

**PART E - ADDITIONAL STANDARD CONTRACT PROVISIONS FOR SERVICING
OF AGENCY-OWNED COMMODITIES**

Article 85. PERFORMANCE SECURITY

Within 10 days after acceptance of the offer, Contractor shall furnish a surety bond acceptable to Agency conditioned on its faithful performance of each and all of the provisions of the contract, or, in lieu of such bond, a certified or cashier's check or other acceptable security, including an irrevocable commercial letter of credit, acceptable to Agency. Such bond or security shall be in the amount specified in the contract, and shall be payable to Agency. Failure to furnish such performance security within such time is a failure of performance under the provisions of Article 68.

Article 86. F.O.B. POINT FOR DELIVERY OF GOVERNMENT-FURNISHED PROPERTY (DEVIATION)

(a) Unless otherwise specified in the solicitation, any Government property furnished to the Contractor for use within the United States (excluding Alaska and Hawaii) or Canada will be delivered by the Government at a point to be specified by the Contractor in the offer. Should the Government elect to make delivery by railroad, the f.o.b. point shall be private siding, Contractor's plant. If the Contractor's plant is not served by rail, the f.o.b. point shall be railroad cars in the same or nearest city having rail service. All line-haul transportation costs to the specified destination shall be borne by the Government. Any other charges, including unloading and drayage to contractor's plant are for the account of the contractor. The Government may choose the mode of transportation and the carriers.

(b) If the destination of such Government-furnished property is a Contractor's plant located outside the 48 contiguous states, the District of Columbia or Canada, the f.o.b. point for Government delivery of Government-furnished property shall be a location in the United States (excluding Alaska and Hawaii) specified by the Contractor. If the Contractor fails to name a point, then the f.o.b. point shall be the port city in the United States nearest to the Government source of the Government-furnished property that has regular commercial water transportation services to the offshore port nearest Contractor's plant.

(c) Unless otherwise directed by the Contracting Officer or provided in the contract, the Contractor shall return all Government-furnished equipment, supplies, and property, including all property not returned in the form of acceptable end items, to the point at which the Government property was originally furnished to the Contractor under the contract. Notwithstanding the fact that the Government may have furnished the property at the Contractor's plant, the Contracting Officer may direct the Contractor to deliver the Government property being returned to, and load, block, and brace it in, railway cars in the city in which the Contractor's plant is located, or, if the Contractor's city is not served by rail service, in the nearest city having rail service. Unless

otherwise specified in the contract, all property shall be packed in containers conforming with the rules of common carrier published tariffs so as to be free of penalty charges by the carrier designated for shipment by the Government.

(d) Contractor shall submit promptly to the carrier and Agency a detailed written report of any overage, shortage, or damage noted at the time of unloading or transfer. The report shall contain, but not be limited to, the following information:

(1) The seal numbers on the conveyance when it is placed for unloading.

(2) The condition of the seals when the conveyance was placed for unloading, whether broken, or intact.

(3) The condition of the conveyance at the time it was placed for unloading, such as leaks, loose drainage valves, etc.

(e) The agricultural commodity delivered by Agency shall be of a quality that will permit Contractor to produce a serviced commodity meeting the specifications required by the contract. If Contractor has reason to believe the agricultural commodity received from Agency is not of such quality, it shall immediately notify Agency of the reasons for such belief and request advice regarding action to be taken by him/her, unless the contract contains a provision prescribing the action to be taken by Contractor in such event. Any such notice by telephone shall be confirmed promptly in writing by Contractor.

Article 87. RESTRICTION AGAINST SUBSTITUTION

Since title to the agricultural commodity delivered by Agency is at all times vested in Agency while such commodity is in the custody of Contractor, Contractor shall not substitute any commodity owned by him/her for the agricultural commodity owned by Agency unless Agency agrees in writing and prescribes conditions for such substitution.

Article 88. DELIVERY TO AGENCY BY CONTRACTOR

(a) The quantity of serviced commodity which Contractor shall deliver to Agency shall not be less than the quantity, if any, specified in the contract, and in any event shall be all of the serviced commodity produced from the agricultural commodity delivered by Agency even through such quantity exceeds the quantity specified in the contract. Unless the contract provides otherwise, Contractor shall account to Agency for any quantity or portion of the agricultural commodity not serviced.

