

AWARD/CONTRACT		1. CERTIFIED FOR NATIONAL DEFENSE UNDER BDSA REG. 2 AND/OR DMS REG.	RATING	PAGE OF PAGES 1 1
2. CONTRACT (Proc. Inst. Ident.) NO. NRC-17-85-394		3. EFFECTIVE DATE May 16, 1985	4. REQUISITION/PURCHASE REQUEST/PROJECT NO. RFFA No. SECY-85-394	
5. ISSUED BY U.S. Nuclear Regulatory Commission Division of Contracts, AR-2223 Washington, D.C. 20555		6. ADMINISTERED BY (If other than Item 5) CODE		

7. NAME AND ADDRESS OF CONTRACTOR (No., street, city, county, State and ZIP Code) Ann Riley & Associates, Ltd. 1625 I Street, N.W., Suite 921 Washington, D.C. 20006		8. DELIVERY <input type="checkbox"/> FOB ORIGIN <input checked="" type="checkbox"/> OTHER (See below)
		9. DISCOUNT FOR PROMPT PAYMENT Net
10. SUBMIT INVOICES (4 copies unless otherwise specified) TO THE ADDRESS SHOWN IN		ITEM 12
CODE	FACILITY CODE	

11. SHIP TO/MARK FOR CODE
As stipulated on individual work orders issued hereunder.

12. PAYMENT WILL BE MADE BY CODE
U.S. NRC, ORM/Division of Accounting and Finance, ATTN: GOV/COM Accounts Washington, D.C. 20555

13. THIS ACQUISITION WAS. (Check appl. box(es))	A. ADVERTISED	14. ACCOUNTING AND APPROPRIATION DATA			
	B. NEGOTIATED PURSUANT TO:	APPN NO.	B&R NO.	FIN NO.	Amt. Obligated
	<input type="checkbox"/> 10 USC 2304(a)() <input checked="" type="checkbox"/> 41 USC 252(c)(2)	31X0200.705	70-19-02	D1458	\$61,040.30

15A. ITEM NO.	15B. SUPPLIES/SERVICES	15C. QUANTITY	15D. UNIT	15E. UNIT PRICE	15F. AMOUNT
<p>The government hereby accepts Ann Riley & Associates, Ltd.'s offer to provide stenographic reporting services in accordance with the Description/Specifications/Work Statement set forth in Section C and in accordance with your proposal dated April 15, 1985, which is incorporated herein and made a part hereof by this reference. Reference Section F.1, Page 15, performance under this contract shall commence May 16, 1985. Reference Section G.1, Page 19, the estimated amount for performing the work under this contract is shown in Block 15G. below.</p> <p>FIXED PRICE REQUIREMENTS-ESTIMATED</p>					
15G. TOTAL AMOUNT OF CONTRACT					\$ 61,040.30

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X	E	INSPECTION AND ACCEPTANCE	12		K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	
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CONTRACTING OFFICER WILL COMPLETE ITEM 17 OR 18 AS APPLICABLE

17. <input type="checkbox"/> CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return _____ 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.)	18. <input checked="" type="checkbox"/> AWARD (Contractor is not required to sign this document.) Your offer on Solicitation Number RS-SEC-85-394 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.
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19A. NAME AND TITLE OF SIGNER (Type or print)		20A. NAME OF CONTRACTING OFFICER Timothy F. Hagan	
19B. NAME OF CONTRACTOR	19C. DATE SIGNED	20B. UNITED STATES OF AMERICA	20C. DATE SIGNED 5/10/85
BY _____ (Signature of person authorized to sign)		BY _____ (Signature of Contracting Officer)	

SOLICITATION, OFFER AND AWARD		1. CERTIFIED FOR NATIONAL DEFENSE UNDER DDSA REG. 2 AND/OR DMS REG. 1		PAYING	PAGE OF 1 85 PAGES
2. CONTRACT NO.		3. SOLICITATION NO. RS-SEC-85-394		4. TYPE OF SOLICITATION <input type="checkbox"/> ADVERTISED (IFB) <input checked="" type="checkbox"/> NEGOTIATED (RFP)	5. DATE ISSUED 3/29/85
7. ISSUED BY U.S. Nuclear Regulatory Commission Division of Contracts, AR 2223 Washington, D.C. 20555		6. ADDRESS OFFER TO (If other than Item 7) Hand-carried offers, which includes "Express Mail" or delivery by any commercial delivery service, must be delivered to the address in Block 9.		6. REQUISITION/PURCHASE NO. SECY-85-394	

NOTE: In advertised solicitations "offer" and "offeror" mean "bid" and "bidder".

SOLICITATION

9. Sealed offers in original and one signed copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if handcarried, in the depository listed in Room 2223, 4550 Montgomery Avenue until 5:00 pm local time 4/15/85
Bethesda, Maryland 20814 (Hour) (Date)

CAUTION - LATE Submissions, Modifications, and Withdrawals: See Section I, Provision No. 52.214-7 or 52.215-10. All offers are subject to all terms and conditions contained in this solicitation.

10. FOR INFORMATION CALL: A. NAME Kathryn A. Davis	B. TELEPHONE NO. (Include area code) (NO COLLECT CALLS) (301) 492-7125
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X	G	CONTRACT ADMINISTRATION DATA	19	X	M	EVALUATION FACTORS FOR AWARD	84
X	H	SPECIAL CONTRACT REQUIREMENTS	22				

OFFER (Must be fully completed by offeror)

NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.

12. In compliance with the above, the undersigned agrees, if this offer is accepted within 60 calendar days (60 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

13. DISCOUNT FOR PROMPT PAYMENT (See Section I, Clause No. 52.232-8)	10 CALENDAR DAYS None %	20 CALENDAR DAYS None %	30 CALENDAR DAYS None %	CALENDAR DAYS None %
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14. ACKNOWLEDGMENT OF AMENDMENTS (The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE

15A. NAME AND ADDRESS OF OFFEROR	CODE Ann Riley & Associates, Ltd. Suite 921 1625 I St. N.W. Washington, D.C. 20006	FACILITY	16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN - OFFER (Type or print) Ann Riley President
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15B. TELEPHONE NO. (Include area code) (202) 293-3950	15C. CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS IN SCHEDULE <input type="checkbox"/>	17. SIGNATURE <i>Ann Riley</i>	18. OFFER DATE 4-15-85
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AWARD (To be completed by Government)

19. ACCEPTED AS TO ITEMS NUMBERED	20. AMOUNT	21. ACCOUNTING AND APPROPRIATION	
22. SUBMIT INVOICES TO ADDRESS SHOWN IN (4 copies unless otherwise specified)		23. NEGOTIATED PURSUANT TO <input type="checkbox"/> 10 U.S.C. 2304(a) () <input type="checkbox"/> 41 U.S.C. 252(c) ()	
24. ADMINISTERED BY (If other than Item 7) CODE		25. PAYMENT WILL BE MADE BY CODE	
26. NAME OF CONTRACTING OFFICER (Type or print)		27. UNITED STATES OF AMERICA (Signature of Contracting Officer)	
		28. AWARD DATE	

IMPORTANT - Award will be made on this Form, or on Standard Form 26, or by other authorized official written notice.

CONTINUATION SHEET

REFERENCE NO. OF DOCUMENT BEING ESTIMATED
RS-SEC-85-394

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PAGES

NAME OF OFFEROR OR CONTRACTOR

ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
	Section B - <u>Supplies or Services and Prices/Costs</u>				
	B.1. Provide stenographic reporting services within the Washington, D.C. metropolitan area in accordance with the Description/Specifications/Work Statement set forth in Section C. for a period of three months as follows:				
		ESTIMATED			
1.	<u>Services - Regular Hours</u>				
	(a) Furnish the typed original of records of proceedings to the Nuclear Regulatory Commission as follows:				
	i. 5-day copy	3,550	PG	\$ 2.95	\$ 10,472.50
	ii. 3-day copy	3,300	PG	\$ 3.20	\$ 10,560.00
	iii. 2-day copy	4,155	PG	\$ 3.20	\$ 13,296.00
	iv. Daily Copy (8:30 a.m. - next day)	4,645	PG	\$ 3.75	\$ 17,418.75
	v. 5-hour copy	125	PG	\$ 5.35	\$ 668.75
	(b) Furnish each additional (duplicated) copy of originals if ordered before transcription as follows:				
	i. Daily Copy (8:30 a.m. - next day)	6,750	PG	\$.75	\$ 5,062.50
	ii. 5-hour copy	250	PG	\$.75	\$ 187.50
2.	<u>Services - Non-Regular Hours</u>				
	(a) Furnish the typed original of records of proceedings to the Nuclear Regulatory Commission as follows:				
	i. 5-day copy	50	PG	\$ 4.05	\$ 202.50
	ii. 3-day copy	50	PG	\$ 5.77	\$ 288.50
	iii. 2-day copy	50	PG	\$ 5.77	\$ 288.50
	iv. Daily Copy	190	PG	\$ 6.28	\$ 1,193.20
	v. 5-hour copy	65	PG	\$ 7.64	\$ 496.60

CONTINUATION SHEET

RS-SEC-85-394

3

85 PAGES

NAME OF OFFEROR OR CONTRACTOR

ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
2.	Services - Non-Regular Hours - Continued (b) Furnish each additional (duplicated) copy of originals if ordered before transcription as follows: i. Daily copy ii. 5-hour copy	ESTIMATED 100 50	 PG PG	 \$.75 \$.75	 \$ 75.00 \$ 37.50
3.	Furnish the typed original transcript of taped proceedings provided by the Nuclear Regulatory Commission as further described in Section C.3.3.12.: i. 5-day copy ii. 3-day copy iii. 2-day copy iv. Daily Copy (8:30 a.m. - next day) v. 5-hour copy	 125 50 75 65 65	 PG PG PG PG PG	 \$ 2.00 \$ 2.00 \$ 2.00 \$ 2.25 \$ 2.25	 \$ 250.00 \$ 100.00 \$ 150.00 \$ 146.25 \$ 146.25
TOTAL AMOUNT ----- Three-Month (Estimated) Requirement					\$ 61,040.30
NOTE: Only one award will be made, therefore offers must be submitted for total estimated quantities shown.					

Section B - Supplies or Services and Prices/Costs (Continued)

B.2 Remittance Address

If Item 15c. of the Standard Form 33 has been checked, the offeror shall enter the remittance address below.

Name: _____

Address: _____

Section C - Description/Specifications/Work Statement

C.1 Statement of Work

C.1.1 Background

The U.S. Nuclear Regulatory Commission (NRC) requires stenographic reporting services for meetings, briefings, hearings, oral presentations, workshops, depositions, and other proceedings before the Commission, its Hearing Boards and Committees, and various other organizational components which take place in the Washington, D.C. metropolitan area.

In keeping with NRC's mission, the protection of the public health and safety in the utilization of commercial nuclear power, many public hearings and adjudicatory proceedings are held as a part of the decision making process. These proceedings are an extremely important and closely scrutinized part of the Commission's daily operations. The nature of the services are such that delays, errors, and other forms of unsatisfactory performance will jeopardize the interests of the Commission and could result in unacceptable delays in completion of the regulatory process for construction and operation of nuclear power plants.

The subject matter to be recorded is very complex and of a highly technical nature primarily in the field of nuclear reactors and nuclear energy. Less technical, but equally demanding are meetings recorded in compliance with the Government in the Sunshine Act, portions of which may be highly sensitive or of a confidential nature. Also sensitive are personnel interviews which must always be recorded in a situation of utmost confidentiality.

C.2 Definitions

- C.2.1. Employment Agreement. An agreement which creates an employer/employee relationship between a business entity and an individual in which the parties agree that, in exchange for services rendered within a specified tour of duty as determined (and controlled) by the organization, the organization shall pay specified wages or salary to the individual and possibly fringe benefits such as health insurance. Additionally, the organization is responsible for the withholding of social security and necessary Federal/State employment taxes from the base salary of the employee.
- C.2.2. Headquarters. Means the Commission offices located in Bethesda, Rockville, and Silver Spring, Maryland, and in downtown Washington, D.C.
- C.2.3. Duplicated. Shall include duplication by various processes, including ditto, hectograph, mimeograph, xerox, etc.
- C.2.4. Non-Regular Hours. Those hours worked after 6:00 p.m. on a given day through 8:30 a.m. the following day and includes all work performed on Federal Government holidays and on all Saturdays and Sundays.
- C.2.5. Proceedings. May include meetings, briefings, oral presentations, and hearings conducted by the Commission, its Adjudicatory Hearing Boards, its Advisory Committees, and the NRC staff whether open to the public or closed. The term is also construed to include other agency functions, such as investigations, conferences, depositions, Boards of Contract Appeals, grievances, telephone conferences, press briefings, and any other proceedings deemed necessary by the Commission.
- C.2.6. Regular Hours. Those hours between 8:30 a.m. and 6:00 p.m. Monday through Friday, excluding legal Federal Government holidays.
- C.2.7. Session. A reporting unit or part of a proceeding for which a transcript is required to be delivered hereunder.
- C.2.8. The Term "Stenographic Reporting". Means the reporting of spoken words recorded by the reporter by means of stenographic notes, directly recorded dictation or monitored direct recording, and the typed reproduction thereof.
- C.2.9. Subcontract. Means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime contractor or subcontractor calling for supplies or services required for performance of the original contract or subcontract.
- C.2.10. The Term "Washington, D.C. Metropolitan Area". Means and includes the area within a 30-mile radius of the Zero milestone in the District of Columbia.
- C.2.11. Presiding Officer. Unless some other person is so designated in the work order, Presiding Officer means the NRC person who presides, chairs, or regulates the proceeding which is being reported.

