary, or any other head or assistant head of the executive or military department or other Federal agency; and the term "his duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the head of the agency or the Secretary.
- (b) The term "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or civilian employee who is a properly designated Contracting Officer; and the term includes, except as otherwise provided in this contract, the authorized representative of a Contracting Officer acting within the limits of his authority.
- (c) Except as otherwise provided in this contract, the term "subcontracts" includes purchase orders under this contract.

### 2. CHANGES

The Contracting Officer may at any time, by a written order, and without notice to the sureties, make changes, within the general scope of this contract, in any one or more of the following: (i) Drawings, designs, or specifications, where the supplies to be furnished are to be specially manufactured for the Government in accordance therewith; (ii) method of shipment or packing; and (iii) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this contract, whether changed or not changed by any such order, an equitable adjustment shall be made in the contract price or delivery schedule, or both, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the Contractor of the notification of change: *Provided, however*, That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Where the cost of property made obsolete or excess as a result of a change is included in the Contractor's claim for adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

### 3. EXTRAS

Except as otherwise provided in this contract, no payment for extras shall be made unless such extras and the price therefor have been authorized in writing by the Contracting Officer.

### 4. VARIATION IN QUANTITY

No variation in the quantity of any item called for by this contract will be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this contract.

### 5. INSPECTION

- (a) All supplies (which term throughout this clause includes

without limitation raw materials, components, intermediate assemblies, and end products) shall be subject to inspection and test by the Government, to the extent practicable at all times and places including the period of manufacture, and in any event prior to acceptance.

(b) In case any supplies or lots of supplies are defective in material or workmanship or otherwise not in conformity with the requirements of this contract, the Government shall have the right either to reject them (with or without instructions as to their disposition) or to require their correction. Supplies or lots of supplies which have been rejected or required to be corrected shall be removed or, if permitted or required by the Contracting Officer, corrected in place by and at the expense of the Contractor promptly after notice, and shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed. If the Contractor fails promptly to remove such supplies or lots of supplies which are required to be removed, or promptly to replace or correct such supplies or lots of supplies, the Government either (i) may by contract or otherwise replace or correct such supplies and charge to the Contractor the cost occasioned the Government thereby, or (ii) may terminate this contract for default as provided in the clause of this contract entitled "Default." Unless the Contractor corrects or replaces such supplies within the delivery schedule, the Contracting Officer may require the delivery of such supplies at a reduction in price which is equitable under the circumstances. Failure to agree to such reduction of price shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(c) If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor without additional charge, shall provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. If Government inspection or test is made at a point other than the premises of the Contractor or a subcontractor, it shall be at the expense of the Government except as otherwise provided in this contract: *Provided*, That in case of rejection the Government shall not be liable for any reduction in value of samples used in connection with such inspection or test. All inspections and tests by the Government shall be performed in such a manner as not to unduly delay the work. The Government reserves the right to charge to the Contractor any additional cost of Government inspection and test when supplies are not ready at the time such inspection and test is requested by the Contractor or when reinspection or retest is necessitated by prior rejection. Acceptance or rejection of the supplies shall be made as promptly as practicable after delivery, except as otherwise provided in this contract; but failure to inspect and accept or reject supplies shall neither relieve the Contractor from responsibility for such supplies as are not in accordance with the contract requirements nor impose liability on the Government therefor.

(d) The inspection and test by the Government of any supplies or lots thereof does not relieve the Contractor from any responsibility regarding defects or other failures to meet the contract requirements which may be discovered prior to acceptance. Except as otherwise provided in this contract, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

(e) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the supplies hereunder. Records of all inspection work by the Contractor shall be kept complete and available to the Government during

the performance of this contract and for such longer period as may be specified elsewhere in this contract.

#### 6. RESPONSIBILITY FOR SUPPLIES

Except as otherwise provided in this contract, (i) the Contractor shall be responsible for the supplies covered by this contract until they are delivered at the designated delivery point, regardless of the point of inspection; (ii) after delivery to the Government at the designated point and prior to acceptance by the Government or rejection and giving notice thereof by the Government, the Government shall be responsible for the loss or destruction of or damage to the supplies only if such loss, destruction, or damage results from the negligence of officers, agents, or employees of the Government acting within the scope of their employment; and (iii) the Contractor shall bear all risks as to rejected supplies after notice of rejection, except that the Government shall be responsible for the loss, or destruction of, or damage to the supplies only if such loss, destruction or damage results from the gross negligence of officers, agents, or employees of the Government acting within the scope of their employment.

#### 7. PAYMENTS

The Contractor shall be paid, upon the submission of proper invoices or vouchers, the prices stipulated herein for supplies delivered and accepted or services rendered and accepted, less deductions, if any, as herein provided. Unless otherwise specified, payment will be made on partial deliveries accepted by the Government when the amount due on such deliveries so warrants; or, when requested by the Contractor, payment for accepted partial deliveries shall be made whenever such payment would equal or exceed either \$1,000 or 50 percent of the total amount of this contract.

#### 8. ASSIGNMENT OF CLAIMS

(a) Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), if this contract provides for payments aggregating \$1,000 or more, claims for moneys due or to become due the Contractor from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Unless otherwise provided in this contract, payments to an assignee of any moneys due or to become due under this contract shall not, to the extent provided in said Act, as amended, be subject to reduction or setoff. (The preceding sentence applies only if this contract is made in time of war or national emergency as defined in said Act and is with the Department of Defense, the General Services Administration, the Energy Research and Development Administration, the National Aeronautics and Space Administration, the Federal Aviation Administration, or any other department or agency of the United States designated by the President pursuant to Clause 4 of the proviso of section 1 of the Assignment of Claims Act of 1940, as amended by the Act of May 15, 1951, 65 Stat. 41.)

(b) In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret," "Secret," or "Confidential," be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive the same. However, a copy of any part or all of this contract so marked may be furnished, or any information contained therein may be disclosed, to such assignee upon the prior written authorization of the Contracting Officer.

#### 9. ADDITIONAL BOND SECURITY

If any surety upon any bond furnished in connection with this contract becomes unacceptable to the Government or if any such

surety fails to furnish reports as to his financial condition from time to time as requested by the Government, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the Government and of persons supplying labor or materials in the prosecution of the work contemplated by this contract.

#### 10. EXAMINATION OF RECORDS BY COMPTROLLER GENERAL

(a) This clause is applicable if the amount of this contract exceeds \$10,000 and was entered into by means of negotiation, including small business restricted advertising, but is not applicable if this contract was entered into by means of formal advertising.

(b) The Contractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of 3 years after final payment under this contract or such lesser time specified in either Appendix M of the Armed Services Procurement Regulation or the Federal Procurement Regulations Part 1-20, as appropriate, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this contract.

(c) The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of 3 years after final payment under the subcontract or such lesser time specified in either Appendix M of the Armed Services Procurement Regulation or the Federal Procurement Regulations Part 1-20, as appropriate, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract. The term "subcontract" as used in this clause excludes (1) purchase orders not exceeding \$10,000 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

(d) The periods of access and examination described in (b) and (c), above, for records which relate to (1) appeals under the "Disputes" clause of this contract, (2) litigation or the settlement of claims arising out of the performance of this contract, or (3) costs and expenses of this contract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall continue until such appeals, litigation, claims, or exceptions have been disposed of.

#### 11. DEFAULT

(a) The Government may, subject to the provisions of paragraph (c) below, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances:

(i) If the Contractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or

(ii) If the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

(b) In the event the Government terminates this contract in whole or in part as provided in paragraph (a) of this clause, the Government may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the Government for any excess costs for such similar supplies or services: *Provided*, That the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

(c) Except with respect to defaults of subcontractors, the

Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

(d) If this contract is terminated as provided in paragraph (a) of this clause, the Government, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the Government, in the manner and to the extent directed by the Contracting Officer, (i) any completed supplies, and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon direction of the Contracting Officer, protect and preserve property in possession of the Contractor in which the Government has an interest. Payment for completed supplies delivered to and accepted by the Government shall be at the contract price. Payment for manufacturing materials delivered to and accepted by the Government and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and Contracting Officer; failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." The Government may withhold from amounts otherwise due the Contractor for such completed supplies or manufacturing materials such sum as the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.

(e) If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the Government, be the same as if the notice of termination had been issued pursuant to such clause. If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, and if this contract does not contain a clause providing for termination for convenience of the Government, the contract shall be equitably adjusted to compensate for such termination and the contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(f) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(g) As used in paragraph (c) of this clause, the terms "subcontractor" and "subcontractors" mean subcontractor(s) at any tier.

## 12. DISPUTES

(a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contract-

ing Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Secretary. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

(b) This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above: *Provided*, That nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

## 13. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT

The provisions of this clause shall be applicable only if the amount of this contract exceeds \$10,000.

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

## 14. BUY AMERICAN ACT

(a) In acquiring end products, the Buy American Act (41 U.S. Code 10 a-d) provides that the Government give preference to domestic source end products. For the purpose of this clause:

(i) "Components" means those articles, materials, and supplies, which are directly incorporated in the end products;

(ii) "End products" means those articles, materials, and supplies, which are to be acquired under this contract for public use; and

(iii) A "domestic source and product" means (A) an unmanufactured end product which has been mined or produced in the United States and (B) an end product manufactured in the United States if the cost of the components thereof which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. For the purposes of this (a) (iii) (B), components of foreign origin of the same type or kind as the products referred to in (b) (ii) or (iii) of this clause shall be treated as components mined, produced, or manufactured in the United States.

