

STANDARD FORM 26, JULY 1966 GENERAL SERVICES ADMINISTRATION FED. PROC. REG. (41CFR) 1-16.101		AWARD/CONTRACT		PAGE 1 OF 13
1. CONTRACT (Proc. Inst. (dens.) NO.) NRC-10-81-364		2. EFFECTIVE DATE FEB 02 1981		3. REQUISITION/PURCHASE REQUEST/PROJECT NO. ADM-81-364
4. CERTIFIED FOR NATIONAL DEFENSE UNDER NSDA REG. 2 AND/OR DMS REG. 1. RATING:		5. ISSUED BY U.S. NUCLEAR REGULATORY COMMISSION Division of Contracts Washington, D. C. 20555		6. ADMINISTERED BY (If other than block 5) CODE
7. DELIVERY <input checked="" type="checkbox"/> FOR DESTINATION <input type="checkbox"/> OTHER (See below)		8. CONTRACTOR NAME AND ADDRESS McGraw-Hill, Inc. 1221 Avenue of the Americas ATTN: Peggy Collins New York, New York 10020		9. DISCOUNT FOR PROMPT PAYMENT
10. SUBMIT INVOICES (4 copies unless otherwise specified) TO ADDRESS SHOWN IN BLOCK 12		11. SHIP TO/MARK FOR See Article IX		12. PAYMENT WILL BE MADE BY U.S. Nuclear Regulatory Commission Office of the Controller Washington, D. C. 20555
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. 257 (a)(10)				
14. ACCOUNTING AND APPROPRIATION DATA B&R No.: 48-20-26-50-06 Appropriation: 31X0200.401 \$69,460.18				
15. ITEM NO.	16. SUPPLIES/SERVICES	17. QUANTITY	18. UNIT	19. UNIT PRICE
See Article I				
20. TOTAL AMOUNT OF CONTRACT \$ 69,460.18				
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 3 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, 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 Peggy Collins Signature of person authorized to sign		27. UNITED STATES OF AMERICA W. D. Lebo Signature of Contracting Officer		
24. NAME AND TITLE OF SIGNER (Type or print) Peggy Collins, Dir. Mgr.		25. DATE SIGNED 1/13/81		29. DATE SIGNED

8103090292

TABLE OF CONTENTS

PART I - GENERAL INSTRUCTIONS

- A. Standard Form 33 "Solicitation, Offer and Award"
- B. Representations, Certifications, and Acknowledgments

PART II - CONTRACT SCHEDULE

- Article I - Supplies/Services/Prices
- Article II - Descriptions/Specifications
- Article III - Period of Performance
- Article IV - Option to Extend the Period of Performance
- Article V - Technical Direction and Authorized Representative
- Article VI - Inspection and Acceptance
- Article VII - Incorporation of Representations and Certifications
- Article VIII - Subcontracts for Work or Other Services
- Article IX - Delivery
- Article X - Billing Instructions for Fixed Price Contracts and Purchase Orders

PART III - ATTACHMENTS

- Attachment I - NRC Contractor Organizational Conflicts of Interest
- Attachment II - General Provisions

REPRESENTATIONS, CERTIFICATIONS AND ACKNOWLEDGMENTS

REPRESENTATIONS (Check or complete all applicable boxes or blocks.)

The offeror represents as part of his offer that:

1. SMALL BUSINESS (See par. 14 on SF 33-A.)

He ☐ is, ☒ is not, a small business concern. If offeror is a small business concern and is not the manufacturer of the supplies offered, he also represents that all supplies to be furnished hereunder ☐ will, ☒ will not, be manufactured or produced by a small business concern in the United States, its possessions, or Puerto Rico.

2. MINORITY BUSINESS ENTERPRISE

He ☐ is, ☒ is not, a minority business enterprise. A minority business enterprise is defined as 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 purpose of this definition, minority group members are Negroes, Spanish-speaking American persons, American-Orientals, American-Indians, American Eskimos, and American-Aleuts.

