

AWARD/CONTRACT		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350)		RATING	PAGE OF PAGES 1 7	
2. CONTRACT (Proc Inst Ident.) NO. NRC-05-85-168		3. EFFECTIVE DATE 5/10/85		4. REQUISITION/PURCHASE REQUEST/PROJECT NO. OIE-85-168		
5. ISSUED BY U. S. Nuclear Regulatory Commission Division of Contracts Washington, DC 20555		6. ADMINISTERED BY (If other than Item 5)		7. NAME AND ADDRESS OF CONTRACTOR (No., street, city, county, State and ZIP Code) Phoenix Associates, Inc. 4720 Montgomery Lane Suite 600 Bethesda, MD 20814		
8. DELIVERY <input type="checkbox"/> FOB ORIGIN <input checked="" type="checkbox"/> OTHER (See below)		9. DISCOUNT FOR PROMPT PAYMENT Net		10. SUBMIT INVOICES (4 copies unless other- wise specified) TO THE ADDRESS SHOWN IN		
11. SHIP TO/MARK FOR U. S. Nuclear Regulatory Commission Attn: Brian K. Grimes, Office of Inspec- tion and Enforcement, Washington, DC 20555		12. PAYMENT WILL BE MADE BY U. S. Nuclear Regulatory Commission Division of Accounting and Finance Attn: Gov/Com Accounts, Washington, DC 20555		13. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: N/A <input type="checkbox"/> 10 U.S.C. 2304(c)(1) <input type="checkbox"/> 41 U.S.C. 253(c)(1)		
14. ACCOUNTING AND APPROPRIATION DATA B&R No. 30-19-03-03 FIN No. B8753		15. TOTAL AMOUNT OF CONTRACT		\$9,644.00		
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CONTRACTING OFFICER WILL COMPLETE ITEM 17 OR 18 AS APPLICABLE						
17. <input checked="" type="checkbox"/> CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is re- quired to sign this document and return 4 copies to issuing office.) Contractor agrees to furnish and deliver all 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, representa- tions, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)				18. <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 con- sists of the following documents: (a) the Government's solicitation and your offer, and (b) this award/contract. No further contractual document is neces- sary.		
19A. NAME AND TITLE OF SIGNER (Type or print) JACK C FEASTERSTOCK President				20A. NAME OF CONTRACTING OFFICER Ronald D. Thompson		
19B. NAME OF CONTRACTOR JACK C FEASTERSTOCK				20B. UNITED STATES OF AMERICA		
19C. DATE SIGNED 20 MAY 1985				20C. DATE SIGNED 6-3-85		

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Part I - The Schedule

Section C - Description/Specifications/Statement of Work

1.0 Background

The Technical Training Center (TTC) currently provides boiling water reactor (BWR) simulator training to the NRC staff by leasing time on three different BWR reactor simulators. The bulk of the BWR simulator training (about 85%) has historically been conducted on the Browns Ferry (BWR/4) simulator at the Sequoyah facility near the Technical Training Center.

The Browns Ferry simulator will be moved to the Browns Ferry site in FY86, the simulator will be unavailable for several months in FY86. All scheduled BWR simulator training on the Browns Ferry simulator after the move will be held on the night shift (0000-0800).

On April 4, 1985, the NRC received an unsolicited proposal from General Electric Company (GE) which offered the NRC the opportunity to purchase the Black Fox (BWR/6) simulator over a period of four years. The key points of this proposal are as follows:

- a. GE will physically move the simulator from its present location (Inola, OK) to an NRC controlled training facility in Chattanooga near the Technical Training Center (TTC). GE will then reassemble the simulator, perform all required diagnostic checks, and perform an operational verification test on the simulator in Chattanooga to certify its readiness for training.
- b. GE will provide training to the BWR instructor staff in the areas of starting up and shutting down the simulator and associated peripheral equipment. GE will also provide training to the instructor staff to allow the NRC to create customized cathode ray tube (CRT) formats.
- c. The NRC has the option to buy the simulator at the end of the use-purchase option period for a nominal one-time payment.
- d. Preventive and corrective maintenance are provided by GE at no additional charge for the term of the contract. At the end of the contract, this service would be contracted out to GE (or other suitable party) on a time and materials basis.
- e. The simulator data base developed by GE over a number of years is included with the simulator. This data base includes full simulator documentation, simulator procedures, plant operating procedures, symptomatic emergency procedures, a question bank, and various technology manuals.
- f. Any software and/or hardware modifications desired by NRC during the term of the use-purchase contract will be done by GE on a time-and-materials basis.