(b) The Contractor agrees that there will be delivered under this contract only domestic source end products, except end products:

(i) Which are for use outside the United States;

(ii) Which the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality;

(iii) As to which the Secretary determines the domestic preference to be inconsistent with the public interest; or



(iv) As to which the Secretary determines the cost to the Government to be unreasonable.

(The foregoing requirements are administered in accordance with Executive Order No. 10582, dated December 17, 1954.)

#### 15. CONVICT LABOR

In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor except as provided by Public Law 89-176, September 10, 1965 (18 U.S.C. 4082(c)(2)) and Executive Order 11755, December 29, 1973.

#### 16. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT— OVERTIME COMPENSATION

This contract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), is subject to the following provisions and to all other applicable provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder.

(a) Overtime requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, apprentices, trainees, watchmen, and guards shall require or permit any laborer, mechanic, apprentice, trainee, watchman, or guard in any workweek in which he is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek on work subject to the provisions of the Contract Work Hours and Safety Standards Act unless such laborer, mechanic, apprentice, trainee, watchman, or guard receives compensation at a rate not less than one and one-half times his basic rate of pay for all such hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, whichever is the greater number of overtime hours.

(b) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions of paragraph (a), the Contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, apprentice, trainee, watchman, or guard employed in violation of the provisions of paragraph (a) in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of his standard workweek of forty hours without payment of the overtime wages required by paragraph (a).

(c) Withholding for unpaid wages and liquidated damages. The Contracting Officer may withhold from the Government Prime Contractor, from any moneys payable on account of work performed by the Contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions of paragraph (b).

(d) Subcontracts. The Contractor shall insert paragraphs (a) through (d) of this clause in all subcontracts, and shall require their inclusion in all subcontracts of any tier.

(e) Records. The Contractor shall maintain payroll records containing the information specified in 29 CFR 516.2(a). Such records shall be preserved for three years from the completion of the contract.

#### 17. WALSH-HEALEY PUBLIC CONTRACTS ACT

If this contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed \$10,000 and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35-45), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and

interpretations of the Secretary of Labor which are not hereafter be in effect. may

#### 18. EQUAL OPPORTUNITY

(The following clause is applicable unless this contract is exempt under the rules, regulations, and relevant orders of the Secretary of Labor (41 CFR, ch. 60).)

During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this Equal Opportunity clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. *Provided, however, That in the event the Contractor becomes involved in,*

or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

#### 19. OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress, or resident Commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

#### 20. COVENANT AGAINST CONTINGENT FEES

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

#### 21. UTILIZATION OF SMALL BUSINESS CONCERNS

(a) It is the policy of the Government as declared by the Congress that a fair proportion of the purchases and contracts for supplies and services for the Government be placed with small business concerns.

(b) The Contractor agrees to accomplish the maximum amount of subcontracting to small business concerns that the Contractor finds to be consistent with the efficient performance of this contract.

#### 22. UTILIZATION OF LABOR SURPLUS AREA CONCERNS

(a) It is the policy of the Government to award contracts to labor surplus area concerns that (1) have been certified by the Secretary of Labor (hereafter referred to as certified-eligible concerns with first or second preferences) regarding the employment of a proportionate number of disadvantaged individuals and have agreed to perform substantially (i) in or near sections of concentrated unemployment or underemployment or in persistent or substantial labor surplus areas or (ii) in other areas of the United States, respectively, or (2) are noncertified concerns which have agreed to perform substantially in persistent or substantial labor surplus areas, where this can be done consistent with the efficient performance of the contract and at prices no higher than are obtainable elsewhere. The Contractor agrees to use his best efforts to place his subcontracts in accordance with this policy.

(b) In complying with paragraph (a) of this clause and with paragraph (b) of the clause of this contract entitled "Utilization of Small Business Concerns" the Contractor in placing his subcontracts shall observe the following order of preference: (1) Certified-eligible concerns with a first preference which are also

small business concerns; (2) other certified-eligible concerns with a first preference; (3) certified-eligible concerns with a second preference which are also small business concerns; (4) other certified-eligible concerns with a second preference; (5) persistent or substantial labor surplus area concerns which are also small business concerns; (6) other persistent or substantial labor surplus area concerns; and (7) small business concerns which are not labor surplus area concerns.

#### 23. UTILIZATION OF MINORITY BUSINESS ENTERPRISES

(a) It is the policy of the Government that minority business enterprises shall have the maximum practicable opportunity to participate in the performance of Government contracts.

(b) The Contractor agrees to use his best efforts to carry out this policy in the award of his subcontracts to the fullest extent consistent with the efficient performance of this contract. As used in this contract, the term "minority business enterprise" means a business, at least 50 percent of which is owned by minority group members or, in case of publicly-owned businesses, at least 51 percent of the stock of which is owned by minority group members. For the purposes of this definition, minority group members are Negroes, Spanish-speaking American persons, American-Orientals, American-Indians, American-Eskimos, and American Aleuts. Contractors may rely on written representations by subcontractors regarding their status as minority business enterprises in lieu of an independent investigation.

#### 24. PRICING OF ADJUSTMENTS

When costs are a factor in any determination of a contract price adjustment pursuant to the Changes clause or any other provision of this contract such costs shall be in accordance with the contract cost principles and procedures in Part 1-15 of the Federal Procurement Regulations (41 CFR 1-15) or Section XV of the Armed Services Procurement Regulation, as applicable, which are in effect on the date of this contract.

#### 25. PAYMENT OF INTEREST ON CONTRACTORS' CLAIMS

(a) If an appeal is filed by the Contractor from a final decision of the Contracting Officer under the Disputes clause of this contract, denying a claim arising under the contract, simple interest on the amount of the claim finally determined owed by the Government shall be payable to the Contractor. Such interest shall be at the rate determined by the Secretary of the Treasury pursuant to Public Law 92-41, 85 Stat. 97, from the date the Contractor furnishes to the Contracting Officer his written appeal under the Disputes clause of this contract, to the date of (1) a final judgment by a court of competent jurisdiction, or (2) mailing to the Contractor of a supplemental agreement for execution either confirming completed negotiations between the parties or carrying out a decision of a board of contract appeals.

(b) Notwithstanding (a), above, (1) interest shall be applied only from the date payment was due, if such date is later than the filing of appeal, and (2) interest shall not be paid for any period of time that the Contracting Officer determines the Contractor has unduly delayed in pursuing his remedies before a board of contract appeals or a court of competent jurisdiction.



FPR CHANGES AND NRC ADDITIONS TO STANDARD FORM 32 (1-16.101(c))  
GENERAL PROVISIONS (SUPPLY CONTRACT)

(June 1976)

ADDITIONS CONSIST OF ARTICLES \_\_\_\_\_ THROUGH \_\_\_\_\_.

26. ALTERATIONS

The following alterations to the provisions of Standard Form 32, General Provisions, of this contract were made prior to execution of the contract by the parties:

1. DEFINITIONS

- a. The following paragraph (d) is added to this clause:

"(d) The term "Commission" or "NRC" means the United States Nuclear Regulatory Commission or any duly authorized representative thereof, including the Contracting Officer except for the purpose of deciding an appeal under the Article "Disputes."

27. LISTING OF EMPLOYMENT OPENINGS (FPR Temp. Reg. 39)

(Applicable to Contracts Involving \$10,000 or More)

DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA

- a. The contractor will not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam era in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans for the Vietnam era without discrimination based upon their disability or veterans status in all employment practices such as the following: employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- b. The contractor agrees that all suitable employment openings of the contractor which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at an establishment of the contractor other than the one wherein the contract is being performed but excluding those of independently operated corporate affiliates, shall be listed at an appropriate local office of the State employment service system wherein the opening occurs. The contractor further agrees to provide such reports to such local office regarding employment openings and hires as may be required.

State and local government agencies holding Federal contracts of \$10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service, but are not required to provide those reports set forth in paragraphs (d) and (e).

