



Section 5 : SERVICE AND SUPPLY CONTRACT CLAUSES

530. Contract-Labor 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 that it supplies to Buyer under this contract 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 it will provide only qualified and competent persons, satisfactory to Buyer, in the performance of this contract. Seller's employees will perform their work in accordance with the highest professional standards and will complete each assigned task on or before the date specified, if any. At any time and for any reason, Buyer may require Seller to withdraw the services of any person and require that Seller promptly provide a replacement for such person satisfactory to Buyer. In addition to any other indemnification provisions within this contract, Seller specifically agrees to indemnify and hold harmless Buyer from and against any liabilities, claims, charges, or suits for alleged losses, costs, damages, or expenses arising from Buyer's exercise of its rights under this subparagraph (b).
- (c) Ethical Practices.
- (1) Seller agrees to properly instruct all of its employees on the confidential nature of their conditions of employment, including, but not limited to, compensation and benefits, and that statements regarding these conditions are not to be made at any time to employees of Buyer.
- (2) Seller understands and agrees that employees it provides pursuant to this contract may be assigned work which affords access to the trade secrets or other proprietary information of Buyer. Seller, therefore, agrees that it will not require its employees provided under this contract to reveal to or discuss with Seller the details of their assignments with Buyer except when such disclosure is required for Seller's performance of this contract.
- (3) Seller agrees that it will not, during the existence of this contract, induce or attempt to induce any employees of Buyer, or any employees of companies under contract with Buyer, to leave their present employment and become employees of Seller or any related entity. Any evidence of Seller's proselytizing of employees of Buyer or employees of companies under contract to Buyer while working on Buyer's premises will constitute grounds for cancellation of this contract.
- (d) 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.

(e) 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 will 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.

(f) Holidays and Vacations. Buyer agrees to grant to Seller's employees furnished under this contract all holidays recognized by Buyer. Buyer will not be obligated to make any payments to Seller with respect to such holidays except for authorized work performed thereon. Seller's employees furnished under this contract will coordinate their vacation absences with Buyer's employee from whom they receive work assignments. Further, if Buyer has a shutdown period and Seller's employees are not required during this period, they will be so advised. Buyer will not be liable for any payment for hours not worked occasioned by any of the conditions described above.

(g) Payment.

(1) Seller's employees will prepare and submit time cards in accordance with instructions specified in this contract or appropriate attachment thereto. Seller will submit all invoices in duplicate to Buyer's authorized purchasing representative. Taxes, if any, must be separately itemized. Any and all tax exemption certificates provided by Buyer will be accepted by Seller. Upon receipt of an accurate and properly executed invoice, Buyer will pay Seller, at the rates specified in this contract, for the labor performed under this contract by Seller's employees properly charging hereto. Such rates include all wages, overhead, general and administrative expenses, all other direct or indirect costs, and profit to be recovered or charged by Seller under this contract. Average straight-time wages paid by Seller to its employees utilized in performance hereof will not be less than the minimum wage of each appropriate labor classification set forth in this contract. Buyer will not be liable for premium rates on overtime worked by Seller's employees under this contract unless such premium rates are expressly set forth in this contract, and the premium will apply to only that overtime which has been approved by Buyer.

(2) Any payments in reimbursement of the cost of transportation furnished by Seller under this contract will be made only if authorized herein and only upon submittal of properly certified invoices, supported, as appropriate, by documentary evidence, satisfactory to Buyer, covering the expenditures for which reimbursement is sought.

(h) Records and Audit.

(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.

(i) 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.

(j) Modifications to MDC 450. Articles 6, 8, and 9 are hereby deleted from MDC 450.

(k) Modifications to Clause 858. Articles 8, 10, and 11 are hereby deleted from Clause 858.

(l) Changes. Buyer may, at any time, exclusively by written order signed by its authorized Purchasing Representative, and without notice to sureties, make changes within the general scope of this contract which affect, among other things, the services to be performed and the time (i.e. hours of the day, days of week, etc.) and place of performance thereof. If any such change causes an increase or decrease in the cost of this contract, an equitable adjustment will be made and the contract will be modified in writing accordingly. Any claim by Seller for such adjustment must be asserted in writing to Buyer's Purchasing Department not later than 30 days after the date of receipt by Seller of the written change authorization, or within such extension as Buyer may grant in writing. Buyer may, in its sole discretion, consider any such claim regardless of when asserted. Such claim will be in the form of a complete change proposal fully supported by factual information. Pending any such adjustment, Seller will diligently proceed with the contract as modified. Buyer will have the right to examine any of Seller's pertinent books and records for the purpose of verifying Seller's claim.

(m) Termination. By written notification, Buyer may terminate this contract in whole or in part at any time and for any reason. In the event of termination, Buyer will be liable for payments to Seller only for services performed by Seller's employees up to the effective date of termination, and then only in accordance with the payment provisions of this contract.

(n) Personal Injury and Property Damage. Seller will indemnify and hold harmless Buyer from and against any and all loss, damage, cost, and expense to Buyer because of death or injury to Buyer's employees, to Seller's employees, agents, or representatives, to third persons, or because of damage to property which arises from Seller's performance hereunder.

(o) Patent Rights, Copyrights, and Nondisclosure.

(1) Definitions. As used in this contract the term "invention" or "invention or discovery" includes any art, machine, manufacture, design, composition of matter, or any new and useful improvement thereof which is or may be patentable under the Patent Laws of the United States or of any foreign country; and "made," when used in relation to any invention or discovery, shall mean the conception or the first actual or constructive reduction to practice of such invention.

(2) Disclosure. Whenever an invention or discovery is made by Seller or any of its employees either solely or in collaboration with others, including employees of Buyer, under or relating to this contract, Seller will give Buyer prompt written notice thereof and will furnish Buyer with complete information thereon, including, as a minimum, a complete written disclosure of each such invention and information concerning the date and identity of any public use, sale, or publication of such invention made by or known to Seller or of any contemplated publication by Seller or its employees.

(3) Rights in Inventions. Rights in any inventions or discoveries made by Seller or its employees under this contract,

including title to and rights under any patent application or patent which may issue thereon, will reside solely with Buyer, together with the exclusive power to determine whether or not and where a patent application will be filed and disposition of any rights thereunder. Seller agrees that it will, and warrants that its employees who may be the inventors of any such invention will, execute all documents and do all things necessary or proper to vest in Buyer the rights granted to it under this clause and to enable Buyer to apply for and prosecute any patent application, in any country, covering such invention, where Buyer has the right under this clause to file such application.

(4) Background Patents. Seller agrees to grant to Buyer a nonexclusive, royalty-free license under any patents owned or controlled by Seller which relate to and are required by Buyer to practice any of the work or the results of the work of Seller or its employees under this contract.

(5) Nondisclosure. Seller agrees it will not, and warrants that its employees will not, disclose to any third party, without the written consent of Buyer, any invention or discovery made under or relating to this contract or any information acquired from Buyer under this contract, including trade secrets, business plans, and confidential or other information which may be proprietary to Buyer.

(6) Employee Agreements. Seller will obtain patent agreements to effectuate the provisions of this clause from all persons who perform any part of the work under this contract, except such clerical and manual labor personnel as will have no access to technical data.

(7) Copyrights. Seller agrees to assign to Buyer the copyrights on any works of authorship prepared under this contract and to cause its employees to do the same to the extent that the works of such employees are not considered to be works made for hire for Buyer or Seller under copyright law.