(b) The serviced commodity shall be delivered by Contractor in the manner (f.o.b. car or truck, at option of Agency) and at the point(s) of delivery specified in the contract. If the contract provides for delivery f.o.b. cars at Contractor's plant or warehouse and such plant or warehouse is not located on a railroad, the point(s) of delivery shall, at the option of Agency, be any place in the city where the plant or warehouse is located, or f.o.b. cars at the railroad delivery point customarily used by Contractor. All costs to deliver the serviced commodity to the delivery point required in the contract shall be for the account of the Contractor.

(c) Immediately on shipment, Contractor shall, in accordance with instructions from Agency, notify Agency or consignee or both of the shipment.

(d) Subject to the provisions in Article 55(c), and the right of rejection as provided in Article 60, risk of loss shall pass to Agency on delivery of the serviced commodity to Agency.

Article 89. CARRIER ACCESSORIAL CHARGES

Contractor agrees to pay any demurrage and protective service charges which may accrue on shipments of the agricultural commodity because of failure to unload such commodity within the free time period allowed by carrier after delivery to Contractor as provided in Article 86. Contractor also agrees to pay any demurrage and protective service charges which may accrue on cars ordered by Contractor and placed for loading, but not loaded and delivered to carrier within free time allowed by carrier. In placing orders with carrier for cars, Contractor agrees to specify appropriate size cars necessary to obtain lowest freight rate. Any excess charges resulting from failure of Contractor to so specify shall be for account of Contractor.

Article 90. TRANSIT

Contractor shall maintain transit records and render reports in accordance with the rules of the Weighing and Inspection Bureau governing the transit point. Contractor shall furnish Agency such transit data as may be requested from time to time. Application of transit on outbound movements will be as directed by Agency with documentation in accordance with the rules of the local Weighing and Inspection Bureau.

Article 91. LIABILITY

(a) Contractor shall be liable for loss, damage, destruction, or deterioration from any cause whatsoever of the agricultural commodity received from Agency until the serviced commodity has been delivered to Agency in accordance with provisions of the contract or the agricultural commodity or serviced commodity has been removed by Agency from Contractor's custody.

(b) Any insurance carried by Contractor covering the agricultural commodity or serviced commodity shall accrue to benefit of Agency and any collection shall be by and at the expense of Contractor. Failure of Contractor to collect full value from any insurer shall not relieve Contractor of liability for the full amount of damages sustained by Agency.

Article 92.

AGENCY'S DELAY AND OTHER FAILURE TO PERFORM

If, due to causes beyond the control and without the fault or negligence of Agency, Agency is unduly delayed or is unable to deliver to Contractor for servicing all or any part of the agricultural commodity which Contractor has contracted to service, Agency shall not be required to deliver or replace such commodity and shall be liable only for the cost (including transportation and handling costs) of containers and packaging materials purchased by Contractor for use in performance of the contract: Provided, That Contractor delivers such containers and packaging materials to Agency.

Article 93.

PERFORMANCE REPORT

Contractor shall prepare a Form ASCS-11, "Performance Report," as of the close of business each day when the agricultural commodity is received, processed or packaged or the serviced commodity is shipped. The original and one copy of this report signed by a representative of Contractor and an inspector shall be mailed promptly to the ASCS Management Office. Three copies of the report will be retained by the inspector. Form ASCS-11 will be supplied to the Contractor by Agency.

Article 94.

SERVICE CONTRACT ACT OF 1965, AS AMENDED

All contracts entered into by the United States or the District of Columbia, in excess of \$2,500, or in an indefinite amount, the principal purpose of which is to furnish services through the use of service employees are subject to the following provisions:

(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) (1) 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 paragraphs 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 the 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 paragraphs (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 Standards 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 1215-0150.):

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

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

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

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

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

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

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

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

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

(h) The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or Regulations, 29 CFR Part 4), rebate, or kickback on 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 contracts pursuant to section 2(a)(5) of the Act as 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

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 _____

(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 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 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 Part 4, 6, and 8. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the Contracting agency, the U.S. Department of Labor, and the employees or their representatives.

Article 95. GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS)

(a) **Government-furnished property.** (1) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the Government-furnished property described in the Schedule or specifications together with any related data and information that the Contractor may request and is reasonably required for the intended use of the property (hereinafter referred to as "Government-furnished property").

(2) The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use (except for property furnished "as-is") will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the contract's delivery or performance dates.

(3) If Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt of it, notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer and at Government expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the Contractor, the Contracting Officer shall make an equitable adjustment as provided in paragraph (h) of this article.

