



Section 5 : SERVICE AND SUPPLY CONTRACT CLAUSES

526. Time and Material Provisions (10/1/96).

(a) Independent Contractor. Seller is an independent contractor for all purposes. In no event will Seller or its agents, representatives, or employees be deemed to be agents, representatives, or employees of Buyer. Seller's employees will be paid exclusively by Seller for all services performed, and Seller will be responsible for, and will actually comply with, all requirements and obligations relating to such employees under federal, state, or local law (or foreign law, if applicable), including, but not limited to, laws regarding Minimum Wages, Social Security, Unemployment Insurance, Federal and State Income Taxes, and Workers' Compensation Insurance. Buyer has no responsibility for withholding any portion of salary or wages due Seller's employees to comply with any of the aforementioned laws.

(b) Standards of Work. Seller agrees that (i) the performance of all work and services under this contract will conform to high professional standards; (ii) only qualified and competent persons will be employed in the performance of such work; and (iii) the average straight-time wages paid by Seller to its employees utilized in the performance of this contract will not be less than the minimum wage of each appropriate labor classification set forth in this contract.

(c) Subcontracting.

(1) Except for the purchase of standard commercial supplies and raw materials, Seller will not subcontract any portion of the work without the prior written approval of Buyer. Where approval to subcontract has been given, the rates for such work will not exceed those regularly agreed upon between Seller and its subcontractor for similar work, nor those provided in any then-current contract between Buyer and Seller's subcontractor for similar work. Rates paid by Seller's subcontractor will not exceed those shown in the schedule of this contract unless specific written approval is given by Buyer. It is further agreed that Seller will derive no profit directly or indirectly by reason of any lower-tier subcontract hereunder.

(2) Seller will not subcontract, on other than a firm-fixed-price basis, any portion of the work under this contract with any supplier who has a concurrent firm-fixed-price contract with Buyer for the same skills and/or disciplines at the same Buyer location. Seller will be responsible for requesting advice on the existence of such contracts. Questions regarding the boundaries of a "Buyer location" should be directed to Buyer's authorized purchasing representative.

(3) Seller will award all subcontracts in excess of \$2,500 on a competitive basis to the maximum extent possible. Suppliers' quotes, including quotes from unsuccessful bidders, will be made available to Buyer upon request and will be retained as supporting documentation in accordance with the requirements of paragraph (e) below.

(d) Concurrent Contracts. Seller will not seek or accept from Buyer or its contractors any concurrent firm-fixed-price contract for the same skills and/or disciplines at the same Buyer location. Questions regarding the boundaries of a "Buyer location" should be directed to Buyer's authorized purchasing representative.

(e) Records.

(1) Seller will maintain detailed, complete, and accurate records of labor furnished in connection with performance under this contract and associated travel costs, if any. Buyer's representatives will be permitted to inspect and audit such records at all reasonable times.

(2) At any time, Buyer may request audit of the invoices and substantiating material or documents. Each payment previously made will be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the voucher or invoice designated by Seller as the "completion invoice" and substantiating material, and upon compliance by Seller with all terms of this contract, including, without limitation, terms relating to patents, Buyer will promptly pay any balance due Seller. The completion invoice and substantiating material will be submitted by Seller as promptly as practicable following completion of the work under this contract.

(3) Seller will maintain detailed, complete, and accurate records for each order. The hours of labor are to be supported by individual, daily, job time cards, preferably signed by the workers performing the services, and including in all cases evidence of actual payment. Material charges are to be supported by paid invoices or storeroom requisitions. When material furnished by Buyer is used, a copy of Buyer's shipper will be kept in Seller's files for auditing purposes.

(f) Material. Material will be furnished by Seller except as specifically provided for herein. To the extent furnished by Seller, the charges therefor shall be actual cost, evidenced by paid invoices. Material withdrawn by Seller from its own stores may be charged at cost under any recognized method of pricing conforming to sound accounting practices and consistently followed. Cash or trade discounts, rebates, and allowances will be credited to Buyer whether or not taken. The value of resulting scrap will also be credited to Buyer. Unless otherwise noted in this contract, handling charges are included in the labor rates established in this contract.

(g) Timekeeping.

(1) Throughout the period of performance of this contract, Seller will maintain a timekeeping system satisfactory to Buyer, sufficient to reflect properly the hours worked under this contract by each of Seller's employees and the nature of the work performed.

(2) Straight-time Hours Defined. Straight-time hours shall mean the first eight consecutive hours worked during any 24-hour period, up to and including the first 40 hours worked in any seven-day period.