C.3 Description/Specifications/Work Statement

- C.3.1. The contractor shall furnish stenographic reporting services for proceedings in the Washington, D.C. Metropolitan area as may be required to be reported for the U.S. Nuclear Regulatory Commission's Headquarters (NRC) operations. The Commission agrees to order from the contractor all of the Commission's requirements for the services described herein, except, however, at the discretion of the Commission for certain closed meetings of the Commissioners and other sessions where in-house capabilities are utilized. In addition, the Commission may or may not use the contractor for joint proceedings held with other federal, state, or local government agencies.
- C.3.2. The Commission at all times shall have the right to reproduce transcripts furnished under this contract, or copies thereof. The Commission also reserves the right to place copies of transcripts furnished under this contract in its Public Document Room in Washington, D.C. and in its Local Public Document Rooms outside the Washington, D.C. area, where they are available for viewing and copying by members of the public at prevailing prices. General practice is that transcripts are not in the Public Document Rooms until 48 hours after delivery of the transcript of the particular session involved. The Commission reserves to itself the authority to change this practice at any time.
- C.3.3. The contractor agrees to furnish the services set forth herein when ordered by the Commission at the rates stipulated in Section B. Your attention is directed to Contract Clause 52.249-8, entitled "Default," which establishes the criteria for default of a contractor and the liability of the contractor to the Government.
- C.3.3.1. Performance. The contractor shall promptly provide as many competent stenographers and maintain such staff and equipment as may be necessary for the furnishing of satisfactory transcripts and copies thereof, in accordance with the requirements of this contract. All work shall be performed in a business-like manner. It shall conform to the standards set forth in this Statement of Work.
- C.3.3.2. Supervision. The contractor, or the duly authorized employee, agent, or representative of the contractor, shall present himself to the Presiding Officer or a designated representative and he shall at all times be governed by the instructions of the Presiding Officer.
- C.3.3.3. Reporting. Everything spoken during a proceeding shall be reported and incorporated into the transcript unless the Presiding Officer otherwise directs. This shall include a record of appearances, with the names and identification of the persons who actually speak at the proceedings, together with such other matters as may be directed by the Presiding Officer to be included. Nothing spoken at the proceedings shall be "off the record" unless so designated by the Presiding Officer. No part of the proceedings, notes of which have been taken, shall be omitted from the record unless the

Presiding Officer so directs. A full and complete verbatim record shall be made and transcribed. Only stenomask or stenotype shall be used in reporting Commission and Advisory Committee on Reactor Safeguards (ACRS) meetings. The contractor shall not use direct reporting (i.e., monitored direct recording and the typed reproduction thereof) for these meetings. Depositions are to be taken only by duly authorized notaries and no separate fees are to be charged for notary services, administering oaths, or affixing seals.

C.3.3.4. Recess. Upon notification by the reporter for a request to recess in order to replace paper, tape, or other necessary materials used in performance of the work, the Presiding Officer may grant such a request and order a recess for a reasonable time. However, in the case of ACRS meetings, and for Commission meetings where the Commission maintains a backup electronic tape (cassette) of the meeting, no such recess will be allowed. The contractor shall have equipment which will not cause disruption of a meeting if the person reporting the proceeding is replaced.

C.3.3.5. Accuracy.

- a. It shall be the responsibility of the contractor to furnish complete transcripts which accurately reflect the full and complete verbatim record of the proceeding. If electronic recording devices are used, they must be of such quality as to insure against error, misinterpretation, or loss of voice. Equipment must be continuously operator-monitored and include simultaneous playback, listening, pre-amplification and speaker identification facilities. The placement of all equipment used by the contractor during a proceeding is subject to the approval of the Presiding Officer.
- b. Where errors attributable to the contractor's performance appear in the transcript (i.e., those which change or obscure the meaning of the testimony, but not including typographical errors or misspelling, if the intended meaning is clearly evident, such as "thier" for "their" or "teh" for "the," etc.), the Commission may demand and the contractor shall correct the errors and furnish corrected transcripts within five (5) business days after receipt of notification. Acceptance of corrected transcripts will be in accordance with the provisions of Section E, "Inspection and Acceptance." Payment for corrected transcripts shall be made in accordance with Section H.1., "Late or Defective Delivery."

C.3.3.6. Format.

- a. Transcripts. Transcripts shall be typed with black one-time carbon ribbons on white 20-pound rag bond or equal. The original of all transcripts shall be furnished to the Commission. Paper shall be 8-1/2 x 11 inches in size, with a margin of 1-3/4 inches at the left-hand side and a margin of

3/8 inch at the right-hand side. Paper to be used will be subject to approval by the Commission. Typing shall be ten (10) spaces to the inch, double-space, using one of the following IBM or equal type styles: Courier 10, Prestige Elite, OCR B, Pica 10, or Letter Gothic, samples of which are furnished as Attachment 3 hereto. Use of "or equal" typefaces will be subject to the approval of the Commission. Whenever testimony is continuous, requiring more than one line, the typing shall begin as close as possible to the left ruled marginal line, words to be properly hyphenated when necessary. The per page rate set forth in Section B will be paid for all pages containing 25 lines of transcription. Payment for pages of a transcript with less than 25 lines per page will be made on a net 25 line basis; i.e., the number of lines on pages with less than 25 lines will be added and the total divided by 25. The resulting number will be added to the number of full pages for transcript payment purposes. Any additional duplicated copies of such transcripts ordered and delivered will be invoiced and paid at the same page count as the original transcript. No payment will be made for lines in excess of 25 lines to the page. Numbers indicating each line of transcription upon page; i.e., 1 to 25 inclusive, shall be printed at the left marginal line of the original transcript.

- b. Covers and Title Pages. Each copy of the transcript furnished shall be bound with covers of good quality, white or colored (other than yellow or red, use for which follows) 140-pound index paper, No. 1 sulphite paper, or similar material approved by the Commission. Cover markings shall include a statement, when appropriate, that the contents are of an in-camera or proprietary nature, in which case a yellow cover shall be used. Red covers shall be used to denote that the contents include classified material. The cover shall show general information such as an identification of the U.S. Nuclear Regulatory Commission, the nature of the proceeding (e.g., Commission Meeting, Atomic Safety and Licensing Board Proceeding, Advisory Committee on Reactor Safeguards Meeting), name of proceeding, location, date, number of pages, page range and docket number. Each transcript shall also have a title page. In the case of Commission meetings the title page shall identify the U.S. Nuclear Regulatory Commission, show the title of the meeting, indicate "COMMISSION MEETING" and either "PUBLIC MEETING," or "CLOSED MEETING" (for closed meetings, the page shall also indicate the exemption number(s), the place, date, and starting time. Finally, the title page shall list the Commissioners present as well as members of the staff and presenters seated at the Commission table.
- c. Indexing. In the original and each copy of the transcript of a Licensing or Appeal Board proceeding, the title page showing name, docket number, place and date of proceedings,

appearance, location, etc., shall be followed by a page or pages indexing the witnesses and exhibits. Each transcript shall include one complete cumulative index of witnesses and exhibits. The index shall state the pages devoted to the testimony of the witness, the party for whom testifying, and the page at which direct, cross, redirect, recross, and Board examination begins. The index shall also identify the exhibits by number and/or letter showing the page and party where identified for the record, and the page where admitted, denied admittance, or withdrawn, and give a brief description of the nature of the exhibit. Other documentary material bound into the transcript at the direction of the Presiding Officer shall also be indexed in the same fashion.

- d. Pagination. Unless otherwise directed by the Presiding Officer, the paging of the transcript shall be in a single series of consecutive numbering regardless of the number of days of the hearing. The paging of the transcript of a further hearing shall follow consecutively the paging of the last previous hearing in the same proceeding, unless otherwise directed by the Presiding Officer. Page numbers are to be placed at the top right of each page.
- e. Binding. Transcripts shall be punched with three (3) round 1/4-inch holes, 4-1/4 inches center-to-center and shall be tied with 3/8-inch cotton twill (red notary tape) in such a manner that they can be disassembled and reassembled with ease. The contractor shall punch and bind with the record, in the order of its submittal, each document(s) which is/are accepted for such purpose by the Presiding Officer for the record, it being understood that the Presiding Officer will not so accept any material not of suitable size for the record. Such material, if any, not of suitable size shall be so designated as not part of the transcribed record and be handled separately as an exhibit. Improperly bound or organized transcripts will be construed to change the meaning of the testimony and will be rejected. No documents of any kind are to be included in any Commission Meeting transcripts.

C.3.3.7. Legibility. Ribbon copy (the original) shall be clearly legible, suitable for making copies. All machine-reproduced copies supplied by the contractor must be clearly legible and machine reproducible. Duplicated copies shall be on white 20-pound paper or equal. Paper to be used for duplicated copies will be subject to the approval of the Commission. In the event the Commission or Presiding Officer finds one or more copies to be illegible or unreproducible, the contractor agrees to correct same or replace with acceptable copies within five (5) business days after receipt of notification. Payment for corrected or replacement copies shall be made in accordance with Section H.1., "Late or Defective Delivery."

"This is to certify that the attached proceedings
before the _____ in the matter of
(Name of Proceeding)
(Docket Number)
(Place of Proceeding)
(Date of Proceeding)

(Signature Typed)
Official Reporter
Reporter's Affiliation"

If any document is withdrawn, or for any other reason is not filed with the transcript, a memorandum shall be inserted by the contractor in the place of the document stating its nature, how numbered or lettered and marked, and the reason for its absence. The numerical order of exhibits introduced at the proceedings or in a reopened case shall follow consecutively the number on the past previous exhibit introduced by such party.

- b. Until submitted to the Secretary of The Commission, and subject to direction of the Presiding Officer, the reporter shall have custody of the hearing record which includes exhibit material in other than documentary form admitted under applicable rules. Any requirement for the special handling of any such exhibit material (example: full scale models) in other than documentary form ordered by the Presiding Officer shall constitute a change within the meaning of the clause hereof entitled, "Changes."
- c. Unless otherwise provided by the Presiding Officer, all exhibit material in the custody of the reporter shall be turned over to the Secretary of the Commission, Attention: Chief, Docketing and Service Branch, within ten (10) calendar days following the completion of each hearing session, accompanied by an inventory sheet prepared specifically for transmittal of such exhibit material.

C.3.3.10. Cancellation of Meetings. The Government will notify the contractor of a proceeding cancellation as soon as the cancellation becomes known. If less than two hours notice is given, a guaranteed minimum payment will be made as specified in Section H.4. For those proceedings scheduled to begin before 10:00 a.m., notification will be given prior to 5:00 p.m. of the preceding business day.

C.3.3.11. Postponements. If an adjudicatory proceeding has been noticed for hearing and is called but not heard at the time and place indicated in the notice, a record shall nevertheless be written with a title page and list of the persons desiring to record their appearances, together with a memorandum of the date, hour, and place at which the hearing was called and a statement showing the action taken. If the Presiding Officer or any official is present and an official reason is stated why the hearing was not held as scheduled, such reason shall be included in the record. If no official reason is stated, the reporter shall, before transcribing the record, ascertain from the Presiding Officer, other hearing official, or the counsel for the Commission, or its staff, the reason why such hearing was not held as scheduled and insert such statement and identify the individual source in the record to be transcribed. The contractor shall be paid for each page involving a postponement in accordance with the contract schedule for the type of delivery ordered.

C.3.3.12. Transcription of Tapes. The NRC may, from time to time, require the contractor to transcribe tapes furnished by the Project Officer. The tapes of Commission Meetings are 90 minute Lanier 4-track cassettes. The transcript format shall be in accordance with Section C.3.3.6., above. Other standard cassette tapes may be furnished as well.