2.0 Work Required

The contractor will perform the following tasks:

1. Review and comment on formal proposals submitted by GE to the NRC. Review available documentation which exists for the simulator and recommend to the NRC the form and content of documentation which should be specified in contractual arrangements with GE for use/purchase of the GE simulator. One trip to the vicinity of Tulsa, Oklahoma will be required.
2. Formulate recommendations for considerations by the NRC to allow ongoing effective use of the simulator. The recommendations will cover operational and maintenance issues including ongoing access to GE and vendor data/information as well as staffing or professional services required during both the use period and during ownership.
3. The results of all Phoenix work will be presented in a written report. In addition, oral briefings will be given to the NRC as necessary.
4. The work scope will not include evaluating the simulator as a training tool, assessing the conformance of the simulator to a power plant design or its overall usefulness to the NRC or assessing the operability of the simulator.

3.0 Final Report

By June 28, 1985 or within five (5) weeks after the effective date of this contract, whichever is later, the contractor shall submit to the NRC Project Officer a draft final report. The report shall contain the information specified in Section 2.0 - Work Required of this statement of work and its format shall be a letter report. The NRC Project Officer will review the draft report and provide comments which the contractor shall incorporate into the final report. Three (3) copies of the final report shall be transmitted to the NRC in letter report form within two (2) weeks of transmittal of the NRC Project Officer's comments.

3.1 Meetings

Frequent oral briefings will be supplied at the request of the NRC Project Officer on both a formal and informal basis.

4.0 NRC Furnished Material

"Proposal to U. S. Nuclear Regulatory Commission for Use or Purchase of the General Electric Company Black Fox Simulator" dated April 4, 1985, and any subsequent technical documents formally submitted to the NRC by GE regarding this proposal within the term of this contract.

Access to the Black Fox simulator and its documentation at a site near Tulsa, Oklahoma will be arranged by the NRC.

Section F - Duration of Contract Period

The period of performance under this contract is from May 10, 1985 through June 28, 1985.

Section G - Contract Administration Data

G.1 Consideration

A. Estimated Cost, Fixed Fee and Obligation

1. It is estimated that the total cost to the Government for full performance of this contract will be \$9,644.00, of which the sum of \$ represents the estimated reimbursable costs, and of which \$ represents the fixed fee.
2. Total funds currently available for payment and allotted to this contract are \$9,644.00, of which \$ represents the estimated reimbursable costs, and of which \$ represents the fixed fee.

G.2 Overhead/General and Administrative Rates

- A. Pending the establishment of final fringe benefits rates which shall be negotiated based on audit of actual costs, the contractor shall be reimbursed for allowable indirect costs hereunder at the provisional rate of percent of Direct Labor.
- B. Pending the establishment of final labor overhead rates which shall be negotiated based on audit of actual costs, the contractor shall be reimbursed for allowable indirect costs hereunder at the provisional rate of percent of Direct Labor.
- C. Notwithstanding A. and B. of this Section, said provisional fringe benefits and overhead rates may be adjusted as appropriate during the term of the contract upon the acceptance of such revised rates by the Contracting Officer.

G.3 Responsibilities of the NRC Project Officer

The authorized representative is responsible for: (1) Monitoring the contractor's technical progress, including the surveillance and assessment of performance and recommending to the Contracting Officer changes in requirements; (2) interpreting the statement of work; (3) performing technical evaluation as required; (4) performing technical inspections and acceptances required by this contract; and (5) assisting the contractor in the resolution of technical problems encountered during performance.

Within the purview of this authority, the representative is authorized to approve payment vouchers for supplies/services required under the contract. The Contracting Officer is responsible for directing or negotiating any changes in terms, conditions, or amounts cited in the contract.

For guidance from the authorized representative to the contractor to be valid, it must: (1) be consistent with the description of work set forth in this contract; (2) not constitute new assignment of work or change to the expressed terms, conditions, or specifications incorporated into this contract; (3) not constitute a basis for an extension to the period of performance or contract delivery schedule; and (4) not constitute a basis for any increase in the contract price.

If the contractor receives guidance from the NRC Project Officer which the contractor feels is not valid under the criteria cited above, the contractor shall immediately notify the NRC Project Officer. If the NRC Project Officer and the contractor are not able to resolve the question within five (5) days, the contractor shall notify the Contracting Officer.

The NRC Project Officer for this contract is Brian K. Grimes.