- c. Listing of employment openings with the employment service system pursuant to this clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a bona fide job order, including the acceptance of referrals of veterans and nonveterans. The listing of employment openings does not require the hiring of any particular job applicant or from any particular group of job applicants, and nothing herein is intended to relieve the contractor from any requirements in Executive orders or regulations regarding nondiscrimination in employment.
- d. The reports required by paragraph (b) of this clause shall include, but not be limited to, periodic reports which shall be filed at least quarterly with the appropriate local office or, where the contractor has more than one hiring location in a State, with the central office of that State employment service. Such reports shall indicate for each hiring location (1) the number of individuals hired during the reporting period, (2) the number of nondisabled veterans of the Vietnam era hired, (3) the number of disabled veterans of the Vietnam era hired, and (4) the total number of disabled veterans hired. The reports should include covered veterans hired for on-the-job training under 38 U.S.C. 1787. The contractor shall submit a report within 30 days after the end of each reporting period wherein any performance is made on this contract identifying data for each hiring location. The contractor shall maintain at each hiring location copies of the reports submitted until the expiration of one year after final payment under the contract, during which time these reports and related documentation shall be made available, upon request, for examination by any authorized representatives of the contracting officer or of the Secretary of Labor. Documentation would include personnel records respecting job openings, recruitment, and placement.
- e. Whenever the contractor becomes contractually bound to the listing provisions of this clause, it shall advise the employment service system in each State where it has establishments of the name and location of each hiring location in the State. As long as the contractor is contractually bound to these provisions and has so advised the State system, there is no need to advise the State system of subsequent contracts. The contractor may advise the State system when it is no longer bound by this contract clause.
- f. This clause does not apply to the listing of employment openings which occur and are filled outside the 50 States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.
- g. The provisions of paragraphs (b), (c), (d), and (e) of this clause do not apply to openings which the contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of his own organization or employer-union arrangement for that opening.

h. As used in this clause:

- (1) "All suitable employment openings" includes, but is not limited to, openings which occur in the following job categories: production and non-production; plant and office; laborers and mechanics; supervisory and nonsupervisory; technical; and executive, administrative, and professional openings that are compensated on a salary basis of less than \$25,000 per year. This term includes full-time employment, temporary employment of more than 3 days' duration, and part-time employment. It does not include openings which the contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement nor openings in an educational institution which are restricted to students of that institution. Under the most compelling circumstances an employment opening may not be suitable for listing, including such situations where the needs of the Government cannot reasonably be otherwise supplied, where listing would be contrary to national security, or where the requirement of listing would otherwise not be for the best interest of the Government.
  - (2) "Appropriate office of the State employment service system" means the local office of the Federal/State national system of public employment offices with assigned responsibility for serving the area where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.
  - (3) "Openings which the contractor proposes to fill from within his own organization" means employment openings for which no consideration will be given to persons outside the contractor's organization (including any affiliates, subsidiaries, and the parent companies) and includes any openings which the contractor proposes to fill from regularly established "recall" lists.
  - (4) "Openings which the contractor proposes to fill pursuant to a customary and traditional employer-union hiring arrangement" means employment openings which the contractor proposes to fill from union halls, which is part of the customary and traditional hiring relationship which exists between the contractor and representatives of his employees.
- i. The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
  - j. In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
  - k. The contractor agrees to post in conspicuous places available to employees and applicants for employment notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notice shall state the contractor's obligation under the law to take affirmative action to employ

and advance in employment qualified disabled veterans and veterans of the Vietnam era for employment, and the rights of applicants and employees.

1. The contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding that the contractor is bound by terms of the Vietnam Era Veteran's Readjustment Assistance Act and is committed to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era.
- m. The contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to the Act, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

28. EMPLOYMENT OF THE HANDICAPPED (FPR Temp. Reg. 38)

- a. The contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- b. The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Rehabilitation Act of 1973 as amended
- c. In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.
- d. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor provided by or through the Contracting Officer. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
- e. The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding that the contractor is bound by the terms of section 503 of the Act, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.



- C. The Contractor will include the provisions of this clause in every subcontract or purchase order of \$2,500 or more unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

29. CLEAR AIR AND WATER (1-1.2302)

(Applicable only if the contract exceeds \$100,000, or the Contracting Officer has determined that orders under an indefinite quantity contract in any one year will exceed \$100,000 or a facility to be used has been the subject of a conviction under the Clear Air Act (42 U.S.C. 1957c-8(c) (1)) or the Federal Water Pollution Control Act (33 U.S.C. 11 (c)) and is listed by EPA, or the contract is not otherwise exempt.)

a. The Contractor agrees as follows:

- (1) To comply with all the requirements of section 114 of the Clean Air Act, as amended (42 U.S.C. 1857, et seq., as amended by Pub. L. 91-604) and section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq., as amended by Pub. L. 95-500), respectively, relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder before the award of the contract.
- (2) That no portion of the work required by this prime contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of such facility or facilities from such listing.
- (3) To use his best efforts to comply with clean air standards and clean water standards at the facility in which the contract is being performed.
- (4) To insert the substance of the provisions of this clause into any nonexempt subcontract, including this paragraph (a)(4).

b. The terms used in this clause have the following meanings:

- (1) The term "Air-Act" means the Clean Air Act, as amended (42 U.S.C. 1857 et. seq., as amended by Pub. L. 91-604).
- (2) The term "Water Act" means Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et. seq., as amended by Pub. L. 92-500).



- (3) The term "clean air standards" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in section 110(d) of the Clean Air Act (42 U.S.C. 1857c-5(d)), an approved implementation procedure or plan under section 111(c) or section 111(d), respectively, of the Air Act (42 U.S.C. 1857(c) or (d)), or an approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 1857c-7(d)).
- (4) The term "clean water standards" means any enforceable limitation, control, condition, prohibition, standard, or other requirement which is promulgated pursuant to the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. 1317).
- (5) The term "compliance" means compliance with clean air or water standards. Compliance shall also mean compliance with a schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency or an air or water pollution control agency in accordance with the requirements of the Air Act or Water Act and regulations issued pursuant thereto.
- (6) The term "facility" means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations owned, leased, or supervised by a contractor or subcontractor, to be utilized in the performance of a contract or subcontract. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location or site shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are collocated in one geographical area.

30. FEDERAL, STATE, AND LOCAL TAXES (1-11.401-1(c))

- (a) Except as may be otherwise provided in this contract, the contract price includes all applicable Federal, State, and local taxes and duties.
- (b) Nevertheless, with respect to any Federal excise tax or duty on the transactions or property covered by this contract, if a statute, court decision, written ruling, or regulation takes effect after the contract date, and--
  - 1. Results in the Contractor being required to pay or bear the burden of any such Federal excise tax or duty or increase in the rate thereof which would not otherwise have been payable on such transactions or property, the contract price shall be increased by the amount of such tax or duty or rate increase: Provided, that the Contractor if requested

by the Contracting Officer, warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price as a contingency reserve or otherwise; or

- (2) Results in the Contractor not being required to pay or bear the burden of, or in his obtaining a refund or drawback of, any such Federal excise tax or duty which would otherwise have been payable on such transactions or property or which was the basis of an increase in the contract price, the contract price shall be decreased by the amount of the relief, refund, or drawback, or the amount shall be paid to Government, as directed by the Contracting Officer. The contract price shall be similarly decreased if the Contractor, through his fault or negligence or his failure to follow instructions of the Contracting Officer, is required to pay or bear the burden of, or does not obtain a refund or drawback of, any such Federal excise tax or duty.
- c. No adjustment pursuant to paragraph (b) above will be made under this contract unless the aggregate amount thereof is or may reasonably be expected to be over \$100.
- d. As used in paragraph (b) above, the term "contract date" means the date set for the bid opening, or if this is a negotiated contract, the date of this contract. As to additional supplies or services procured by modification to this contract, the term "contract date" means the date of such modification.
- e. Unless there does not exist any reasonable basis to sustain an exemption, the Government, upon request of the Contractor, without further liability, agrees, except as otherwise provided in this contract, to furnish evidence appropriate to establish exemption from any tax which the Contractor warrants in writing was excluded from the contract price. In addition, the Contracting Officer may furnish evidence to establish exemption from any tax that may, pursuant to this clause, give rise to either an increase or decrease in the contract price. Except as otherwise provided in this contract, evidence appropriate to establish exemption from duties will be furnished only at the discretion of the Contracting Officer.
- f. The Contractor shall promptly notify the Contracting Officer of matters which will result in either an increase or decrease in the contract price, and shall take action with respect thereto as directed by the Contracting Officer.

### 31. TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (1-8.701)

- a. The performance of work under this contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

- b. After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall:
- (1) Stop work under the contract on the date and to the extent specified in the Notice of Termination;
  - (2) Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated;
  - (3) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
  - (4) Assign to the Government, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
  - (5) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;
  - (6) Transfer title to the Government and deliver in the manner, at the times, and to the extent, if any, directed by the Contracting Officer, (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (ii) the completed or partially completed plans, drawings, information and other property which, if the contract had been completed, would have been required to be furnished to the Government;
  - (7) Use his best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in (6) above: *Provided, however,* That the Contractor (i) shall not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer: *And provided further,* That the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct;
  - (8) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

- (9) Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

At any time after expiration of the plant clearance period, as defined in Subpart 1-8.1 of the Federal Procurement Regulations (41 CFR 1-8.1), as the definition may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter the Government will accept title to such items and remove them or enter into a storage agreement covering the same: *Provided*, That the list submitted shall be subject to verification by the Contracting Officer upon removal of the items or, if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

- c. After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim, in the form and with certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the Contractor made in writing within such one-year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one-year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any review required by the contracting agency's procedures in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.
- d. Subject to the provisions of paragraph (c), and subject to any review required by the contracting agency's procedures in effect as of the date of execution of this contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done: *Provided*, That such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in paragraph (e) of this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Contracting Officer to agree upon the whole amount to



be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph (d).