C.4. Work Orders.

C.4.1. Orders for services required hereunder will normally be placed or issued by the Contracting Officer or his authorized representatives at least 48 hours before the start of a proceeding. However, the Government reserves the right to require the contractor's reporter to be at the proceeding site within two hours after being notified by the Contracting Officer or his authorized representative.

C.4.2 Work orders will normally be written but may, on occasion be oral, in which event the order will be confirmed in writing. Work orders will set forth the time, date, and place of proceeding, the type of proceeding, the title or subject of the proceeding, the estimated duration, the number of copies required, the delivery schedule, pagination instructions to assure the continuation of pagination, security classification, and delivery instructions, including names and addresses of recipients for hand or mail delivery.

Section D - Packaging and Marking

D.1 All materials delivered hereunder shall be packaged in such a manner as to ensure arrival at the place of delivery in an undamaged condition. Each package shall be clearly marked with the contractor's name, work order number, and content, e.g., "Hearing Transcripts," "Industry Conference Transcripts," or "Press Conference Transcripts," as applicable.

D.2 Material of a classified nature shall be packaged and marked in accordance with applicable NRC security regulations. Additional marking and packaging instructions, e.g., "Addressee Only," "Sensitive" or requirement for double envelopes, as deemed necessary by the Project Officer, may be designated on individual work orders issued hereunder.

Section E - Inspection and Acceptance

E.1 Place of Inspection and Acceptance

E.1.1 Preliminary inspection and acceptance of the materials and services set forth herein shall be made at the places specified in Section F.3 by the Commission's receiving party, but final inspection and acceptance shall be made by the Contracting Officer or his authorized representative.

E.1.2 Acceptance or rejection of deliverable items shall be made by the authorized representative within twenty (20) calendar days after receipt of deliverable items from the contractor. In the event of rejection of any portion of the work, completion of corrected items shall be received within five (5) business days after receipt of notice of rejection. Final acceptance shall be made only after the work has been corrected to the extent it conforms to the specifications contained herein.

E.2 FAR Citations

52.246-2 INSPECTION OF SUPPLIES--FIXED-PRICE. (APR 1984)

(a) Definition. "Supplies," as used in this clause, includes but is not limited to raw materials, components, intermediate assemblies, end products, and lots of supplies.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering supplies under this contract and shall tender to the Government for acceptance only supplies that have been inspected in accordance with the inspection system and have been found by the Contractor to be in conformity with contract requirements. As part of the system, the Contractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to the Government during contract performance and for as long afterwards as the contract requires. The Government may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly delay the contract work. The right of review, whether exercised or not, does not relieve the Contractor of the obligations under the contract.

(c) The Government has the right to inspect and test all supplies called for by the contract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. The Government shall perform inspections and tests in a manner that will not unduly delay the work. The Government assumes no contractual obligation to perform any inspection and test for the benefit of the Contractor unless specifically set forth elsewhere in this contract.

(d) If the Government performs inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the contract, the Government shall bear the expense of Government inspections or tests made at other than the Contractor's or subcontractor's premises; provided, that in case of rejection, the Government shall not be liable for any reduction in the value of inspection or test samples.

(e) (1) When supplies are not ready at the time specified by the Contractor for inspection or test, the Contracting Officer may charge to the Contractor the additional cost of inspection or test.

(2) The Contracting Officer may also charge the Contractor for any additional cost of inspection or test when prior rejection makes reinspection or retest necessary.

(f) The Government has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with contract requirements. The Government may reject nonconforming supplies with or without disposition instructions.

(g) The Contractor shall remove supplies rejected or required to be corrected. However, the Contracting Officer may require or permit correction in place, promptly after notice, by and at the expense of the Contractor. The Contractor shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and, when required, shall disclose the corrective action taken.

(h) If the Contractor fails to promptly remove, replace, or correct rejected supplies that are required to be removed or to be replaced or corrected, the Government may either (1) by contract or otherwise, remove, replace, or correct the supplies and charge the cost to the Contractor or (2) terminate the contract for default. Unless the Contractor corrects or replaces the supplies within the delivery schedule, the Contracting Officer may require their delivery and make an equitable price reduction. Failure to agree to a price reduction shall be a dispute.

(i) (1) If this contract provides for the performance of Government quality assurance at source, and if requested by the Government, the Contractor shall furnish advance notification of the time (i) when Contractor inspection or tests will be performed in accordance with the terms and conditions of the contract and (ii) when the supplies will be ready for Government inspection.

(2) The Government request shall specify the period and method of the advance notification and the Government representative to whom it shall be furnished. Requests shall not require more than 2 workdays of advance notification if the Government representative is in residence in the Contractor's plant, nor more than 7 workdays in other instances.

(j) The Government shall accept or reject supplies as promptly as practicable after delivery, unless otherwise provided in the contract. Government failure to inspect and accept or reject the supplies shall not relieve the Contractor from responsibility, nor impose liability on the Government, for nonconforming supplies.

(k) Inspections and tests by the Government do not relieve the Contractor of responsibility for defects or other failures to meet contract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.

(1) If acceptance is not conclusive for any of the reasons in paragraph (f) hereof, the Government, in addition to any other rights and remedies provided by law, or under other provisions of this contract, shall have the right to require the Contractor (1) at no increase in contract price, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the Contractor's plant at the Contracting Officer's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and the Contracting Officer; provided, that the Contracting Officer may require a reduction in contract price if the Contractor fails to meet such delivery schedule, or (2) within a reasonable time after receipt by the Contractor of notice of defects or nonconformance, to repay such portion of the contract as is equitable under the circumstances if the Contracting Officer elects not to require correction or replacement. When supplies are returned to the

Contractor, the Contractor shall bear the transportation cost from the original point of delivery to the Contractor's plant and return to the original point when that point is not the Contractor's plant. If the Contractor fails to perform or act as required in (1) or (2) above and does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure, the Government shall have the right to contract or otherwise to replace or correct such supplies and charge to the Contractor the cost occasioned the Government thereby.

(End of clause)
(R 7-103.5(a) 1958 MAY)
(R 7-103.5(d) 1977 SEP)
(R 1-7.102-5)

52.246-16 RESPONSIBILITY FOR SUPPLIES. (APR 1984)

(a) Title to supplies furnished under this contract shall pass to the Government upon formal acceptance, regardless of when or where the Government takes physical possession, unless the contract specifically provides for earlier passage of title.

(b) Unless the contract specifically provides otherwise, risk of loss of or damage to supplies shall remain with the Contractor until, and shall pass to the Government upon--

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Acceptance by the Government or delivery of the supplies to the Government at the destination specified in the contract, whichever is later, if transportation is f.o.b. destination.

(c) Paragraph (b) above shall not apply to supplies that so fail to conform to contract requirements as to give a right of rejection. The risk of loss of or damage to such nonconforming supplies remains with the Contractor until cure or acceptance. After cure or acceptance, paragraph (b) above shall apply.

(d) Under paragraph (b) above, the Contractor shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of the Government acting within the scope of their employment.

(End of clause)
(R 7-103.6 1968 JUN)
(R 1-7.102-6)

Section F - Deliveries and Performance

F.1 Duration of Contract Period

Performance under this contract shall commence on the date of receipt of the written Notice of Award or the effective date as otherwise specified, and continue for a period of three (3) months. Any work order issued during the period of performance of this contract and not completed by the expiration of the contract period shall be completed within the time specified by the individual work order as further stipulated in Contract Clause 52.216-21, "Requirements (Apr 1984)."

F.2 Time of Delivery

- F.2.1 Five-Day Copy. When the contractor is directed to delivery 5-day copy as specified in Section B, delivery of the record of the proceeding shall be deemed to have been effected when the required number of transcripts of the proceeding are delivered to the recipient designated in the work order by 9:00 a.m. on the fifth business day after each daily recess of the proceeding (e.g., transcripts for proceedings held on Monday shall be delivered by 9:00 a.m. the following Monday; transcripts for proceedings held on Friday shall be delivered by 9:00 a.m. the following Friday).
- F.2.2 Three-Day Copy. When the contractor is directed to deliver 3-day copy as specified in Section B, delivery of the record of the proceeding shall be deemed to have been effected when the required number of transcripts of the proceeding are delivered to the recipient designated in the work order by 9:00 a.m. on the third business day after each daily recess of the proceeding (e.g., transcripts for proceedings held on Monday shall be delivered by 9:00 a.m. the following Thursday; transcripts for proceedings held on Friday shall be delivered by 9:00 a.m. the following Wednesday).
- F.2.3 Two-Day Copy. When the contractor is directed to deliver 2-day copy as specified in Section B, delivery of the record of the proceeding shall be deemed to have been effected when the required number of transcripts of the proceeding are delivered to the recipient designated in the work order by 9:00 a.m. on the second business day after each daily recess of the proceeding (e.g., transcripts for proceedings held on Monday shall be delivered by 9:00 a.m. the following Wednesday; transcripts for proceedings held on Friday shall be delivered by 9:00 a.m. the following Tuesday).
- F.2.4 Daily Copy. When the contractor is directed to deliver daily copy as specified in Section B, delivery of the record of the proceeding shall be deemed to have been effected when the required number of transcripts of the day's proceedings are delivered to the recipient designated in the work order by 8:30 a.m. on the next business day following the proceeding (e.g., transcripts for proceedings held on Monday shall be delivered by 8:30 a.m. on Tuesday, transcripts for proceedings held on Friday shall be delivered by 8:30 a.m. the following Monday; except, for those proceedings scheduled in the work order to continue on Saturday, the transcript for the Friday session shall be delivered by 8:30 a.m. on Saturday. The transcript for Saturday's session shall be delivered by 8:30 a.m. on the following Monday.).

F.2.5 Five-Hour Copy. When the contractor is directed to deliver 5-hour copy as specified in Section B, delivery of the record of the proceeding shall be deemed to have been effected when the required number of transcripts of the proceedings are delivered to the recipient designated in the work order within 5 hours after the close of each session of the proceeding.

F.2.6 Evening Sessions.

a. If any proceeding for which daily copy has been requested is in session after 6:00 p.m. of any day, the contractor shall deliver that portion of the transcript which would reflect the session:

1. Prior to 6:00 p.m., on or before 8:30 a.m. the following day.
2. After 6:00 p.m. (evening session), within 15 hours after the close of each session.

b. No extension of time will be allowed for five-hour, two-day, three-day or five-day delivery because of evening sessions.

F.2.7 Allowance for Delivery Dates Falling on Legal or Federal Holidays. If the time for delivery falls on a legal Federal Government holiday, delivery shall be completed on the following Federal Government business day at the same hour as delivery would have been required had the delivery day not fallen on a legal Federal Government holiday.

F.3 Place of Delivery

NRC offices are located in Bethesda, Rockville, and Silver Spring, Maryland, and in downtown Washington, D. C. Place of delivery will be stipulated on each work order issued hereunder. Multiple deliveries may be specified. All costs associated with delivery shall be prepaid and made at the expense of the contractor.

F.4. Reports, Documentation and Other Deliverable End Items

A report summarizing sales of duplicate copies of transcripts to parties other than NRC shall be submitted on a monthly basis (Reference Section H.7.1.) in the following format:

<u>NRC Ordering Office</u>	<u>Number of Transcripts</u>	<u>Total Number of Pages</u>
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The report shall be forwarded in duplicate to the U.S. Nuclear Regulatory Commission, Division of Contracts, Attention: (Insert Name of Contract Administrator, AR 2223), Washington, D.C. 20555, to arrive within 15 days following the end of the reporting period.

F.5. FAR Citations

52.212-4 LIQUIDATED DAMAGES--SUPPLIES, SERVICES, OR RESEARCH
AND DEVELOPMENT. (APR 1984)

(a) If the Contractor fails to deliver the supplies or perform the services within the time specified in this contract, or any extension, the Contractor shall, in place of actual damages, pay to the Government as fixed, agreed, and liquidated damages, for each calendar day of delay the sum of - See Section H.1.

(b) Alternatively, if delivery or performance is so delayed, the Government may terminate this contract in whole or in part under the Termination for Default--Supplies and Services clause in this contract and in that event, the Contractor shall be liable for fixed, agreed, and liquidated damages accruing until the time the Government may reasonably obtain delivery or performance of similar supplies or services. The liquidated damages shall be in addition to excess costs under the Termination clause.

(c) The Contractor shall not be charged with liquidated damages when the delay in delivery or performance arises out of causes beyond the control and without the fault or negligence of the Contractor as defined in the Termination for Default--Supplies and Services clause in this contract.