3. REGULAR DEALER - MANUFACTURER (Applicable only to supply contracts exceeding \$10,000.)

He is a ☐ regular dealer in, ☒ manufacturer of, the supplies offered.

4. CONTINGENT FEE (See par. 15 on SF 33-A.)

(a) He ☐ has, ☒ has not, employed or retained any company or persons (other than a full-time bona fide employee working solely for the offeror) to solicit or secure this contract, and (b) he ☐ has, ☒ has not, paid or agreed to pay any company or person (other than a full-time bona fide employee working solely for the offeror) any fee, commission, percentage, or brokerage fee contingent upon or resulting from the award of this contract, and agrees to furnish information relating to (a) and (b) above, as requested by the Contracting Officer. (Interpretation of the representation, including the term "bona fide employee," see Code of Federal Regulations, Title 41, Supplement 1, 1.5.)

5. TYPE OF BUSINESS ORGANIZATION

He operates as ☒ an individual, ☐ a partnership, ☐ a nonprofit organization, ☒ a corporation, incorporated under the laws of the State of MASSACHUSETTS.

6. AFFILIATION AND IDENTIFYING DATA (Applicable only to advertised solicitations.)

Each offeror shall complete (a) and (b) if applicable, and (c) below:

(a) He ☐ is, ☒ is not, owned or controlled by a parent company. (See par. 16 on SF 33-A.)

(b) If the offeror is owned or controlled by a parent company, he shall enter in the blocks below the name and main office address of the parent company:

NAME OF PARENT COMPANY
AND MAIN OFFICE ADDRESS
(Include ZIP code)

6. EMPLOYER'S IDENTIFICATION NUMBER (SEE PAR. 17 ON SF 33-A.)

13-1026-995

OFFEROR'S E.O. NO.

PARENT COMPANY'S E.O. NO.

7. EQUAL OPPORTUNITY

(a) He ☐ has, ☒ has not, participated in a previous contract or subcontract subject either to the Equal Opportunity clause herein or the clause originally contained in section 301 of Executive Order No. 10925, or the clause contained in Section 201 of Executive Order No. 11114, that he ☐ has, ☒ has not, filed all required compliance reports; and that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained prior to subcontract awards. (The above representation need not be submitted in connection with contracts or subcontracts which are exempt from the equal opportunity clause.)

(b) The bidder (or offeror) represents that (1) he ☐ has developed and has on file, ☒ has not developed and does not have on file, at each establishment affirmative action programs as required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2) or (2) he ☐ has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor. (The above representation shall be completed by each bidder (or offeror) whose bid (offer) is \$50,000 or more and who has 50 or more employees.)

CERTIFICATIONS (Check or complete all applicable boxes or blocks.)

1. BUY AMERICAN CERTIFICATE

The offeror certifies as part of his offer, that: each end product, except the end products listed below, is a domestic end product (as defined in the clause entitled "Buy American Act"), and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

EXCLUDED END PRODUCTS

COUNTRY OF ORIGIN

2. **CLEAN AIR AND WATER** (Applicable if the bid or offer exceeds \$100,000, or the contracting officer has determined that orders under an indefinite quantity contract in any year will exceed \$100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857c-3(c)(1)) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c)) and is listed by EPA, or is not otherwise exempt.)

The bidder or offeror certifies as follows:

(a) Any facility to be utilized in the performance of this proposed contract ☐ has, ☐ has not, been listed on the Environmental Protection Agency List of Violating Facilities.

(b) He will promptly notify the contracting officer, prior to award, of the receipt of any communication from the Director, Office of Federal Activities, Environmental Protection Agency, indicating that any facility which he proposes to use for the performance of the contract is under consideration to be listed on the EPA list of Violating Facilities.

(c) He will include substantially this certification, including this paragraph (c), in every nonexempt subcontract.