- e. In the event of the failure of the Contractor and the Contracting Officer to agree as provided in paragraph (d) upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the Contracting Officer shall, subject to any review required by the contracting agency's procedures in effect as of the date of execution of this contract, determine, on the basis of information available to him the amount if any due to the Contractor by reason of the termination and shall pay to the Contractor the amounts determined as follows:
- (1) For completed supplies accepted by the Government (or sold or acquired as provided in paragraph (b) (7) above) and not theretofore paid for, a sum equivalent to the aggregate price for such supplies computed in accordance with the price or prices specified in the contract, appropriately adjusted for any saving of freight or other charges;
  - (2) The total of--
    - (i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but exclusive of any costs attributable to supplies paid or to be paid for under paragraph (e) (1) hereof;
    - (ii) The cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b) (5) above, which are properly chargeable to the terminated portion of the contract (exclusive of amounts paid or payable on account of supplies or materials delivered or services furnished by subcontractors or vendors prior to the effective date of the Notice of Termination, which amounts shall be included in the costs payable under (i) above); and
    - (iii) A sum, as profit on (i), above, determined by the contracting officer pursuant to § 1-8.303 of the Federal Procurement Regulations (41 CFR 1-8.303), in effect as of the date of execution of this contract, to be fair and reasonable: *Provided, however,* That if it appears that the contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (iii) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and
  - (3) The reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the

contract and for the termination and settlement of subcontracts the remainder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to this contract.

The total sum to be paid to the Contractor under (1) and (2) of this paragraph (e) shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor as provided in (e) (1) and (2) (i) above, the fair value, as determined by the Contracting Officer, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government, or to a buyer pursuant to paragraph (b) (7).

- f. Costs claimed, agreed to, or determined pursuant to paragraphs (c), (d), and (e) of this clause shall be in accordance with the applicable contract cost principles and procedures in Part 1-15 of the Federal Procurement Regulations (41 CFR 1-15) in effect on the date of this contract.
- g. The Contractor shall have the right to appeal, under the clause of this contract entitled "Dispute," from any determination made by the Contracting Officer under paragraph (c) or (e) above, except that, if the Contractor has failed to submit his claim within the time provided in paragraph (c) above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (c) or (e) above, the Government shall pay to the Contractor the following: (1) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer; or (2) if an appeal has been taken, the amount finally determined on such appeal.
- h. In arriving at the amount due the Contractor under this clause there shall be deducted (1) all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this contract; (2) any claim which the Government may have against the Contractor in connection with this contract; and (3) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the Government.
- i. If the termination hereunder be partial, prior to the settlement of the terminated portion of this contract, the Contractor may file with the Contracting Officer a request in writing for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices.

- j. The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate of 6 percent per annum for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government: *Provided, however,* That no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.
- k. Unless otherwise provided for in this contract, or by applicable statute, the Contractor, from the effective date of termination and for a period of three years after final settlement under this contract, shall preserve and make available to the Government at all reasonable times at the office of the Contractor but without direct charge to the Government, all his books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under this contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions thereof.

32. MINORITY BUSINESS ENTERPRISES SUBCONTRACTING PROGRAM (1-1.1310.2(b))

- a. The Contractor agrees to establish and conduct a program which will enable minority business enterprises (as defined in the clause entitled "Utilization of Minority Business Enterprises") to be considered fairly as subcontractors and suppliers under this contract. In this connection, the Contractor shall--
- (1) Designate a liaison officer who will administer the Contractor's minority business enterprises program.
  - (2) Provide adequate and timely consideration of the potentialities of known minority business enterprises in all "make-or-buy" decisions.
  - (3) Assure that known minority business enterprises will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of minority business enterprises.
  - (4) Maintain records showing (i) procedures which have been adopted to comply with the policies set forth in this clause, including the establishment of a source list of minority business enterprises, (ii) awards to minority business enterprises on the source list, and (iii) specific efforts to identify and award contracts to minority business enterprises.

- (5) Include the Utilization of Minority Business Enterprises clause in subcontracts which offer substantial minority business enterprises subcontracting opportunities.
  - (6) Cooperate with the Contracting Officer in any studies and surveys of the Contractor's minority business enterprises procedures and practices that the Contracting Officer may from time to time conduct.
  - (7) Submit periodic reports of subcontracting to known minority business enterprises with respect to the records referred to in subparagraph (4), above, in such form and manner and at such time (not more often than quarterly) as the Contracting Officer may prescribe.
- b. The Contractor further agrees to insert, in any subcontract hereunder which may exceed \$500,000, provisions which shall conform substantially to the language of this clause, including this paragraph (b), and to notify the Contracting Officer of the names of such subcontractors.

33. PREFERENCE FOR U.S. FLAG AIR CARRIERS (1-1.323-2)

- a. Pub. L. 93-623 requires that all Federal agencies and Government contractors and subcontractors will use U.S. flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent service by such carriers is available. It further provides that the Comptroller General of the United States shall disallow any expenditure from appropriate funds for international air transportation on other than a U.S. flag air carrier in the absence of satisfactory proof of the necessity therefor.
- b. The contractor agrees to utilize U.S. flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent service by such carriers is available.
- c. In the event that the contractor selects a carrier other than a U.S. flag air carrier for international air transportation; he will include a certification on vouchers involving such transportation which is essentially as follows:

CERTIFICATION OF UNAVAILABILITY OF U.S. FLAG  
AIR CARRIERS

I hereby certify that transportation service for personnel (and their personal effects) or property by certificated air carrier was unavailable for the following reasons:<sup>1</sup> (state reasons)

34. NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (1-7.203-3)

- a. Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this

<sup>1</sup> See Federal Procurement Regulations (41 CFR 1-1.323-3) or section 1-336.2 of the Armed Services Procurement Regulations, as applicable.



contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the Contracting Officer.

- b. The Contractor agrees to insert the substance of this clause, including this paragraph (b), in any subcontract hereunder as to which a labor dispute may delay the timely performance of this contract; except that each such subcontract shall provide that in the event its timely performance is delayed or threatened by delay by an actual or potential labor dispute, the subcontractor shall immediately notify his next higher tier subcontractor, or the Prime Contractor, as the case may be, of all relevant information with respect to such disputes.

35. PERMITS (9-7.5006-48)

Except as otherwise directed by the Contracting Officer, the contractor shall procure all necessary permits or licenses and abide by all applicable laws, regulations, and ordinances of the United States and of the State, territory, and political subdivision in which the work under this contract is performed.

36. RENEGOTIATION (9-7.5004-20)

If this contract is subject to the Renegotiation Act of 1951, as amended, the following provisions shall apply:

- a. This contract is subject to the Renegotiation Act of 1951 (50 U.S.C. App. 1211, et. seq.), as amended, and to any subsequent act of Congress providing for the renegotiation of contracts. Nothing contained in this clause shall impose any renegotiation obligation with respect to this contract or any subcontract hereunder which is not imposed by an act of Congress heretofore or hereafter enacted. Subject to the foregoing, this contract shall be deemed to contain all the provisions required by section 104 of the Renegotiation Act of 1951, and by any such other act, without subsequent contract amendment specifically incorporating such provisions.
- b. The contractor agrees to insert the provisions of this clause, including this paragraph (b), in all subcontracts, as that term is defined in section 103 g. of the Renegotiation Act of 1951, as amended.

37. PATENT INDEMNITY (9-9.5009(c))

The Contractor agrees to indemnify the Government, its officers, agents, servants, and employees against liability of any kind (including costs and expenses incurred) for the use of any invention or discovery and for the infringement of any Letters Patent (not including liability, arising pursuant to Section 183, Title 35, (1952) U.S. Code, prior to the issuance of Letters Patent) occurring in the performance of this contract or arising by reason of the use of disposal by or for the account of the Government of items manufactured or supplied under this contract.

38. REPORTING OF ROYALTIES (9-9.5011)

If this contract is in an amount which exceeds \$10,000 and if any royalty payments are directly involved in the contract or are reflected in the contract price to the Government, the Contractor agrees to report in writing to the Commission (Patent Counsel, Office of the Executive Legal Director) during the performance of this contract and prior to its completion or final settlement the amount of any royalties or other payments paid or to be paid by it directly to others in connection with the performance of this contract together with the names and addresses of licensors to whom such payments are made and either the patent numbers involved or such other information as will permit identification of the patents or other basis on which the royalties are to be paid. The approval of the Commission of any individual payments or royalties shall not estop the Government at any time from contesting the enforceability, validity or scope of, or title, to, any patent under which a royalty or payments are made.

39. NOTICE REGARDING LATE DELIVERY (1-7.204-4)

In the event the Contractor encounters difficulty in meeting performance requirements, or anticipates difficulty in complying with the contract delivery schedule or date, the Contractor shall immediately notify the Contracting Officer thereof in writing, giving pertinent details, including the date by which it expects to complete performance or make delivery: *Provided, however,* That this data shall be informational only in character and that receipt thereof shall not be construed as a waiver by the Government of any contract delivery schedule or date, or any rights or remedies provided by law or under this contract.