(End of clause)
(R 7-105.5 1969 AUG)

52.247-34 F.O.B. DESTINATION. (APR 1984)

(a) The term "f.o.b. destination," as used in this clause, means--

(1) Free of expense to the Government, on board the carrier's conveyance, at a specified delivery point where the consignee's facility (plant, warehouse, store, lot, or other location to which shipment can be made) is located; and

(2) Supplies shall be delivered to the destination consignee's wharf (if destination is a port city and supplies are for export), warehouse unloading platform, or receiving dock, at the expense of the Contractor. The Government shall not be liable for any delivery, storage, demurrage, accessorial, or other charges involved before the actual delivery (or "constructive placement" as defined in carrier tariffs) of the supplies to the destination, unless such charges are caused by an act or order of the Government acting in its contractual capacity. If rail carrier is used, supplies shall be delivered to the specified unloading platform of the consignee. If motor carrier (including "piggyback") is used, supplies shall be delivered to truck tailgate at the unloading platform of the consignee. If the Contractor uses rail carrier or freight forwarder for less than carload shipments, the Contractor shall assure that the carrier will furnish tailgate delivery if transfer to truck is required to complete delivery to consignee.

(b) The Contractor shall--

(1) (i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements;

(2) Prepare and distribute commercial bills of lading;

(3) Deliver the shipment in good order and condition to the point of delivery specified in the contract;

(4) Be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by the consignee at the delivery point specified in the contract;

(5) Furnish a delivery schedule and designate the mode of delivering carrier; and

(6) Pay and bear all charges to the specified point of delivery.

(End of clause)

(R 1-19.306(a)(1) and (b))

(R 7-104.71 1969 APR)

Section G - Contract Administration Data

G.1 Total Amount of the Contract - Ceiling

The estimated amount for performing the work under this contract is specified in Part I, Block 20 of Standard Form 33, page 1. The estimated amount specified may be increased by the Contracting Officer at his discretion from time to time by written notice to the contractor. When and if the amount(s) paid and payable to the contractor hereunder shall equal the ceiling, the contractor shall be excused from further performance of the work (except to meet existing commitments and liabilities) unless and until the Contracting Officer shall increase the amount obligated with respect to this contract.

G.2 Project Officer

G.2.1 The Contracting Officer may designate one or more authorized representatives (Project Officers) under this contract for the purpose of assuring that the services required under the contract are delivered in accordance therewith. Such Project Officers as may be appointed will be specifically designated in writing by the Contracting Officer. The Project Officers are not authorized to approve or request any action which results in or could result in an increase in contract cost, or to terminate or settle any claim or dispute arising under the contract, or to issue any unilateral directive whatever.

G.2.2 The Project Officer is responsible for: (1) monitoring the Contractor's technical progress, including surveillance and assessment of performance, and recommending to the Contracting Officer changes in requirements; (2) interpreting the 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 Project Officer is authorized to review all costs requested for reimbursement by Contractors and submit recommendations for 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.

- G.2.3 For guidance from the Project Officer to the Contractor to be valid, it must: (1) be consistent with the description of work set forth in the contract; (2) not constitute new assignment of work or change to the expressed terms, conditions or specifications incorporated into this contract; (3) not constitute a basis for an extension to the period of performance or contract delivery schedule; and, as stated above, (4) not constitute a basis for any increase in the contract cost.

G.3 Payment Due Date

- G.3.1 Payments under this contract will be due 30 calendar days after the later of:

- a. The date of actual receipt of a proper invoice (original and 4 copies) to:

U.S. Nuclear Regulatory Commission
Division of Accounting and Finance
Office of Resource Management
ATTN: GOV/COM Accounts Section
Washington, D.C. 20555

or

- b. The date the supplies are accepted by the Government.

- G.3.2 For the purpose of determining the due date for payment and for no other purpose, acceptance will be deemed to occur 30 calendar days after the date of delivery of these supplies in accordance with the terms of the contract.

- G.3.3 If the supplies are rejected for failure to conform to the technical requirements of the contract, or for damage in transit or otherwise, the provisions in paragraph (b) of this clause will apply to the new delivery of replacement supplies.

- G.3.4 The date of payment by wire transfer through the Treasury Financial Communications Systems shall be considered the date payment is made for individual payments exceeding \$25,000. The date a check is issued shall be considered the date payment is made for individual payments of \$25,000 or less.

G.4 Invoice Requirements

Invoices shall be submitted in an original and 4 copies to:

U.S. Nuclear Regulatory Commission
Division of Accounting and Finance
Office of Resource Management
ATTN: GOV/COM Accounts Section
Washington, D.C. 20555.

To constitute a proper invoice, the invoice must include the following information and/or attached documentation:

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

G.5 Frequency of Invoicing

Invoices shall be submitted monthly in accordance with the instructions set forth in Section G.4 above. All services performed during the billing period may be included on the monthly invoice. However, those services for which final acceptance has not been made and/or services which have been rejected will be deleted from the invoice at the time the invoice is processed for payment. Deleted items must be re-invoiced by the contractor in succeeding monthly billings.

G.6 Interest on Overdue Payments

G.6.1 The Prompt Payment Act, Public Law 97-177 (96 STAT. 85, 31 USC 1801) is applicable to payments under this contract and requires the payment of interest to contractors on overdue payments and improperly taken discounts.

G.6.2 Determinations of interest due will be made in accordance with the provisions of the Prompt Payment Act and Office of Management and Budget Circular A-125, Vol. 47 Federal Register 37321, August 25, 1982. Among other considerations, OMB Circular A-125 provides that:

- (a) Interest penalties are not required when payment is delayed because of a disagreement over the amount of payment or other issues concerning compliance with the terms of the contract.
- (b) Whenever a proper invoice is paid after the due date plus 15 days, interest will be included with the payment at the interest rate applicable on the payment date. Interest will be computed from the day after the due date through the payment date.

Section H - Special Contract Requirements

H.1 Late or Defective Delivery - Liquidated Damages

If the contractor fails to make delivery within the times as directed or fails to furnish transcripts or other services in accordance with the provisions of Sections B and F hereto, payment will be at the applicable price as specified in Section B for the actual delivery of acceptable copy; i.e., if daily copy is not delivered by the time specified herein, payment shall be made for such copy at the 2-day rate; if the daily copy is not delivered in 2 days, payment shall be made for such copy at the 3-day rate; if daily copy is not delivered in 3 days, payment shall be made for such copy at the 5-day rate; and if such delivery is later than 5 days, the price paid shall be computed at the 5-day rate less 10 percent per day, down to a minimum of 50 percent of the 5-day rate.

Nothing in this Section shall be construed to abrogate the performance requirements of this contract or to permit the contractor or his representative to fail to perform or to delay in performing any duties or responsibilities under this contract. Failure to furnish a reporting service or delinquency in the delivery of a transcript is a default, and subjects the contractor to the default provisions of this contract (Section I, Contract Clause 52.249-8).

H.2 Copied Matter

- H.2.1 No document shall be copied verbatim into the transcript or added to it unless ordered by the Presiding Officer.
- H.2.2 Any document ordered to be copied verbatim into the transcript shall be paid for at the same rate as spoken testimony. Any document ordered to be added to the transcript as an exhibit or otherwise shall be paid for at the page rate in accordance with additional copies as set forth in the Schedule.
- H.2.3 Whenever documentary testimony is accepted by the Presiding Officer for the record and furnished to the contractor in insufficient numbers, the contractor shall make the necessary number of copies and shall be paid the page rate in accordance with additional copies as set forth in the Schedule.

H.3 Expenses of Contractor

All costs incident to performance under this contract shall be included in the unit prices set forth in Section B.1 of the schedule. No expenses incurred by the contractor in performance of his duties under this contract shall be borne by the Commission, except as provided for in Section H.4, "Guaranteed Minimum," below.

H.4 Guaranteed Minimum

- H.4.1 The contractor shall be paid a minimum of \$50.00 per day per person for attending proceedings as described in individual work orders within the Washington, D.C. metropolitan area. Notwithstanding the foregoing, in the case of successive meetings and one meeting is anticipated to be of short duration, e.g., Commission Affirmation Session, the guaranteed minimum will be applied as for one proceeding although separate work orders are issued. The guaranteed minimum will not be paid when transcripts ordered at rates quoted herein equal or exceed the guaranteed minimum. In the event the Government elects to dispense with the furnishing by the contractor of transcripts of hearings regardless of how many hours the proceedings have taken, the Government agrees to pay the daily minimum established above for such day.
- H.4.2 In the event that the transcripts furnished to the Government do not exceed the guaranteed minimum, the contractor shall receive payment for the transcript taken plus the difference between the price for the actual transcript taken and the applicable guaranteed minimum.
- H.4.3 The Government reserves the right to cancel a work order without any penalty charges provided the contractor is given proper notice specified in Section C.3.3.10. If proper notice is not given, the guaranteed minimum will apply.
- H.4.4 If, after presenting himself to the Presiding Officer or other person in charge at the time and place of a proceeding scheduled to be held, the contractor is notified that the proceeding has been postponed or cancelled, the contractor will be paid the applicable guaranteed minimum.
- H.4.5 The contractor shall, if requested by the Commission, furnish evidence satisfactory to the Contracting Officer that failure to receive the said notice of postponement or cancellation prior to the arrival at the hearing site was not due to his negligence.

H.5 Charges

For any proceeding that starts during regular hours, the contractor shall charge the Commission at the rate(s) stipulated in Section B., hereof for the particular service and corresponding delivery schedule listed for the regular hours category. If such proceedings start before regular hours or extend beyond regular hours, the rate(s) set forth in the Schedule for service during non-regular hours shall be effective; they shall be limited, however, to that portion of the work performed during non-regular hours.

H.6 Failure of Contractor to Appear

If the contractor does not appear at the place and time specified for a hearing after being notified in accordance with Section C.4, "Work Orders," of the place and time for the scheduled proceeding, the Commission representative may call in a substitute reporting firm, and the contractor shall reimburse the Commission for any extra expense incurred on account thereof. The Commission may deduct such expenses from any sum otherwise due the contractor.

H.7 Sale of Copies

H.7.1 Except as specified below, the contractor agrees to sell to the public copies of transcripts or portions thereof covered by this contract. Copies required by the public on a faster basis than required by the Commission will be furnished by the contractor if it does not interfere with the needs of the proceeding as determined by the Presiding Officer. The contractor shall provide the Commission, at the rates the Commission ordered the transcript for delivery, the original transcript and required duplicated copies, if any, at the same time copies are furnished to any other party. The contractor shall submit to the Contracting Officer monthly reports of the number of duplicate copy pages sold to parties other than NRC (see Section F.4.).

H.7.2 The contractor is not authorized to sell copies of transcripts or portions thereof of any closed or in-camera sessions to the public.

H.8 Restrictions on Disclosure

H.8.1 The Commission or the Presiding Officer shall have the right to prohibit the sale of copies of transcripts or portions thereof.

H.8.2 Any information in any form gained in the course of performance of duties hereunder which is designated by the Presiding Officer as classified or otherwise restricted shall be governed by the provisions hereof entitled, "Private Use of Contract Information and Data," (Section H.10 below) and "Retention of Exempt Material" (Section H.14 below).

H.9 Materials

Where materials are referred to in the specifications as "equal to" any particular standard, the Contracting Officer shall decide the question of equality.

H.10 Private Use of Contract Information and Data

H.10.1 Except as specifically authorized by this contract, or as otherwise approved by the Contracting Officer, information and other data developed or acquired by or furnished the contractor in the performance of this contract shall be used only in connection with the work under this contract.

- H.10.2 The contractor shall be responsible for safeguarding from unauthorized disclosure any information or other documents and material exempt from public disclosure by the Commission's regulations and made available to the contractor in connection with the performance of work under this contract. The contractor agrees to conform to all regulations, requirements, and directions of the Commission with respect to such material.
- H.10.3 The contractor's duties under this clause shall not be construed to limit or affect in any way the contractor's obligation to conform to all security regulations and requirements of the Commission pertaining to classified information and material.

H.11 Working Space and Storage Facilities

The Commission will supply the contractor with working space, desk or table, chair, lights, and storage space with respect to work involving Classified and/or unusually sensitive material. The contractor will, unless otherwise provided, perform all work involving such material including transcription of reports which contain such material within the Commission supplied premises or other approved Government facilities and not the contractor's place of business.

H.12 Security (OMB Clearance Number 3150-0112)

(a) It is the Contractor's duty to safeguard Restricted Data, Formerly Restricted Data, and other classified information. The Contractor shall, in accordance with the Commission's security regulations and requirements, be responsible for safeguarding Restricted Data, Formerly Restricted Data, and other classified information and protecting against sabotage, espionage, loss and theft, the classified documents and material in the Contractor's possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the Contractor shall, upon completion or termination of this contract, transmit to the Commission any classified matter in the possession of the Contractor or any person under the Contractor's control in connection with performance of this contract.