3. **CERTIFICATION OF INDEPENDENT PRICE DETERMINATION** (See par. 18 on SF JJ-A)

(a) By submission of this offer, the offeror certifies, and in the case of a joint offer, each party thereto certifies as to its own organization, that in connection with this procurement:

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

(2) Unless otherwise required by law, the prices which have been quoted in this offer have not been knowingly disclosed by the offeror and will not knowingly be disclosed by the offeror prior to opening in the case of an advertised procurement or prior to award in the case of a negotiated procurement, directly or indirectly to any other offeror or to any competitor; and

(3) No attempt has been made or will be made by the offeror to induce any other person or firm to submit or not to submit an offer for that purpose of restricting competition.

(b) Each person signing this offer certifies that:

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

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

4. **CERTIFICATION OF NONSEGREGATED FACILITIES** (Applicable to (1) contracts, (2) subcontracts, and (3) agreements with applicants who are themselves performing federally assisted construction contracts, exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause.)

By the submission of this bid, the bidder, offeror, applicant, or subcontractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location under his control, where segregated facilities are maintained. He certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The bidder, offeror, applicant, or subcontractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion or national origin, because of habit, local custom, or otherwise. He further agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause; that he will retain such certifications in his files; and that he will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

Notice to prospective subcontractors of requirement for certifications of nonsegregated facilities.

A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually). NOTE: The penalty for making false offers is prescribed in 18 U.S.C. 1001.

Continued on Page 4

ACKNOWLEDGMENT OF AMENDMENTS	AMENDMENT NO.		DATE	
The offeror acknowledges receipt of amendments to the Solicitation for offers and related documents numbered and dated as follows:				

NOTE: Offers must set forth full, accurate and complete information as required by this Solicitation (including attachments). The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

PART I

Representations, Certifications, and Acknowledgments - Continued SF-33 (Page 3)

5. WOMAN-OWNED BUSINESS

Concern is ☐ is not ☒ a woman-owned business. The business is publicly owned, a joint stock association, or a business trust ☒ yes ☐ no. The business is ☒ certified ☐ not certified.

A woman-owned business is a business which is, at least, 51 percent owned, controlled, and operated by a woman or women. Controlled is defined as exercising the power to make policy decisions. Operated is defined as actively involved in the day-to-day management.

For the purposes of this definition, businesses which are publicly owned, joint stock associations, and business trusts are exempted. Exempted businesses may voluntarily represent that they are, or are not, woman-owned if this information is available.

6. PERCENT OF FOREIGN CONTENT

The offeror/contractor will represent (as an estimate), immediately after the award of a contract, the percent of the foreign content of the item or service being procured expressed as a percent of the contract award price (accuracy within plus or minus 5 percent is acceptable).

7. NON-DISCRIMINATION BECAUSE OF AGE CERTIFICATION (1-12.1001)

The offeror hereby certifies as follows:

- ☒ (a) In the performance of Federal contracts, he and his subcontractors shall not in connection with the employment, advancement, or discharge of employees or in connection with the terms, conditions, or privileges of their employment, discriminate against persons because of their age except upon the basis of a bona fide occupational retirement plan, or statutory requirement, and
- ☒ (b) That contractors and subcontractors, or persons acting on their behalf, shall not specify, in solicitations or advertisements for employees to work on Government contracts, a maximum age limit for such employment unless the specified maximum age limit is based on a bona fide occupational qualification, retirement plan, or statutory requirement.

8. CERTIFICATION OF RECOVERED MATERIALS (1-1.2504(b))

The offeror/contractor certifies that recovered materials will be used as required by specifications referenced in the solicitation/contract.

9. CONTRACTOR ORGANIZATIONAL CONFLICTS OF INTEREST

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

The award to McGraw-Hill Inc. 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 paragraph 20-1.5403(b)(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 factors bearing on his representation to the Contracting Officer. If the Contracting Officer determines that organizational conflicts exist, the following actions may be taken:

- (a) impose appropriate conditions which avoid such conflicts,
- (b) disqualify the offeror, or
- (c) 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.