40. STOP WORK ORDER

(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 ninety (90) days after the order is delivered to the Contractor, and for any further period at which the parties may agree. Any such order shall be specifically identified as a Stop Work Order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall forthwith 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 ninety (90) days after a stop work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either:

- (i) cancel the stop work order, or
- (ii) terminate the work covered by such order as provided in the "Default" or the "Termination for Convenience" clause of this contract.

(b) If a stop work order issued under this clause is cancelled or the period of the order or any extension thereof expires, the Contractor shall resume work. An equitable adjustment shall be made in the delivery schedule or contract price, or both, and the contract shall be modified in writing accordingly, if:

- (i) 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
- (ii) the Contractor asserts a claim for such adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if the Contracting Officer decides the facts justify such action, he may receive and act upon any such claim asserted at any time prior to final payment under this contract.

(c) If a stop work order is not canceled and the work covered by such order is terminated for the convenience of the Government, the reasonable costs resulting from the stop work order shall be allowed in arriving at the termination settlement.

(d) If a stop work order is not canceled and the work covered by such order is terminated for default, the reasonable costs resulting from the stop work order shall be allowed by equitable adjustment or otherwise.

#### 41. PUBLICATION AND PUBLICITY

Unless otherwise specified in this contract, the Contractor is encouraged to publish and make available through accepted channels the results of its work under this contract. The Contractor shall submit a copy of each article or other information to the Project Officer prior to publication or dissemination for public use. If the article or other information is subsequently modified or altered in any manner, the Contractor shall promptly notify the Project Officer and furnish him/her a copy of the article or other information as finally submitted for publication or dissemination.

The Contractor shall acknowledge the support of the U. S. Nuclear Regulatory Commission whenever publicizing the work under this contract in any media. To effectuate the foregoing, the Contractor shall include in any publication resulting from work performed under this contract an acknowledgement substantially as follows:

"The work upon which this publication is based was performed pursuant to Contract (insert number) with the (insert name of constituent agency), U. S. Nuclear Regulatory Commission."

Either Clause No. 42, entitled "Dissemination of Contract Information" or Clause No. 41 is for application but not both. In the absence of a clear delineation, Clause No. 41 applies.

#### 42. DISSEMINATION OF CONTRACT INFORMATION

The Contractor shall not publish, permit to be published, or distribute for public consumption, any information, oral or written, concerning the results of conclusions made pursuant to the performance of this contract, without the prior written consent of the Contracting Officer. (Two copies of any material proposed to be published or distributed shall be submitted to the Contracting Officer.) Failure to comply with this clause shall be grounds for termination of this contract.



43. WORK FOR OTHERS

Notwithstanding any other provision of this contract, during the term of this contract, the contractor agrees to forego entering into consulting or other contractual arrangements with any firm or organization, the result of which may give rise to an actual or apparent conflict of interest with respect to the work being performed under this contract. The contractor shall insure that all employees designated as key personnel if any, under this contract abide by the provisions of this clause. If the contractor believes with respect to itself or any such employee that any proposed consultant or other contractual arrangement with any firm or organization may involve a possible conflict of interest, the contractor shall obtain the written approval of the Contracting Officer prior to execution of such contractual arrangement.

## PART 20-1 -- GENERAL

### Subpart 20-1.54--Contractor Organizational Conflicts of Interest

#### Sec.

20-1.5401	Scope and policy.
20-1.5402	Definitions.
20-1.5403	Criteria for recognizing contractor organizational conflicts of interest.
20-1.5404	Representation.
20-1.5405	Contract clauses.
20-1.5405-1	General contract clause.
20-1.5405-2	Special contract provisions.
20-1.5406	Evaluation, findings, and contract award.
20-1.5407	Conflicts identified after award.
20-1.5408	(Reserved)
20-1.5409	(Reserved)
20-1.5410	Subcontractors.
20-1.5411	Waiver.
20-1.5412	Remedies.

AUTHORITY: Sec. 8, Pub. L. 95-601, adding Sec. 170A to Pub. L. 83-703, 68 Stat. 919, as amended (42 U.S.C. ch. 14)

#### §20-1.5401 Scope and Policy

(a) It is the policy of the U.S. Nuclear Regulatory Commission (NRC) to avoid, eliminate or neutralize contractor organizational conflicts of interest. The NRC achieves this objective by requiring all prospective contractors to submit information describing relationships, if any, with organizations or persons (including those regulated by NRC) which may give rise to actual or potential conflicts of interest in the event of contract award.

(b) Contractor conflict of interest determinations cannot be made automatically or routinely; the application of sound judgment on virtually a case-by-case basis is necessary if the policy is to be applied so as to satisfy the overall public interest. It is not possible to prescribe in advance a specific method or set of criteria which would serve to identify and resolve all of the contractor conflict of interest situations which might arise; however, examples are provided in these regulations to guide application of the policy. NRC contracting and program officials must be alert to other situations which may warrant application of this policy guidance. The ultimate test is: Might the contractor, if awarded the contract, be placed in a position where its judgment may be biased, or where it may have an unfair competitive advantage?

(c) The conflict of interest rule contained in this subpart applies to contractors and offerors only. Individuals or firms who have other relationships with NRC (e.g., parties to a licensing proceeding) are not covered by this regulation. This rule does not apply to the acquisition of consulting services through the personnel appointment process, NRC

agreements with other government agencies, international organizations, or state, local or foreign governments; separate procedures for avoiding conflicts of interest will be employed in such agreements, as appropriate.

#### § 20-1.5402 Definitions

(a) "Organizational conflicts of interest" means that a relationship exists whereby a contractor or prospective contractor has present or planned interests related to the work to be performed under an NRC contract which: (1) May diminish its capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product, or (2) may result in its being given an unfair competitive advantage.

(b) "Research" means any scientific or technical work involving theoretical analysis, exploration, or experimentation.

(c) "Evaluation activities" means any effort involving the appraisal of a technology, process, product, or policy.

(d) "Technical consulting and management support services" means internal assistance to a component of the NRC in the formulation or administration of its programs, projects, or policies which normally require the contractor to be given access to information which has not been made available to the public or proprietary information. Such services typically include assistance in the preparation of program plans; and preparation of preliminary designs, specifications, or statements of work.

(e) "Contract" means any contract, agreement, or other arrangement with the NRC except as provided in Section 20-1.5401(c).

(f) "Contractor" means any person, firm, unincorporated association, joint venture, co-sponsor, partnership, corporation, affiliates thereof, or their successors in interest, including their chief executives, directors, key personnel (identified in the contract), proposed consultants or subcontractors, which is a party to a contract with the NRC.

(g) "Affiliates" means business concerns which are affiliates of each other when either directly or indirectly one concern or individual controls or has the power to control another, or when a third party controls or has the power to control both (41 CFR § 1-1.606-1(e)).

(h) "Subcontractor" means any subcontractor of any tier which performs work under a contract with the NRC except subcontracts for supplies and subcontracts in amounts of \$10,000 or less.

(i) "Prospective contractor" or "offeror" means any person, firm, unincorporated association, joint venture, partnership, corporation, or affiliates thereof, including its chief executive, directors, key personnel (identified in the proposal), proposed consultants, or subcontractors, submitting a bid or proposal, solicited or unsolicited, to the NRC to obtain a contract.

(j) "Potential conflict of interest" means that a factual situation exists that suggests (indicates) that an actual conflict of interest may arise from award of a proposed contract. The term "potential conflict of interest" is used to signify those situations which merit investigation prior to contract award in order to ascertain whether award would give rise to an actual conflict or which must be reported to the contracting officer for investigation if they arise during contract performance.

§ 20-1.5403 Criteria for recognizing contractor organizational conflicts of interest

(a) General. Two questions will be asked in determining whether actual or potential organizational conflicts of interest exist: (1) Are there conflicting roles which might bias a contractor's judgment in relation to its work for the NRC? (2) May the contractor be given an unfair competitive advantage based on the performance of the contract? The ultimate determination by NRC as to whether organizational conflicts of interest exist will be made in light of common sense and good business judgment based upon the relevant facts disclosed and the work to be performed. While it is difficult to identify and to prescribe in advance a specific method for avoiding all of the various situations or relationships which might involve potential organizational conflicts of interest, NRC personnel will pay particular attention to proposed contractual requirements which call for the rendering of advice, consultation or evaluation activities, or similar activities that lay direct groundwork for the NRC's decisions on regulatory activities, future procurements, and research programs.

(b) Situations or relationships which may give rise to organizational conflicts of interest. (1) The offeror or contractor shall disclose information concerning relationships which may give rise to organizational conflicts of interest under the following circumstances:

(i) Where the offeror or contractor provides advice and recommendations to the NRC in a technical area in which it is also providing consulting assistance in the same area to any organization regulated by the NRC.

(ii) Where the offeror or contractor provides advice to the NRC on the same or similar matter in which it is also providing assistance to any organization regulated by the NRC.

(iii) Where the offeror or contractor evaluates its own products or services, or the products or services of another entity where the offeror or contractor has been substantially involved in their development or marketing.

(iv) Where the award of a contract would otherwise result in placing the offeror or contractor in a conflicting role in which its judgment may be biased in relation to its work for the NRC or may otherwise result in an unfair competitive advantage for the offeror or contractor.