(b) Regulations. The Contractor agrees to conform to all security regulations and requirements of the Commission.

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(c) Definition of Restricted Data. The term "Restricted Data," as used in this clause, means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 142 of the Atomic Energy Act of 1954, as amended.

(d) Definition of Formerly Restricted Data. The term "Formerly Restricted Data," as used in this clause, means all data removed from the Restricted Data category under section 142-d. of the Atomic Energy Act of 1954, as amended.

(e) Security Clearance Personnel. The Contractor shall not permit any individual to have access to Restricted Data, Formerly Restricted Data, or other classified information, except in accordance with the Atomic Energy Act of 1954, as amended, and the Commission's regulations or requirements applicable to the particular type or category of classified information to which access is required.

(f) Criminal Liabilities. It is understood that disclosure of Restricted Data, Formerly Restricted Data, or other classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any Restricted Data, Formerly Restricted Data, or any other classified matter that may come to the Contractor or any person under the Contractor's control in connection with work under this contract, may subject the Contractor, its agents, employees, or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794; and Executive Order 11652.)

(g) Subcontracts and Purchase Orders. Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this contract.

(h) In performing the contract work, the Contractor shall assign classifications to all documents, material, and equipment originated or generated by the Contractor in accordance with classification guidance by the Commission. Every subcontract and purchase order issued hereunder involving the origination or generation of classified documents, material, or equipment shall provide that the subcontractor or supplier shall assign classifications to all such documents, material, and equipment in accordance with classification guidance furnished by the Contractor.

H.13 Security Classification

- H.13.1 The highest classification applicable to the service to be furnished under this contract will be TOP SECRET (National Security Information, Restricted Data and/or Formerly Restricted Data). The contract

Security/Classification Requirements are set forth in NRC Form 187, attached hereto as Attachment 4.

- H.13.2 Notwithstanding the provisions of Subsection H.12 to this contract, entitled "Security," to the contrary, and in addition thereto, the parties hereto agree that the NRC shall formally classify all classified information or material delivered under this contract and shall provide classification guidance to the contractor as required in the performance of this contract.
- H.13.3 When advised by the Presiding Officer that information or material is classified or sensitive unclassified information, the contractor shall mark any resulting documentation in accordance with NRC regulations.
- H.13.4 If subsequent to the date of this contract, the security level under the contract is changed by the Commission and such change causes an increase or decrease in the estimated cost or the time required for performance under the contract, the contract cost, delivery schedule, or both and any other provisions of the contract that may be affected shall be subject to an equitable adjustment by reason of such increased or decreased costs. Any equitable adjustment shall be accomplished in the same manner as if such changes were directed under the "Changes" Clause, Contract Clause No. 52.243-1, Alternate II, hereto.

H.14 Retention of Exempt Material

H.14.1 Government Property

The contractor agrees that all work, including shorthand or longhand notes, stenotype tapes, memoranda, cassette tapes, and material of every description relating thereto, as well as all copies of the foregoing relating to the work or any part thereof, shall be the property of the government and may be used by the government for any purpose whatsoever without any claim on the part of the contractor and its subcontractors and vendors for additional compensation, and shall be delivered to the government, as provided in the work order. The Commission retains the right to reproduce in full and distribute any transcript received under the terms of this contract.

H.14.2 Material Exempt from Public Disclosure

The contractor shall not retain under any circumstances any portion of a transcript, including shorthand or longhand notes, stenotype tapes, cassette tapes, memoranda, and material of every description relating thereto, and copies thereof, taken during an in-camera session at any regulatory hearing or other proceeding or at any other closed hearing or meeting which contains information exempt from public disclosure pursuant to the Commission's regulations, including, but not limited to, trade secrets, confidential or privileged business or financial

information, or information the disclosure of which would constitute an unwarranted invasion of personal privacy. At the time the transcript is delivered, the contractor shall return to the Commission all of the above mentioned documents which contain information exempt from public disclosure pursuant to the Government in the Sunshine Act or the Commission's regulations. The contractor, its employees and representatives are prohibited from otherwise revealing any of the foregoing information.

H.14.3 Final Delivery and Restrictions

The contractor further agrees that all work, including shorthand or longhand notes, stenotype tapes, memoranda, and material of every description, relating thereto, not covered above or documents not covered under Section H.12, "Security," herein, shall be held by the contractor subject to the authority and control of the Commission until the expiration of the contract, at which time, they shall be delivered to the Commission. The contractor's right of retention and use shall be subject to the security, patent, and use of information provisions, if any, of this contract.

H.15 Proprietary Data and Confidential Information

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

H.16 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 herein contracted for without the prior written approval of the Contracting Officer, but this provision will not be taken as requiring the approval of contracts of employment between the contractor and personnel assigned for services hereunder.

H.17 Service Contract Act Wage Determination

Each service employee employed in the performance of this contract by the contractor or any subcontractor shall be paid not less than the minimum wage and shall be furnished fringe benefits in accordance with the wages and fringe benefits specified in Department of Labor Wage Determination No. 76-533 (Rev. 8) dated June 12, 1984 which is attached hereto as Attachment No. 5 and made a part hereof.

H.18 Contract Personnel Security Requirements

H.18.1 Performance of certain requirements under the contract will involve access to classified information requiring "Q" Personnel Clearances. The contract will also involve access to Restricted Data. Personnel Security Clearances shall be processed and granted in accordance with NRC Manual Chapter 2101, NRC Security Program.

H.18.2 The contractor shall submit to the U.S. Nuclear Regulatory Commission, Division of Security, Washington, D.C. 20555, within twenty (20) days following contract award, completed Personnel Security Questionnaire Packages for all personnel requiring security clearance. Those personnel shall be identified at the time of contract award.

H.19 Contractor Organizational Conflicts of Interest (OMB Clearance Number 3150-0112)

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

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

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

interest, the Contractor shall obtain the written approval of the Contracting Officer prior to execution of such contractual arrangement.

(d) Disclosure after award.

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

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

(e) Access to and use of information.

(1) If the Contractor in the performance of this contract obtains access to information, such as NRC plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (Pub. L. 93-579), or data which has not been released to the public, the Contractor agrees not to:

- (i) Use such information for any private purpose until the information has been released to the public;
- (ii) compete for work for the Commission based on such information for a period of six (6) months after either the completion of this contract or the release of such information to the public, whichever is first;
- (iii) submit an unsolicited proposal to the Government based on such information until one year after the release of such information to the public, or
- (iv) release the information without prior written approval by the Contracting Officer unless such information has previously been released to the public by the NRC.

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

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

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

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

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

H.20 Method of Payment

(a) Payment under this contract will be made by wire transfer through the Treasury Financial Communications System for each individual payment in excess of \$25,000 and by Treasury check for each individual payment of \$25,000 or less.

(b) Within seven days after the effective date of the contract, the Contractor shall forward the following information in writing to the Contracting Officer to facilitate wire transfer of contract payments. In the event that the Contractor's financial institution has access to the Federal Reserve Communications System, Contractor shall complete all items except items 7 - 9. In the event the Contractor's financial institution does not have access to the Federal Reserve Communications System, Contractor shall complete all items except item 4.

1. Name and address of organization
2. Contact person and telephone number
3. Name and address of financial institution
4. Financial institutions's 9-digit ABA identifying number for routing transfer of funds
5. Telegraphic abbreviation of financial institution

6. Account number at your financial institution your financial institution receives electronic funds transfer messages through, if it does not have access to the Federal Reserve Communications System
 7. Name and address of the correspondent financial institution your financial institution receives electronic funds transfer messages through, if it does not have access to the Federal Reserve Communications System
 8. Correspondent financial institution 9-digit ABA identifying number for routing transfer of funds
 9. Telegraphic abbreviation of correspondent financial institution
 10. Signature and title of person supplying this information
- (c) Any changes to the information furnished under paragraph (b) of this clause shall be furnished to the Contracting Officer in writing. It is the Contractor's responsibility to furnish these changes promptly to avoid payments to erroneous bank accounts.

PART II - CONTRACT CLAUSES

Section I - Contract Clauses

52.202-1 DEFINITIONS. (APR 1984)

(a) "Head of the agency" (also called "agency head") or "Secretary" means the Secretary (or Attorney General, Administrator, Governor, Chairperson, or other chief official, as appropriate) of the agency, including any deputy or assistant chief official of the agency, and, in the Department of Defense, the Under Secretary and any Assistant Secretary of the Departments of the Army, Navy, and Air Force and the Director and Deputy Director of Defense agencies; and the term "authorized representative" means any person, persons, or board (other than the Contracting Officer) authorized to act for the head of the agency or Secretary.

(b) "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(c) Except as otherwise provided in this contract, the term "subcontracts" includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this contract.

(End of clause)
(R 7-103.1 1979 MAR)

(R 7-203.1)
(R 7-302.1)
(R 7-402.1)
(R 7-901.1)
(R 7-1902.1)
(R 7-1909.1)

52.203-1 OFFICIALS NOT TO BENEFIT. (APR 1984)

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 arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit.

(End of clause)
(R 7-103.19 1949 JUL)
(R 1-7.102-17)

52.203-3 GRATUITIES. (APR 1984)

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative--

(1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and

(2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) above, the Government is entitled--

(1) To pursue the same remedies as in a breach of the contract; and

(2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)

(d) 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.

(End of clause)
(R 7-104.16 1952 MAR)

52.203-5 COVENANT AGAINST CONTINGENT FEES. (APR 1984)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. 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 the contingent fee.

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

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

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

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

(End of clause)
(R 7-103.20 1958 JAN)
(R 1-1.503)
(R 1-7.102-18)

52.215-1 EXAMINATION OF RECORDS BY COMPTROLLER GENERAL. (APR 1984)

(a) This clause applies if this contract exceeds \$10,000 and was entered into by negotiation.

(b) The Comptroller General of the United States or a duly authorized representative from the General Accounting Office shall, until 3 years after final payment under this contract or for any shorter period specified in Federal Acquisition Regulation (FAR) Subpart 4.7, Contractor Records Retention, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract.

(c) The Contractor agrees to include in first-tier subcontracts under this contract a clause to the effect that the Comptroller General or a duly authorized representative from the General Accounting Office shall, until 3 years after final payment under the subcontract or for any shorter period specified in FAR Subpart 4.7, have access to and the right to examine any of the subcontractor's directly pertinent books, documents, papers, or other records involving transactions related to the subcontract. "Subcontract," as used in this clause, excludes (1) purchase orders not exceeding \$10,000 and (2) subcontracts or purchase orders for public utility services at rates established to apply uniformly to the public, plus any applicable reasonable connection charge.

(d) The periods of access and examination in paragraphs (b) and (c) above for records relating to (1) appeals under the Disputes clause, (2) litigation or settlement of claims arising from the performance of this contract, or (3) costs and expenses of this contract to which the Comptroller General or a duly authorized representative from the General Accounting Office has taken exception shall continue until such appeals, litigation, claims, or exceptions are disposed of.

(End of clause)
(R 7-104.15 1975 JUN)
(R 1-7.103-3)

52.215-2 AUDIT--NEGOTIATION. (APR 1984)

(a) Examination of costs. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable contract, or any combination of these, the Contractor shall maintain--and the Contracting Officer or representatives of the Contracting Officer shall have the right to examine and audit--books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred in performing this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.

(b) Cost or pricing data. If, pursuant to law, the Contractor has been required to submit cost or pricing data in connection with pricing this contract or any modification to this contract, the Contracting Officer or representatives of the Contracting Officer who are employees of the Government shall have the right to examine and audit all books, records, documents, and other data of the Contractor (including computations and projections) related to negotiating, pricing, or performing the contract or modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. The right of

examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used.

(c) Reports. If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or representatives of the Contracting Officer who are employees of the Government shall have the right to examine and audit books, records, other documents, and supporting materials, for the purpose of evaluating (1) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.

(d) Availability. The Contractor shall make available at its office at all reasonable times the materials described in paragraphs (a) and (b) above, for examination, audit, or reproduction, until 3 years after final payment under this contract, or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation, or for any longer period required by statute or by other clauses of this contract. In addition--

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement; and

(2) Records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are disposed of.