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 awards; 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.

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 an 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.

The offeror's failure to execute the representation required herein with respect to invitation for bids will be considered to be a minor informality, and the offeror will be permitted to correct the omission.

Any contract resulting from a solicitation requirement shall include general clauses (41 CFR 20-1.5404-1) prohibiting contractors from engaging in relationships which may give rise to an actual or apparent conflict of interest. Note: NRC Contractor Organizational Conflicts of Interest (41 CFR Part 20) is included in Part IV as Attachment No. 1.

CONTINUATION SHEET

REF. NO. OF DOC. BEING CONT'D.

NRC-10-81-364

PAGE

6

NAME OF OFFEROR OR CONTRACTOR

PART II - CONTRACT SCHEDULE

ITEM NO.	ARTICLE I - SUPPLIES/SERVICES /PRICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
	The Contractor shall furnish the following subscriptions in accordance with Article IX, DELIVERY.				
1.	One year subscription to <u>Inside DOE</u> beginning 1/1/81 and ending 12/31/81.	12	EA	\$ 390.00	\$ 4,680.00
2.	Nine month subscription to <u>Inside DOE</u> beginning 4/1/81 and ending 12/31/81.	1	EA	\$ 292.50	\$ 292.50
3.	One year subscription to <u>Inside FERC</u> beginning 1/1/81 and ending 12/31/81.	7	EA	\$ 375.00	\$ 2,625.00
4.	One year subscription to <u>Inside NRC</u> beginning 1/1/81 and ending 12/31/81.	50	EA	\$ 475.00	\$23,750.00
5.	Fourteen month subscription to <u>Nuclear Fuel</u> beginning 11/1/80 and ending 12/31/81.	23	EA	\$ 513.38	\$11,807.74
6.	Nine month subscription to <u>Nuclear Fuel</u> beginning 4/1/81 and ending 12/31/81.	1	EA	\$ 329.94	\$ 329.94
7.	One year subscription to <u>Nucleonics Week</u> beginning 1/1/81 and ending 12/31/81.	40	EA	\$ 540.00	\$21,600.00
8.	One year subscription to <u>Nucleonics Week</u> beginning 1/1/81 and ending 12/31/81.	7	EA	\$ 625.00	\$ 4,375.00
				TOTAL.....	\$69,460.18

Article II - Descriptions/Specifications

The Contractor shall furnish the following publications during the specified time periods:

1. Twelve (12) subscriptions to Inside DOE beginning January 1, 1981 and ending December 31, 1981.
2. One (1) subscription to Inside DOE beginning April 1, 1981 and ending December 31, 1981.
3. Seven (7) subscriptions to Inside FERC beginning January 1, 1981 and ending December 31, 1981.
4. Fifty (50) subscriptions to Inside NRC beginning January 1, 1981 and ending December 31, 1981.
5. Twenty-Three (23) subscriptions to Nuclear Fuel beginning November 1, 1980 and ending December 31,
6. One (1) subscription to Nuclear Fuel beginning April 1, 1981 and ending December 31, 1981.
7. Forty-Seven (47) subscriptions to Nucleonics Week beginning January 1, 1981 and ending December 31, 1981.

Article III - Period of Performance

The period of performance under this contract shall begin on November 1, 1980 and extend through December 31, 1981.

Article IV - Option to Extend the Period of Performance

This contract may be extended for an additional one year period, 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 period of performance. The Contracting Officer may give preliminary written notice of an intent to exercise such option at least ninety (90) days prior to the last day of the period of performance (such preliminary notice shall not be construed as an exercise of the option) and will not bind the Government to exercise the option.

Upon receipt of the notice of intent to exercise the option, the Contractor shall submit to the Contracting Officer, within thirty (30) days, a cost estimate for the proposed extended period of performance.

If the Government exercises such option, the total duration of this contract, including the exercise of this option, shall not exceed two (2) years.