G.4 Travel Reimbursement

The contractor will be reimbursed for the following reasonable domestic travel costs incurred directly and specifically in the performance of this contract and accepted by the Contracting Officer:

1. Per diem shall be reimbursed at a daily rate not to exceed \$50.00. The per diem amount is comprised of lodging expense plus \$23.00 for meals and miscellaneous expense, the total of which shall not exceed the daily rate.
2. When travel is to one of the high-rate geographical areas listed below, actual subsistence costs shall be reimbursed at a daily rate not to exceed the rates indicated:

<u>Area</u>	<u>Daily Rate</u>
Tulsa, OK	\$75.00
3. The cost of travel by privately owned automobile shall be reimbursed at the rate of 20.5¢ per mile.
4. The cost of travel by rented automobile shall be reimbursed on a reasonable actual expense basis.
5. All common carrier travel reimbursable hereunder shall be via economy class rates when available. If not available, reimbursement vouchers will be annotated that economy class accommodations were not available. First-class air travel is not authorized.
6. Receipts are required for common carrier transportation, lodging and miscellaneous items in excess of \$25.00.

Section H - Special Contract Requirements

H.1 Key Personnel

- (a) The following individuals are considered to be essential to the successful performance of the work hereunder.

Jack C. Fensterstock
Mark Birnbaum

The contractor agrees that such personnel shall not be removed from the contract work or replaced without compliance with paragraphs (b) and (c) hereof.

- (b) If one or more of the key personnel for whatever reason becomes, or is expected to become, unavailable for work under this contract for a continuous period exceeding 30 work days, or is expected to devote substantially less effort to the work than indicated in the proposal or initially anticipated, the contractor shall immediately notify the Contracting Officer and shall, subject to the concurrence of the Contracting Officer or his authorized representative, promptly replace such personnel with personnel of at least substantially equal ability and qualifications.
- (c) All requests for approval of substitutions hereunder must be in writing and provide a detailed explanation of the circumstances necessitating the proposed substitutions. They must contain a complete resume for the proposed substitute, and other information requested by the Contracting Officer or needed by him to approve or disapprove the proposed substitution. The Contracting Officer or his authorized representative will evaluate such requests and promptly notify the contractor of his approval or disapproval thereof in writing.
- (d) If the Contracting Officer determines that suitable and timely replacement of key personnel who have been reassigned, terminated or have otherwise become unavailable for the contract work is not reasonably forthcoming or that the resultant reduction of productive effort would be so substantial as to impair the successful completion of the contract or the service order, the contract may be terminated by the Contracting Officer for default or for the convenience of the Government, as appropriate, or, at the discretion of the Contracting Officer if he finds the contractor at fault for the condition, the contract price or fixed fee may be equitably adjusted downward to compensate the Government for any resultant delay, loss or damage.

H.2 Proprietary Data and Confidential Information

In connection with the performance of the work under this contract, the Contractor may be furnished, or may develop or acquire, proprietary data (trade secrets) or confidential or privileged technical, business, or financial information, including Commission plans, policies, reports, financial plans, internal data protected by the Privacy Act of 1974 (P.L. 93-579), or other information which has not been released to the public or has been determined by the Commission to be otherwise exempt from disclosure to the public. Contractor agrees to hold such information in confidence and not to directly or indirectly duplicate, disseminate, or disclose such information in whole or in part to any other person or organization except as may be necessary to perform the work under this contract. Contractor agrees to return such information to the Commission or otherwise dispose of it either as the Contracting Officer may from time to time direct during the progress of the work or in any event as the Contracting Officer shall direct upon completion or termination of this contract. Failure to comply with this clause shall be grounds for termination of this contract.

H.3 Contractor Organizational Conflicts of Interest (OMB Clearance Number 3150-0112)

(a) Purpose. The primary purpose of this clause is to aid in ensuring that the Contractor: (1) Is not placed on 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 forgo 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 prescriptions 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.