(e) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (e), in all subcontracts over \$10,000 under this contract, altering the clause only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

(End of clause)
(R 7-104.41(a) 1978 AUG)
(R 1-3.814-2(a))
(R 7-303.28)
(R 7-402.30)
(R 7-603.20)
(R 7-605.11)
(R 7-607.22)
(R 7-802.7)
(R 7-901.16)
(R 7-1702.15 1971 APR)
(R 7-1903.29)
(R 7-1909.24)
(R 7-2102.19)

52.215-30 FACILITIES CAPITAL COST OF MONEY. (APR 1984)

(a) Facilities capital cost of money will be an allowable cost under the contemplated contract, but only if the prospective contractor elects to claim it below. If the prospective contractor elects to claim this cost, the Waiver of Facilities Capital Cost of Money will be excluded from the contract. If the prospective contractor does not elect to claim this cost, the contract will include the Waiver of Facilities Capital Cost of Money.

(b) By including an item of proposed allowable cost in response to the solicitation, the prospective contractor will be deemed to have elected to claim facilities capital cost of money.

(End of clause)

(NM)

52.215-31 WAIVER OF FACILITIES CAPITAL COST OF MONEY. (APR 1984)

If the Contractor did not include facilities capital cost of money as a proposed allowable cost, it shall be deemed that the Contractor waived the right to claim it under this contract.

(End of clause)

(AV OFPP Policy Letter 80-7 1980 OCT)

52.216-18 ORDERING. (APR 1984)

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders by the individuals or activities designated in the Schedule. Such orders may be issued from the effective date of award through a three-month period.

(b) All delivery orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order and this contract, the contract shall control.

(c) If mailed, a delivery order is considered "issued" when the Government deposits the order in the mail. Orders may be issued orally or by written telecommunications only if authorized in the Schedule.

(End of clause)

(R 7-1101 1968 JUN)

52.216-21 REQUIREMENTS. (APR 1984)

(a) This is a requirements contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the Government's requirements do not result in orders in the quantities described as "estimated" or "maximum" in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. Subject to any limitations in the Delivery-Order Limitations clause or elsewhere in this contract, the Contractor shall furnish to the Government all supplies or services specified in the Schedule and called for by orders issued in accordance with the Ordering clause. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(c) Except as this contract otherwise provides, the Government shall order from the Contractor all the supplies or services specified in the Schedule that are required to be purchased by the Government activity or activities specified in the Schedule.

(d) The Government is not required to purchase from the Contractor requirements in excess of any limit on total orders under this contract.

(e) If the Government urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the Government may acquire the urgently required goods or services from another source.

(f) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract for orders requiring performance beyond ten (10) calendar days after the expiration of the contract, or any extension thereof.

(End of clause)
(R 7-1102.2(b) 1966 OCT)

52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS AND SMALL DISADVANTAGED BUSINESS CONCERNS. (APR 1984)

(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 performing 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 efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(c) 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. The term "small business concern owned and controlled by socially and economically disadvantaged individuals" shall mean a small business concern--

(1) Which is at least 51 percent 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

(2) 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, Asian-Indian Americans and other minorities, or any other individual found to be disadvantaged by the Administration pursuant to section 8(a) of the Small Business Act.

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

(End of clause)
(R 7-104.14(a) 1980 AUG)
(V FPR Temp. Reg. 50 1979 JUN and its
Supplement 2 1980 MAY)

52.219-13 UTILIZATION OF WOMEN-OWNED SMALL BUSINESSES. (APR 1984)

(a) "Women-owned small businesses," as used in this clause, means businesses that are at least 51 percent owned by women who are United States citizens and who also control and operate the business.

"Control," as used in this clause, means exercising the power to make policy decisions.

"Operate," as used in this clause, means being actively involved in the day-to-day management of the business.

(b) It is the policy of the United States that women-owned small businesses shall have the maximum practicable opportunity to participate in performing contracts awarded by any Federal agency.

(c) The Contractor agrees to use its best efforts to give women-owned small businesses the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with the efficient performance of its contract.

(End of clause)
(7-104.52 1980 AUG)
(FPR Temp. Reg. 54 1980 MAY)

52.220-1 PREFERENCE FOR LABOR SURPLUS AREA CONCERNS. (APR 1984)

(a) This acquisition is not a set aside for labor surplus area (LSA) concerns. However, the offeror's status as such a concern may affect (1) entitlement to award in case of tie offers or (2) offer evaluation in accordance with the Buy American Act clause of this solicitation. In order to determine whether the offeror is entitled to a preference under (1) or (2) above, the offeror must identify, below, the LSA in which the costs to be incurred on account of manufacturing or production (by the offeror or the first-tier subcontractors) amount to more than 50 percent of the contract price.

.....
.....

(b) Failure to identify the locations as specified above will preclude consideration of the offeror as an LSA concern. If the offeror is awarded a contract as an LSA concern and would not have otherwise qualified for award, the offeror shall perform the contract or cause the contract to be performed in accordance with the obligations of an LSA concern.

(End of clause)
(R 7-2003.13 1978 JUN)

52.220-3 UTILIZATION OF LABOR SURPLUS AREA CONCERNS. (APR 1984)

(a) Applicability. This clause is applicable if this contract exceeds the appropriate small purchase limitation in Part 13 of the Federal Acquisition Regulation.

(b) Policy. It is the policy of the Government to award contracts to concerns that agree to perform substantially in labor surplus areas (LSA's) when 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 its best efforts to place subcontracts in accordance with this policy.

(c) Order of preference. In complying with paragraph (b) above and with paragraph (c) of the clause of this contract entitled Utilization of Small Business Concerns and Small Disadvantaged Business Concerns, the Contractor shall observe the following order of preference in awarding subcontracts: (1) small business concerns that are LSA concerns, (2) other small business concerns, and (3) other LSA concerns.

(d) Definitions. "Labor surplus area," as used in this clause, means a geographical area identified by the Department of Labor in accordance with 20 CFR 654, Subpart A, as an area of concentrated unemployment or underemployment or an area of labor surplus.

"Labor surplus area concern," as used in this clause, means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas. Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.

(End of clause)
(R 1-1.805-3(a))
(R 7-104.20(a) 1981 May)

52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES. (APR 1984)

(a) If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

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

(End of clause)
(R 7-203.27 1967 JUN)
(AV 7-104.4 1958 SEP)
(AV 7-603.1 1958 SEP)

52.222-3 CONVICT LABOR. (APR 1984)

The Contractor agrees not to employ any person undergoing sentence of imprisonment in performing this contract except as provided by 18 U.S.C. 4082(c)(2) and Executive Order 11755, December 29, 1973.

(End of clause)

(R 7-104.17 1975 OCT)

(R 7-607.12 1975 OCT)

(R 1-12.204)

52.222-26 EQUAL OPPORTUNITY. (APR 1984)

(a) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with subparagraphs (b)(1) through (11) below. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(b) During performing this contract, the Contractor agrees as follows:

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

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

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

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. Standard Form 100 (EEO-1), or any successor form, is the prescribed form to be filed within 30 days following the award, unless filed within 12 months preceding the date of award.

(8) The Contractor shall permit access to its books, records, and accounts by the contracting agency or the Office of Federal Contract Compliance Programs (OFCCP) for the purposes of investigation to ascertain the Contractor's compliance with the applicable rules, regulations, and orders.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of subparagraph (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

(End of clause)

(R 7-103.18 1978 SEP)

(R 1-12.803-2)

(R 7-607.13 1978 SEP)

52.222-35 AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS
(APR 1984)

(a) Definitions.

"Appropriate office of the State employment service system," as used in this clause, means the local office of the Federal-State national system of public employment offices assigned to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

"Openings that the Contractor proposes to fill from within its own organization," as used in this clause, means employment openings for which no one outside the Contractor's organization (including any affiliates, subsidiaries, and the parent companies) will be considered and includes any openings that the Contractor proposes to fill from regularly established "recall" lists.

"Openings that the Contractor proposes to fill under a customary and traditional employer-union hiring arrangement," as used in this clause, means employment openings that the Contractor proposes to fill from union halls, under their customary and traditional employer-union hiring relationship.

"Suitable employment openings," as used in this clause--

(1) Includes, but is not limited to, openings that occur in jobs categorized as--

- (i) Production and nonproduction;
- (ii) Plant and office;
- (iii) Laborers and mechanics;
- (iv) Supervisory and nonsupervisory;
- (v) Technical; and
- (vi) Executive, administrative, and professional positions compensated on a salary basis of less than \$25,000 a year; and

(2) Includes full-time employment, temporary employment of over 3 days, and part-time employment, but not openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement, nor openings in an educational institution that are restricted to students of that institution.

(b) General. (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a special disabled or Vietnam Era veteran. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled and Vietnam Era veterans without discrimination based upon their disability or veterans' status in all employment practices such as--

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion or transfer;
- (iv) Recruitment;
- (v) Advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

(c) Listing openings. (1) The Contractor agrees to list all suitable employment openings existing at contract award or occurring during contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Contractor facility, including one not connected with performing this contract. An independent corporate affiliate is exempt from this requirement.

(2) State and local government agencies holding Federal contracts of \$10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service.

(3) The listing of suitable employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(4) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State 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 terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.

(5) Under the most compelling circumstances, an employment opening may not be suitable for listing, including situations when (i) the Government's needs cannot reasonably be supplied, (ii) listing would be contrary to national security, or (iii) the requirement of listing would not be in the Government's interest.

(d) Applicability. (1) 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, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

(2) The terms of paragraph (c) above of this clause do not apply to openings that the Contractor proposes to fill from within its own organization or under 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 its own organization or employer-union arrangement for that opening.

(e) Postings. (1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era, and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (Director), and provided by or through the Contracting Officer.

(3) The Contractor shall 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 the Act, and is committed to take affirmative action to employ, and advance in employment, qualified special disabled and Vietnam Era veterans.

(f) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(g) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

(End of clause)

(R 7-103.27 1976 JUL)

(P FPR Temp. Reg. 39)

52.222-36 AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS (APR 1984)

(a) General. (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental handicap. 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--

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion or transfer;
- (iv) Recruitment;
- (v) Advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) Postings. (1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped individuals and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (Director), and provided by or through the Contracting Officer.

(3) The Contractor shall 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, qualified physically and mentally handicapped individuals.

(c) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$2,500 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

(End of clause)
(R 7-103.28 1976 MAY)
(R FPR Temp. Reg. 38)

FPR TEMP. REG 76 SERVICE CONTRACT ACT

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

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

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

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

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

(iv)(A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

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

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

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

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

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

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

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

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

(e) The contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and

accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract. (Approved by the Office of Management and Budget under OMB control number 1215-0150).

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

(g)(1) The contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work records containing the information specified in paragraphs (g)(1)(i) through (vi) of this section for each employee subject to the Act and shall make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration of the U.S. Department of Labor. (Sections 4.6(g)(1)(i) through (iv) approved by the Office of Management and Budget under OMB control number 1215-0017 and sections 4.6(g)(1)(v) and (vi) approved under OMB control number 1215-0159).

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

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

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

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

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

(vi) Any list of the predecessor contractor's employees which have been furnished to the contractor pursuant to §4.61(1)(2).

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

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

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

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

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

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

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

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

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

Employee Class	Monetary wage-fringe benefits
Court Reporter	GS-11 \$12.64 per hour
Shorthand Reporter	GS-9 \$10.44 per hour
Typist	GS-5 \$ 6.89 per hour
Copying Machine Operator	GS-4 \$ 5.49 per hour

Fringe Benefits

Health Insurance: The government pays approximately 60 percent not to exceed cost of the insurance.

Life Insurance: The government pays one-third of the cost of Basic Life Insurance.

Paid Holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Christmas Day, Martin Luther King's Birthday (beginning January 1986), and Inauguration Day (once every four years).

Leave Accrued:

Sick Leave: Two (2) hours each week regardless of length of service.

Annual Leave:
(Vacation)

1. Two (2) hours each week for an employee with less than three years of service.
2. Three (3) hours each week for any employee with three but less than 15 years of service.
3. Four (4) hours each week for an employee with 15 or more years of service.

Retirement: The government contributes 7 percent of the basic hourly rate.

(1)(1) If wages to be paid or fringe benefits to be furnished any service employees employed by the Government prime contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed,

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

(2) Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a contractor (predecessor) or successor (4.173 of Regulations, 29 CFR Part 4), the incumbent prime contractor shall furnish to the contracting officer a certified list of the names of all service employees on the contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor contractors of each such service employee. The contracting officer shall turn over such list to the successor contractor at the commencement of the succeeding contract. (Approved by the Office of Management and Budget under OMB control number 1215-0150.)

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

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

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

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

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

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical, or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or

2(b)(1) of the Service Contract Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of that Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the Service Contract Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).