(2) The contracting officer may request specific information from an offeror or contractor or may require special contract provisions such as provided in §20-1.5405-2 in the following circumstances:

(i) Where the offeror or contractor prepares specifications which are to be used in competitive procurements of products or services covered by such specifications.

(ii) Where the offeror or contractor prepares plans for specific approaches or methodologies that are to be incorporated into competitive procurements using such approaches or methodologies.

(iii) Where the offeror or contractor is granted access to information not available to the public concerning NRC plans, policies, or programs which could form the basis for a later procurement action.

(iv) Where the offeror or contractor is granted access to proprietary information of its competitors.

(v) Where the award of a contract might otherwise result in placing the offeror or contractor in a conflicting role in which its judgment may be biased in relation to its work for the NRC or may otherwise result in an unfair competitive advantage for the offeror or contractor.

(c) Policy application guidance. The following examples are illustrative only and are not intended to identify and resolve all contractor organizational conflict of interest situations. (1) Example. The XYZ Corp., in response to a request for proposal (RFP), proposes to undertake certain analyses of a reactor component as called for in the RFP. The XYZ Corp. is one of several companies considered to be technically well qualified. In response to the inquiry in the RFP, the XYZ Corp. advises that it is currently performing similar analyses for the reactor manufacturer.

Guidance. An NRC contract for that particular work normally would not be awarded to the XYZ Corp. because it would be placed in a position in which its judgment could be biased in relationship to its work for NRC. Since there are other well-qualified companies available, there would be no reason for considering a waiver of the policy.

(2) Example. The ABC Corp., in response to a RFP, proposes to perform certain analyses of a reactor component which are unique to one type of advanced reactor. As is the case with other technically qualified companies responding to the RFP, the ABC Corp. is performing various projects for several different utility clients. None of the ABC Corp. projects have any relationship to the work called for in the RFP. Based on the NRC evaluation, the ABC Corp. is considered to be the best qualified company to perform the work outlined in the RFP.

Guidance. An NRC contract normally could be awarded to the ABC Corp. because no conflict of interest exists which would motivate bias with respect to the work. An appropriate clause would be included in the contract to preclude the ABC Corp. from subsequently contracting for work during the performance of the NRC contract with the private sector which could create a conflict. For example, ABC Corp. would be precluded from the performance of similar work for the company developing the advanced reactor mentioned in the example.

(3) Example. As a result of operating problems in a certain type of commercial nuclear facility, it is imperative that NRC secure specific data on various operational aspects of that type of plant so as to assure adequate safety protection of the public. Only one manufacturer has extensive experience with that type of plant. Consequently, that company is the only one with whom NRC can contract which can develop and conduct the testing programs required to obtain the data in reasonable time. That company has a definite interest in any NRC decisions that might result from the data produced because those decisions affect the reactor's design and thus the company's costs.

Guidance. This situation would place the manufacturer in a role in which its judgment could be biased in relationship to its work for NRC. Since the nature of the work required is vitally important in terms of NRC's responsibilities and no reasonable alternative exists, a waiver of the policy may be warranted. Any such waiver shall be fully documented and coordinated in accordance with the waiver provisions of this policy with particular attention to the establishment of protective mechanisms to guard against bias.

(4) Example. The ABC Co. submits a proposal for a new system for evaluating a specific reactor component's performance for the purpose of developing standards that are important to the NRC program. The ABC Co. has advised NRC that it intends to sell the new system to industry once its practicability has been demonstrated. Other companies in this business are using older systems for evaluation of the specific reactor component.

Guidance. A contract could be awarded to the ABC Co. provided that the contract stipulates that no information produced under the contract will be used in the contractor's private activities unless such information has been reported to NRC. Information which is reported to NRC by contractors will normally be disseminated by NRC to others so as to preclude an unfair competitive advantage that might otherwise accrue. When NRC furnishes information to the contractor for the performance of contract work, it shall not be used in the contractor's private activities unless such information is generally available to others. Further, the contract will stipulate that the contractor will inform the NRC contracting officer of all situations in which the information developed under the contract is proposed to be used.

(5) Example. The ABC Corp., in response to a RFP proposes to assemble a map showing certain seismological features of the Appalachian fold belt. In accordance with the representation in the RFP and §20-1.5403(b)(1)(i), ABC Corp. informs the NRC that it is presently doing seismological studies for several utilities in the Eastern United States but none of the sites are within the geographic area contemplated by the NRC study.

Guidance. The contracting officer would normally conclude that award of a contract would not place ABC Corp. in a conflicting role where its judgment might be biased. The work for others clause of §20-1.5405-1(c) would preclude ABC Corp. from accepting work during the term of the NRC contract which could create a conflict of interest.

(d) Other considerations. (1) The fact that the NRC can identify and later avoid, eliminate, or neutralize any potential organizational conflicts arising from the performance of a contract is not relevant to a determination of the existence of such conflicts prior to the award of a contract.

(2) It is not relevant that the contractor has the professional reputation of being able to resist temptations which arise from organizational conflicts of interest, or that a follow-on procurement is not involved, or that a contract is awarded on a competitive or a sole source basis.

#### §20-1.5404 Representation

(a) The following procedures are designed to assist the NRC contracting officer in determining whether situations or relationships exist which may constitute organizational conflicts of interest with respect to a particular offeror or contractor.

(b) Representation procedure. The following organizational conflicts of interest representation provision shall be included in all solicitations and unsolicited proposals for: (1) Evaluation services or activities; (2) technical consulting and management support services; (3) research; and (4) other contractual situations where special organizational conflicts of interest provisions are noted in the solicitation and would be included in the resulting contract. This representation requirement shall also apply to all modifications for additional effort under the contract except those issued under the "changes" clause. Where, however, a statement of the type required by the organizational conflicts of interest representation provision has previously been submitted with regard to the contract being modified, only an updating of such statement shall be required.

## ORGANIZATIONAL CONFLICTS OF INTEREST REPRESENTATION

I represent to the best of my knowledge and belief that:

The award to \_\_\_\_\_ of a contract or the modification of an existing contract does ( ) or does not ( ) involve situations or relationships of the type set forth in 41 CFR § 20-1.5403(b)(1).

(c) Instructions to offerors. The following shall be included in all NRC solicitations: (1) If the representation as completed indicates that situations or relationships of the type set forth in 41 CFR § 20-1.5403(b)(1) are involved, or the contracting officer otherwise determines that potential organizational conflicts exist, the offeror shall provide a statement in writing which describes in a concise manner all relevant facts bearing on his representation to the contracting officer. If the contracting officer determines that organizational conflicts exist, the following actions may be taken: (i) Impose appropriate conditions which avoid such conflicts, (ii) disqualify the offeror, or (iii) determine that it is otherwise in the best interest of the United States to seek award of the contract under the waiver provisions of § 20-1.5411.

(2) The refusal to provide the representation required by § 20-1.5404(b) or upon request of the contracting officer the facts required by § 20-1.5404(c), shall result in disqualification of the offeror for award. The nondisclosure or misrepresentation of any relevant interest may also result in the disqualification of the offeror for award; or if such nondisclosure or misrepresentation is discovered after award, the resulting contract may be terminated. The offeror may also be disqualified from subsequent related NRC contracts and be subject to such other remedial actions provided by law or the resulting contract.

(d) The offeror may, because of actual or potential organizational conflicts of interest, propose to exclude specific kinds of work from the statements of work contained in a RFP unless the RFP specifically prohibits such exclusion. Any such proposed exclusion by an offeror will be considered by the NRC in the evaluation of proposals. If the NRC considers the proposed excluded work to be an essential or integral part of the required work and its exclusion would work to the detriment of the competitive posture of the other offerors, the proposal must be rejected as unacceptable.

(e) The offeror's failure to execute the representation required by subsection (b) above with respect to invitation for bids will be considered to be a minor informality, and the offeror will be permitted to correct the omission.

§ 20-1.5405 Contract clauses

§ 20-1.5405-1 General contract clause



All contracts of the types set forth in § 20-1.5404(b) shall include the following clauses:

(a) Purpose. The primary purpose of this clause is to aid in ensuring that the contractor: (1) Is not placed in a conflicting role because of current or planned interest (financial, contractual, organizational, or otherwise) which relate to the work under this contract, and (2) does not obtain an unfair competitive advantage over other parties by virtue of its performance of this contract.

(b) Scope. The restrictions described herein shall apply to performance or participation by the contractor as defined in 41 CFR § 20-1.5402(f) in the activities covered by this clause.

(c) Work for others. Notwithstanding any other provision of this contract, during the term of this contract, the contractor agrees to forego entering into consulting or other contractual arrangements with any firm or organization, the result of which may give rise to a conflict of interest with respect to the work being performed under this contract. The contractor shall ensure that all employees who are employed full time under this contract and employees designated as key personnel, if any, under this contract abide by the provision of this clause. If the contractor believes with respect to itself or any such employee that any proposed consultant or other contractual arrangement with any firm or organization may involve a potential conflict of interest, the contractor shall obtain the written approval of the contracting officer prior to execution of such contractual arrangement.

(d) Disclosure after award. (1) The contractor warrants that to the best of its knowledge and belief and except as otherwise set forth in this contract, it does not have any organizational conflicts of interest, as defined in 41 CFR § 20-1.5402(a).