(3) Overtime Hours Defined. Overtime hours shall mean those hours worked in excess of eight consecutive hours during any 24-hour period and those hours worked in excess of 40 hours during any seven-day period, provided that 40 straight-time hours have first been worked during such seven-day period or 32 hours in a seven-day period in which a Buyer holiday occurs. Multiple Buyer holidays in the same seven-day period will decrease the 32-hour requirement accordingly. All such overtime must have the prior approval of Buyer's authorized purchasing representative.

(h) Additional Invoicing Requirements. After inspection and acceptance, Seller will submit properly certified invoices for each order. Invoices will include, at a minimum:

(1) This contract number.

(2) The authorization number for the work performed.

(3) A description of the work performed, including the location where the work was performed.

(4) Detailed charges for labor.

(5) Detailed charges for material.

(6) Detailed cost of any subcontracted work, including copies of invoices for same.

(i) Modifications to MDC 450.

(1) Delete Article 2, Inspection, Acceptance and Rejection, and substitute in lieu thereof DAR 7-901.21, Inspection and Correction of Defects.

(2) Delete Article 6, Changes, and substitute in lieu thereof DAR 7-901.2, Changes.

(3) Delete DAR 8-706 from Article 8, Termination for Convenience, and substitute in lieu thereof DAR 7-901.4, Terminations.

(j) Modifications to Clause 858.

(1) Delete Article 3, Inspection, and Article 6, Acceptance, Rejection, and Correction of Deficiencies, and substitute in lieu thereof FAR 52.246-6, Inspection - Time-and-Material and Labor-Hour.

(2) Delete Article 8, Changes, and substitute in lieu thereof FAR 52.243-3, Changes - Time-and-Materials or Labor-Hours.

(3) Delete FAR 52.249-2, from Article 10, Termination for Convenience, and substitute in lieu thereof FAR 52.249-6, Termination, and Alternate IV.

(4) Paragraph (A) in Article 17, Subcontracting and Assignment, is hereby deleted.

(k) Insurance. If, in the performance of this contract, Seller's employees, with or without equipment, are required to enter premises owned or controlled by Buyer or the Government, Seller will maintain Workers' Compensation and Comprehensive General Liability Insurance coverage, in the form, amounts, and with carriers satisfactory to Buyer. Such insurance will list Buyer as an additional insured. Seller will submit certifications covering such insurance prior to commencing performance; the certifications will indicate that Buyer is an additional insured. Seller will provide renewal certifications throughout the term of this contract, such that Buyer is in continuous possession of proof of Seller's insurance coverage. If, during the term of this contract, any insurance policy required by this provision expires and is not superseded by another policy of equal or greater coverage, Seller will so advise Buyer.

(l) Security. All employees, agents, and representatives of Seller or its subcontractors who are expected to enter premises owned or controlled by Buyer or the Government may, at Buyer's discretion, be required to provide Buyer's Security personnel birth certificates and/or other evidence of citizenship satisfactory to Buyer before being allowed within any restricted area. All such employees, agents, and representatives are bound by the provisions of the United States Criminal Code relating to espionage and sabotage and will conform to the standards and requirements established by the Government and Buyer's Security. The name, social security number, and birth certificate and/or other satisfactory evidence of citizenship of each such employee, agent, or representative will be submitted by Seller, if requested by Buyer, prior to the time for reporting to work. Selected positions and assignments of Seller's employees may require a security clearance.

(m) Hold Harmless and Release. Seller agrees that, if this contract calls for any work to be done on premises owned, leased, or occupied by Buyer, (i) Seller will indemnify and save harmless Buyer and the owner of such premises against any liability to subcontractors or other third persons under the mechanics, material men, labor, or other applicable lien laws of the state in which the work is to be performed, and (ii) the last payment called for under this contract will not in any event be due until Seller will have first delivered to Buyer executed releases on forms satisfactory to Buyer.

(n) Indemnification. Seller hereby agrees to indemnify and save harmless Buyer and its agents and employees against all liabilities, obligations, claims, losses, and expenses (i) caused or created by Seller, its subcontractors, or the agents and employees of either, whether negligent or not, arising directly or indirectly out of the work under this contract or (ii) arising

directly or indirectly out of injuries suffered or allegedly suffered by employees of Seller or its subcontractors in the course of their employment, in the performance of the work under this contract, or upon premises owned or controlled by Buyer.

(o) **Delayed Payment.** Payments by Buyer to Seller's final invoice covering any work on premises owned or controlled by Buyer involving more than \$25,000 will not be due until 45 days after completion of Seller's work subject to the lien laws of California (Code of Civil Procedure, Part III, Table IV, Chapter II).