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

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

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

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

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

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

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

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

(FPR Temporary Regulation 76)

52.222-44 FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT--PRICE
ADJUSTMENT. (APR 1984)

(a) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(b) The contract price or contract unit price labor rates will be adjusted to reflect increases or decreases by the Contractor in wages or fringe benefits of employees working on this contract to comply with--

(1) An increased or decreased wage determination applied to this contract by operation of law; or

(2) An amendment to the Fair Labor Standards Act of 1938 that is enacted subsequent to award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(c) Any such adjustment will be limited to increases or decreases in wages or fringe benefits as described in paragraph (b) above, and to the concomitant increases or decreases in social security and unemployment taxes and workers' compensation insurance; it shall not otherwise include any amount for general and administrative costs, overhead, or profits.

(d) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after the effective date of the wage change, unless this period is extended by the Contracting Officer in writing. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing.

The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(e) The Contracting Officer or an authorized representative shall, until the expiration of 3 years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor.

(End of clause)
(R 7-1905(c) 1975 MAY)

52.223-2 CLEAN AIR AND WATER. (APR 1984)

(a) "Air Act," as used in this clause, means the Clean Air Act (42 U.S.C. 7401 et seq.).

"Clean air standards," as used in this clause, means--

(1) Any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738;

(2) An applicable implementation plan as described in section 110(d) of the Air Act (42 U.S.C. 7410(d));

(3) An approved implementation procedure or plan under section 111(c) or section 111(d) of the Air Act (42 U.S.C. 7411(c) or (d)); or

(4) An approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 7412(d)).

"Clean water standards," as used in this clause, means any enforceable limitation, control, condition, prohibition, standard, or other requirement promulgated under 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).

"Compliance," as used in this clause, means compliance with--

(1) Clean air or water standards; or

(2) 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 under the requirements of the Air Act or Water Act and related regulations.

"Facility," as used in this clause, 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, used in the performance of a contract or subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the Environmental Protection Agency, determines that independent facilities are collocated in one geographical area.

"Water Act," as used in this clause, means Clean Water Act (33 U.S.C. 1251 et seq.).

(b) The Contractor agrees--

(1) To comply with all the requirements of section 114 of the Clean Air Act (42 U.S.C. 7414) and section 308 of the Clean Water Act (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those acts before the award of this contract;

(2) That no portion of the work required by this prime contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of the facility from the listing;

(3) To use best efforts to comply with clean air standards and clean water standards at the facility in which the contract is being performed; and

(4) To insert the substance of this clause into any nonexempt subcontract, including this subparagraph (b)(4).

(End of clause)

(R 7-103.29 1975 OCT)

(R 1-1.2302)

52.227-1 AUTHORIZATION AND CONSENT. (APR 1984)

(a) The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(b) The contractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed \$25,000; however, omission of this clause from any subcontract, under or over \$25,000, does not affect this authorization and consent.

(End of clause)

(R 7-103.22 1961 JAN)

52.227-2 NOTICE AND ASSISTANCE, REGARDING PATENT AND COPYRIGHT INFRINGEMENT. (APR 1984)

(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 under this contract, 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.

(c) The Contractor agrees to include, and require inclusion of, this clause in all subcontracts at any tier for supplies or services (including construction and architect-engineer subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed the dollar amount set forth in 13.000 of the Federal Acquisition Regulation (FAR).

(End of clause)
(R 7-103.23 1965 JAN)

52.227-3 PATENT INDEMNITY. (APR 1984)

(a) The Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use of disposal by or for the account of the Government of such supplies or construction work.

(b) This indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to (1) an infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor, (2) an infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance, or (3) a claimed infringement that is unreasonably settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

(End of clause)
(R 7-104.5 1975 JUN)

52.229-3 FEDERAL, STATE, AND LOCAL TAXES (APR 1984)

(a) "Contract date," as used in this clause, means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

"All applicable Federal, State, and local taxes and duties," as used in this clause, means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

"After-imposed Federal tax," as used in this clause, means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

"After-relieved Federal tax," as used in this clause, means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

(b) The contract price includes all applicable Federal, State, and local taxes and duties.

(c) The contract price shall be increased by the amount of any after-imposed Federal tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.

(d) The contract price shall be decreased by the amount of any after-relieved Federal tax.

(e) The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.

(f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$100.

(g) The Contractor shall promptly notify the Contracting Officer of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.

(h) The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

(End of clause)

(R 7-103.10(a) 1971 NOV)

(R 1-11.401-1(c))

52.232-1 PAYMENTS. (APR 1984)

The Government shall pay the Contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in this contract, payment shall be made on partial deliveries accepted by the Government if--

(a) The amount due on the deliveries warrants it; or

(b) The Contractor requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total contract price.

(End of clause)

(R 7-103.7 1958 JAN)

(R 1-7.102-7)

52.232-8 DISCOUNTS FOR PROMPT PAYMENT. (APR 1984)

In connection with any discount offered for prompt payment, time shall be computed from (1) the date of completion of performance of the services or delivery of the supplies to the carrier if acceptance is at point of origin, or date of delivery at destination or port of embarkation if delivery and

acceptance are at either of these points, or (2) the date the correct invoice or voucher is received in the office specified by the Government, if the latter is later than date of performance or delivery. For the purpose of computing the discount earned, payment shall be considered to have been made on the date the Government check was mailed.

(End of clause)
(R 7-103.14 1968 JUNE)
(R 7-1902.11 1971 NOV)

52.232-11 EXTRAS. (APR 1984)

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.

(End of clause)
(V 7-103.3 1949 JUL)
(V 1-7.102-3)

52.232-17 INTEREST. (APR 1984)

(a) Notwithstanding any other clause of this contract, all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(b) Amounts shall be due at the earliest of the following dates:

- (1) The date fixed under this contract.
- (2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.
- (3) The date the Government transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.
- (4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.

(c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

(End of clause)
(R 7-104.39 1972 MAY)
(R 1-7.203-15)

52.232-23 ASSIGNMENT OF CLAIMS. (APR 1984)

(a) The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 203, 41 U.S.C. 15 (hereafter referred to as the "the Act"), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.

(b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.

(c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes such action in writing.

(End of clause)

(R 7-103.8 1962 FEB; R 1-30.703 1976 MAY)

(R 7-602.8 1976 OCT)

(R 7-607.6 1976 OCT)

52.233-1 DISPUTES. (APR 1984)

(a) This contract is subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph (d)(2) below. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d) (1) A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) For Contractor claims exceeding \$50,000, the Contractor shall submit with the claim a certification that--

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Contractor's knowledge and belief; and

(iii) The amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable.

(3) (i) If the Contractor is an individual, the certification shall be executed by that individual.

(ii) If the Contractor is not an individual, the certification shall be executed by--

(A) A senior company official in charge at the Contractor's plant or location involved; or

(B) An officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.

(e) For Contractor claims of \$50,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$50,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) The Government shall pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(h) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

(End of clause)

(R 7-103.12 1980 JUN)

(R FPR Temporary Regulation 55-II 1980 JUN)

52.243-1 CHANGES--FIXED-PRICE. (APR 1984)--Alternate II. (APR 1984)

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

(1) Description of services to be performed.

(2) Time of performance (i.e., hours of the day, days of the week, etc.).

(3) Place of performance of the services.

(4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.

(5) Method of shipment or packing of supplies.

(6) Place of delivery.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Contractor must submit any "proposal for adjustment" (hereafter referred to as proposal) under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of clause)

(R 7-103.2 1958 JAN)

(R 1-7.102-1)

(R 7-1902.2 1971 NOV)

(R 7-103.2 1958 JAN)

(R 1-7.102-2)

52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE).
(APR 1984)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(6) As directed by the Contracting Officer, transfer title and deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and

(ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government.

(7) Complete performance of the work not terminated.

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

(9) Use its best effort to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (6) above; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(d) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension.

If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(e) Subject to paragraph (d) above, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (e) or paragraph (f) below, exclusive of costs shown in subparagraph (f)(3) below, may not exceed the total contract price as reduced by (a) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be amended, and the Contractor paid the agreed amount. Paragraph (f) below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(f) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (e) above:

(1) The contract price for completed supplies or services accepted by the Government (or sold or acquired under subparagraph (b)(9) above) not previously paid for, adjusted for any saving of freight and 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 excluding any costs attributable to supplies or services paid or to be paid under subparagraph (f)(1) above;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (i) above; and

(iii) A sum, as profit on subdivision (i) above, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(3) The reasonable costs of settlement of the work terminated, including--

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(g) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (f) above, the fair value, as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government or to a buyer.

(h) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(i) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (d), (f), or (k), except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (d) or (k), and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (d), (f), or (k), the Government shall pay the Contractor (1) the amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.

(j) In arriving at the amount due the Contractor under this clause, there shall be deducted--

(1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Government.

(k) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.

(l) (1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(m) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

(End of clause)

(R 1-8.701)

(R 7-103.21(b) 1974 OCT)

52.249-8 DEFAULT (FIXED-PRICE SUPPLY AND SERVICE). (APR 1984)

(a) (1) The Government may, subject to paragraphs (c) and (d) below, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to--

(i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;

(ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) below); or

(iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).

(2) The Government's right to terminate this contract under subdivisions (1)(ii) and (1)(iii) above, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(b) If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the Government for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

(e) If this contract is terminated for default, the Government may require the Contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.

(f) The Government shall pay contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The Government may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(h) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

(R 1-8.707)

(R 7-103.11 1959 AUG)

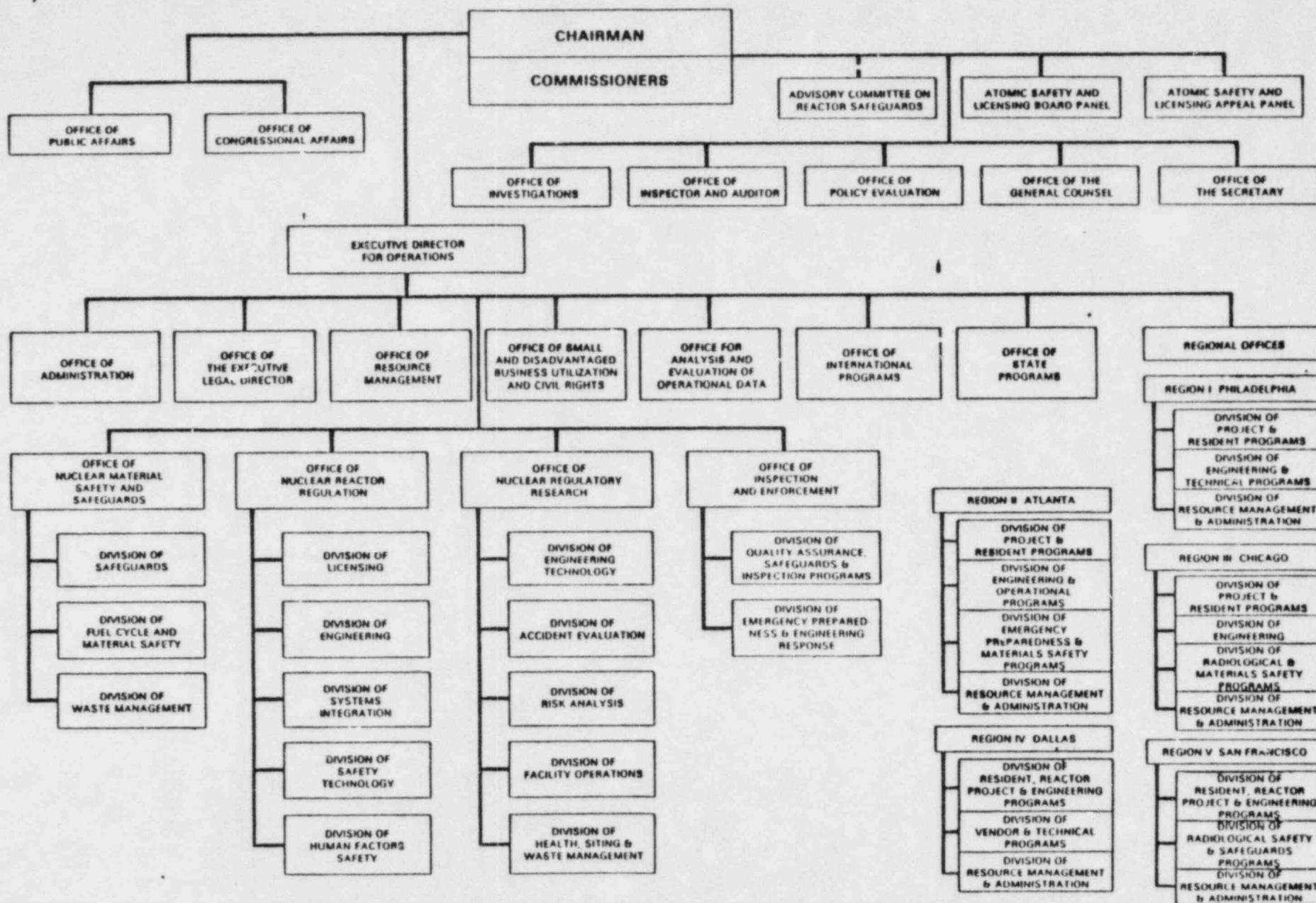
PART III - LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS

Section J - List of Attachments

<u>Attachment Number</u>	<u>Title</u>
1	NRC Organization Chart, 1 page
2	NRC Contractor Organizational Conflicts of Interest (41 CFR Part 20), 12 pages
3	Sample Typefaces, 1 page
4	Security/Classification Requirements, NRC Form 187, 2 pages
- 5	Wage Determination No. 76-553 (Rev 8), June 12, 1984, 1 page
6	Standard Form 1411, Contract Pricing Proposal Cover Sheet, with Instructions, 7 pages (withdrawn)

U.S. NUCLEAR REGULATORY COMMISSION

ORGANIZATION CHART



ATTACHMENT 1

PART 20-1 -- GENERAL

Subpart 20-1.54--Contractor Organizational Conflicts of Interest

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

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

§20-1.5401 Scope and Policy

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

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

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

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

§20-1.5402 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§20-1.5404 Representation

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

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

ORGANIZATIONAL CONFLICTS OF INTEREST REPRESENTATION

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

The award to Ann Riley & Associates Ltd. of a contract or the modification of an existing contract does () or does not (✓) involve situations or relationships of the type set forth in 41 CFR § 20-1.5403(b)(1):

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

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

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

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

§ 20-1.5405 Contract clauses

§ 20-1.5405-1 General contract clause

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 20-1.5405-2 Special contract provisions.