(2) The contractor agrees that if after award it discovers organizational conflicts of interest with respect to this contract, it shall make an immediate and full disclosure in writing to the contracting officer. This statement shall include a description of the action which the contractor has taken or proposes to take to avoid or mitigate such conflicts. The NRC may, however, terminate the contract for convenience if it deems such termination to be in the best interests of the government.

(e) Access to and use of information. (1) If the contractor in the performance of this contract obtains access to information, such as NRC plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (Pub. L. 93-579), or data which has not been released to the public, the contractor agrees not to: (i) Use such information for any private purpose until the information has been released to the public; (ii) compete for work for the Commission based

on such information for a period of six (6) months after either the completion of this contract or the release of such information to the public, whichever is first, (iii) submit an unsolicited proposal to the government based on such information until one year after the release of such information to the public, or (iv) release the information without prior written approval by the contracting officer unless such information has previously been released to the public by the NRC.

(2) In addition, the contractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (Pub. L. 93-579), or other confidential or privileged technical, business, or financial information under this contract, the contractor shall treat such information in accordance with restrictions placed on use of the information.

(3) The contractor shall have, subject to patent and security provisions of this contract, the right to use technical data it produces under this contract for private purposes provided that all requirements of this contract have been met.

(f) Subcontracts. Except as provided in 41 CFR §20-1.5402(h), the contractor shall include this clause, including this paragraph, in subcontracts of any tier. The terms "contract," "contractor," and "contracting officer," shall be appropriately modified to preserve the government's rights.

(g) Remedies. For breach of any of the above proscriptions or for intentional nondisclosure or misrepresentation of any relevant interest required to be disclosed concerning this contract or for such erroneous representations as necessarily imply bad faith, the government may terminate the contract for default, disqualify the contractor from subsequent contractual efforts, and pursue other remedies as may be permitted by law or this contract.

(h) Waiver. A request for waiver under this clause shall be directed in writing through the contracting officer to the Executive Director for Operations (EDO) in accordance with the procedures outlined in §20-1.5411.

#### §20-1.5405-2 Special contract provisions.

(a) If it is determined from the nature of the proposed contract that organizational conflicts of interest exist, the contracting officer may determine that such conflict can be avoided or after obtaining a waiver in accordance with §20-1.5411, neutralized through the use of an appropriate special contract provision. If appropriate, the offeror may negotiate the terms and conditions of these clauses, including the extent and time period of any such restriction. These provisions include but are not limited to:

(1) Hardware exclusion clauses which prohibit the acceptance of production contracts following a related nonproduction contract previously performed by the contractor;

(2) Software exclusion clauses;

(3) Clauses which require the contractor (and certain of his key personnel) to avoid certain organizational conflicts of interest; and

(4) Clauses which provide for protection of confidential data and guard against its unauthorized use.

(b) The following additional contract clause may be included as section (i) in the clause set forth in § 20-1.5405-1 when it is determined that award of a follow-on contract would constitute an organizational conflict of interest.

(i) Follow-on effort. (1) The contractor shall be ineligible to participate in NRC contracts, subcontracts, or proposals therefor (solicited or unsolicited) which stem directly from the contractor's performance of work under this contract. Furthermore, unless so directed in writing by the contracting officer, the contractor shall not perform any technical consulting or management support services work or evaluation activities under this contract on any of its products or services or the products or services of another firm if the contractor has been substantially involved in the development or marketing of such products or services.

(2) If the contractor under this contract prepares a complete or essentially complete statement of work or specifications, the contractor shall be ineligible to perform or participate in the initial contractual effort which is based on such statement of work or specifications. The contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the contracting officer, in which case the restriction in this subparagraph shall not apply.

(3) Nothing in this paragraph shall preclude the contractor from offering or selling its standard commercial items to the government.

#### § 20-1.5406 Evaluation, findings, and contract award

The contracting officer will evaluate all relevant facts submitted by an offeror pursuant to the representation requirements of § 20-1.5404(b) and other relevant information. After evaluating this information against the criteria of § 20-1.5403, a finding will be made by the contracting officer whether organizational conflicts of interest exist with respect to a particular offeror. If it has been determined that conflicts of interest exist, then the contracting officer shall either:

(a) Disqualify the offeror from award,

- (b) Avoid or eliminate such conflicts by appropriate measures; or
- (c) Award the contract under the waiver provision of § 20-1.5411.

#### § 20-1.5407 Conflicts identified after award.

If potential organizational conflicts of interest are identified after award with respect to a particular contractor, the contracting officer determines that such conflicts do, in fact, exist and that it would not be in the best interests of the government to terminate the contract as provided in the clauses required by § 20-1.5405, the contracting officer will take every reasonable action to avoid, eliminate, or, after obtaining a waiver in accordance with § 20-1.5411, neutralize the effects of the identified conflict.

§ 20-1.5408 (Reserved)

§ 20-1.5409 (Reserved)

§ 20-1.5410 Subcontracts

The contracting officer shall require offerors and contractors to submit a representation statement in accordance with § 20-1.5404(b) from subcontractors and consultants. The contracting officer shall require the contractor to include contract clauses in accordance with § 20-1.5405 in consultant agreements or subcontracts involving performance of work under a prime contract covered by this subsection.

§ 20-1.5411 Waiver

In the first instance, determination with respect to the need to seek a waiver for specific contract awards shall be made by the contracting officer with the advice and concurrence of the program office director and the Office of Executive Legal Director. Upon the recommendation of the contracting officer, and after consultation with the Office of the General Counsel, the EDO may waive the policy in specific cases if he determines that it is in the best interest of the United States to do so.

Such action shall be strictly limited to those situations in which:

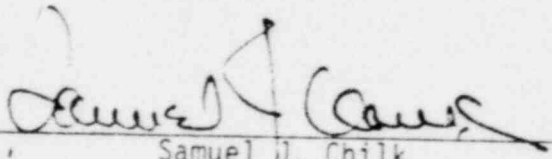
- (1) The work to be performed under contract is vital to the NRC program;
- (2) the work cannot be satisfactorily performed except by a contractor whose interests give rise to a question of conflict of interest; and
- (3) contractual and/or technical review and supervision methods can be employed by NRC to neutralize the conflict. For any such waivers, the justification and approval documents shall be placed in the Public Document Room.

§20-1.5412 Remedies

In addition to such other remedies as may be permitted by law or contract for a breach of the restrictions in this subpart or for any intentional misrepresentation or intentional nondisclosure of any relevant interest required to be provided for this section, the NRC may debar the contractor from subsequent NRC contracts.

Dated at Washington, D.C. this 27th day of March 1979.

For the Nuclear Regulatory Commission

  
\_\_\_\_\_  
Samuel J. Chilk  
Secretary of the Commission



REGISTER OF WAGE DETERMINATIONS UNDER  
THE SERVICE CONTRACT ACT  
By direction of the Secretary of Labor

Henry T. White

Deputy Administrator

LOCALITY	State: _____				
	Area: Mid-Atlantic Region <u>1</u> /				
Wage determination number: 78-279 (Rev. -2)					
Date: <u>APR 29 1980</u>					
Class of service employee	Minimum hourly wage	Fringe benefit payments			
		Health & Welfare	Vacation	Holiday	Other

Employed on contracts for Key entry and related services:

- |   |        |
|---|--------|
| 1. Key entry operator, class A <u>2</u> / | \$5.07 |
| 2. Key entry operator, class B <u>2</u> / | 4.28   |

Fringe benefits applicable to classes of service employees engaged in contract performance:

3/ 4/ 5/

- 1/ A description of the geographic area within the Mid-Atlantic Region is attached hereto.
- 2/ Occupation descriptions are attached hereto.
- 3/ \$.32 an hour or \$12.80 a week or \$55.46 a month.
- 4/ 2 weeks paid vacation after 1 year of service with a contractor or successor. Length of service includes the whole span of continuous service with the present (successor) contractor wherever employed, and the predecessor contractors in the performance of similar work at the same Federal facility. (Reg. 4.171(b)(2).)
5. 9 paid holidays per year: New Year's Day, Washington's Birthday, Good Friday, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, and Christmas Day. (A contractor may substitute for any of the named holidays another day off with pay in accordance with a plan communicated to the employees involved.)

Any class of service employee required in the performance of the contract but not listed above shall be classified by the contractor so as to provide a reasonable relationship between such classes and those listed above, and shall be paid such monetary wages as are determined by agreement (evidenced in writing) of the interested parties, who shall be deemed to be the contracting agency, the contractor, and the employees who will perform on the contract or their representatives. In the absence of an agreement, the question of proper conformable wage rates is to be submitted to the Department of Labor by the contracting officer for a final determination. (See Section 4.6(b) of Regulations 29 CFR 4).