Article V - Technical Direction and Authorized Representative

is hereby designated as the Contracting Officer's Project Officer (PO) for technical aspects of this contract. The PO is not authorized to approve or request any action which results in or could result in an increase in contract costs; or terminate, settle any claim or dispute arising under the contract, or issue any unilateral directive whatever.

The PO 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 scope 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 PO is authorized to review all approval, disapproval, or suspension 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.

Article VI - Inspection and Acceptance

- A. Inspection of the services and deliverables called for hereunder shall be performed by the Project Officer.
- B. Acceptance of the services and deliverables called for hereunder shall be accomplished by the Contracting Officer, or the Project Officer.

Article VII - Incorporation of Representations and Certifications

The offeror's representations and certifications submitted in accordance herewith are hereby incorporated by reference.

Article VIII - Subcontracts for Work or Services

No contract shall be made by the Contractor with any other party for furnishing any of the work or services required herein without the prior written approval of the Contracting Officer. This provision shall not be construed, however, as requiring the prior approval of contracts of employment between the Contractor and personnel assigned by the Contractor to provide services hereunder.

Article IX - Delivery

The subscriptions set forth under Article I, Supplies/Services/Prices, shall be delivered to the following locations:

A. Item No. 1, Inside DOE:

Ten (10) copies shall be addressed to:

U.S. Nuclear Regulatory Commission
Library
Washington, D.C. 20555

One (1) copy shall be addressed to:

U.S. Nuclear Regulatory Commission
Law Library, MN8B 9604
Washington, D.C. 20555

One (1) copy shall be addressed to:

U.S. Nuclear Regulatory Commission
Region II
Office of Inspection and Enforcement
10 Marietta Street, N.W., Suite 3100
Atlanta, GA 30303

B. Item No. 2, Inside DOE:

One (1) copy shall be addressed to:

U.S. Nuclear Regulatory Commission
Library
Washington, D.C. 20555

C. Item No. 3, Inside FERC:

Seven (7) copies shall be addressed to:

U.S. Nuclear Regulatory Commission
Library
Washington, D.C. 20555

D. Item No. 4, Inside NRC:

Fourty-four (44) copies shall be addressed to:

U.S. Nuclear Regulatory Commission
Library
Washington, D.C. 20555

One (1) copy shall be addressed to each of the following:

U.S. Nuclear Regulatory Commission
Region I, Directorate of Regulatory Operations
631 Park Avenue
King of Prussia, PA 19406

U.S. Nuclear Regulatory Commission
Region II
Office of Inspection and Enforcement
101 Marietta Street, N.W., Suite 3100
Atlanta, GA 30303

U.S. Nuclear Regulatory Commission
Region III
Office of Inspection and Enforcement
799 Roosevelt Road
Glen Ellyn, IL 60137

U.S. Nuclear Regulatory Commission
Region IV
Office of Inspection and Enforcement
611 Ryan Plaza Drive, Suite 1000
Arlington, TX 76012

U.S. Nuclear Regulatory Commission
Region V
Office of Inspection and Enforcement
1900 N. California Boulevard, Suite 202
Walnut Creek, CA 94596

U.S. Nuclear Regulatory Commission
Reactor Training Center
Osborne Building, Suite 200
East Gate Shopping Center
Chattanooga, TN 37411

E. Item No. 5, Nuclear Fuel:

Eighteen (18) copies shall be addressed to:

U.S. Nuclear Regulatory Commission
Library
Washington, D.C. 20555

One (1) copy shall be addressed to each of the following:

U.S. Nuclear Regulatory Commission
Region I, Directorate of Regulatory Operations
631 Park Avenue
King of Prussia, PA 19406

U.S. Nuclear Regulatory Commission
Region II
Office of Inspection and Enforcement
101 Marietta Street, N.W., Suite 3100
Atlanta, GA 30303

U.S. Nuclear Regulatory Commission
Region III
Office of Inspection and Enforcement
799 Roosevelt Road
Glen Ellyn, IL 60137