Part II - Contract Clauses

52.252-2. CLAUSES INCORPORATED BY REFERENCE (Apr. 84) - This contract incorporates the following clauses by reference with the same force and effect as if they were given in full text. Upon request the Contracting Officer will make their full text available:

FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) CLAUSES

- 52.203-1 Officials Not to Benefit (Apr. 84)
- 52.203-3 Gratuities (Apr. 84)
- 52.203-5 Covenant Against Contingent Fees (Apr. 84)
- 52.216-7 Allowable Cost and Payment (Apr. 84)
- 52.216-8 Fixed Fee (Apr. 84)
- 52.222-3 Convict Labor (Apr. 84)
- 52.222-26 Equal Opportunity (Apr. 84)
- 52.222-36 Affirmative Action for Handicapped Workers (Apr. 84)
(Applies if order exceeds \$2,500)
- 52.232-20 Limitation of Cost (Apr. 84)
- 52.232-23 Assignment of Claims (Apr. 84)
- 52.233-1 Disputes, Alternate I (Apr. 84)
- 52.242-1 Notice of Intent to Disallow Costs (Apr. 84)
- 52.243-2 Changes-Cost Reimbursement, Alternate I (Apr. 84)
- 52.246-1 Contractor Inspection Requirements (Apr. 84)
- 52.249-6 Termination (Cost Reimbursement (Apr. 84)
- 52.249-14 Excusable Delays (Apr. 84)

The following clauses, also applicable to this contract, are attached:

1. Interest on Overdue Payments
2. Payment Due Date
3. Invoice Requirements
4. Contract Work Hours and Safety Standards Act-Overtime Compensation (Applied if order exceeds \$2,500)
5. Payrolls and Basic Records (Applies to orders over \$2,500)
6. Service Contract Act (Abbreviated version applies to orders up to \$2,500; long version to orders over \$2,500)

Interest on Overdue Payments

- (a) The Prompt Payment Act, Public Law 97-177 (96 STAT. 85, 31 USC 1801) is applicable to payments under this contract and requires the payment of interest to contractors on overdue payments and improperly taken discounts.
- (b) Determinations of interest due will be made in accordance with the provisions of the Prompt Payment Act and Office of Management and Budget Circular A-125, Vol. 47 Federal Register 37321, August 25, 1982. Among other considerations, OMB Circular A-125 provides that:
 - (1) Interest penalties are not required when payment is delayed because of a disagreement over the amount of payment or other issues concerning compliance with the terms of the contract.
 - (2) Whenever a proper invoice is paid after the due date plus 15 days, interest will be included with the payment at the interest rate applicable on the payment date. Interest will be computed from the day after the due date through the payment date.

Payment Due Date (FOB Destination)

- (a) Payments under this Purchase Order will be due 30 calendar days after the later of:
 - (1) The date of actual receipt of a proper invoice (original and 1 copy) to the U.S. Nuclear Regulatory Commission, Division of Accounting and Finance, Office of Resource Management, Attn: GCV/COM Accounts Section, Washington, D.C. 20555.
 - (2) The date the supplies are accepted by the Government.
- (b) For the purpose of determining the due date for payment and for no other purpose, acceptance will be deemed to occur 7 calendar days after the date of delivery of the supplies in accordance with the terms of the contract.
- (c) If the supplies are rejected for failure to conform to the technical requirements of the contract, or for damage in transit or otherwise the provisions in paragraph (b) of this clause will apply to the new delivery of replacement supplies.
- (d) The date of the check issued in payment shall be considered to be the date payment is made.

Payment Due Date (FOB Origin)

- (a) Payments under this contract will be due 30 calendar days after the date of actual receipt of a proper invoice (original and 1 copy) to the U.S. Nuclear Regulatory Commission, Division of Accounting and Finance, Office of Resource Management, Attn: GOV/COM Accounts Section, Washington, D. C. 20555.
- (b) The date of the check issued in payment shall be considered to be the date payment is made.

Invoice Requirements

Invoices shall be submitted in an original and 1 copy to the U.S. Nuclear Regulatory Commission, Division of Accounting and Finance, Office of Resource Management, Attn: GOV/COM Accounts Section Washington, D.C. 20555. To constitute a proper invoice, the invoice must include the following information and/or attached documentation:

- (a) Name of the business concern and invoice date.
- (b) Purchase order number or other authorization for delivery of property or services.
- (c) Description price and quantity of property and services actually delivered or rendered.
- (d) Shipping and payment terms.
- (e) Name (where practicable), title, phone number, and complete mailing address of responsible official to whom payment is to be sent.
- (f) Other substantiating documentation or information as required by the Purchase Order.

CONTRACT WORK HOURS AND SAFETY STANDARDS
ACT-OVERTIME COMPENSATION (40 U.S.C. 327-333)

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 or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 8 hours in any calendar day or in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or in excess of forty hours in such workweek, whichever is greater.