(4) If Government-furnished property is not delivered to the Contractor by the required time, the Contracting Officer shall, upon the

Contractor's timely written request, make a determination of the delay, if any, caused the Contractor and shall make an equitable adjustment in accordance with paragraph (h) of this article.

(b) **Changes in Government-furnished property.** (1) The Contracting Officer may, by written notice, (i) decrease the Government-furnished property provided or to be provided under this contract, or (ii) substitute other Government-furnished property for the property to be provided by the Government, or to be acquired by the Contractor for the Government, under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct regarding the removal, shipment, or disposal of the property covered by such notice.

(2) Upon the Contractor's written request, the Contracting Officer shall make an equitable adjustment to the contract in accordance with paragraph (h) of this article, if the Government has agreed in the Schedule to make the property available for performing this contract and there is any--

(i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or

(ii) Withdrawal of authority to use this property, if provided under any other contract or lease.

(c) **Title in Government property.** (1) The Government shall retain title to all Government-furnished property.

(2) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this article. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(3) Title to each item of facilities, special test equipment, and special tooling (other than that subject to a special tooling clause) acquired by the Contractor for the Government under this contract shall pass to and vest in the Government when its use in performing this contract commences or when the Government has paid for it, whichever is earlier, whether or not title previously vested in the Government.

(4) If this contract contains a provision directing the Contractor to purchase material for which the Government will reimburse the Contractor as a direct item of cost under this contract--

(i) Title to material purchased from a vendor shall pass to and vest in the Government upon the vendor's delivery of such material; and

(ii) Title to all other material shall pass to and vest in the Government upon--

(A) Issuance of the material for use in contract performance;

(B) Commencement of processing of the material or its use in contract performance; or

(C) Reimbursement of the cost of the material by the Government, whichever occurs first.

(d) **Use of Government property.** The Government property shall be used only for performing this contract, unless otherwise provided in this contract or approved by the Contracting Officer.

(e) **Property administration.** (1) The Contractor shall be responsible and accountable for all Government property provided under this contract and shall comply with Federal Acquisition Regulation (FAR), Title 48, C.F.R. Subpart 45.5, as in effect on the date of this contract.

(2) The Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound industrial practice and the applicable provisions of Subpart 45.5 of the FAR.

(3) If damage occurs to Government property, the risk of which has been assumed by the Government under this contract, the Government shall replace the items or the Contractor shall make such repairs as the Government directs. However, if the Contractor cannot effect such repairs within the time required, the Contractor shall dispose of the property as directed by the Contracting Officer. When any property for which the Government is responsible is replaced or repaired, the Contracting Officer shall make an equitable adjustment in accordance with paragraph (h) of this article.

(4) The Contractor represents that the contract price does not include any amount for repairs or replacement for which the Government is responsible. Repair or replacement of property for which the Contractor is responsible shall be accomplished by the Contractor at its own expense.

(f) **Access.** The Government and all its designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

(g) **Risk of loss.** Unless otherwise provided in this contract, the Contractor assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, Government property upon its delivery to the Contractor or upon passage of title to the Government under paragraph (c) of this article. However, the Contractor is not responsible for reasonable wear and tear to Government property or for Government property properly consumed in performing this contract.

(h) **Equitable adjustment.** When this article specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes article. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the Government. The right to an equitable adjustment shall be the Contractor's exclusive remedy. The Government shall not be liable to suit for breach of contract for--

- (1) Any delay in delivery of Government-furnished property;
- (2) Delivery of Government-furnished property in a condition not suitable for its intended use;
- (3) A decrease in or substitution of Government-furnished property; or
- (4) Failure to repair or replace Government property for which the Government is responsible.

(i) **Final accounting and disposition of Government property.** Upon completing this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government property (including any resulting scrap) not consumed in performing this contract or delivered to the Government. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid to the Government as the Contracting Officer directs.

(j) **Abandonment and restoration of Contractor's premises.** Unless otherwise provided herein, the Government--

(1) May abandon any Government property in place, at which time all obligations of the Government regarding such abandoned property shall cease; and

(2) Has no obligation to restore or rehabilitate the Contractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon contract completion). However, if the Government-furnished property (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this article may properly include restoration or rehabilitation costs.

(k) **Communications.** All communications under this article shall be in writing.

(l) **Overseas contracts.** If this contract is to be performed outside of the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this article) shall be construed as "United States Government" and "United States Government-furnished," respectively.

**Article 96. FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT--
PRICE ADJUSTMENT**

(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 article.

(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 article 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 article, but nothing in the article 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.