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

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

(2) Software exclusion clauses;

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

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

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

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

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

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

§ 20-1.5406 Evaluation, findings, and contract award

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

(a) Disqualify the offeror from award.

(b) Avoid or eliminate such conflicts by appropriate measures; or

(c) Award the contract under the waiver provision of § 20-1.5411.

§ 20-1.5407 Conflicts identified after award.

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

§ 20-1.5408 (Reserved)

§ 20-1.5409 (Reserved)

§ 20-1.5410 Subcontracts

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

§ 20-1.5411 Waiver

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

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

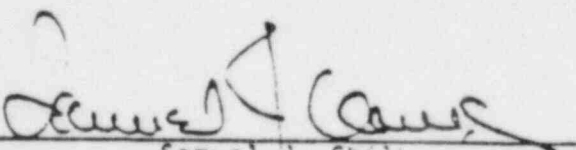
- (1) The work to be performed under contract is vital to the NRC program;
- (2) the work cannot be satisfactorily performed except by a contractor whose interests give rise to a question of conflict of interest; and
- (3) contractual and/or technical review and supervision methods can be employed by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

§20-1.5412 Remedies

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

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

For the Nuclear Regulatory Commission



Samuel J. Chilk
Secretary of the Commission

SAMPLES

REQUIRED TYPE STYLES

Courier 10

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OCR B

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PICA 10

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LETTER GOTHIC

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NRC FORM 187 14 80 NRCM 2101		U.S. NUCLEAR REGULATORY COMMISSION		AUTHORITY The policies, procedures, and criteria of NRCM 2101, NRC Security Program, apply to performance of this contract, subcontract or other activity.	
SECURITY/CLASSIFICATION REQUIREMENTS					
1. REASON FOR REQUIREMENT		CONTRACT NUMBER OR OTHER IDENTIFYING NUMBER (Prime contract number must be shown for all subcontracts)		2. THIS SUBMISSION IS	
<input checked="" type="checkbox"/> a. INVITATION FOR BID, REQUEST FOR PROPOSAL OR REQUEST FOR QUOTE <input type="checkbox"/> b. PRIME CONTRACT <input type="checkbox"/> c. SUBCONTRACT <input type="checkbox"/> d. OTHER (Specify)		SECY-85-394 		8/15/85 	
				* ORIGINAL b. REVISED (Subcontract, previous submission) c. OTHER (Specify)	
				EFFECTIVE DATE 5/16/85	
3. FOR FOLLOW-ON CONTRACT, ENTER PRECEDING CONTRACT NUMBER AND DATE COMPLETED. <input checked="" type="checkbox"/> DOES NOT APPLY					
CONTRACT NUMBER				DATE COMPLETED	
4a. NAME OF PRIME CONTRACTOR, OFFEROR, OTHER (Specify)			b. NAME OF RESPONSIBLE SECURITY OFFICE		
STREET ADDRESS			U.S. Nuclear Regulatory Commission		
CITY			STREET ADDRESS		
STATE			Division of Security		
ZIP CODE			CITY		
			Washington		
			STATE		
			DC		
			ZIP CODE		
			20555		
5a. NAME OF SUBCONTRACTOR			f. NAME OF RESPONSIBLE SECURITY OFFICE		
STREET ADDRESS			STREET ADDRESS		
CITY			CITY		
STATE			STATE		
ZIP CODE			ZIP CODE		
6. PROJECT TITLE AND OTHER IDENTIFYING INFORMATION					
Stenographic Reporting Service					
7. PERFORMANCE WILL REQUIRE				YES	NO
a. ACCESS TO NRC FACILITIES ONLY				X	
b. ACCESS TO CLASSIFIED MATTER OR OTHER CLASSIFIED INFORMATION				X	
c. RECEIPT, STORAGE, OR OTHER SAFEGUARDING OF CLASSIFIED DOCUMENTS					X
d. GENERATION OF CLASSIFIED DOCUMENTS				X	
e. ACCESS TO CLASSIFIED CONSEC MATERIAL OR OTHER CLASSIFIED COMSEC INFORMATION					X
f. ACCESS TO CLASSIFIED MATTER OR CLASSIFIED INFORMATION POSSESSED BY ANOTHER AGENCY					X
g. USE OF AN AUTOMATIC DATA PROCESSING SYSTEM				X	
h. ACCESS TO NRC HEADQUARTERS, POSSESSION OF NRC PHOTO IDENTIFICATION OR CARD KEY BADGES				X	
i. OTHER (Specify)					
8. INFORMATION PERTAINING TO THESE REQUIREMENTS OR THIS PROJECT, EVEN THOUGH SUCH INFORMATION IS CONSIDERED UNCLASSIFIED, SHALL NOT BE RELEASED FOR DISSEMINATION EXCEPT AS APPROVED BY:					
BY <u>John C. Hoyle</u> JOHN C. HOYLE, ACTING SECRETARY NAME (Signature)					
BY <u>M. J. Mottet</u> CONTRACTING OFFICER (Signature)					

9. SECURITY CLASSIFICATION REQUIREMENTS

a. GUIDANCE FURNISHED IN WRITING BY AUTHORIZED CLASSIFIER AND ATTACHED OR AS STATED IN 9c BELOW

X b. GUIDANCE FURNISHED IN WRITING BY DIVISION OF SECURITY AND ATTACHED OR AS STATED IN 9c BELOW

c. NATURE OF CLASSIFICATION GUIDANCE

(Indicate in spaces below)

1. TOP SECRET transcripts and/or recording (all copies) must be forwarded by the Office of the Secretary to the Information Security Branch, Division of Security, for appropriate recording and control of TOP SECRET information.
2. Information believed to be TOP SECRET can only be classified as TOP SECRET by the Chairman, the Commissioners, and the Executive Director for Operations and D/SEC.
3. Reproduction of TOP SECRET information is limited to the Information Security Branch, Division of Security.
4. Distribution of TOP SECRET documents and/or transcripts is authorized only after coordination with the Information Security Branch has been made.
5. Prior to the use of a room in which TOP SECRET information will be discussed and recorded, arrangements must be made with the Division of Security to ensure the room is secure.
6. Individual transcripts will be reviewed and classified when necessary by the office sponsoring the presentation transcribed, and will provide a written determination to the Office of the Secretary as to the appropriate markings to be placed on the transcript and any typed or printed copies made therefrom.

(See Remarks)

10. CLASSIFICATION REVIEW OF CONTRACTOR/SUBCONTRACTOR REPORTS AND OTHER DOCUMENTS WILL BE CONDUCTED BY

NAME OF AND TITLE OF POSITION OF AUTHORIZED CLASSIFIER

☐

☐ DIVISION OF SECURITY

11. REQUIRED DISTRIBUTION OF NRC FORM 187 (Check appropriate box(es))

X SPONSORING NRC OFFICE OR DIVISION (Item 12a)

PRIME CONTRACTOR (Item 4a)

X DIVISION OF SECURITY (Item 12c)

SUBCONTRACTOR (Item 5a)

X DIVISION OF CONTRACTS (Item 12c)

RESPONSIBLE SECURITY OFFICE
(Items 4b and 5b)

SECURITY/CLASSIFICATION REQUIREMENTS FOR SUBCONTRACTS RESULTING FROM THIS CONTRACT WILL BE APPROVED BY THE OFFICIALS NAMED IN ITEMS 12b AND 12c BELOW.

12. THE SECURITY/CLASSIFICATION REQUIREMENTS AND ATTACHMENTS REFERENCED HEREIN HAVE BEEN APPROVED BY THE OFFICIALS NAMED IN 12a AND b BELOW. FINAL CONTRACTING APPROVAL BY THE DIRECTOR, DIVISION OF CONTRACTS OR HIS REPRESENTATIVE IS TO BE INCLUDED IN 12c BELOW:

NAME	SIGNATURE	DATE
a. DIRECTOR, OFFICE OR DIVISION John C. Hoyle, Acting Secretary	<i>J. C. Hoyle</i>	3-26-85
b. DIRECTOR, DIVISION OF SECURITY Raymond J. Brady	<i>for Randolph M. Mather</i>	3/29/85
c. DIRECTOR, DIVISION OF CONTRACTS Edward L. Halman	<i>R. J. Mather</i>	3/29/85

REMARKS

7. The marking, handling, transmission and storage of classified information is subject to the procedures outlined in Appendix 2101, Part III, "Control of Classified Information and Documents."
8. There should be no subcontracting of classified hearings without the prior written approval of the NRC Division of Security.
9. No NRC classified or sensitive unclassified information shall be processed on any word processor without the specific written approval of the Division of Security.

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WAGE AND HOUR DIVISION
WASHINGTON, D.C. 20210

CT000
A0184

ATTACHMENT 5

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

W. M. Otter

W. M. Otter

Administrator

LOCALITY	State: <u>NATIONWIDE</u>	
	Area: <u>INCLUDING ALASKA, HAWAII, PUERTO RICO AND THE VIRGIN ISLANDS</u>	
(This wage determination does not apply to contracts for which separate wage determinations have been issued.)		
Wage determination number: <u>76-553 (Rev. 8)</u>		Date: <u>JUN 12 1984</u>
Class of service employee	Minimum hourly wage	Fringe benefit payments
		Health & Welfare Vacation Holiday Other

Employed on contracts for verbatim reporting and transcribing services:

	<u>1 Day Delivery</u>	<u>2-3 Day Delivery</u>	<u>Over 3 days delivery</u>
1. Stenographer & transcriber, typing (combined duties) <u>1/</u>	\$2.88 per page*	\$1.79 per page*	\$1.53 per page*
2. Transcriber, typing <u>2/</u>	\$.75 per page*	\$.67 per page*	\$.61 per page*

1/ Includes service employees who take notes by use of a stenotype machine, stenomask, monitoring tape recordings or shorthand and type a transcript of the notes.

2/ Includes service employees who type transcript of notes taken by others.

*NOTE: A "per page" rate is stipulated in this determination and service employees may be paid on such piece rate or task rate basis; however, the measure of work and compensation used, when translated or reduced by computation to an hourly basis, must result in a rate per hour that will fulfill the statutory requirement of Section 6(a)(1) of the Fair Labor Standards Act, currently \$3.35 per hour. Failure to pay for certain hours at the required rates cannot be transformed into compliance with the Service Contract Act by reallocating portions of payments made for other hours in excess of the specified minimum. Code of Federal Regulations, Title 29, Part 4, S4.166.

NOTE: Any class of service employee required in the performance of the contract but not listed herein shall be classified by the contractor so as to provide a reasonable relationship between such classes and those listed herein, and shall be paid such monetary wages as are determined by agreement (evidenced in writing) of the interested parties, who shall be deemed to be the contracting agency, the contractor, and the employees who will perform on the contract or their representatives. In the absence of an agreement, the question of proper conformable wage rates is to be submitted to the Department of Labor by the con-

tractor for a final determination. (See Section 4.6(h) of Regulations, 29 CFR