(b) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions set forth in paragraph (a) of this clause in the sum of \$10 for each calendar day for which such individual was required or permitted to work in excess of 8 hours or in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

(c) Withholding for unpaid wages and liquidated damages. The Contracting Officer shall upon his/her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Prime Contractor or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Prime Contractor such sums as may 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 set forth in paragraph (b) of this clause.

(d) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the provisions set forth in paragraphs (a) through (d) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

(End of clause)

PAYROLLS AND BASIC RECORDS

(a) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the contract work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(b) The records to be maintained under paragraph (a) of this clause shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by the Contracting Officer or the Department of labor or their authorized representatives. The Contractor and subcontractors will permit such representatives to interview employees during working hours on the job.

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

(End of clause)

Service Contract Act

Except to the extent that an exemption, variation or tolerance would apply if this were a contract in excess of \$2,500, the contractor and any subcontractor hereunder shall pay all of his employees engaged in performing work on the contract not less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. Regulations and interpretations of the Service Contract Act of 1965, as amended, are contained in 29 CFR Part 4.

(FPR Temporary Regulation 76)

Service Contract Act

(a) Service Contract Act of 1965, as amended: This contract is subject to the Service Contract Act of 1965, as amended (41 U.S.C. 351 et seq.) and is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor issued thereunder (29 CFR Part 4).

(b)(1) Each service employee employed in the performance of this contract by the contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or authorized representative, as specified in any wage determination attached to this contract.

(2)(i) If there is such a wage determination attached to this contract, the contracting officer shall require that any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this section. (The information collection requirements contained in the following paragraph of this section have been approved by the Office of Management and Budget under OMB control number 1215-0150.)

(ii) Such conforming procedure shall be initiated by the contractor prior to the performance of contract work by such unlisted class of employee. A written report of the proposed conforming action, including information regarding the agreement or disagreement of the authorized representative of the employees involved or, where there is no authorized representative, the employees themselves, shall be submitted by the contractor to the contracting officer no later than 30 days after such unlisted class of employees performs any contract work. The contracting officer shall review the proposed action and promptly submit a report of the action, together with the agency's recommendation and all pertinent information including the position of the contractor and the employees, to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the contracting officer within 30 days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the contracting officer who shall promptly notify the contractor of the action taken. Each affected employee shall be furnished by the contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(iv)(A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade

pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option or extension of an existing contract, or in any other case where a contractor succeeds a contract under which the classification in question was previously conformed pursuant to this section, a new conformed wage rate and fringe benefits may be assigned to such conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the contractor shall advise the contracting officer of the action taken but the other procedures in paragraph (b)(2)(ii) of this section need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined pursuant to paragraphs (b)(2)(i) and (ii) of this section shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay such unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(vi) Upon discovery of failure to comply with paragraph (b)(2)(i) through (v) of this section, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class of employees commenced contract work.

(3) If, as authorized pursuant to section 4(d) of the Service Contract Act of 1965 as amended, the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees shall be subject to adjustment after 1 year and not less often than once every 2 years, pursuant to wage determinations to be issued by the Wage and Hour Division, Employment Standards Administration of the Department of Labor as provided in such Act.

(c) The contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined conformably thereto by furnishing any equivalent combinations of bona fide fringe benefits, or by making equivalent or differential payments in cash in accordance with the applicable rules set forth in Subpart D of 29 CFR Part 4, and not otherwise.

(d)(1) In the absence of a minimum wage attachment for this contract, neither the contractor nor any subcontractor under this contract shall pay any person performing work under the contract (regardless of whether they are service employees) less than the minimum wage specified by section 6(a)(i) of the Fair Labor Standard Act of 1938. Nothing in this provision shall relieve the contractor or any subcontractor of any other obligation under law or contract for the payment of a higher wage to any employee.

(2) If this contract succeeds a contract, subject to the Service Contract Act of 1965 as amended, under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreements, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of §4.1b(b) of 29 CFR Part 4 apply or unless the Secretary of Labor or his authorized representative finds, after hearing as provided in §4.10 of 29 CFR Part 4 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in §4.11 of 29 CFR Part 4, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract 53 Comp. Gen. 401 (1973). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(e) The contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract. (Approved by the Office of Management and Budget under OMB control number 1215-0150).

(f) The contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the contractor or subcontractor which are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to furnish these services, and the contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

(g)(i) The contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work records containing the information specified in paragraphs (g)(1)(i) through (vi) of this section for each employee subject to the Act and shall make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration of the U.S. Department of Labor. (Sections 4.6(g)(1)(i) through (iv) approved by the Office of Management and Budget under OMB control number 1215-0017 and sections 4.6(g)(1)(v) and (vi) approved under OMB control number 1215-0150).