DEFINITION OF MID ATLANTIC REGION

The Mid-Atlantic Region consists  
of the following states and counties

Delaware (08)  
Entire State

District of Columbia (09)  
District of Columbia (001)

Maryland (21)  
Entire State

New Jersey (31) part.  
Counties of  
Cape May  
Cumberland  
Salem

Pennsylvania (39) part.  
Counties of  
Adams  
Bedford  
Chester  
Cumberland  
Dauphin  
Delaware  
Franklin  
Fulton  
Huntingdon  
Juniata  
Lancaster  
Lebanon  
Perry  
York

Virginia (47)  
Entire State

West Virginia (49) part.  
Counties of  
Berkeley  
Grant  
Hampshire  
Hardy  
Jefferson  
Mineral  
Morgan

## Key Entry Operator

Operates keyboard controlled data entry device such as keypunch machine or key operated magnetic tape or disk encoder to transcribe data into a form suitable for computer processing. Work requires skill in operating an alpha-numeric keyboard and an understanding of transcribing procedures and relevant data entry equipment.

Positions are classified into levels on the basis of the following definitions:

### Class A

Work requires the application of experience and judgment in selecting procedures to be followed and in searching for, interpreting, selecting, or coding items to be entered from a variety of source documents. On occasion may also perform routine work as described for class B.

NOTE: Excluded are operators above class A using the key entry controls to access, read, and evaluate the substance of specific records to take substantive actions, or to make entries requiring a similar level of knowledge.

### Class B

Work is routine and repetitive. Under close supervision or following specific procedures or detailed instructions, works from various standardized source documents which have been coded and require little or no selecting, coding, or interpreting of data to be entered. Refers to supervisor problems arising from erroneous items, codes, or missing information.

### (Not classifiable by level)

Workers in positions with work characteristics as described, and within the range of defined levels, should be reported under this classification when the information needed to classify them according to the level definitions is not available.

This wage determination was designed, consistent with the requirements of the Service Contract Act, to apply to the contracts solicited by Federal Agencies within the Washington, D. C., area for keypunch and related services. These contracts are typically performed at the location of the successful contractor's facility which is unknown at the time of a related bid solicitation. The geographic "locality" defined in the determination is considered representative of all the places at which such contract work would potentially be performed based on reviews of bidder interest and awarded contracts.

Prospective bidders on the bid solicitation to which this determination is a part must furnish service employees, as a minimum, the listed wage rates and fringe benefits when their facility, where the work will be performed, is situated within the specified geographic "locality". The determination will likewise be deemed applicable to any prospective bidder proposing to perform the solicited services at a location outside the determination's area of application unless the issuing procurement office is given timely notice of an intent to submit a bid and requested to communicate such notice of intent to the Department of Labor, Division of Service Wage Determinations at (202) 523-7581. The wage rates and fringe benefits herein are accordingly subject to modification upon advice from the issuing procurement office that the competitive interest extends beyond the geographic "locality" specified in the determination.



## Attachment 4

NRC FORM 187 (2-78) NRCM 2101 (Pending Issuance)		U. S. NUCLEAR REGULATORY COMMISSION WASHINGTON, D. C. 20555		1. The policies, procedures and criteria of NRCM 2101, NRC Security Program, apply to performance of this contract.				
SECURITY/CLASSIFICATION REQUIREMENTS				COMPLETE CLASSIFIED ITEMS BY SEPARATE CORRESPONDENCE.				
2. THIS SPECIFICATION IS FOR:		3. CONTRACT NUMBER OR OTHER IDENTIFYING NUMBER (Prime contracts must be shown for all subcontracts)		DATE TO BE COMPLETED (Estimated)				
a. INVITATION FOR BID OR REQUEST FOR PROPOSAL <input checked="" type="checkbox"/>		b. INVITATION FOR BID, REQUEST FOR QUOTE, OR REQUEST FOR PROPOSAL RFPA		4. THIS SPECIFICATION IS (See note below) <input checked="" type="checkbox"/> a. ORIGINAL				
b. PRIME CONTRACT <input checked="" type="checkbox"/>		c. PRIME NRC-10-80-695		d. REVISED (Supersedes all previous specifications) <input type="checkbox"/>				
c. SUBCONTRACT <input type="checkbox"/>		e. FIRST TIER SUBCONTRACT <input type="checkbox"/>		f. OTHER (Specify) <input type="checkbox"/>				
d. OTHER (Specify) <input type="checkbox"/>		g. (Specify) <input type="checkbox"/>		h. OTHER (Specify) <input type="checkbox"/>				
5. FOR FOLLOW-ON CONTRACT, ENTER PRECEDING CONTRACT NUMBER AND DATE COMPLETED. <input type="checkbox"/> DOES NOT APPLY.								
CONTRACT NUMBER			DATE COMPLETED					
6a. NAME AND ADDRESS OF PRIME CONTRACTOR, OFFEROR, OTHER (Specify; include Zip Code)  Small Business Administration			6b. NAME AND ADDRESS OF RESPONSIBLE COGNIZANT SECURITY OFFICE (Include Zip Code)  U.S. Nuclear Regulatory Commission Division of Security Washington D.C. 20555					
7a. NAME AND ADDRESS OF SUBCONTRACTOR (Include Zip Code) (if applicable)  International Business Services 1010 Vermont Ave., N.W. Suite 1010 Washington D.C. 20005			7b. NAME AND ADDRESS OF RESPONSIBLE COGNIZANT SECURITY OFFICE (Include Zip Code)  U.S. Nuclear Regulatory Commission Division of Security Washington D.C. 20555					
8. PROJECT TITLE AND OTHER IDENTIFYING INFORMATION								
9. PERFORMANCE WILL REQUIRE:								
		YES	NO	TS	S	C	NSI	RD
a. ACCESS TO NRC SECURITY AREAS ONLY.		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. ACCESS TO CLASSIFIED INFORMATION OR MATTER AT GOVERNMENT FACILITIES ONLY.		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. RECEIPT, GENERATION, STORAGE OR SAFEGUARDING OF CLASSIFIED DOCUMENTS.		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. MANUFACTURE, PROCESSING OR SAFEGUARDING OF CLASSIFIED MATERIAL.		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. ACCESS TO CLASSIFIED COMSEC INFORMATION OR MATERIAL.		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. ACCESS TO CLASSIFIED INFORMATION OR MATERIAL CURRENTLY POSSESSED BY ANOTHER AGENCY.		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g. USE OF AN AUTOMATIC DATA PROCESSING SYSTEM.		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h. OTHER (Specify) <u>Key punch</u>		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
10. INFORMATION PERTAINING TO THIS REQUIREMENT OR PROJECT, EVEN THOUGH SUCH INFORMATION IS CONSIDERED UNCLASSIFIED, SHALL NOT BE RELEASED FOR DISSEMINATION EXCEPT AS APPROVED BELOW:								
PROPOSED DISSEMINATION SHALL BE SUBMITTED FOR APPROVAL PRIOR TO RELEASE <input type="checkbox"/> DIRECT <input type="checkbox"/> THROUGH (Specify)								



11. SECURITY/CLASSIFICATION REQUIREMENTS ARE SET FORTH BELOW (Check which are applicable)

- ☐ GUIDES ATTACHED (hereby made a part of this requirement).  
☐ DOCUMENT(S) LISTED BELOW (hereby made part of this requirement).  
☒ AS STATED BELOW:

Classification guidance not required under this contract.

The Contractor shall submit a plan in response to this solicitation describing the procedures and methods to be used in protecting any sensitive data that will be accessed, received, handled, stored or processed both on NRC premises and at the Contractor's facilities. Such a plan should have the objective of meeting the requirements of the Privacy Act of 1974, Public Law 93-579, December 31, 1974 (5 U.S.C. 552a.) and NRC Bulletin 2101-15, dated January 10, 1980, "Automated Information Systems Security Program for Sensitive Data."

12. REQUIRED DISTRIBUTION OF NRC FORM 187

- ☒ SPONSORING NRC OFFICE OR DIVISION ☒ PRIME CONTRACTOR (Item 6a)  
☒ DIVISION OF SECURITY (Item 13c) ☒ SUBCONTRACTOR (Item 7a)  
☒ DIVISION OF CONTRACTS (Item 13d) ☒ RESPONSIBLE/COGNIZANT  
 SECURITY OFFICE (Items 7a and 7b)

ADDITIONAL DISTRIBUTION

SECURITY/CLASSIFICATION REQUIREMENTS FOR SUBCONTRACTS RESULTING FROM THIS CONTRACT WILL BE APPROVED BY THE OFFICIALS NAMED IN ITEM 13c AND d BELOW.

13. THIS SECURITY/CLASSIFICATION REQUIREMENT AND ATTACHMENTS REFERENCED HEREIN WILL BE APPROVED BY THE FOLLOWING, WITH FINAL APPROVAL BY THE CONTRACTING OFFICER OR HIS REPRESENTATIVE NAMED IN ITEM 13d BELOW.

NAME	SIGNATURE	DATE
a. OFFICE OR DIVISION AUTHORIZED CLASSIFIER Daniel J. Donoghue, Director-ADM	<i>DJ Donoghue</i>	
b. DIRECTOR, OFFICE OR DIVISION Charles R. Troutman, Director-ADPS/ADM	<i>Charles R. Troutman</i>	2-13-79
c. DIRECTOR, DIVISION OF SECURITY Raymond J. Brady	<i>Raymond J. Brady</i>	6/20/79
d. DIRECTOR, DIVISION OF CONTRACTS Edward J. Halman	<i>Edward J. Halman</i>	6/20/79