U.S. Nuclear Regulatory Commission
Region IV
Office of Inspection and Enforcement
611 Ryan Plaza Drive, Suite 1000
Arlington, TX 76012

U.S. Nuclear Regulatory Commission
Region V
Office of Inspection and Enforcement
1900 N. California Boulevard, Suite 202
Walnut Creek, CA 94596

F. Item No. 6, Nuclear Fuel:

One (1) copy shall be addressed to:

U.S. Nuclear Regulatory Commission
Library
Washington, D.C. 20555

G. Item No. 7, Nucleonics Week:

Fourty (40) copies shall be addressed to:

Thomas R. Combs
1717 H Street, N.W., Room 1153
Washington, D.C. 20006

H. Item No. 8, Nucleonics Week:

One (1) copy shall be addressed to:

Thomas R. Combs
1717 H Street, N.W., Room 1153
Washington, D.C. 20006

One (1) copy shall be addressed to each of the following:

U.S. Nuclear Regulatory Commission
Reactor Training Center
Osborne Building, Suite 200
East Gate Shopping Center
Chattanooga, TN 37411

U.S. Nuclear Regulatory Commission
Region I, Directorate of Regulatory Operations
631 Park Avenue
King of Prussia, PA 19406

U.S. Nuclear Regulatory Commission
Region II
Office of Inspection and Enforcement
101 Marietta Street, N.W., Suite 3100
Atlanta, GA 30303

U.S. Nuclear Regulatory Commission
Region III
Office of Inspection and Enforcement
799 Roosevelt Road
Glen Ellyn, IL 60137

U.S. Nuclear Regulatory Commission
Region IV
Office of Inspection and Enforcement
611 Ryan Plaza Drive, Suite 1000
Arlington, TX 76012

U.S. Nuclear Regulatory Commission
Region V
Office of Inspection and Enforcement
1900 N. California Boulevard, Suite 202
Walnut Creek, CA 94596

The following line items shall be delivered on a weekly basis; 1, 2, 3, 7, 8.

The following line items shall be delivered on a biweekly basis; 4, 5, 6.

ARTICLE X - BILLING INSTRUCTIONS FOR FIXED PRICE CONTRACTS AND PURCHASE ORDERS

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 1034 "Public Voucher for Purchases and Services Other Than Personal," and Standard Form 1035 "Public Voucher for Purchases Other Than Personal -- Continuation Sheet." These forms are available from the Government Printing Office, 710 North Capitol Street, Washington, D. C. 20501.

Number of Copies and Mailing Address. An original and six (6) 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 four (4) copies) to: U. S. Nuclear Regulatory Commission, Division of Accounting, Office of the Controller, ATTN: GOV/COM Accounts Section, Washington, D. C. 20555. (ii) Address two (2) copies to: U. S. Nuclear Regulatory Commission, ATTN: E. L. Halman, Director, Division of Contracts, Washington, D. C. 20555. (iii) The original copy of the voucher should indicate that two (2) copies have been forwarded to the Contracting Officer.
- (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.

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. 3, 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.

120-1.5402 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 service 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 101-11.606-1(a)).

(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 120-1.6405-2 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 technologies that are to be incorporated into competitive procurements using such approaches or technologies.

(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 reactor, it is determined 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 120-1.5403(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.

Analysis. The contracting officer will not fully conclude that ABC Corp. is in a position to accept the NRC contract as a contracting role where its judgment might be biased. The work for others clause of 120-1.5405-1(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.

120-1.5404 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).

(1) If the offeror is an officer, the following shall be included in the representation required by §20-1.5403(b)(1) if the representation is completed and 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 120-1.5404(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

(b) Scope. The restrictions described herein shall apply to performance or participation by the contractor as defined in 41 CFR 120-1.5402(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 consulting 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 120-1.5402(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 seems 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 101-11.6402(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 101-11.6411.

101-11.6403-2 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 101-11.6411, neutralized through the use of an appropriate special contract provision. If appropriate, the officer 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.