(i) Name and address and social security number of each employee.

(ii) The correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of fringe benefit payments in lieu thereof, and total daily and weekly compensation of each employee.

(iii) The number of daily and weekly hours so worked by each employee.

(iv) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(v) A list of monetary wages and fringe benefits for those classes of service employees not included in the wage determination attached to this contract but for which such wage rates or fringe benefits have been determined by the interested parties or by the Administrator or authorized representative pursuant to the labor standards clause in paragraph (b) of this section. A copy of the report required by the clause in paragraph (b)(2)(ii) of this section shall be deemed to be such a list.

(vi) Any list of the predecessor contractor's employees which have been furnished to the contractor pursuant to §4.6(1)(2).

(2) The contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available such records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce such records, the contracting officer, upon direction of the Department of Labor and notification of the contractor, shall take action to cause suspension of any further payment or advance of funds until such violation ceases.

(4) The contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(h) The contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or Regulations, 29 CFR Part 4), rebate, or kickback or any account. Such payments shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(i) The contracting officer shall withhold or cause to be withheld from the Government prime contractor under this or any other Government contract with the prime contractor such sums as an appropriate official of the Department of Labor requests or such sums as the contracting officer decides may be necessary to pay underpaid employees employed by the contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the agency may, after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of these clauses relating to the Service Contract Act of 1965, may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost.

(j) The contractor agrees to insert these clauses in this section relating to the Service Contract Act of 1965 in all subcontracts subject to the Act. The term "contractor" as used in these clauses in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government prime contractor."

(k)(1) As used in these clauses, the term "service employee" means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in Part 541 of Title 29, Code of Federal Regulations, as of July 30, 1976, and any subsequent revision of those regulations. The term "service employee" includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

(2) The following statement is included in contract pursuant to section 2(a)(5) of the Act and is for informational purposes only:

The following classes of service employees expected to be employed under the contract with the Government would be subject, if employed by the contracting agency, to the provisions of 5 U.S.C. 5341 or 5 U.S.C. 5332 and would, if so employed, be paid not less than the following rates of wages and fringe benefits:

Employee class	Monetary wage-fringe benefits
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(1)(1) If wages to be paid or fringe benefits to be furnished any service employees employed by the Government prime contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government prime contractor shall report such fact to the contracting officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance, such agreements shall be reported promptly after negotiation thereof. (Approved by the Office of Management and Budget under OMB control number 1215-0150.)

(2) Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a contractor (predecessor) or successor (4.173 of Regulations, 29 CFR Part 4), the incumbent prime contractor shall furnish to the contracting officer a certified list of the

names of all service employees on the contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor contractors of each such service employee. The contracting officer shall turn over such list to the successor contractor at the commencement of the succeeding contract. (Approved by the Office of Management and Budget under OMB control number 1215-0150.)

(m) Rulings and interpretations of the Service Contract Act of 1965, as amended are contained in Regulations, 29 CFR Part 4.

(n)(1) By entering into this contract, the contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract pursuant to section 5 of the Act.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(o) Notwithstanding any of the clauses in paragraphs (b) through (m) of this section relating to the Service Contract Act of 1965, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Public Law 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical, or mental deficiency or injury may be employed at wage lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Service Contract Act without diminishing any fringe benefits or cash payment in lieu thereof required under section 2(a)(2) of that Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the Service Contract Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing

requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525)

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in Parts 525 and 528 of Title 29 of the Code of Federal Regulations.

(p) Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program.

(q) An employee engaged in an occupation in which he or she customarily and regularly receives more than \$30 a month in tips may have the amount of tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531: Provided, however; that the amount of such credit may not exceed \$1.24 per hour beginning January 1, 1980, and \$1.34 per hour after December 31, 1980. To utilize this proviso:

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized.

(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received):

(3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; (approved by the Office of Management and Budget under OMB control number 1215-0017);

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

(r) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 4, 6, and 8. Disputes within the meaning of the clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, the employees or their representatives.

(FPR Temporary Regulation 76)

(r) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 4, 6, and 8. Disputes within the meaning of the clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, the employees or their representatives.

(FPR Temporary Regulation 76)

(r) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 4, 6, and 8. Disputes within the meaning of the clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, the employees or their representatives.

(FPR Temporary Regulation 76)