(c) The following additional contract clause may be included as section (i) in the clause set forth in 20-1.6405-1 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.

20-1.6406 Evaluation, findings, and contract award

The contracting officer will evaluate all relevant facts submitted by an offeror pursuant to the representation requirements of 20-1.6404(b) and other relevant information. After evaluating this information against the criteria of 20-1.6402, 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 contract. Pursuant to § 20-1.5403, 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 U. Chik
Secretary of the Commission

Revised 7/30/80

Consisting of
Pages 1 through 25

GENERAL PROVISION
FIXED PRICE SUPPLY CONTRACT

TABLE OF CONTENTS

Standard Form 32, General Provisions (Supp' 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.....	13
35	Permits.....	19
36	Renegotiation.....	19
37	Patent Indemnity.....	19
38	Reporting Royalties.....	20
39	Notice Regarding Late Delivery.....	20

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 issued 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 90 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 exempt the Contractor from proceeding with the contract as ordered.

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

Variation in the quantity of any item called for by this contract shall be accepted unless such variation has been caused by operations 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

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, fire, 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, (1) any completed supplies, and (2) 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 contract which is not resolved 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 the decision, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Secretary or his duly authorized representative. The determination of such appeals shall be final and conclusive unless the decision is shown to have been fraudulent, or capricious, or so grossly erroneous as necessarily to imply bad faith, or is supported by substantial evidence. In connection with an appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to present in support of its appeal. Pending the final decision, the Contractor shall proceed with the performance of the contract and in accordance with the Contracting Officer's decision.

(b) The "dispute" clause does not preclude consideration of law in connection with decisions provided for in paragraph (a). However, 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 101 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 end 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

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, 35 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.

- 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. 1737. 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.

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.

13. EMPLOYMENT OF THE HANDICAPPED (FPR Temp. Reg. 18)

- 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.

- (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.

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 is requested

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

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

- 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.

11. 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.

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 133, 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.

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.

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.

UTILIZATION OF SMALL BUSINESS CONCERNS AND SMALL
BUSINESS CONCERNS OWNED AND CONTROLLED BY
SOCIOALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS

46

(a) It is the policy of the United States that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency.

(b) The contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with the efficient performance of this contract. The contractor further agrees to cooperate in any studies or surveys as may be conducted by the Small Business Administration or the contracting agency which may be necessary to determine the extent of the contractor's compliance with this clause.

(c) (1) As used in this contract, the term "small business concern" shall mean a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

(2) The term "small business concern owned and controlled by socially and economically disadvantaged individuals" shall mean a small business concern—

(i) which is at least 51 per centum owned by one or more socially and economically disadvantaged individuals; or in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

(ii) whose management and daily business operations are controlled by one or more of such individuals.

The contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and other minorities, or any other individual found to be disadvantaged by the Small Business Administration pursuant to section 3(a) of the Small Business Act.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.

(End of Clause)

ROUTING AND TRANSMITTAL SLIP

Date

2/15/81

TO: (Name, office symbol, room number,
building, Agency/Post)

Initials

Date

1. Accessions Unit, P-042

2. Public Document Room, H-St. Lobby

3.

4.

5.

Action	File	Note and Return
Approval	For Clearance	Per Conversation
As Requested	For Correction	Prepare Reply
Circulate	For Your Information	See Me
Comment	Investigate	Signature
Coordination	Justify	

REMARKS

The attached contract document is hereby
forwarded for display in the Public Document
Room.

DO NOT use this form as a RECORD of approvals, concurrences, disposals,
clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post)

Lynne Martin

Administrative Contracts Branch

Division of Contracts

Room No.—Bldg.

286-SS

Phone No.

74420

5041-102

OPTIONAL FORM 41 (Rev. 7-76)

Prescribed by GSA
FPMR (41 CFR) 101-11.206

☆ U.S. GPO: 1978-0-261-647 3554